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Collective bargaining in the public service *A way forward*

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**General Survey concerning labour relations
and collective bargaining in the public service**

**Third item on the agenda:
Information and reports on the application
of Conventions and Recommendations**

**Report of the Committee of Experts
on the Application of Conventions and Recommendations
(articles 19, 22 and 35 of the Constitution)**

Report III (Part 1B)

International Labour Office Geneva

**Collective bargaining
in the public service:**
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Foreword

1. This General Survey is the first one to be conducted on the Labour Relations (Public Service) Convention, 1978 (No. 151), the Collective Bargaining Convention, 1981 (No. 154), the Labour Relations (Public Service) Recommendation, 1978 (No. 159), and the Collective Bargaining Recommendation, 1981 (No. 163). The main focus of the General Survey is on collective bargaining rights in the public administration. It also covers a number of other subjects, including consultation, the civil and political rights of public employees, the facilities to be granted to trade union representatives, protection against acts of discrimination and interference, and dispute settlement mechanisms.
2. However, Convention No. 154 applies not only to the public administration, but also to the whole of the public and private sectors. This explains that while the Survey focuses on the public administration for the subjects mentioned, it also refers more generally, and in less detail, to the situation in respect of law and practice in the private sector.
3. A certain number of national systems are examined in the Survey in greater detail, with some national provisions being cited. The intention is not to promote any particular system in the various member States, which would not be very meaningful given the specific and distinct traditions and legacies of each system, but to make available to member States generally and to the tripartite constituents certain elements of these systems and provisions for information purposes, and perhaps to serve as a reference or source of inspiration, amongst others, for States wishing to apply the principles or ratify the Conventions in question.
4. With regard to collective bargaining, in order to avoid repetition, questions relating to the application of Conventions Nos 151 and 154 in the various countries are addressed in general in the context of the observations and direct requests made on the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which establishes the right to collective bargaining of public servants, except those engaged in the administration of the State. This is why the footnotes to this Survey generally refer to observations and direct requests relating to Convention No. 98. The same approach is used for protection against acts of anti-union discrimination and interference under Convention No. 151, which is also dealt with in the context of Convention No. 98 in order to avoid repetition.
5. Attention is drawn to the fact that some of the guidance developed in the subjects covered by this Survey is based on relevant principles of the Committee on Freedom of Association, a tripartite body operating since 1951 in the framework of the special procedure for the protection and promotion of trade union rights, established following an agreement reached in 1950 between the United Nations Economic and Social Council and the ILO Governing Body. The Committee highlights that the principles of the Committee on Freedom of Association, which is a tripartite and independent body, are of particular value and relevance for its work, as they reflect a tripartite consensus on matters relating to trade union rights and labour relations.

6. Lastly, as far as guidance in this General Survey is concerned, consideration should be given both to its legal status and to the value of the assessment underlying its formulation, based on the wording of the provisions contained in the Conventions. In this regard, the Committee wishes to note that, as part of the regular machinery for the monitoring of the application of ratified Conventions, it is called upon to bring to the attention of the Conference Committee on the Application of Standards any national practices and standards that are not in conformity with the Conventions and the severity of certain situations (which necessarily implies an evaluation), as well as, in conformity with its working methods, to indicate cases of progress in the application of standards. This task inevitably involves a degree of interpretation, with due regard to coherence and equal treatment of States. Over the years, the evaluations used have given rise to a number of formulations of guidance in the form of opinions and recommendations, as is the case of those set out by supervisory bodies for certain conventions or treaties within the framework of the United Nations or some regional organizations. The Committee's opinions and recommendations are not binding within the ILO supervisory process and are not binding outside the ILO unless an international instrument expressly establishes them as such or the supreme court of a country so decides of its own volition.

7. This guidance belongs to the body of so-called "soft law" – or non-binding opinions and decisions intended to guide the actions of the national authorities. The work of these supervisory bodies derives its value from their rationality and legitimacy (independence, experience and expertise, and responsiveness to different national realities and legal systems, guarantees in the selection procedures, provision of information by non-governmental sources such as employers' and workers' organizations, working methods built on ongoing and constructive dialogue with governments, etc.). The technical role and expertise as well as the moral authority of these supervisory bodies in the international arena is considerable, particularly as these bodies have been engaged in supervisory tasks for decades and the Committee of Experts has been operating for over 80 years.

8. As regards the interpretation of ILO Conventions and the role of the International Court of Justice in this area, the Committee has pointed out since 1990 that its terms of reference do not enable it to give definitive interpretations of Conventions, competence to do so being vested in the International Court of Justice by article 37 of the Constitution of the ILO. It has stated, nevertheless, that in order to carry out its function of determining whether the requirements of Conventions are being respected, the Committee has to consider the content and meaning of the provisions of Conventions, to determine their legal scope, and where appropriate to express its views on these matters. The Committee has consequently considered that, in so far as its views are not contradicted by the International Court of Justice, they should be considered as valid and generally recognized. The Committee considers the acceptance of these considerations to be indispensable to maintaining the principle of legality and, consequently, to the certainty of law required for the proper functioning of the International Labour Organization.¹

¹ See ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 4A), International Labour Conference, 77th Session, Geneva, 1990, para. 7, p. 8.

Introduction

9. On 10 June 2008, the International Labour Organization unanimously adopted the ILO Declaration on Social Justice for a Fair Globalization (the Social Justice Declaration). This Declaration is deemed to be the third major statement of principles and policies adopted by the International Labour Conference since the ILO Constitution, 1919. It is inspired by the Declaration of Philadelphia, 1944, and the Declaration on Fundamental Principles and Rights at Work, 1998. The Social Justice Declaration expresses the contemporary vision of the ILO's mandate in the era of globalization. It formalizes the ILO decent work concept developed in 1999 by making it a central part of the Organization's policies for achieving its constitutional objectives. This Declaration expresses the universal character of the Decent Work Agenda: all Members of the Organization must implement policies based on ILO strategic objectives – employment, social protection, social dialogue and the fundamental principles and rights at work. It also emphasizes a global and integrated approach by stating that its objectives are “inseparable, interrelated and mutually supportive”, and it ensures that international labour standards successfully fulfil their role in achieving all these objectives.

10. The follow-up to the Social Justice Declaration calls for the introduction of a scheme of recurrent discussions by the International Labour Conference so as to: (i) understand better the diverse realities and needs of its Members with respect to each of the strategic objectives and respond more effectively to them, using all the means of action at its disposal, including standards-related action, technical cooperation and the technical and research capacity of the Office, and adjust its priorities and programmes of action accordingly; and (ii) assess the results of the ILO's activities with a view to informing programme and budget and other governance decisions.²

11. In March 2011, at its 310th Session, the Governing Body of the International Labour Organization decided that, under the follow-up to the Social Justice Declaration, the recurrent item on the agenda of the 102nd Session (2013) of the International Labour Conference would address the ILO strategic objective of social dialogue.

12. Under article 19, paragraphs 5(e), 6(d) and 7(b), of the ILO Constitution, member States are required to report to the Director-General, “at appropriate intervals, as requested by the Governing Body” on non-ratified Conventions and Recommendations; the reports must in particular cover the position of law and practice concerning matters dealt with in these instruments. In 1950, the Committee of Experts on the Application of Conventions and Recommendations (hereinafter “the Committee”) was called on for the first time to consider reports submitted under article 19 of the Constitution. It soon became apparent that it would be useful to have an overview of the instruments under consideration and their implementation both in countries that had ratified them and in other countries, by using information contained in the reports under article 19 and under articles 22 and 35 of the Constitution regarding ratified Conventions. The first “general

² Section II(B) of the Annex to the Social Justice Declaration.

survey”, based on both these groups of reports, was prepared in 1956 by the Committee. Every year, the Conference Committee on the Application of Standards examines the General Surveys (Report III (Part I B)) during its general discussion.

13. In an effort to align the General Survey of the Committee with the recurrent item report and considering the link between freedom of association and collective bargaining on the one hand and social dialogue on the other – particularly where the emphasis is on the public service³ – the Governing Body decided at its 310th Session (March 2011) to invite governments to submit reports for 2012, under article 19 of the Constitution, on the Labour Relations (Public Service) Convention, 1978 (No. 151), the Labour Relations (Public Service) Recommendation, 1978 (No. 159), the Collective Bargaining Convention, 1981 (No. 154), and the Collective Bargaining Recommendation, 1981 (No. 163) (for the latter two instruments, only regarding the public service).⁴

14. During a number of past reviews of international labour standards by the Governing Body, the instruments that are the subject of this Survey were deemed particularly relevant and important.

15. Therefore, with respect to Convention No. 151 and Recommendation No. 159, the Working Party on International Labour Standards (the Ventejol Working Party) classified these instruments as instruments to be promoted on a priority basis, under the heading “fundamental human rights”.⁵

16. With respect to Convention No. 154 and Recommendation No. 163, the Ventejol Working Party classified these instruments as instruments to be promoted on a priority basis, under the heading “labour relations”.⁶

17. In decisions adopted in 1997 and 1999, following recommendations of the Working Party on Policy regarding the Revision of Standards (the Cartier Working Party), the Governing Body decided that the ratification of Conventions Nos 151 and 154 should be encouraged because these Conventions were still applicable to current needs (up-to-date Conventions) and invited member States to consider ratifying them; regarding Recommendations Nos 159 and 163, it decided that they were still up to date and invited member States to give effect to them, in accordance with article 19 of the ILO Constitution.

18. Several dates are to be noted regarding the International Labour Conference. In 2002, the Conference adopted a resolution concerning tripartism and social dialogue in which, recalling Conventions Nos 87, 98, 151 and 154 and their corresponding Recommendations, it invited governments to ensure that the necessary preconditions existed for social dialogue, including respect for the fundamental principles and the right to freedom of association and collective bargaining, a sound labour relations environment, and respect for the role of social partners, and invited governments as well

³ GB.310/LILS/4, para. 11.

⁴ See the report form adopted by the Governing Body (GB.310/11/2(Rev.)) which appears in Appendix 2 to this report.

⁵ See Final Report of the Working Party on International Labour Standards, approved by the Governing Body in 1979 (*Official Bulletin*, Special Issue, Vol. LXII, 1979, Series A, p. 12) and Report of the Working Party on International Labour Standards, approved by the Governing Body in 1987 (*Official Bulletin*, Special Issue, Vol. LXX, 1987, Series A, p. 7).

⁶ See Report of the Working Party on International Labour Standards, approved by the Governing Body in 1987 (*Official Bulletin*, Special Issue, Vol. LXX, 1987, Series A, p. 7). The Worker members had observed that the instruments on collective bargaining adopted in 1981 (Convention No. 154 and Recommendation No. 163) could also be regarded as dealing with basic human rights, *ibid.*, p. 42.

as workers' and employers' organizations to promote and enhance tripartism and social dialogue, especially in sectors where tripartism and social dialogue are either absent or hardly exist.

19. In 2008, the Social Justice Declaration reaffirmed that the role of tripartism and social dialogue between governments and workers' and employers' organizations was vital to social cohesion and the rule of law. By adopting the Social Justice Declaration, the International Labour Conference recognized that the strategic objectives of the ILO – employment, social protection, social dialogue and fundamental principles and rights at work – through which the Decent Work Agenda was expressed, were inseparable, interrelated and mutually supportive.

20. In 2009, the Conference adopted the Global Jobs Pact, affirming that the Decent Work Agenda was part of the response to the global economic crisis and its consequences. The Pact affirms that, especially in times of heightened social tension, it is vital to strengthen respect for, and the use of, mechanisms of social dialogue, including collective bargaining, where appropriate at all levels.

21. In this respect, the Committee notes with interest that in the Programme and Budget proposals for 2012–13,⁷ which were presented by the Director-General of the ILO and adopted by the Governing Body and the Conference, a global campaign is scheduled to be launched to promote the ratification and application of all the standards mentioned in the Global Jobs Pact and that this activity will address, among other things, the collective bargaining Conventions (Nos 98, 151 and 154).

22. Currently, out of 185 member States, 48 have ratified the Labour Relations (Public Service) Convention, 1978 (No. 151), and 43 have ratified the Collective Bargaining Convention, 1981 (No. 154), out of which 29 have ratified both Conventions. The Committee observes that all the States that have ratified Conventions Nos 151 and 154 have also ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), with the exception of Brazil, which has not ratified Convention No. 87. The General Survey suggests offering member States that have not yet ratified Conventions Nos 151 and 154 with detailed information on the scope of these instruments and also guidance on possible ways of removing any obstacles they may have encountered in law and in practice.

23. The aim of this General Survey, which addresses labour relations and collective bargaining in the public service, is to give a global picture of the legislation and practice of member States in terms of the application of Conventions Nos 151 and 154, regardless of whether they have been ratified, and of Recommendations Nos 159 and 163, by describing both the positive initiatives undertaken by some countries and the problems encountered. The General Survey also highlights the main observations made by the Committee and its corresponding guidance to help achieve fuller implementation of ratified Conventions. It analyses the scope, methods and difficulties of application of the instruments in question, the most salient thematic features pertaining to each one, and their implementation and impact. Finally, it examines the obstacles to ratification encountered by some member States, the technical assistance available to overcome such obstacles and the prospects for ratification.

24. This General Survey is based, on the one hand, on the reports communicated under article 19 of the ILO Constitution by countries that have not ratified the Conventions

⁷ GB.310/PFA/2, para. 211.

concerned and, on the other, on the reports submitted under articles 22 and 35 of the Constitution by countries that have ratified them. The number of reports submitted by Governments under article 19 is 69 for Convention No. 151, 98 for Recommendation No. 159, 73 for Convention No. 154 and 99 for Recommendation No. 163.⁸ In addition, the Committee has received information and observations from workers'⁹ and employers'¹⁰ organizations regarding these instruments. When examining the information contained in the reports, the Committee makes every effort to take related legislation and practice into account; it attaches particular importance to practice, meaning practical implementation, since the mere alignment of national legislation with ILO instruments without effective implementation is not very significant.

25. The connection between the instruments covered by the present Survey and the fundamental Conventions on freedom of association and collective bargaining (the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)) is indisputable. In this respect, the Committee recalls that it has repeatedly highlighted the connection between the right to organize and collective bargaining on the one hand and the development of human potential, economic growth, social justice and sustainable peace on the other hand, as well as the relevance of this right to achieving the objective of decent work, particularly during times of economic crisis.

26. This Survey complements the previous one, entitled *Giving globalization a human face*, on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, International Labour Conference, 101st Session, 2012, Report III (Part 1B) (hereafter "General Survey, 2012"), which addressed the eight fundamental ILO Conventions¹¹ and in which the Committee recalled that it has always considered that the right to establish and join occupational organizations should be guaranteed for all public servants and officials, irrespective of whether they are engaged in the state administration at the central, regional or local level, are officials of bodies which provide important public services or are employed in state-owned economic undertakings.¹² The Committee has considered that collective bargaining in the public service has special characteristics which are found in varying degrees in most countries, principally in view of the twofold responsibility of the State in this sphere, since it is both the employer and the legislative authority, which is ultimately accountable to the population for the allocation and management of its resources.¹³

27. Generally, labour relations in the public service imply particular challenges and difficulties that have often resulted in the national legislation excluding public service employees from laws governing labour relations and stipulating special provisions for

⁸ See Appendix IV.

⁹ Some 132 observations have been received from 40 workers' organizations (see Part V of this Survey and Appendix V for a list of organizations concerned).

¹⁰ Five national employers' organizations have submitted their obligations (see Part V of this Survey and Appendix V for a list of organizations concerned).

¹¹ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

¹² General Survey, 2012, para. 64.

¹³ *ibid.*, para. 211.

this category of workers, whether through the formulation of “public service statutes” or by the adoption of special laws and regulations.

28. The recognition of public sector workers’ trade union rights, including the right to collective bargaining, has long been claimed by the trade union movement and, in the last 50 years, many countries have adopted standards in view of achieving this objective. A review of different national legislation demonstrates a clear global tendency towards acknowledging these rights. This tendency is in response to a concern to avoid discrimination against public employees in the same way as for private sector workers, particularly regarding collective bargaining of their terms and conditions of employment. Special modalities can be involved for public employees, however. The Committee underlines that collective bargaining, far from damaging the quality of public services or being contrary to general interest, is in fact an instrument that can lead to a harmonious work environment, more effective and efficient services and, above all, to decent working conditions that respect the dignity of public employees. Indeed, collective bargaining in the public sector, in the countries where it exists, has resulted in the recognition by these governments of the positive role it can play.

Background

29. Freedom of association has been one of the objectives of the International Labour Organization's programme of action since the adoption of its Constitution in 1919. The principle of "freedom of association" is recognized as part of the Organization's objectives in the Preamble to Part XIII of the Treaty of Versailles. Furthermore, article 427 of the Treaty, which relates to general principles, provides for "the right of association for all lawful purposes by the employed as well as by the employers".

30. In 1919, the authors of the Constitution of the International Labour Organization, affirming that "universal and lasting peace can be established only if it is based upon social justice" and noting the urgent need to improve "conditions of labour ... involving ... injustice, hardship and privation", fixed as the main objective of the Organization the attainment of social justice, particularly by improving working conditions and the adoption by all nations of "humane conditions of labour".

31. The following are the original objectives of the Organization, set out in the second paragraph of the Preamble of the ILO Constitution:

Whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment and the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures.

32. The International Labour Conference, meeting in Philadelphia in 1944, unanimously adopted a solemn Declaration of the aims and purposes of the ILO and of the principles which should inspire the policy of its Members. The Declaration of Philadelphia was integrated into the ILO Constitution, developing and expanding the Organization's original objectives as set out in the Preamble. The Declaration makes a fundamental objective of "the war against want ... with a view to the promotion of the common welfare", the latter being understood to be the "material well-being and ... spiritual development" of all human beings "in conditions of freedom and dignity, of economic security and equal opportunity" an objective that must constitute "the central aim of national and international policy". This fundamental objective provides the Organization with extensive means of action in social and economic spheres, to such an extent that the Declaration of Philadelphia affirms that "it is a responsibility of the International Labour Organisation to examine and consider all international economic and financial policies and measures in the light of this fundamental objective".

33. For the purposes of this General Survey the salient point is that the Declaration of Philadelphia, in Parts II and III, by taking up the objectives set out in the Preamble to the

Constitution, reaffirms freedom of association and explicitly provides for, among other things, “the effective recognition of the right to collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures”.

34. It was not until almost 30 years after the adoption of the ILO Constitution that the International Labour Conference was in a position to adopt a general instrument on freedom of association as well as another one on collective bargaining, more limited in scope. Many initiatives for an ILO Convention regulating freedom of association and the right to collective bargaining had already been put forward by the Workers’ group and certain Governments.

35. Before the adoption of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), only two instruments – which, it must be pointed out, were not general in scope – had been adopted in this field. The first is the Right of Association (Agriculture) Convention, 1921 (No. 11), which requires each Member of the International Labour Organization that ratifies it “to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers, and to repeal any statutory or other provisions restricting such rights in the case of those engaged in agriculture”. The second is the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), which addresses the right of association and the settlement of labour disputes in non-metropolitan territories.

36. When the International Labour Conference adopted, by an overwhelming majority, Convention No. 87 in 1948, it recognized the right to organize for both private sector and public sector workers, including those in the public service, as well as the right to organize for employers. This is why Article 2 of the Convention states that “workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their choosing without previous authorisation”. The only group of workers which may be excluded from this general principle is the police and armed forces. It is up to national laws and regulations to determine the extent to which the guarantees provided for in this Convention apply to this group (Article 9). The Convention also states that workers’ and employers’ organizations have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes, and that public authorities will refrain from any interference which would restrict this right (Article 3).

37. In 1949, when a new instrument, the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which was intended to promote collective bargaining, came before the Conference, it was decided to allow the same exception regarding the police and armed forces, and also to state in Article 6 that: “This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.”

38. Convention No. 98 provides for the protection of workers against acts of discrimination (Article 1), protection of workers’ and employers’ organizations against any acts of interference (Article 2), and the promotion of the development and utilization of machinery for voluntary negotiation of collective agreements (Article 4).

39. In 1959, when the Conference’s agenda contained an item addressing non-manual workers’ issues, it adopted conclusions concerning the development of an ILO programme for non-manual workers. In these conclusions, it requested a review of the

situation of public service staff in regard to the right to organize and collective bargaining, with the help of a special technical meeting, if needed.

40. Subsequently, in 1963, the Meeting of Experts on the working and labour conditions of public service staff was convened to review, among other things, the issue of freedom of association and the procedures for determining the labour conditions in the public service. It was partly to take into account the conclusions of this Meeting of Experts that the Governing Body decided to set up the Joint Committee on the Public Service, whose task was to study the issues related to employment in the public service. At its first session in 1971, the Joint Committee recommended that the Governing Body place this item on the agenda of a future session of the Conference. However, the Governing Body then decided to give priority to other items.

41. In 1971, the Conference adopted the Workers' Representatives Convention, 1971 (No. 135), and the Workers' Representatives Recommendation, 1971 (No. 143). The scope of these two instruments is limited to the workers' representatives in the undertaking, as well as their protection and the granting of facilities to these workers to enable them to carry out their functions, and does not include public employees.

42. In 1975, the Conference adopted the Rural Workers' Organisations Convention, 1975 (No. 141), and the Rural Workers' Organisations Recommendation, 1975 (No. 149). These two instruments incorporate the basic tenets of Conventions Nos 87 and 98, making them applicable to a particular category of workers.

43. In 1974, the Governing Body decided to convene a technical conference on the public service the following year (to which all member States were invited to send a bipartite delegation), whose task was to study this issue and advise the ILO with regard to possible action. The technical conference on the public service met in April 1975 and in its conclusions it unanimously invited the Governing Body to consider placing an item regarding freedom of association and the determination of conditions of employment in the public service on the agenda of a future session of the International Labour Conference, with a view to adopting an appropriate international instrument, based on a preliminary outline that it had approved. On this point it should be noted that the technical conference, recalling that the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), already applied to the public service, did not make provision in the preliminary outline of a possible international instrument for any new provisions relating to the matters already covered by that Convention. On the other hand, highlighting the fact that public servants were excluded (Article 6) from the scope of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the technical conference revised the preliminary outline with a view to extending the guarantees set forth in the areas covered by the Convention to public servants, as well as to certain other related areas.

44. Following the recommendation of the technical conference, the Governing Body decided to place the item on the agenda of the 63rd Session (1977) of the Conference.

45. It was thus nearly 30 years after the adoption of Convention No. 98 that the Conference adopted the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Labour Relations (Public Service) Recommendation, 1978 (No. 159), both in 1978. These instruments complement Convention No. 98 by covering public servants as well, while adding elements of Convention No. 135 regarding the granting of facilities to workers' representatives in the execution of their functions.

46. Convention No. 151 builds on the requirements established in Convention No. 98 regarding protection against anti-union discrimination (Article 4) and acts of interference

(Article 5). It also includes a provision on public employees' civil and political rights (Article 9).

47. Article 7 of Convention No. 151 further provides that “measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees’ organisations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters”. This formulation mainly builds on the principle of Article 4 of Convention No. 98, with the addition of public servants being granted permission to use methods other than collective bargaining. In this way the International Labour Conference enabled the rights recognized by Convention No. 98 to be extended to public employees by officially giving them the right to participate in determining their working conditions, with collective bargaining being specifically mentioned as one of the possible modalities.

48. The Convention applies to “all persons employed by public authorities, to the extent that more favourable provisions in other international labour Conventions are not applicable to them” (Article 1). The only categories of public employees that can be excluded from the scope of the Convention by national laws and regulations (other than the armed forces and the police, as was the case with previous Conventions) are: “high-level employees whose functions are normally considered as policy making or managerial” or “employees whose duties are of a highly confidential nature”.

49. Regarding the settlement of disputes arising in connection with the determination of terms and conditions of employment, Convention No. 151 advocates negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved (Article 8).

50. Although recognition of the right to collective bargaining of public servants significantly improved with the adoption of Convention No. 151, States could still avoid resorting to it by establishing conditions of employment by other means. For this reason, in order to enable the broader recognition of collective bargaining, the Collective Bargaining Convention, 1981 (No. 154), and the Collective Bargaining Recommendation, 1981 (No. 163), are unique in that they cover both the private sector and the public sector (except the armed forces and the police). As regards the public sector, the Convention only provides that special modalities of application of the Convention may be fixed by national laws or regulations or national practice (Article 1, paragraph 3). Therefore, a member State that has ratified it can no longer limit itself to the consultation method, as was the case with Convention No. 151. It must promote collective bargaining for determining working conditions and terms of employment (Articles 2 and 5, paragraph 1). Thus, with the adoption of Convention No. 154, the international community recognized that collective bargaining constitutes the preferred method of regulating working conditions for both the public and private sectors.

51. By allowing for special modalities of application, Convention No. 154 introduces a degree of flexibility into the application of its provisions and in this way it enables to take into account the distinctive features of the public sector and the various national budgetary systems and procedures.

52. As demonstrated by this brief background, the transposition of fundamental trade union principles and rights set forth in the ILO Constitution of 1919 and the Declaration of Philadelphia into the aforementioned international labour Conventions has been no easy task and has taken a considerable time.

Part I

Trade union rights and facilities in the public administration

I. Scope of the Labour Relations (Public Service) Convention, 1978 (No. 151)

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

Article 1

This Convention applies to all persons employed by public authorities, to the extent that more favourable provisions in other international labour Conventions are not applicable to them.

The extent to which the guarantees provided for in this Convention shall apply to high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature, shall be determined by national laws or regulations.

The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

Article 2

For the purpose of this Convention, the term public employee means any person covered by the Convention in accordance with Article 1 thereof.

Article 3

For the purpose of this Convention, the term public employees' organisation means any organisation, however composed, the purpose of which is to further and defend the interests of public employees.

53. When in 1948 the International Labour Conference adopted the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), it recognized the right to organize for workers in both the private and public sectors, including public servants. Article 2 of this Convention therefore sets forth the principle that “[w]orkers and employers, without distinction whatsoever, shall have the right to establish ... organisations of their own choosing without previous authorisation”.

54. The only exception provided for in Convention No. 87 relates to the armed forces and the police, for whom national laws or regulations shall determine the extent to which the guarantees provided for in the Convention shall apply (Article 9 of Convention No. 87).

55. When a new instrument designed to promote collective bargaining – the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – was put before the Conference for discussion in 1949, it was decided not only to allow the same exception in respect of the police and the armed forces, but also to provide in Article 6 that the Convention does not deal with the position of public servants engaged in the

administration of the State, nor shall it be construed as prejudicing their rights or status in any way. In adopting this Article, the Conference recognized that collective bargaining in the public service has special characteristics that are found to varying degrees in most countries. The first reason generally given is that the State assumes two functions in this case, both employer and legislative authority, which sometimes overlap or even contradict one another, something that can cause difficulties. Furthermore, the State's room for manoeuvre depends to a large extent on tax revenue, and yet in its role of employer the State is responsible to the electorate for the allocation and management of its resources. Lastly, in certain legal and socio-cultural traditions the status of public servant is incompatible with any notion of collective bargaining or freedom of association.

56. Considering the preparatory work for Convention No. 98,¹⁴ the Committee of Experts indicated that not all public servants may be excluded from the scope of the Convention, only those engaged in the administration of the State. The Committee adopted this position in keeping with Article 6, which refers to "public servants engaged in the administration of the State".

57. Thirty years after the adoption of Convention No. 98, Convention No. 151 tried to address this shortcoming by asking member States to "promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organisations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters". The International Labour Conference therefore allowed the rights recognized under Convention No. 98 to be extended to public employees by officially granting them the right to participate in the determination of their conditions of employment, with collective bargaining being expressly mentioned as one of the possible modalities.

58. *Relationship between the Conventions.* In 1977, the Committee on the Public Service of the International Labour Conference decided, during the preparation of Convention No. 151, not to include the following paragraph: "Members that ratify the Convention may exclude from its scope persons employed in enterprises or public establishments of a commercial, industrial, agricultural or similar nature, or certain categories of them." It indicated that the intention was to cover those workers who were excluded from Convention No. 98 and that the coverage of the proposed Convention and of Convention No. 98 would be such that, apart from those who might be specifically excluded under the proposed Convention, no categories of workers would be in the position of not being covered by either one Convention or the other.¹⁵ Consequently, as provided in Article 1, paragraph 1, the Convention applies to all persons employed by the public authorities, to the extent that more favourable provisions in other international labour Conventions are not applicable to them.

59. The safeguard provided in Article 1, paragraph 1, of the Convention has been helpful for reaching agreement in situations where the provisions of Conventions Nos 87 and 98, in particular, were more favourable than those of Convention No. 151. The Committee on Freedom of Association, among others, has on a number of occasions

¹⁴ Preparatory work for ILO Conventions and Recommendations is available online, on the ILO website (LABORDOC database).

¹⁵ International Labour Conference, 63rd Session, 1977, *Record of Proceedings*, p. 635, Report of the Committee on the Public Service, para. 48.

given its views on the relationship between ILO Conventions.¹⁶ It has noted, for example, that Article 4 of Convention No. 98 offers more favourable provisions to workers than Article 7 of Convention No. 151 in a branch of activity such as public education where both Conventions are applicable, since Article 4 includes the concepts of voluntary negotiation and the independence of the negotiating parties. The Committee has considered that in such cases, taking into account Article 1 of Convention No. 151, Article 4 of Convention No. 98 should be applicable in preference to Article 7 of Convention No. 151, which calls upon the public authorities to promote collective bargaining either by means of procedures that make such bargaining possible, or by such other methods as will allow public servants to participate in the determination of their terms and conditions of employment.¹⁷

60. *The notion of public authority.* In 1978, the Committee on the Public Service agreed that the term “public authorities” in Article 1, paragraph 1, of the Convention should be understood to refer to all bodies or institutions invested with public authority or public functions.¹⁸ In this regard, it was recalled that it would be for each government in the first instance to determine which bodies and institutions were public authorities in its country, subject to the principle that Conventions must be applied by a ratifying country in good faith.

61. The preparatory work indicates that members of parliament, the judiciary and other elected or appointed members of public authorities themselves do not come within the meaning of this definition.¹⁹ The right to organize of judges is nevertheless recognized under Convention No. 87.

62. *Public employees in managerial positions, involved in the formulation of policies or with duties of a highly confidential nature.* The Convention leaves it to national laws or regulations to determine the extent to which the guarantees provided for in the Convention shall apply to high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature (Article 1, paragraph 2).

63. In 1978, the Committee on the Public Service specified that the words “whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature” should be understood as not permitting the exclusion of persons whose managerial functions are ancillary to, or only a minor part of, their normal duties, and that this paragraph was intended to provide a certain degree of flexibility by allowing governments discretion to decide on the extent to which the proposed instruments would apply to a limited number of such high-level employees and employees whose duties were highly confidential.²⁰

¹⁶ *Digest of decisions and principles of the Freedom of Association Committee*, fifth (revised) edition, 2006, paras 1061–1064 (hereinafter “Committee on Freedom of Association, Digest, 2006”).

¹⁷ Committee on Freedom of Association, 256th Report, Case No. 1391 (United Kingdom), para. 85.

¹⁸ International Labour Conference, 64th Session, 1978, *Record of Proceedings*, p. 25/3, Report of the Committee on the Public Service, para. 23.

¹⁹ International Labour Conference, 63rd Session, 1977, *Record of Proceedings*, pp. 633–634, Report of the Committee on the Public Service, para. 37; and International Labour Conference, 64th Session, 1978, *Record of Proceedings*, pp. 25/3 and 25/4, Report of the Committee on the Public Service, para. 24.

²⁰ International Labour Conference, 63rd Session, 1977, *Record of Proceedings*, p. 635, Report of the Committee on the Public Service, para. 47; and International Labour Conference, 64th Session, 1978, *Record of Proceedings*, p. 25/4, Report of the Committee on the Public Service, para. 26.

64. In this regard, both the Committee of Experts and the Committee on Freedom of Association have had occasion to address national law and practice which, owing to the overly broad definitions of the category of “high-level employees whose functions are normally considered as policy-making or managerial” and of “employees whose duties are of a highly confidential nature”, or owing to an overly frequent inclusion of public employees’ posts in this category, was in practice hindering trade union rights. Such provisions or practices, sometimes combined with the requirement for a relatively high minimum number of members to establish a union, can even, in practice, constitute acts of interference in trade union affairs, prevent trade unions from being established, and consequently seriously violate the trade union rights of the public employees concerned.

65. The Committee considers that the notion of confidentiality should be interpreted restrictively: likewise, duties should only be considered “managerial” and functions “policy-making” in very limited cases. The Committee of Experts and the Committee on Freedom of Association must determine on a case-by-case basis whether too broad a use has been made of the notion of confidentiality or the classification of duties as being of a managerial nature or as relating to the formulation of policies. In order to do this, the supervisory bodies base themselves on criteria such as the authority that the public employees in question have to impose penalties, and the extent to which their job duties and responsibilities include a capacity to issue standards and administrative decisions, to represent the State, to oversee public accounts (for example, auditors or sometimes public accountants), etc. These criteria are therefore based on the nature of the activity, as well as on the position in the hierarchy of the public employees concerned who, according to the Committee, must have a high degree of autonomy.

66. Some of the public employees who come under the definition in Article 1, paragraph 2, of the Convention, are high-level employees or employees whose duties are of a highly confidential nature who are freely appointed and dismissed, for example, ministers, junior ministers, directors-general and other trusted staff. It is important to distinguish this situation from the practice that has developed in some States of having large-scale recourse to posts subject to free appointment and dismissal for the performance of tasks that in fact relate to ongoing public administration, which raises problems in respect of the Convention.

67. *Armed forces and police.* Article 1, paragraph 3, of the Convention provides that the extent to which the guarantees provided for in the Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

68. During the preparatory work, it was thought that the question of whether and to what extent persons exercising functions similar to those of the armed forces and police could be excluded could best be dealt with by the Committee of Experts on the Application of Conventions and Recommendations in the exercise of its supervisory functions, as it had done in the past when interpreting other Conventions containing the expression “the armed forces and the police”.²¹

69. It is interesting to note that in a significant number of countries legislation implementing the provisions of the Convention also applies to armed forces and police personnel and some countries provide collective bargaining rights to police.²²

²¹ International Labour Conference, 63rd Session, 1977, *Record of Proceedings*, pp. 635–636, Report of the Committee on the Public Service, para. 50; and International Labour Conference, 64th Session, 1978, *Record of Proceedings*, p. 25/5, Report of the Committee on the Public Service, para. 30.

²² For example, *South Africa, Brazil, Belgium, New Zealand* and a number of states of the *United States*.

70. The Committee emphasizes that in any event the Convention applies to the civilian personnel of the armed forces and those attached to the police. In some countries, these civilian personnel have no trade union rights.²³

71. Problems of conformity with the Convention often arise in respect of prison services. For example, in *Botswana*, the Public Service Act, the Trade Union and Employers' Organizations (Amendment) Act 2003 (TUEO) and the Trade Disputes Act, do not apply to the prison service. The Committee, noting the Government's statement that the Botswana prison service has been determined by national laws and regulations to be providing a security service, has recalled that under Article 1 of the Convention, only the police, the armed forces, high-level employees whose functions are normally considered as policy-making or managerial, and employees whose duties are of a highly confidential nature, may be excluded from the scope of the Convention, and has requested the Government to amend section 2 of the TUEO Act, section 2 of the Trade Disputes Act and section 35 of the Prisons Act, so as to guarantee for the prison service the rights enshrined in the Convention.²⁴

72. With regard to the notions of public employee and public employees' organization, as defined in Articles 2 and 3 of the Convention, it is specified that the Convention covers any organization, however composed, the purpose of which is to further and defend the interests of public employees. In 1978, the Committee on the Public Service stated that the term "however composed" was intended to refer to composite organizations composed of public and other employees.²⁵

²³ For example, in *Pakistan*, railway employees are deemed to be part of the armed forces and are thus excluded from trade union rights.

²⁴ *Botswana* – CEACR, Convention No. 151, observation, 2012.

²⁵ International Labour Conference, 64th Session, 1978, *Record of Proceedings*, p. 25/6, Report of the Committee on the Public Service, para. 36, and *Burundi* – CEACR, Convention No. 87, direct request, 2012. The Committee has had occasion to specify, for example when examining the situation of *Burundi* in the context of the application of Convention No. 87, that although first-level organizations of public servants may be restricted to this category of workers, such organizations should nonetheless be free to join federations and confederations of their own choosing, including those which also group together organizations from the private sector.

II. Civil and political rights accorded to public employees

Introduction

73. In its preamble, the Universal Declaration of Human Rights of 1948, the cornerstone of international human rights law, highlights the universal nature of these rights: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” The International Covenant on Civil and Political Rights and its two optional protocols, and the International Covenant on Economic, Social and Cultural Rights, which entered into force in 1976, have supplemented and developed the Universal Declaration.

74. The basic principles of the human rights set out for the first time in this Declaration – universality, interdependence and indivisibility – and the fact that human rights also imply rights and obligations for authorities and for the people who enjoy the rights, have been reaffirmed in many international human rights agreements, declarations and resolutions²⁶ and state practice.

75. Before addressing the civil and political rights of public employees more closely, the Committee considered it appropriate to emphasize the importance to be attached to the basic principles set out in the Universal Declaration, considering that the violation of these principles can adversely affect the free exercise of trade union rights. If the various fundamental human rights are to be effective, they must be interlinked, and consequently none of these rights can be exercised fully if there is no mutual coexistence with the others. This interrelationship between freedom of association and civil and political liberties was highlighted in the resolution concerning trade union rights and their relation to civil liberties adopted by the 54th Session (1970) of the International Labour Conference.

76. The resolution concerning trade union rights and their relation to civil liberties recognizes that “the rights conferred upon workers’ and employers’ organizations must be based on respect for those civil liberties which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, and that the absence of these civil liberties removes all meaning from the concept of trade union rights”.

²⁶ See, for example, http://www.un.org/en/documents/udhr/hr_law.shtml.

The scope of the civil and political rights accorded to public employees

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

Article 9

Public employees shall have, as other workers, the *civil and political rights* which are essential for the normal exercise of freedom of association, subject only to the obligations arising from their status and the nature of their functions.

ILO resolution of 1970 concerning trade union rights and their relation to civil liberties

General Conference of the International Labour Organization,

...

2. Places special emphasis on the following civil liberties, as defined in the Universal Declaration of Human Rights, which are essential for the normal exercise of trade union rights: (a) the right to freedom and security of person and freedom from arbitrary arrest and detention; (b) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers; (c) freedom of assembly; (d) the right to a fair trial by an independent and impartial tribunal; (e) the right to protection of the property of trade union organizations.

77. During the discussions held on this subject in 1977 and 1978, prior to the adoption of Convention No. 151, the Committee on the Public Service specified that the civil and political rights to which this Article was referring were those recognized as being essential for the normal exercise of trade union rights by the ILO resolution concerning trade union rights and their relation to civil liberties.²⁷

78. This resolution, adopted by the Conference in 1970, reaffirms the essential link between civil liberties and trade union rights, which was already emphasized in the 1944 Declaration of Philadelphia.²⁸

79. Considering, among other things, “that there exist firmly established, universally recognized principles, defining the basic guarantees of civil liberties which should constitute a common standard of achievement for all peoples and all nations”, the Conference explicitly listed the fundamental rights that are necessary for the exercise of freedom of association, making particular reference to: “(a) the right to freedom and security of person and freedom from arbitrary arrest and detention; (b) freedom of opinion and expression, and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers; (c) freedom of assembly; (d) the right to a fair trial by an independent and impartial tribunal; and (e) the right to protection of the property of trade union organizations”.²⁹ By adopting this resolution, the Conference reaffirmed that in the absence of a democratic system in which fundamental rights and civil liberties are

²⁷ International Labour Conference, 63rd Session, 1977, *Record of Proceedings*, p. 641, Report of the Committee on the Public Service, para. 102; and International Labour Conference, 64th Session, 1978, *Record of Proceedings*, p. 25/10, Report of the Committee on the Public Service, para. 75.

²⁸ The Declaration of Philadelphia declares in article I(b) that freedom of expression and of association are essential to sustained progress and refers in article II(a) to the fundamental rights that are inherent to human dignity.

²⁹ *ILO resolution concerning trade union rights and their relation to civil liberties* (adopted on 25 June 1970), para. 2.

respected, freedom of association cannot be fully developed, considering that “without national independence and political liberty full and genuine trade union rights could not exist”.

80. Since the adoption of this resolution, the Committee of Experts, the Conference Committee on the Application of Standards and the Committee on Freedom of Association have systematically called attention to the interdependence of civil liberties and trade union rights, emphasizing that a truly free and independent trade union movement can only develop in a climate free from violence, pressure and threats of any kind against the leaders and members of such organizations and that trade unions often become the catalyst for broader democratic developments, particularly in situations where the law prohibits democratic and pluralistic alternative voices in the political sphere. The Committee underlines that, in the absence of the full right to organize, exercised without interference, collective bargaining rights cannot be exercised in a meaningful manner.

81. The Committee emphasizes that, subject only to the obligations arising from the status of public employees and the nature of their functions, which covers notably the question of the obligation to observe confidentiality and the duty to act in good faith incumbent upon public employees, human rights are applicable to public employees in the same way as they are to all other citizens.

82. In this regard it recalls that the interdependence of respect for human rights and respect for freedom of association implies, in particular, that the public authorities cannot interfere in the legitimate trade union activities of organizations either by subjecting trade union officials or members of trade union organizations to arrests or arbitrary detention, or by accusing them of criminal conduct because of their trade union membership or legitimate trade union activities. Furthermore, it considers that independent judicial investigations must be conducted rapidly in the case of allegations of violations of the rights and principles guaranteed by the Convention, with a view to establishing the facts and determining responsibilities, punishing the perpetrators and instigators, and preventing the recurrence of such acts. The Committee recalls that excessive delays in the procedures set in motion in response to such acts create, in practice, a situation of impunity, which reinforces the existing climate of violence and insecurity. It also emphasizes the need to provide the law enforcement services with specific training regarding freedom of association in order to avoid violence and arbitrary arrests.

83. The Committee notes with serious concern that in practice the issue of the civil rights of public employees continues to pose problems in a large number of countries and that, for example, murders of trade union leaders and members³⁰ and the violent suppression of demonstrations continue to occur. The examination of the substance of the many allegations of violations of trade union rights submitted to the Committee on Freedom of Association since its inception in November 1951 shows that the restriction of civil and political freedoms is one of the major causes of freedom of association violations. All such acts of violence and violations also affect public employees.

84. Furthermore, the Committee is of the view that provisions that generally prohibit political or partisan activities exercised by organizations of public employees to promote their specific objectives are contrary to the principles of freedom of association; the prohibition of any political activity by trade unions would not be feasible in practice.

³⁰ See, for example, *Colombia* and *Guatemala*, including in the public sector, and *Panama* and the *Bolivarian Republic of Venezuela*, in construction.

85. The Committee recalls that organizations of public employees must also have the opportunity to publicly express their opinions on general issues relating to economic and social policy, which have a direct impact on their members' interests. Nevertheless, in expressing their opinions, trade union organizations should respect the limits of propriety and refrain from the use of insulting language.³¹

86. Linked to the question of the obligation to observe confidentiality and the duty to act in good faith that public employees must observe, the Committee points out that restrictions on the freedom of expression of these employees can be justified to a certain extent, notably in the case of public employees in senior positions and particularly when expressing opinions relating to the administration.

87. Public employees are generally subject to certain specific obligations in the performance of their duties. They must, for example, devote themselves to their duties, have integrity, be obedient and loyal, and maintain confidentiality, objectivity and professional discretion. Failure to respect these obligations can result in disciplinary measures being taken.³² In their reports under article 19 of the Constitution, several governments explain that these obligations are imposed to protect the public service, guarantee transparency and guard against corruption. In *Canada*, political impartiality is a core value set forth in the Public Service Employment Act (PSEA). According to the Government, it constitutes an essential element in a professional public service and a responsible democratic government. In a politically impartial public service, appointments are based on merit and must be free from political influence. Moreover, the public servants perform their duties in a politically impartial manner and are perceived as doing so. Part 7 (Political Activities) of the PSEA and its implementing regulation make provision for a system to manage employees' political activities, based on the need to find the right balance between the right of employees to engage in political activities and the principle of public service impartiality. Consequently, public employees may engage in political activities, so long as they do not impair, or are not perceived as impairing, the employees' ability to perform their duties in a politically impartial manner. In *France*, according to the preamble of the Constitution of 27 October 1946, maintained in force by the 4 October 1958 Constitution, public employees, like all workers, have the right not to suffer prejudice in their employment by virtue of their beliefs or opinions. They are entitled to belong to political parties and to cultural associations. Furthermore, the administration cannot refuse anyone authorization to apply for a position in the public service on the grounds of their political opinions, and no mention of these opinions is to be made in employees' files.

88. In some countries, public employees cannot retain their positions when they take on a political mandate. In others, they are allowed to express their political, philosophical and religious views outside the service but they are required to perform their duties in an impartial and objective manner. Furthermore, they are generally prohibited from engaging professionally in private gainful occupations of any sort or in activities that involve conflicts of interest with their status of public servant. In *Chad*, for example, this prohibition does not apply to rural production, the production of scientific, literary and artistic works, or to any other cases for which a decree issued by the Council of Ministers confirms that such activities do not represent a conflict of interests with the public service mission and are compatible with administrative ethics. In some countries,

³¹ See, for example, Committee on Freedom of Association, Case No. 1865 (*Republic of Korea*), Report No. 363, para. 131.

³² See, for example, Committee on Freedom of Association, Case No. 2779 (*Uruguay*), Report No. 360, para. 1136.

the right to strike is prohibited for public servants or subject to significant restrictions (in the preparatory work for Convention No. 151, it was established that the Convention does not cover the right to strike). Senior officials, including magistrates, are often prohibited from belonging to political parties. Some governments justify this restriction being imposed on magistrates by invoking respect for the principle of the separation of powers.³³

89. The Committee notes that nearly all countries also impose additional restrictions for public employees belonging to the armed forces and the police, in view of their specific duties.³⁴ The Committee considers that these restrictions are not contrary to Convention No. 151, as they comply with Article 1(3).

90. Finally, the Committee underlines that the freedom of association Conventions contain no provisions that allow the invocation of a state of emergency to justify exemption from the obligations arising under the Conventions, or the suspension of their application. Frequent use of the state of emergency constitutes a serious threat to the exercise of trade union rights. Such a pretext cannot be used to justify the restriction of the civil liberties indispensable for the effective exercise of trade union rights other than in extremely serious circumstances (cases of force majeure, serious civil unrest, etc.) and on condition that any measures affecting the guarantees established in the Conventions are limited in scope and duration to what is strictly necessary to deal with the situation in question. While it is conceivable that, in the event of a state of emergency, the exercise of some civil liberties, such as the right to public assembly or the right to hold street demonstrations, might be limited, suspended and even prohibited, it is not permissible that, in the field of trade union activities, guarantees should be limited, suspended or abolished.³⁵

³³ In this connection see, in Europe, the *Convention for the Protection of Human Rights and Fundamental Freedoms*, CETS No. 005 (1953), article 10: "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

³⁴ In its report under article 19 of the Constitution, the Government of *Hungary* indicates that members of the armed forces and soldiers are strictly prohibited from any political involvement whatsoever. Their rights to freedom of expression and assembly are thus restricted.

³⁵ *General Survey of the Committee of Experts on the Application of Conventions and Recommendations on freedom of association and collective bargaining*, ILO, Geneva, 1994 (hereinafter "1994 General Survey"); and ILO, Report of the Commission instituted under article 26 of the Constitution of the ILO to examine the complaint on the observance by *Poland* of Conventions Nos 87 and 98, *Official Bulletin*, Special Supplement, Series B, Vol. LXVII, 1984, para. 479.

III. Protection against acts of anti-union discrimination and interference

91. Under Articles 4 and 5 of Convention No. 151, member States are required to adopt specific measures to ensure that public employees enjoy adequate protection against acts of anti-union discrimination and that public employees' organizations enjoy adequate protection against any acts of interference by a public authority in their establishment, functioning or administration.

92. The wording of these two Articles of Convention No. 151 essentially reproduces the language of Articles 1 and 2 of Convention No. 98 regarding the protection of workers and their organizations against acts of anti-union discrimination and interference, applying it to public employees. It therefore follows that the opinions of the Committee in connection with the application of these Articles of Convention No. 98 are also generally applicable to the situation of public employees; however, as will be seen below, in applying these opinions certain distinctions need to be made in view of the particular characteristics of the public administration, in particular with regard to procedures and applicable safeguards.

93. Firstly, public employees, in most cases, are covered by specific procedures which provide protection against discrimination in general and anti-union discrimination in particular, at the time of their appointment, in the course of employment and at the end of the employment relationship. As the State is bound to abide scrupulously by the principle of equality among citizens, access to the career civil service generally requires the passing of a public examination that is open to anyone who meets a number of objective pre-established criteria. Historically, this type of recruitment system was introduced with the aim of depoliticizing the administration and avoiding systems that, in practice, led to the dismissal of a significant number of public employees whenever political changes occurred in the country.

94. As regards dismissal, these special procedures generally provide a higher level of protection than those applicable in the private sector. For example, public employees cannot generally be removed or dismissed with immediate effect or after merely giving notice, but only as a result of a procedure that ensures that their rights are duly respected. Furthermore, in addition to the employment security enjoyed by public employees, in some cases certain procedures provide for the participation of workers'/union representatives. In some countries, participation of workers'/union representatives in disciplinary proceedings against a public employee simply takes the form of supervision of compliance with the applicable rules; in others, workers'/union representatives participate fully in the decision-making process concerning the movement of personnel including transfers or the termination of the employment relationship.

95. In practice, the observation that, in general, there are more unionized workers in the public than in the private sector³⁶ and fewer cases of anti-union discrimination indicates that the State in its capacity as employer, which has to set the example as regards non-discrimination and non-interference in trade union matters, generally accepts the trade union movement and its demands. This observation is mitigated, however, by the fact that the reports of the Committee of Experts and the Committee on Freedom of Association indicate that there are countries in which the number of acts of

³⁶ The Committee noted, for example, that in *Australia*, in August 2008, trade union membership in the private sector was 13.6 per cent compared to 41.9 per cent in the public sector. *Australia* – CEACR, Convention No. 87, direct request, 2010.

anti-union discrimination against trade union leaders or public employees is very high, as in *Guatemala*,³⁷ for example, or high, as in *Peru* (although, according to the report of the Committee on Freedom of Association, very often the judicial authorities order reinstatement in this country; the reports of the Committee on Freedom of Association can be consulted on the ILO website under the rubric NORMLEX). In addition, the question of retrenchments has been particularly evident in the recent developments occurring within the framework of the measures taken in the context of the economic crisis (see Part II, Chapter XII). If the risk of acts of anti-union discrimination and interference in the public sector appears to be relatively moderate in periods of economic stability, it can by no means be considered non-existent.

96. It is important to bear in mind the particular situation of contractual staff employed by the State (i.e. under a non-statutory legal regime), who do not enjoy the employment security of the public service and are generally covered by the same system as private sector workers. The same applies to cases in which subcontracting is used to mask the existence of a real employment relationship in the public service, or cases in which freely appointed and removable public employees are systematically employed to fill posts linked to permanent functions that are not necessarily confidential positions or high-level posts with managerial or policy-making functions.

97. In general, the Committee emphasizes the need to adopt specific legislative provisions for the public administration respecting anti-union discrimination and interference.³⁸ In the case of *Mali*, for example, the Committee noted that the General Civil Service Regulations did not contain specific provisions respecting anti-union discrimination and interference. Accordingly, it requested the Government to take the necessary steps to ensure that the legislation includes explicit provisions to protect workers against acts of anti-union discrimination at the time of recruitment and in the course of employment and against acts of interference by the public authorities, together with effective and rapid remedies and sufficiently dissuasive sanctions.³⁹

98. Such legislative protection can be guaranteed either by means of general legislation covering both private sector workers and public employees, or through legislation applying specifically to the latter. The Employment Act of 2006 adopted by the Government of the *Isle of Man*, for example, which provides enhanced protection against anti-union discrimination upon recruitment, during employment and upon termination of employment, applies to both the private and public sectors.⁴⁰ In *Morocco*, the General Public Service Act (Dahir of 24 February 1958) provides that membership or non-membership of a trade union shall in no way influence recruitment, promotion, job assignment or the general situation of the employees covered by the Act.⁴¹

99. The Committee notes that, although in most cases national legislation contains provisions against acts of anti-union discrimination and interference, the level of

³⁷ The Committee took note of the very high number of allegations of anti-union dismissals in Guatemala (according to the trade union confederations there had been several hundred in numerous public institutions and in certain public enterprises) and violations of the right to collective bargaining, which were presented by the International Trade Union Confederation (ITUC) and the Trade Union, Indigenous and Peasant Farmers Movement of Guatemala (MSICG). *Guatemala* – CEACR, observation, 2012.

³⁸ See, for example, *Chad* – CEACR, direct request, 2010; *Gabon* – CEACR, direct request, 2012; *China (Macau Special Administrative Region)* – CEACR, direct request, 2012.

³⁹ *Mali* – CEACR, Convention No. 151, observation, 2010.

⁴⁰ *Isle of Man* – CEACR, Convention No. 151, observation, 2010.

⁴¹ Report submitted under article 19 of the ILO Constitution.

protection provided varies in terms of the employment stage covered (recruitment, employment and/or dismissal), the persons protected (trade union officials or members), and the procedures and sanctions established for their enforcement. As a general rule, the remit of the labour inspectorate does not cover the situation of career civil servants; in this case supervision of the application of legislation is carried out by special officials or administrative bodies (which may or may not be bipartite) in first instance, and by the judicial authority in second instance.

100. In addition to the difficulties arising from the lack of adequate legislative provisions, the Committee has also noted on occasion a marked contrast between the existence of legislation that is in conformity with the Convention and the absence, in practice, of real protection against acts of anti-union discrimination and interference, for various reasons.

101. The Committee recalls that on the occasion of its last General Survey (2012), in order to assess the general effectiveness of protection provided at national level, it had invited governments to indicate, after consultation with the most representative employers' and workers' organizations, the number of complaints filed with the competent authorities in this field, as well as the results of investigations and court proceedings, and their average duration in both the private and public sectors.

Protection against acts of anti-union discrimination

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

Article 4

1. Public employees shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
2. Such protection shall apply more particularly in respect of acts calculated to –
 - (a) make the employment of public employees subject to the condition that they shall not join or shall relinquish membership of a public employees' organisation;
 - (b) cause the dismissal of or otherwise prejudice a public employee by reason of membership of a public employees' organisation or because of participation in the normal activities of such an organisation.

102. According to Article 4 of Convention No. 151, the acts of anti-union discrimination against which States shall ensure adequate protection, both in law and in practice, in accordance with the Convention include in particular measures intended to: (i) make the employment of public employees subject to the condition that they shall not join or shall relinquish membership of a public employees' organization; or (ii) cause the dismissal of or otherwise prejudice a public employee by reason of membership of a public employees' organization or because of participation in the normal activities of such an organization.

103. Although the risk of being a victim of discrimination in general, and of anti-union discrimination in particular, is generally moderate where the State is the employer, because of the reasons outlined above, and particularly the existence of protective procedures (upon recruitment, during employment or on termination of the employment relationship), it is still far from being non-existent. Hence there is a need for measures to ensure that public employees enjoy adequate protection against acts of anti-union discrimination as provided for under the Convention.

104. While the national legislation in several countries provides full protection, (for example, France, Argentina, Belgium, Spain, etc.) other legislation only affords protection against certain acts of anti-union discrimination or at certain stages of the employment relationship. In this regard, the legislation in some countries punishes dismissal on anti-union grounds but not acts of discrimination during recruitment or in the course of the employment relationship.⁴² Conversely, others only provide protection at the recruitment stage.⁴³

105. *Recruitment.* Access to a career in the public administration usually requires passing a stringently regulated examination which has to be made public⁴⁴ and which is open to anyone meeting a set of objective, pre-established criteria. These rules provide a degree of special protection against discrimination during recruitment which, in some countries, is reinforced by the existence of certain forms of trade union supervision of the appointment of public employees. For example, union representatives are sometimes present as observers during the examination (e.g. in Germany in certain Länder and in Belgium) or may even be able to give their opinion regarding the final selection.

106. Nevertheless, anti-union discrimination may arise in the recruitment procedure in the public sector.⁴⁵ A public employee who is a victim of anti-union discrimination at the recruitment stage can face insurmountable difficulties, as it will often be virtually impossible to prove that past trade union membership or activities are the real reason for not having been recruited. This may be the case, for example, where there is no legislative provision authorizing the candidate concerned to assert the discriminatory nature of the recruitment procedure before an independent authority or providing adequate protection within the meaning of Article 4 of the Convention. The Committee accordingly considers that the legislation should provide means of overcoming such difficulties; for example, some countries, such as *Slovenia*, provide for the reversal of the burden of proof and/or authorize the unsuccessful candidate to know the reasons for his/her not being recruited where the applicant asserts, through legal means and supplying reasonable evidence, the anti-union nature of the non-recruitment.

107. Furthermore, the Committee recalls that the practice of so-called “blacklists” of trade union officers or activists or unionized public employees, in the context of recruitment procedures, is incompatible with the principles of the Convention. Problems tend to occur particularly with regard to contractual staff in the public administration. In some countries, the legislation explicitly prohibits the use of such lists. Recalling that the secret nature of such lists often makes a dead letter of the remedies provided for by general legislation on the protection of privacy, the Committee once again urges governments to adopt stringent measures and ensure that the necessary investigations are carried out. Following its comments on the use of these lists, the Committee noted with satisfaction the adoption by the *United Kingdom* of the Employment Relations Act 1999 (Blacklists) Regulations 2010, which prohibits the compilation, use, sale or supply of lists containing details of persons who are or have been members of trade unions or persons who are taking part or have taken part in the activities of trade unions, compiled with a view to being used by employers or employment agencies for purposes of discrimination in the context of recruitment, pay and the dismissal of employees. The

⁴² See General Survey, 2012, para. 177.

⁴³ See, for example, *Kiribati* – CEACR, observation, 2011.

⁴⁴ See, for example, *Slovenia*, section 57 of the Act of 11 June 2002 on public servants.

⁴⁵ In the following paragraphs, the Committee reiterates, with some alterations, its guidance on anti-union discrimination, expressed in the 2012 General Survey.

Regulations also provide for exceptions to this prohibition so as to protect the legitimate or legal compilation of such information.⁴⁶

108. *In the course of employment.* Measures such as suspension, transfer, relocation, demotion, denial of benefits or restrictions of any kind (remuneration, social or economic benefits, training, etc.) may be adopted on anti-union grounds and cause serious prejudice to the public employee concerned. In some cases, non-renewal of a contract is linked to the employee's union activities. The Committee considers that provisions against all acts of anti-union discrimination should be adopted and protective measures should be laid down.⁴⁷

109. *Dismissal/removal.* Of all the forms of anti-union discrimination, removal and dismissal are probably those that have the most serious consequences. Again, it should be noted in this regard that the procedures in place for terminating the contract of a public employee generally protect the employee's rights. In addition to the protection afforded by the employment security public employees enjoy, the disciplinary procedures that can be initiated against them are often accompanied by certain safeguards, such as the gradation of penalties or trade union supervision of disciplinary proceedings against such employees. In some cases, collective agreements concluded in the private sector provide for objectivity and impartiality of legal proceedings, thus enhancing due process for the public employee concerned.

110. In several countries, however, the situation continues to pose problems of compatibility with the Convention regarding this matter. This is, for example, the case of legislation that allows the State to unilaterally terminate the employment of a public employee, in particular contractual staff and employees subject to free appointment and dismissal, without giving a reason, provided that it pays the compensation prescribed by law, even if the real reason for the removal or dismissal is the employee's trade union membership or participation in trade union activities. This is particularly frequent where the free appointment and removal or dismissal of public employees becomes the general rule and ceases to apply only to staff in managerial and confidential positions. The Committee emphasizes in particular the need to ensure adequate protection for public employees against anti-union dismissal, including in the context of collective bargaining or of industrial action by public employees' unions.

111. Determining the scope of the concept of "adequate protection" within the meaning of Article 4, paragraph 1, of the Convention is central to issues relating to anti-union dismissal and means of prevention and compensation. The Committee considers that systems are compatible with the Convention which provide for: (i) preventive measures (such as the requirement to obtain prior authorization from a judge, an independent authority or the labour inspectorate – as indicated above, in the public service the role of the labour inspectorate is generally carried out by administrative bodies – for the dismissal of a staff or union representative) this is the most effective protection and generally only applies to trade union leaders or founders or certain workers' representatives; (ii) compensation and sufficiently dissuasive sanctions; and/or (iii) the reinstatement of public employees dismissed because of their union membership or legitimate trade union activities with retroactive compensation, which, in the absence of preventive procedures requiring prior authorization, constitutes the most effective remedy for acts of anti-union discrimination. As indicated above, in some cases, trade union supervision of disciplinary proceedings involving public employees can be

⁴⁶ *United Kingdom* – CEACR, Convention No. 98, observation, 2011.

⁴⁷ See, for example, *Dominican Republic* – CEACR, observation, 2012.

provided for by collective agreements; they may only stipulate that union representatives have to be present during disciplinary proceedings, or they may further require that the trade union confederation give its consent to the dismissal of a public employee. Excessive slowness of reinstatement procedures or failure to comply with court orders for reinstatement of dismissed trade unionists constitute, in the Committee's opinion, grave restrictions on the exercise of trade union rights.

112. On the other hand, the Committee considers that legislation that allows the removal or dismissal "without cause" (i.e. without giving a reason to the employee), or does not explicitly prohibit dismissal for anti-union reasons is not compatible with the Convention. This is a problem particularly in the case of contractual employees in the public administration. Whatever the system selected, the authorities responsible for examining the case – whether administrative tribunals or specialized bodies – must be given all the powers necessary to reach an expeditious and comprehensive decision, in full independence, and to determine the most appropriate remedy in the circumstances.

113. In practice, although the Convention does not require States to incorporate provisions in their legislation on the reinstatement of public employees in cases of anti-union dismissal, an increasing number are doing so. The Committee noted in this respect that in *Namibia*, the Labour Act of 2007 provides for reinstatement and back pay compensation awards as remedies for acts of anti-union discrimination.⁴⁸ Certain countries prefer other compensation measures. In the Committee's view, reinstatement should at least be included as one of the measures available to the competent authority, and ultimately to the judicial authority, in cases of anti-union discrimination. For States that opt for a system based on the principle of reinstatement, the Committee emphasizes the importance of ensuring that the system provides for retroactive wage compensation for the period between dismissal and the reinstatement or re-employment order, as well as compensation for the prejudice incurred, so that the measures taken together constitute a sufficiently dissuasive sanction. It is important, however, to point out that, unlike in the private sector, where a worker contesting dismissal is often left without wages, public employees in many countries continue in most cases to receive their salaries during the period prior to the court ruling, even if they have been removed from their functions.

114. Where a country has opted for a compensation system, the Committee considers that compensation for anti-union dismissal should fulfil certain conditions, namely it should: (i) be sufficiently high so as to be effectively dissuasive; and (ii) be periodically reviewed (particularly in countries with runaway inflation, where it would otherwise soon become merely symbolic) on the basis, for example, of a minimum number of wage units or units of taxable income. Furthermore, sufficiently dissuasive sanctions should be imposed on those responsible for anti-union discrimination.

115. *Trade union officials and members.* While the Convention requires protection of all public employees against acts of anti-union discrimination, special emphasis must be placed on protection for trade union officials and representatives. One means of ensuring such protection is to provide that union representatives cannot be dismissed or subjected to other prejudicial measures, either during their term of office or for a specified period following its expiry. Moreover, the nature and importance of the duties of trade union representatives and the demands of this type of office should be taken into account when determining whether a violation has been committed and assessing its gravity.

⁴⁸ See, for example, *Namibia* – CEACR, direct request, 2010.

116. In this respect, the Committee noted with interest the new Labour Law of Montenegro,⁴⁹ which covers employees in the public sector and the administration of the State and extends the protection of trade union representatives to six months after they cease their trade union activities. The Committee on Freedom of Association has also had occasion to make recommendations on allegations of anti-union discrimination affecting public employees serving as trade union officials. In Case No. 2723 concerning Fiji, for example, it asked the Government to take the necessary steps to reinstate, without loss of pay or benefits, a trade union official working in the public education sector whose dismissal constituted an act of anti-union discrimination. On this occasion it recalled that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, transfer, demotion and other prejudicial measures, and that this protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee considered that the guarantee of such protection in the case of trade union officials is also necessary to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom. It recalled that one way of ensuring the protection of trade union officials is to provide that these officials cannot be dismissed, either during their period of office or for a certain time thereafter, except, of course, for serious misconduct.⁵⁰

117. Moreover, in the view of the Committee of Experts, it is not sufficient to limit the protection afforded under the Convention to trade union representatives, without also including public employees who are union members, but not trade union representatives. Lastly, the Committee recalls that the protection provided under the Convention covers all union representatives, including those belonging to trade unions that have not been registered or are in the process of being registered.

118. *Delays in procedures.* The existence of legislation prohibiting acts of anti-union discrimination is not enough if it is not accompanied by rapid and effective procedures to ensure its application in practice. Whether the mechanism is based on prevention or compensation, problems arise in application, particularly with regard to the slowness of procedures. Such delays are the result of general deficiencies in the labour inspectorate and the judicial system in certain countries. They are also related to difficulties linked to the burden of proof and to the possibility, which is contested by the Committee, for the State to discharge its obligations by paying inadequate compensation which bears no proportion to the gravity of the act of discrimination or the prejudice incurred. In order to remedy this situation, the Committee emphasizes the importance of conducting independent, expeditious and thorough investigations in all cases of alleged anti-union discrimination. It stresses that the longer the proceedings, the more inclined public employees will be to drop their demands for reinstatement and to accept a financial settlement. The Committee has noted with concern the excessive slowness of national proceedings and the possibility of lodging successive appeals, delaying a final decision for several years (five or seven years in some cases). The Committee emphasizes that excessive delays in the administration of justice in cases of anti-union discrimination constitute a violation of the Convention.

⁴⁹ Montenegro – CEACR, direct request, 2011 (Labour Law (O.G. No. 49/08)).

⁵⁰ Committee on Freedom of Association, Report No. 362, Case No. 2723 (Fiji), para. 832.

119. *Burden of proof.* One of the main difficulties regarding allegations of discrimination in general, and anti-union discrimination in particular, concerns the burden of proof. Placing on public employees the burden of proving that the act in question occurred as a result of anti-union discrimination may constitute an insurmountable obstacle to determining responsibility and ensuring an appropriate remedy. To compensate for this deficiency, some States have decided to strengthen the protection of public employees by requiring, under certain conditions, that the State prove that the alleged anti-union act was based on considerations other than union membership or activities. Such provisions introducing a “reversal of the burden of proof” are among the preventive mechanisms ensuring protection against anti-union discrimination that, in the view of the Committee, usefully supplement other types of sanctions and compensation measures that may be adopted in this field. National jurisdictions have on occasion decided to reverse the burden of proof in cases of presumed anti-union discrimination.⁵¹

120. *Effective and sufficiently dissuasive sanctions.* The effectiveness of legislation prohibiting acts of anti-union discrimination depends not only on the effectiveness of the prescribed remedies, but also on the sanctions provided for which should, in the view of the Committee, be effective and sufficiently dissuasive.⁵² Depending on the legal system, sanctions range from fines to other penalties, including imprisonment. As regards compensation, its purpose should be to compensate fully for the prejudice incurred, both in financial and in occupational terms. Such sanctions, which serve the dual purpose of punishing those responsible and acting as a deterrent, are likely to strengthen protection against anti-union discrimination.

121. *Union security clauses.* The Committee has long recognized that *Article 2* of Convention No 87, leaves it to the practice and regulations of each State to decide whether it is appropriate to guarantee the right of workers not to join an occupational organization, or on the other hand, to authorize and, where necessary, to regulate the use of union security clauses in practice.⁵³ The Committee recalls that “union security” clauses were intended to make union membership or the payment of union dues mandatory, making them subject to certain requirements or prohibiting certain types of arrangements. Such clauses may either specify that the employer can only recruit unionized workers who are members of a particular union (closed shop), or allow the employer to recruit the workers of his choice, but requiring the workers to become members of a particular union within a certain period (union shop). They can also oblige non-unionized workers to pay contributions equivalent to union dues without making union membership a condition for employment (agency shop), or require the employer to give preference to unionized workers according to the principle of preferential treatment. In the light of the preparatory work for Conventions Nos 87 and 98, the Committee has considered that union security clauses are compatible with Convention No. 87, provided that they are not imposed by legislation but are the result of free negotiations between workers’ unions and employers. The Committee pointed out, however, that union security clauses are increasingly being contested by national supreme courts, which is also in conformity with the Convention.⁵⁴

⁵¹ For example, in *Argentina*, *Namibia* and in the *United States*.

⁵² See, for example, *Sao Tome and Principe* – CEACR, direct request, 2011.

⁵³ General Survey, 1994, para. 100 and the General Survey, 2012, para. 99. See also ILC, 30th Session, 1947, *Record of Proceedings*, p. 571 and ILC, 32nd Session, 1949, *Record of Proceedings*, p. 468.

⁵⁴ See, for example, “*amparo directo* in review No. 1124/2000” of the High Court of Mexico.

122. With regard to the issue of union security clauses in the public sector, the Committee noted that in 1977 the Committee on the Public Service of the International Labour Conference endorsed the work of the Committee on Industrial Relations that had preceded the adoption of Convention No. 98, according to which this instrument could in no way be interpreted as authorizing or prohibiting union security arrangements, such questions being matters for regulation in accordance with national practice.⁵⁵ It follows that problems related to union security clauses in the public sector should be resolved at the national level, in accordance with the labour relations system and practice of each country, also taking into account the principle set out in the previous paragraph.

Protection against acts of interference

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

Article 5

1. Public employees' organisations shall enjoy complete independence from public authorities.
2. Public employees' organisations shall enjoy adequate protection against any acts of interference by a public authority in their establishment, functioning or administration.
3. In particular, acts which are designed to promote the establishment of public employees' organisations under the domination of a public authority, or to support public employees' organisations by financial or other means, with the object of placing such organisations under the control of a public authority, shall be deemed to constitute acts of interference within the meaning of this Article.

123. Certain legislative provisions directly or indirectly protecting public employers' organizations against acts of interference by public authorities are formulated in general terms, affirming the full independence of these organizations from public authorities or incorporating the wording of the Convention. Others, on the other hand, specify the prohibited measures (such as interference in the establishment or administration of public employees' organizations; activities aimed at restricting the right of public employees to join together in a trade union or exercising control over these trade unions; pressure in favour of or against a public employees' organization; bribery of union leaders, etc.).

124. In practice, although the Committee emphasizes the need for legislation to make express provision for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference, provisions of this kind are less common than those intended to protect public employees against acts of anti-union discrimination. The Committee notes that protection against acts of interference continues to be non-existent or inadequate in some countries.⁵⁶ Some governments tend to consider that public employees' organizations are sufficiently strong and developed to be protected against any act of interference or that, because of union plurality, there are no problems in this respect.

125. With regard to the participation of States in financing these organizations or granting certain facilities to public employees' organizations, the Committee considers that, while there is no objection in principle to the State thus demonstrating its

⁵⁵ *Record of Proceedings*, International Labour Conference, 63rd Session, 1977, para. 60.

⁵⁶ See, for example, *Botswana* – CEACR, observation, 2012.

willingness to promote the capacity of these organizations to fulfil their functions, this should not have the effect of allowing it to exercise control over public employees' organizations or of favouring one union over another. It is essential for public employees' organizations to maintain their independence so that they can defend the interests of their members effectively.

126. Acts of interference that may potentially impair the protection provided under the Convention occur in such a variety of forms that it would be impossible to draw up an exhaustive list.⁵⁷ The complaints of this kind examined by the Committee on Freedom of Association serve as a good illustration of the problem in practice; in the case of *Guyana*, for example, the Committee on Freedom of Association considered that the fact that one of the members of the government is at the same time leader of a trade union representing several categories of state employees creates a possibility of interference.⁵⁸ The Committee of Experts also noted with concern that the Charities and Societies Proclamation in *Ethiopia*, for example, organizes an ongoing and close monitoring of the organizations established on its basis and gives governmental authorities great discretionary powers to interfere in the registration, internal administration and dissolution of the organizations falling within its scope, which appear to encompass civil servants, including teachers in public schools.⁵⁹ In the case of *Burundi* the Committee recalled that, although first-level organizations of public service may be restricted to this category of workers, such organizations should nonetheless be free to join federations and confederations of their own choosing, including those which may also group together organizations of the private sector.⁶⁰

127. "Adequate protection" against acts of interference within the meaning of the Convention requires the establishment of rapid appeal procedures and sufficiently dissuasive sanctions against such acts.⁶¹ However, as in the case of anti-union discrimination, certain sanctions, if they exist, that are established by States do not fully meet the requirements of effectiveness and dissuasiveness deemed necessary by the Committee. Nevertheless, some countries have recently made significant progress in this respect. For example, the Committee has noted with interest the entry into force of the new Labour Law of *Montenegro*,⁶² which provides for stronger financial sanctions against acts of interference in trade union activities; and it has welcomed the fact that penalties in that country can be imposed on the enterprise, the State and the State as employer, when the State fails to allow employees the free exercise of their trade union rights, or fails to provide the trade union with the conditions necessary for exercising trade union rights.

128. Lastly, it is important to recall that Convention No. 151 does not consider the question of relations between trade unions and political parties. This issue has been addressed in the resolution concerning the independence of the trade union movement, adopted in 1952 by the International Labour Conference. On that occasion, the Conference affirmed that it is essential for the trade union movement in each country to preserve its freedom and independence so as to be in a position to carry forward its

⁵⁷ For example, the variety of acts of interference is illustrated in the report of the Commission of Inquiry on "trade union rights in Belarus" (*Official Bulletin*, Vol. LXXXVII, 2004, Series B, pp. 108 ff.).

⁵⁸ Committee on Freedom of Association, Report No. 246, Case No. 1330 (*Guyana*), para. 379.

⁵⁹ *Ethiopia* – CEACR, Convention No. 87, observation, 2012.

⁶⁰ *Burundi* – CEACR, Convention No. 87, direct request, 2012.

⁶¹ See, for example, *Sao Tome and Principe* – CEACR, Convention No. 151, direct request 2011.

⁶² *Montenegro* – CEACR, direct request, 2011 (Labour Law (O.G. No. 49/08)).

economic and social mission irrespective of political changes. Moreover, it considered that when trade unions in accordance with national law and practice of their respective countries and at the decision of their members decide to establish relations with a political party or to undertake constitutional political action as a means towards the advancement of their economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the trade union movement or its social and economic functions – irrespective of political changes in the country. The Conference also called on governments, in seeking the cooperation of trade unions to carry out their economic and social policies, to recognize that the value of this cooperation rests to a large extent on the freedom and independence of the trade union movement as an essential factor in promoting social advancement. It urged them not to attempt to transform the trade union movement into an instrument for the pursuance of their political aims, or to attempt to interfere with the normal functions of a trade union movement because of its freely established relationship with a political party.

IV. Facilities to be afforded to the representatives of recognized public employees' organizations

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

Article 6

1. Such facilities shall be afforded to the representatives of recognized public employees' organisations as may be appropriate in order to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work.
2. The granting of such facilities shall not impair the efficient operation of the administration or service concerned.
3. The nature and scope of these facilities shall be determined in accordance with the methods referred to in Article 7 of this Convention, or by other appropriate means.

Introduction

129. The facilities to be granted to workers' and public employees' organizations representatives in the performance of their trade union activities and duties are a logical corollary of the functions of trade unions recognized by national constitutions, legislation, collective agreements, arbitral awards or practice, namely the functions of bargaining, consultation, cooperation and supervision of labour standards. The facilities granted to workers' representatives were defined and promoted by ILO instruments, initially with a focus on the undertaking and social and economic policy, and subsequently extended to cover the entire public administration.

ILO standards

130. In 1944, the Declaration of Philadelphia established the principle of the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures.⁶³ It was followed by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and a few years later by the Co-operation at the Level of the Undertaking Recommendation, 1952 (No. 94), Paragraph 1 of which provides that: "appropriate steps should be taken to promote consultation and co-operation between employers and workers at the level of the undertaking on matters of mutual concern not within the scope of collective bargaining machinery, or not normally dealt with by other machinery concerned with the determination of terms and conditions of employment"; the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), which provides in Paragraph 1, subparagraphs 1 and 5, that "measures appropriate to national conditions should be taken to promote effective consultation and co-operation at the industrial and national levels between public authorities and employers' and workers' organisations, as well as between these organisations" and that such consultation and cooperation should aim, in particular, "at ensuring that the competent public authorities seek the views, advice and assistance of employers' and workers' organisations in an appropriate manner, in respect of such matters as: (i) the

⁶³ Declaration concerning the aims and purposes of the International Labour Organization, adopted by the Conference at its 26th Session, Philadelphia, 10 May 1944, article III(e) ("Declaration of Philadelphia").

preparation and implementation of laws and regulations affecting their interests; (ii) the establishment and functioning of national bodies, such as those responsible for organisation of employment, vocational training and retraining, labour protection, industrial health and safety, productivity, social security and welfare; and (iii) the elaboration and implementation of plans of economic and social development”, as well as the Examination of Grievances Recommendation, 1967 (No. 130).

131. Subsequently, in 1971, additional specific provisions were adopted concerning workers’ representatives. These were the Workers’ Representatives Convention, 1971 (No. 135), applicable to workers in the undertaking, and the Workers’ Representatives Recommendation, 1971 (No. 143), which provided, *inter alia*, for the protection and facilities to be afforded to workers’ representatives. In 1974, the Paid Educational Leave Convention, 1974 (No. 140), added that “each Member shall formulate and apply a policy designed to promote, by methods appropriate to national conditions and practice and by stages as necessary, the granting of paid educational leave for the purpose of: (a) training at any level; (b) general, social and civic education; (c) trade union education” (Article 2) and that “a period of paid educational leave shall be assimilated to a period of effective service for the purpose of establishing claims to social benefits and other rights deriving from the employment relation, as provided for by national laws or regulations, collective agreements, arbitration awards or such other means as may be consistent with national practice” (Article 11).

132. It gradually became apparent that the principles established in the abovementioned instruments also applied to the public administration. Thus, in 1978, the Labour Relations (Public Service) Convention, 1978 (No. 151), and Recommendation, 1978 (No. 159), extended to workers’ representatives in the public sector certain facilities and protections which had hitherto been granted only in the context of enterprises.

Concept of representatives of recognized public employees’ organizations

133. Article 6 of Convention No. 151 provides that facilities must be afforded to “representatives of recognized public employees’ organizations”. Article 3, paragraph 1, of the Collective Bargaining Convention, 1981 (No. 154), provides that where national law or practice recognizes the existence of workers’ representatives as defined in Article 3(b), of the Workers’ Representatives Convention, 1971, national law or practice may determine the extent to which the term “collective bargaining” shall also extend, for the purpose of the Convention, to negotiations with these representatives. Appropriate measures must be taken, wherever necessary, to ensure that the existence of these representatives is not used to undermine the position of the workers’ organizations concerned. Article 3 of Convention No. 135 provides that the term “workers’ representatives” means persons recognized as such under national law or practice, whether they are: (a) trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or (b) elected representatives, namely, representatives freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognized as the exclusive prerogative of trade unions in the country concerned. The question thus arises whether the facilities to be afforded to the representatives of recognized public employees’ organizations as provided in Article 6 of Convention No. 151 also apply to representatives elected by staff of public institutions (staff representatives, works committees) when the State has ratified Conventions Nos 151 and 154. In this regard, given that Convention No. 154

allows national law or practice to grant bargaining functions to representatives elected by the workers (according to Article 3, paragraph 2, of Convention No. 154), the Committee considers that the term “representatives of recognized public employees’ organizations” used in Article 6 of Convention No. 151 covers both trade union representatives (designated or elected) and, if national law or practice so allows, representatives elected by all workers concerned,⁶⁴ otherwise, there would be inconsistencies between Conventions Nos 151 and 154 in the case of collective bargaining in the context of the public service. The Committee also points out that when the law provides for elections of representatives from among the entire workforce, trade union representatives should be able to stand for election. In *Spain*, for example, candidates for election may be workers, public servants or employees or trade union representatives; in that country, elections serve to determine the representativeness of trade unions. (The question of representativeness is dealt with in Part II, Chapter VII, paragraph 281 and following.) In other countries, such as *Belgium*, only trade union representatives may stand as candidates in such elections. The Committee considers that both systems are compatible with Convention No. 151.

Functions of workers’ organizations and workers’ representatives

134. The purpose of workers’ organizations is to promote the economic and social interests of their members. To that end, these organizations are required, in particular, to engage in collective bargaining on terms and conditions of employment, participate in joint bodies on economic and social matters, take part in bipartite or tripartite consultations, supervise the application of labour legislation by filing complaints and actions with the administrative and judicial authorities, ensure compliance with legislation and collective agreements or represent their members’ individual interests before the administrative or judicial authorities (mediation, conciliation, arbitration, labour inspection, commissions, courts).⁶⁵ In some countries, workers’ conciliation, representatives are also required to sit on the management boards of public enterprises or large firms. To that end, these organizations normally enjoy facilities afforded them by law or collective agreement. Facilities granted directly to workers’ and public employees’ representatives are often supplemented by other measures and facilities afforded to trade unions, generally through legislation. These include the granting of subsidies, which can be used, *inter alia*, by trade union representatives to carry out their activities (travel, per diem, studies, etc.), and tax exemptions.⁶⁶ Social measures can also be put in place by

⁶⁴ It is also worth noting that this is the approach taken in *Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community*, which defines workers’ representatives broadly as “the employees’ representatives provided for by national laws and/or practices”: whereas (16) specifies that “*This Directive is without prejudice to those systems which provide for the direct involvement of employees, as long as they are always free to exercise the right to be informed and consulted through their representatives.*”

⁶⁵ See, for example, *Lithuania* – section 22 of the Labour Code clearly stipulates that workers’ representatives have the following trade union prerogatives: (1) to conclude collective agreements and supervise their application; (2) to submit proposals to the employer concerning the organization of work in the enterprise; (3) to organize strikes and take other legitimate measures; (4) to submit proposals to the State and municipal authorities; (5) to supervise and control the application of labour laws; (6) to protect workers’ rights in the event of restructuring processes; (7) to obtain information from employers on their social and economic situation and plan changes which could affect workers’ jobs; and (8) to challenge employers’ decisions in the courts and supervise the application by the employer of social and economic laws, collective agreements and any other agreement affecting workers’ rights.

⁶⁶ See, for example, *Argentina* – section 39 of the Trade Unions Act provides tax exemptions for workers’ organizations with trade union status (*personería gremial*); *Egypt* – the Trade Unions Act provides that legal

these organizations to assist members, such as housing aid, savings schemes, insurance, loan schemes, legal aid, etc.⁶⁷ In *Argentina* and in *France*, for example, the trade unions perform functions relating to social security. To facilitate the introduction of such measures or programmes, the authorities sometimes grant aid and subsidies.

135. Although most of the facilities referred to in Convention No. 151 relate directly to tasks and functions carried out by workers' representatives, the granting of facilities to organizations is also included among the aims of the Convention and some are expressly mentioned in ILO instruments (for example, the collection of trade union dues).

Methods of application of the Convention

136. Article 6 of Convention No. 151 provides that "such facilities shall be afforded to the representatives of recognised public employees' organizations as may be appropriate in order to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work". Paragraph 2 of that Article explains that "the granting of such facilities shall not impair the efficient operation of the administration or service concerned". Lastly, paragraph 3 indicates that to give the rules the necessary flexibility, "the nature and scope of these facilities shall be determined in accordance with the methods referred to in Article 7 of this Convention, or by other appropriate means". Article 7 of the Convention reads as follows: "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organizations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters."

137. It is thus through legislation, collective agreements, consultation and arbitral awards, or more generally through procedures that allow negotiation of conditions of work or any other method of determining conditions of employment, that the nature and scope of the facilities granted to public employees' organizations are determined. Direct legislative intervention is often the principal method of application of the Convention at national level (adoption of industrial relations and civil service laws, labour codes, etc.),⁶⁸ bearing in mind that it is desirable for the adoption of laws to be preceded by tripartite consultation.

actions brought by trade unions or one of their members on the application of the provisions of this Act are exempt from legal costs and stamp duty at all stages of the proceedings and trade unions enjoy the following benefits: (a) 75 per cent reduction in their electricity, water and telephone bills; (b) 50 per cent reduction in travel costs by internal transport owned by the State, local authorities or public sector entities; (c) 50 per cent reduction of the cost of travel on vessels owned by the State, public bodies or public sector entities which are required to travel abroad to carry out their trade union activities or to participate in international or Arab conferences, training or cultural sessions; (d) 50 per cent reduction on charges for publication of notices required by law in newspapers operated by press establishments; and (e) total exemption from charges related to publications in the *Official Gazette* required by law; and *Republic of Moldova* – section 28 of the Trade Unions Act provides that trade unions are entitled to tax relief and article 35 provides that the employer must pay 0.15 per cent of the total wage bill to trade unions for the purposes set out in the collective agreement.

⁶⁷ See, for example, *Republic of Moldova* – section 35 of the Act provides that buildings, premises, equipment and other cultural and social assets, holiday camps for children and adolescents and open-air facilities owned or rented by the enterprise should be made available to the trade union, free of charge, so that the latter can organize cultural or sporting events and activities to improve the health of workers and their families as set out in the collective agreement.

⁶⁸ It is worth noting that *Estonia* has adopted a Workers' Representatives Act which sets out the legal framework for the activities of workers' representatives, supplementing the Trade Unions Act and the Employment Contracts Act.

138. Normally the law provides for a minimum number of mandatory facilities in a general framework which may be supplemented by collective agreements and thereby adjusted to the size of the public enterprise or institution. The Committee emphasizes that when a State opts for the application of the Convention exclusively through collective agreements, such agreements must guarantee in practice a substantial number of facilities and reasonable coverage, both in terms of public enterprises and institutions and in terms of the workers' and public employees' representatives covered.⁶⁹ In all cases, the Committee recalls the importance that it attaches to the duty to bargain in good faith, including with respect to facilities granted to representatives of public employees' organizations, for the harmonious conduct of industrial relations.

Facilities granted to workers' representatives: reference to Recommendation No. 143

139. Paragraph 4 of the Labour Relations (Public Service) Recommendation, 1978 (No. 159), provides that "regard should be had to the Workers' Representatives Recommendation, 1971" (No. 143) in determining the nature and scope of the facilities.

140. It is therefore worth reproducing here Part IV of the Workers' Representatives Recommendation, 1971 (No. 143):

Workers' Representatives Recommendation, 1971 (No. 143)

IV. Facilities to be afforded to workers' representatives

9. (1) Such facilities in the undertaking should be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently.

(2) In this connection account should be taken of the characteristics of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

(3) The granting of such facilities should not impair the efficient operation of the undertaking concerned.

10. (1) Workers' representatives in the undertaking should be afforded the **necessary time off from work, without loss of pay or social and fringe benefits, for carrying out their representation functions in the undertaking.**

(2) In the absence of appropriate provisions, a workers' representative may be required to obtain **permission from his immediate supervisor** or another appropriate representative of management designated for this purpose before he takes time off from work, **such permission not to be unreasonably withheld.**

(3) Reasonable limits may be set on the amount of time off which is granted to workers' representatives under subparagraph (1) of this Paragraph.

⁶⁹ See, for example, *Antigua and Barbuda* – CEACR, Convention No. 151, direct request, 2010. The Committee acknowledged the several collective agreements provided by the Government and noted that they included references to some facilities, such as collection of union dues, access to management and access to the workplace; *El Salvador* – CEACR, Convention No. 151, observation, 2010. The Committee noted that, according to the Government, a number of collective agreements had been registered in the public sector which include trade union leave and time off, contributions for social, cultural, artistic and sports facilities and the grant of trade union premises. The Committee invited the Government to examine with the social partners means of promoting, on a broader basis, the facilities to be granted to workers' representatives. In their reports submitted under article 19 of the Constitution, the Governments of *Canada*, *Costa Rica* and *Finland* indicate that it is common practice for public sector collective agreements to be very elaborate. The collective agreement could, for example, grant the right to use some of the employer's premises, put up notices for employees, obtain various kinds of information from the employer concerning the application of the collective agreement; a system of temporary release of employees, according to varying modalities, to carry out trade union activities and the deduction at source by the employer of trade union dues and their payment to the accredited association.

11. (1) In order to enable them to carry out their functions effectively, workers' representatives should be afforded the **necessary time off for attending trade union meetings, training courses, seminars, congresses and conferences.**

(2) Time off afforded under subparagraph (1) of this Paragraph should be afforded **without loss of pay or social and fringe benefits**, it being understood that the question of who should bear the resulting costs may be determined by the methods of implementation referred to in Paragraph 1 of this Recommendation.

12. Workers' representatives in the undertaking should be granted **access to all workplaces in the undertaking**, where such access is necessary to enable them to carry out their representation functions

13. Workers' representatives should be granted **without undue delay access to the management of the undertaking** and to management representatives empowered to take decisions, as may be necessary for the proper exercise of their functions.

14. In the absence of other arrangements for the **collection of trade union dues**, workers' representatives authorized to do so by the trade union should be permitted to collect such dues regularly on the premises of the undertaking.

15. (1) Workers' representatives acting on behalf of a trade union should be authorized to **post trade union notices on the premises of the undertaking in a place or places** agreed on with the management and to which the workers have easy access.

(2) The management should permit workers' representatives acting on behalf of a trade union **to distribute news sheets, pamphlets, publications and other documents of the union among the workers of the undertaking.**

(3) The union notices and documents referred to in this Paragraph should relate to normal trade union activities and their posting and distribution should not prejudice the orderly operation and tidiness of the undertaking.

(4) Workers' representatives who are elected representatives in the meaning of clause (b) of Paragraph 2 of this Recommendation should be given similar facilities consistent with their functions.

16. The management should make available to workers' representatives, under the conditions and to the extent which may be determined by the methods of implementation referred to in Paragraph 1 of this Recommendation, **such material facilities and information as may be necessary for the exercise of their functions.**

17. (1) **Trade union representatives who are not employed in the undertaking** but whose trade union has members employed therein should be granted **access to the undertaking.**

(2) The determination of the conditions for such access should be left to the methods of implementation referred to in Paragraphs 1 and 3 of this Recommendation.

141. As can be seen from the preparatory work for the Recommendation, the Committee on Workers' Representatives in the Undertaking sought to meet the diversity of the industrial relations systems, the functions of workers' representatives and the needs of the individual undertaking or enterprise. It endeavoured to give the instruments the necessary flexibility while setting forth more specific terms assuring protection and facilities to be afforded.⁷⁰

Nature, number and scope of facilities

142. The Committee, in its interpretation of Article 6 of Convention No. 151, has always considered that the facilities referred to in Recommendation No. 143 were not the only ones possible, but that several facilities should be granted. Article 6 of the

⁷⁰ See *Record of Proceedings* (Convention No. 135), International Labour Conference, 56th Session, Geneva, 1971.

Convention provides that “such facilities” should be afforded to the representatives of recognized public employees’ organizations. Thus, the Committee considers that in order to ensure conformity with the Convention, several facilities must be granted by law or in practice and that mention should be made of at least one or two of the most important among them. It considers, for example, that merely providing a noticeboard and granting the right to distribute trade union newsletters, for example, would clearly not suffice to meet the requirements and aims of the Convention.

143. The Committee has requested the granting of additional facilities when it considered that those afforded were not sufficient.⁷¹

144. Before expanding on the foregoing points, the Committee considers that it is worth providing a few examples of facilities granted by national legislation to representatives of recognized public employees’ organizations: *Argentina* – the Trade Union Act requires employers to provide a meeting place, regularly meet trade union representatives and grant them time off (monthly hours credited) to carry out their functions; *Azerbaijan* – the Trade Unions Act guarantees time off to trade union representatives and lays down an obligation on employers provide trade unions with equipment and premises; *Belarus* – the Trade Unions Act provides that the employer must provide equipment, premises and means of transport and communication to workers’ representatives, access to the workplace, and the right to the information necessary for the performance of their functions; the Labour Code guarantees the necessary time off to enable them to carry out certain functions (participation in conferences and collective bargaining); *Belize* – the Trade Unions and Employers’ Organizations (Registration, Recognition and Status) Act provides that an employer may not refuse a workers’ representative access to the enterprise. The Government Workers’ Regulations provide that the employer must grant time off to workers’ representatives to discuss grievances or any matters in dispute; *Côte d’Ivoire* – under sections 18 and 19 of Decree No. 96-207 of 7 March 1996 concerning staff representatives and trade union representatives, the latter are allowed a maximum of 15 hours per month to carry out their trade union activities. They are also provided with premises to hold meetings. Section 21 of the Decree requires the employer to meet with workers’ representatives collectively at least once a month and, on request, in the event of an emergency; *Spain* – the law (Organic Act on Trade Unions) provides for the right to hold meetings during working time with the employer’s permission, for a maximum of 36 hours per year; the right to time off, without loss of wages, access to workplaces, the right to premises and material facilities such as noticeboards, in institutions with more than 250 employees; *Finland* – the law requires employers to provide trade unions with appropriate premises for use during breaks and outside working hours, and workers’ representatives must be allowed time off, without loss of wages, to carry out their functions and engage in collective bargaining; *Gabon* – the law provides for time off, the provision of premises and annual subsidies granted by the Government to the most representative trade union confederations; *Hungary* – the Civil Service Act provides that the employer must grant time off to workers’ representatives, and lays down their right to information and the possibility of using the employer’s premises for trade union purposes; *Italy* – the law provides for the right to meet, to hold referendums, to paid and unpaid leave, to put up notices, to collect trade union dues, and to use appropriate premises for the exercise of the trade union functions laid down by law; *Lithuania* – under the Trade Unions Act, public bodies must provide information on employment-related issues and economic and

⁷¹ See, for example, *Chile* – CEACR, Convention No. 135, direct request, 2003. The Government had indicated only that trade union officials had the necessary time off to carry out their functions. The Committee requested the Government to state whether other facilities were granted.

social matters necessary for the activities of trade unions and public employees' organizations, within the time limit laid down by law. The Act also stipulates that public bodies may assist trade unions in carrying out research on social or other matters and that workers' organizations have the right to supervise the employer's compliance with labour legislation and to instigate proceedings against those who fail to do so. In order to exercise this function, authorized workers' representatives may have access to the enterprise and to documentation concerning conditions of work and economic and social conditions affecting the members of the organization; *Luxembourg* – the general Regulations on the state civil service provide that a staff representative body established within an administrative department is authorized to meet 12 times a year, each time for a maximum of four hours, in appropriate premises made available by the management of the administrative department. In addition, the staff representative body has the right to post notices directly related to its legal functions and addressed to the staff that it represents in places reserved for that purpose by the management of the administrative department; *Mali* – the law grants public interest leave which covers interruptions of service, inter alia, for authorized participation in an official national or international event and full-time participation in a political or trade union training seminar. Such leave may not exceed three months with full payment of wages; *Mauritius* – the Employment Relations Act provides that time off must be granted to workers' representatives to perform their functions, subject to the exigencies of employment and in a manner that does not impair the smooth operation of the workplace. The extent, duration and conditions of time off are to be agreed between the parties, depending on the size of the trade union, its volume of activities and the additional responsibilities of representatives in a federation or confederation; *Namibia* – the Labour Act provides that an employer must not refuse access to the enterprise by trade union representatives during working hours in order to recruit members or to perform any function under the Act or a collective agreement and outside working hours to hold meetings with members, and must deduct trade union dues in the manner laid down in the Act; *Poland* – the law provides for the right to information and consultation of workers' representatives, granting of paid time off necessary to carry out their functions, and the provision of premises and material facilities by the employer; *Portugal* – the law provides for the granting of paid time off to workers' representatives (at least four days per month for staff of recognized public bodies), the right to premises, to hold meetings outside working hours at the workplace, or during working hours for a maximum of 15 hours per year, to a noticeboard, to distribute newsletters, etc., and to collect trade union dues; *Republic of Moldova* – the Trade Unions Act contains a list of facilities which the employer is required to grant free of charge to trade unions so that they can effectively fulfil their functions: provision of premises (including office equipment, heating, electricity, maintenance and security necessary for their use), means of transport and communication and check-off of trade union dues. The public authorities and the employer may not prevent access to enterprises by workers' representatives; the latter have the right to four hours per week of paid time off to perform their functions, as well as the time necessary to participate in trade union meetings, training, seminars, congresses and conferences; *Czech Republic* – the Labour Code provides that the employer must grant paid time off to trade union representatives to carry out their functions and attend meetings, conferences, etc. The employer is also required, at its own expense, to provide equipped premises to workers' organizations and to bear the costs of maintenance, etc.; *United Kingdom* – the Trade Union and Labour Relations (Consolidation) Act 1992 requires employers to put in place measures to allow workers' representatives to carry out their duties and stipulates the minimum amount of time off to be granted; *Saint Martin* – the law provides that trade union representatives may take

part in meetings and take such initiatives as they consider appropriate. They have the right to up to 12 days of paid leave per year to carry out their trade union functions; *Sao Tome and Principe* – the Trade Union Act, No. 5/92 of 28 May 1992, provides that, in order to exercise the powers conferred on them by the trade union's statutes, trade union representatives must have the following rights and facilities: (a) use of premises in the enterprise suitable for their activities; (b) the right to freedom of movement in the workplaces occupied by workers belonging to the trade union; (c) appropriate storage space in the enterprise for documents relating to the trade union, trade union activities and the workers' social and occupational interests; and (d) the right to convene, announce and conduct trade union meetings; *Serbia* – the Labour Act provides that the employer must provide relevant information to the trade union and that representatives have the right to paid time off to perform their functions and attend meetings, conferences or congresses (the time off granted varies according to the size of the public institution); the law also provides the possibility of a full-time trade union representative; *Tunisia* – the general Regulations on the civil service provide that fully paid trade union leave may be granted to trade union representatives when holding their congress, that civil servants who are full-time trade union officials may be seconded to their organization, and that public employees who have trade union responsibilities may be released for that purpose; *Zambia* – the law provides that representatives of public employees' organizations have the right to time off (outside or, with the employer's consent, during working hours) and the right to hold meetings, outside or, with the employer's consent, during working hours, in order to ensure workplace safety.

Collection of trade union dues, time off without loss of wages or social and fringe benefits, prompt access to management and access to the workplace

145. Among all the facilities which may be afforded to workers' representatives, some, by their nature, are more important than others. The Committee considers, for example, that the collection of trade union dues (for example, through the check-off system or other methods), time off without loss of wages or social and fringe benefits to allow representatives to perform their functions, prompt access to the management of the enterprise and access to the workplace are especially important in a public institution, as well as at sectoral or national level. The bigger the undertaking or public institution, the greater the need to ensure that appropriate facilities are afforded.

146. Depending on the country, workers' representatives carry out their functions outside working hours, during part of their working hours or, in some cases, as full-time trade union officials, which is a useful practice. It is thus self-evident that the responsibilities of workers' representatives take up time, and that this time may encroach on their normal working hours. The granting of facilities such as paid time off to representatives of public employees' organizations can contribute to compliance with the regulations applicable to public institutions and to dialogue with the employer, and thus to the creation of an appropriate environment and the proper functioning of the administration or department concerned.

147. When national legislation does not provide for the payment of wages to representatives, whether or not they are full-time trade union officials, the question of

who bears the financial burden should be the subject of free and voluntary negotiation between the parties.⁷²

148. Furthermore, it is essential for workers' representatives to be able to have access to the workplace, as well as access without unjustified delay to the employer, and information and consultation in a timely manner.⁷³ This helps prevent disputes and ensures effective and dynamic industrial relations.

149. Lastly, in many countries, the legislation provides for the possibility of withholding trade union dues at source, enabling sound management of organizations' finances. The procedure to be followed and the minimum amount of the dues are normally negotiated between the parties. Requiring workers to declare their trade union membership in writing in order to have their union dues deducted from their wages does not violate the principles of freedom of association.⁷⁴ In some countries, for example *France*, trade union dues can be deducted from taxes.

150. In the light of the aims of the Convention, the Committee emphasizes that particular attention must be paid to the facilities mentioned in this part.

Material facilities

151. Recommendation No. 143 provides in Paragraph 16 that "the management should make available to workers' representatives, under the conditions and to the extent which may be determined by the methods of implementation referred to in Paragraph 1 of this Recommendation, such material facilities and information as may be necessary for the exercise of their functions". The section entitled "Nature, number and scope of facilities" (above) describes a number of material facilities mentioned in the relevant national legislation. The Committee considers it worth recalling them here: provision of premises (furnished or unfurnished), office equipment (telephone, mobile phone for trade union officials, fax machine, photocopier, computer, postal address, email, Intranet web page, etc.), storage space, a noticeboard⁷⁵ and means of transport, as well as the coverage of transport costs.

⁷² See preparatory work (Convention No. 135), op. cit., p. 512: the Worker members pointed out, and this was the understanding of the Committee, that their proposal in no way specified who was to bear the burden of these measures. Moreover, in this regard, the Committee on Freedom of Association, in a case concerning the Republic of Korea, has suggested that the question of the payment of time off to perform trade union functions and trade union leave should be negotiated.

⁷³ It is worth noting in this regard that *Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community* provides that information and consultation of workers cover three main areas affecting the undertaking: developments and the economic, financial and strategic nature; the structure and probable development of employment and any measures envisaged; and decisions likely to lead to substantial changes in work organization or in contractual relations. Information must be given at such time, in such fashion and with such content as are appropriate to enable, in particular, employees' representatives to conduct an adequate study and, where necessary, prepare for consultation. Consultation must take place while ensuring that the timing, method and content thereof are appropriate, at the relevant level of management and representation, depending on the subject under discussion, on the basis of information supplied by the employer and of the opinion which the employees' representatives are entitled to formulate, in such a way as to enable employees' representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate, with a view to reaching an agreement on decisions within the scope of the employer's powers (articles 4 and 5).

⁷⁴ See, for example, Committee on Freedom of Association, 304th Report, Case No. 1832 (*Argentina*), para. 36.

⁷⁵ See, for example, *Spain* – According to Spanish case law, given that a trade union's noticeboard is private, it does not need to obtain the employer's permission before putting up a notice, but any notice must bear the signature of the trade union representative.

152. The provision of premises enables unions to hold meetings with members or workers and should be granted in a way so as to ensure that they may meet in complete confidentiality and so that documents may be stored confidentially. Obviously, the granting of such premises includes the right of inviolability of the premises and the right to free use of all furniture and equipment – which is covered by the freedom of organizations to organize their administration envisaged in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – and the right to confidentiality of mail (both paper and electronic). It should be recalled in this context that the right of public employees’ organizations to hold meetings in their own premises to discuss occupational matters, outside working hours or, with the employer’s authorization, during working hours, should not be subject to prior authorization or interference by the authorities, as it is an essential element of freedom of association. It should also be recalled that the public authorities should refrain from any interference which would restrict this right or impede its exercise, unless public order is disturbed thereby or its maintenance seriously and imminently endangered.⁷⁶

The granting of facilities must not impair the efficient operation of the administration or service concerned

153. Article 6, paragraph 2, of Convention No. 151 provides that “the granting of such facilities shall not impair the efficient operation of the administration or service concerned”. Recommendation No. 143 takes the same approach. Paragraph 9(2) reads as follows: “account should be taken of the characteristics of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned”. For example, with regard to time off, the Recommendation provides that a workers’ representative may be required to obtain permission from his immediate supervisor or another appropriate representative of management designated for this purpose before taking time off from work (Paragraph 10(2)) and that reasonable limits may be set on the amount of time off (Paragraph 10(3)). Thus, taking into account all interests means that the competent authorities solely responsible for the efficient operation of their services may check requests for time off during hours of work.⁷⁷ Nevertheless, trade union representatives should be able to exercise their functions in accordance with the rules of their organization, without having to account to the management for each activity.⁷⁸

154. With regard to the posting and distribution of trade union notices in the undertaking, Recommendation No. 143 makes it clear that these should relate to normal trade union activities (Paragraph 15(3)), that their placing should be agreed with the management (Paragraph 15(1)) and their posting and distribution should not prejudice the orderly operation and tidiness of the undertaking. Access by trade union representatives to an undertaking in which they are not employed but whose trade union

⁷⁶ See, for example: Committee on Freedom of Association, 334th Report, Case No. 2222 (*Cambodia*), para. 219.

⁷⁷ See, for example, Committee on Freedom of Association, 335th Report, Case No. 2306 (*Belgium*), para. 353. In its report submitted in accordance with article 19 of the Constitution, the Government of *France* indicates that only time off to attend meetings convened by the administration is granted as of right. Other time-off facilities are granted subject to the needs of the service. Any refusal must be justified by the administration. The notion of needs of the service cannot be based on considerations of a general nature: only objective and specific reasons justify refusal to allow the staff member’s request in exceptional cases. This justification is subject to examination by a judge.

⁷⁸ See, for example, Committee on Freedom of Association, 363rd Report, Case No. 1865 (*Republic of Korea*), para. 110.

has members among the staff of that undertaking may be subject to conditions (Paragraph 17(2)). The Committee considers that access of trade union officials to workplaces should not, of course, be used to the detriment of the efficient operation of the administration or public institutions concerned. Accordingly, the workers' organizations concerned and the employer should seek to reach agreements so that access to workplaces, during and outside working hours, may be granted to workers' organizations without impairing the efficient functioning of the administration or the public institution concerned.⁷⁹ It has been generally recognized, nevertheless, that cases could arise where access might have to be limited for reasons of safety, security or secrecy.⁸⁰

Withdrawal of facilities

155. In general, the Committee encourages the use of methods of application of Convention No. 151 that are based on tripartism, social dialogue and full and frank consultations between the social partners. This is particularly important with regard to legislation on industrial relations, including provisions concerning facilities to be afforded to workers' representatives, in order to ensure that the parties subscribe to the underlying principles and, thus, that the measures adopted are sustainable and are not contingent, in the civil service, on successive changes of government or administration.

156. The unilateral withdrawal of facilities from public employees' organizations can seriously impair the normal functioning of such organizations. The larger the organization, in terms of the number of workers it represents and their sectoral and geographical coverage, the more the withdrawal of facilities can have harmful consequences. In this respect, the Committee on Freedom of Association has considered that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should thus be avoided.⁸¹

Facilities afforded to trade union representatives and representativeness

157. The Committee emphasizes that facilities afforded by legislation to representatives of the most representative public employees' organizations should not unduly favour some organizations to the detriment of others. The Committee on Freedom of Association has examined this question and has pointed out that, on several occasions, and in particular during the discussion on the draft Right to Organise and Collective Bargaining Convention, the International Labour Conference has referred to the question of the representative character of trade unions, and has, to some extent, accepted the distinction that is sometimes made between the various unions concerned according to how representative they are. Furthermore, article 3, paragraph 5, of the Constitution of the ILO includes the concept of "most representative" organizations. Accordingly, the Committee has considered that the mere fact that the law of a country draws a distinction

⁷⁹ See, for example, Committee on Freedom of Association, 334th Report, Case No. 2222 (*Cambodia*), para. 220. In addition, in its report submitted in accordance with article 19 of the Constitution, the Government of *New Zealand* indicates that the Employment Relations Act 2000 provides that before exercising their right of access to the workplace, trade union representatives must request such access and obtain the consent of the employer, or a representative of the employer, which must not be unreasonably refused.

⁸⁰ See preparatory work Convention No. 135, op. cit.

⁸¹ See, for example, Committee on Freedom of Association, *Digest*, 2006, op. cit., para. 475.

between the most representative trade union organizations and other trade union organizations is not in itself a matter for criticism. Such a distinction, however, should not result in the most representative organizations being granted privileges extending beyond that of priority in representation, on the ground of their having the largest membership, for such purposes as collective bargaining or consultation by governments, or for the purpose of nominating delegates to international bodies. In other words, this distinction should not have the effect of depriving trade union organizations that are not recognized as being among the most representative of the essential means for defending the occupational interests of their members, for organizing their administration and activities and formulating their programmes, as provided for in Convention No. 87.⁸² By according favourable or unfavourable treatment to a given organization as compared with others, a government may be able to influence the choice of workers as to the organization which they intend to join. It would seem desirable that, if a government wishes to make certain facilities available to trade union organizations, these organizations should enjoy equal treatment in this respect.⁸³

158. Paragraph 1(1) of the Labour Relations (Public Service) Recommendation, 1978 (No. 159), provides that “in countries in which procedures for recognition of public employees’ organisations apply with a view to determining the organisations to be granted, on a preferential or exclusive basis, the rights provided for under Parts III, IV or V [facilities afforded to representatives of public employees’ organizations] of the Labour Relations (Public Service) Convention, 1978, such determination should be based on objective and pre-established criteria with regard to the organisations’ representative character”.

159. In the Committee’s opinion, it follows from the wording of Paragraph 1(1) of Recommendation No. 159 that legislation may grant representatives of the most representative organizations certain exclusive facilities relating to collective bargaining (such as time off for bargaining or supervising the application in practice of the collective agreement or, as the case may be, the use of premises) but nothing in Convention No. 151 or in Recommendation No. 159 prevents law or practice from affording facilities to representatives of less representative trade unions which are not party to the collective agreement of the bargaining unit (for example, the right to communicate or receive information about their members or to approach representatives of management to defend the individual interests of their members).

⁸² See, for example, Committee on Freedom of Association, *Digest*, 2006, op. cit., para. 346.

⁸³ See, for example, Committee on Freedom of Association, *Digest*, 2006, op. cit., para. 340. See also paras 342 and 345.

V. Procedures for determining terms and conditions of employment other than collective bargaining

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

Article 7

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organisations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters.

160. Article 7 of Convention No. 151 provides that the terms and conditions of employment of public employees may be determined either through machinery for negotiation between the public authorities concerned and public employees' organizations, or through "such other methods as will allow representatives of public employees to participate in the determination of these matters". It should be noted, however, that Article 1(1) of Convention No. 151 provides that its provisions should not be applied so as to undermine the application of any more favourable provisions in other international labour Conventions.

161. As the second part of this Survey covers the Collective Bargaining Convention, 1981 (No. 154), the question of the use of negotiations to determine the terms and conditions of employment of public employees, as provided for under Convention No. 151, will be examined in the second part of the Survey, together with the provisions of Convention No. 154.

162. With regard to the use of *methods other than collective bargaining* to determine the terms and conditions of employment of public employees, these consist primarily of consultation procedures exclusively between the parties and of consultation machinery involving the intervention of bodies to reconcile points of view or make recommendations to decision-making bodies, with the assistance of experts or independent persons. In some countries, such as *Finland*, consultations have been replaced by co-management systems. In 1988, this country adopted an Act respecting co-determination in government departments and institutions with the object of offering personnel the possibility of influencing decisions affecting their terms and conditions of employment with a view to promoting economic efficiency in the administrations concerned. Joint bodies were established for this purpose.

163. The Committee considers it useful to emphasize that the demarcation line between consultation and negotiation is not always clear and that consultation in good faith may result in a more satisfactory outcome than purely formal collective bargaining with no genuine desire to achieve results. It is therefore the spirit in which the parties act that is decisive. Moreover, in systems that have opted for consultation and where the right to strike is recognized, consultation processes may result in genuine negotiations when trade unions are sufficiently strong since, once a strike breaks out, the dispute has to be resolved.

164. Most of the Conventions of the International Labour Organization contain specific provisions on bipartite or tripartite consultations. Convention No. 151 explicitly introduces the principle of negotiation or other methods for determining terms and conditions of employment (for example, consultation) in the public administration. A

detailed analysis of the aspects of bipartite and tripartite consultation was carried out by the International Labour Conference in 1960. The Committee on Consultation and Co-operation, established by the International Labour Conference at its 44th Session (1960), when drafting the text of Recommendation No. 113 concerning consultation and cooperation between public authorities and employers' and workers' organizations at the industrial and national levels, engaged in an exchange of views, following which it presented to the Conference a long series of observations "that might enrich the experience of all who are concerned to see an improvement or extension of consultation". In the opinion of the Committee of Experts, most of these observations are relevant in the context of public administration. The observations from 1960 are based on the increasing recognition by a wide variety of member States that consultation of the most representative organizations on matters affecting them is desirable and even necessary. The observations relate to the basic principles of consultation (which should be distinguished from the notion of collective bargaining which is defined in Article 2 of Convention No. 154):

- There is a growing belief that ... organisations should be consulted by public authorities on matters affecting, or likely to affect, them. It is recognised that if the viewpoints of all concerned are known, there is a greater likelihood that the measures and policies which public authorities may be called upon to undertake or follow will not only be likely to command greater respect and support but also be more soundly based.
- This consultation and co-operation may be seen as a reflection of the philosophy of government by consent and of the sharing, in a broad fashion, of responsibility for the well-being of the community as a whole. It may be the reflection, in the eyes of the community, of the growing stature of ... organisations and of the belief that, however divergent may be some of [their] attitudes ..., there is a common interest in the well-being of the community as a whole and that through consultation ... greater harmony in industrial relations may be achieved. Consultation and co-operation may also be seen as a reflection of the growing complexity of the problems of modern society and of the extension of the activities of the State in the social field. No public authority can, in these circumstances, hope to be omniscient or be certain that what it proposes may adequately provide for what is intended.

165. The main elements of the 1960 observations are as follows:

- Consultation helps to remove misunderstandings, is a means of providing organizations with information not otherwise available to them and which may be helpful to the formulation of their own policies and attitudes, and contributes to understanding the point of view of others and to examining issues in full knowledge of the facts so as to develop compromise solutions or reach an agreement. Consultation therefore helps to minimize the need for legislative or administrative action, as well as areas of possible friction between the parties, and thus contributes to greater industrial harmony.
- The prerequisites for effective consultations are voluntary participation, good faith, confidence and mutual respect, respect for the freedom and independence of each party, the existence of strong organizations able to appreciate the need to reconcile the interests of the organizations with those of the community at large, the necessary expertise of the participants in the consultations and a mandate for the most representative organizations. In its observations, the International Labour Conference warns about the risk to consultations if the parties are inadequately

prepared, entrenched in their prejudices or lack sufficient authority to deal with the problems raised.

- Consultation methods vary greatly from country to country and, while they may be formal or informal, they *should never become a mere formality*. Depending on the country, consultations take place by correspondence or formal or informal discussions; they sometimes involve bringing the parties together around the same table, or convening official or unofficial conferences or round tables, and they may also take place in permanent bodies having general competence in economic and social questions, or in sectoral bodies and, in practice, experts (economists, lawyers, statisticians, etc.) may be called upon, and there may, or may not be a secretariat (which, for example, prepares documents or minutes); they may also take the form of ad hoc bodies for specific issues. Consultations are sometimes held in the form of hearings by parliamentary committees or other agencies of the public authorities. A close relationship between the participants can facilitate consultation and meetings should be convened and the agenda communicated sufficiently ahead of time.

166. As for consultations in permanent bodies, they have the added benefit of enabling representatives to acquire a wealth of experience, which increases their ability to deal with issues.

167. The Committee wishes to point out that, when preparing other general surveys on instruments in which consultation is of paramount importance, it has set out a number of principles in the same spirit as that which prevailed in the observations adopted by the International Labour Conference in 1960, while highlighting certain points.

168. In the context of the 2000 General Survey concerning the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the Committee emphasized the need for consultations to take place sufficiently in advance of the adoption of legislative or administrative measures, and the need to have all the necessary information far enough in advance to allow organizations to formulate their own opinions. The Committee emphasized that the initiative in convening consultations is not confined to the government or public authority concerned and that the frequency of consultations, whether or not they are held in standing bodies, is determined by their subject matter. Depending on national practice, consultation can mean either submitting the government's proposed decision to the representatives of organizations, or asking them to help formulate the proposal. On this basis, the parties will be able to engage in an exchange of communications or discussions. Consultation should be meaningful, effective and undertaken in good faith, and should not be merely a token gesture, but should be given serious attention by the competent authorities. The Committee added that the outcome of the consultations should not be regarded as binding, and that the ultimate decision must rest with the government or legislature, as the case may be. Finally, with regard to countries where the consultation bodies are not strictly bipartite or tripartite in composition and include, in addition to employers' and workers' representatives, other persons, such as independent experts, representatives of women's organizations, of persons with disabilities or of indigenous peoples, or consumers' associations, it is important that consultation of these other parties should not undermine that of the main recognized social partners, let alone seek to replace it.⁸⁴

⁸⁴ See, for example, the 2000 General Survey on the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), paras 29, 31, 38, 120 and 122.

169. On this last point, the Committee considers that, when consultation systems are extended to many actors, it is essential to ensure a specific space for *bipartite* dialogue between public employees' trade union organizations and representatives of the public authorities when the issues to be addressed concern administrative or legislative measures relating to the terms and conditions of employment of public employees. This criterion also applies to general issues relating to working conditions in the private sector, in which case consultations should involve, on a *tripartite* basis, the most representative social partners in the sector, together with the competent authorities. The Committee emphasizes that the more the consultation system is extended to the above associations, the greater the need to provide this bipartite or tripartite space when working conditions are at issue.

170. At its session in 2010, the Committee of Experts, in a general observation on the application of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), recalled, in other terms, the general requirements concerning consultation. In particular, while emphasizing that consultation does not imply a right of veto (since, by definition, in the consultation process administrative or legislative authorities retain the responsibility for decision-making), the Committee indicated that consultations must be real, in-depth, formal and full, and exercised in good faith, and that there must be genuine dialogue characterized by communication and understanding, mutual respect, good faith and the sincere wish, in so far as possible, to reach a common accord, with sufficient effort being made for that purpose.⁸⁵

171. The Committee also wishes to refer to the principles established by the Committee on Freedom of Association regarding consultations. The Committee on Freedom of Association has repeatedly emphasized the importance of in-depth, frank, full and detailed consultations without obstacles with the most representative organizations on *matters of mutual interest*, including issues relating to terms and conditions of employment, and on any legislation or measures concerning terms and conditions of employment, and any draft legislation in the field of labour law. The Committee on Freedom of Association has repeatedly insisted on the fact that the parties must make every effort to *arrive, to the fullest possible extent, at agreed solutions*. It has also emphasized the importance of consultations taking place in good faith, confidence and mutual respect and for the parties to have sufficient time to express their views and discuss them in full with a view to reaching a suitable compromise.⁸⁶ The Committee of Experts shares these principles.

172. Finally, the Committee recalls that Article 7 of Convention No. 154 provides that "Measures taken by public authorities to encourage and promote the development of collective bargaining shall be the subject of prior consultation and, whenever possible, agreement between public authorities and employers' and workers' organisations."

The variety of national consultation systems

173. The systems used in the different States worldwide for the determination of terms and conditions of employment in the public sector are very diverse in nature and the participation of public employees and their organizations can range from the simplest form, such as ad hoc and informal consultations initiated by the parties, to collective

⁸⁵ General observation on the application of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), CEACR, Report, 2011.

⁸⁶ See Committee on Freedom of Association, *Digest*, 2006, op. cit., paras 1065–1088; see also, for example, the Committee's 353rd Report, Case No. 2254 (*Bolivarian Republic of Venezuela*), para. 1381.

bargaining mechanisms in an institutional framework defined by law, as well as formal consultations in standing bodies and intermediary procedures, such as the intervention, after hearing the trade unions, of bodies composed of persons who are neutral and independent of the parties, such as experts who prepare recommendations for the public authorities after consultation with the parties.

174. The Committee recalls that Paragraph 2(2) of Recommendation No. 159 provides that “Where methods other than negotiation are followed to allow representatives of public employees to participate in the determination of terms and conditions of employment, the procedure for such participation and for final determination of these matters should be determined by national laws or regulations or other appropriate means.” The flexibility thus envisaged for consultation procedures means that systems laying down legal rules for the participation of public employees in the determination of their terms and conditions of employment are compatible with Convention No. 151, as are those where the rules are based on practice, provided that such practice is clearly established. The Recommendation appears, however, to suggest that it is preferable not to rely on ad hoc initiatives to ensure that public employees participate in the determination of their terms and conditions of employment, and that it is better for such procedures to be determined.

175. The Committee notes that formal consultation procedures exist in the vast majority of countries. In general, the Committee observes that consultations are in many ways characterized by a variable geometry. They may be held at different levels, depending on the organization of States (at the national/federal, regional/provincial or local/municipal levels or at institutional level, depending on the system). They may involve one administration in particular, or several. They can be organized at the sectoral level (for example, only involving public employees in the education or health sectors) or at the intersectoral level. In addition, the scope of consultations may be general, or only cover one or more specific subjects (such as wages, training, social security or occupational safety and health). In most countries, consultations are held in several bodies (for example, tripartite committees, economic and social councils and joint public service committees), using different methods, even in cases where the legislation grants public employees the right to collective bargaining. The Committee considers that, in principle, all of these systems are in compliance with the Convention.

176. While some countries only make use of one type of participation procedure, in the majority of countries various types of participation coexist, with negotiation being customary for some categories of personnel, for one or other specific issue, and consultation being applicable for other public service employees, or for other issues. The legislation sometimes specifies subjects that have to be covered by consultations and/or those that are to be subject to bargaining. The demarcation line between consultation and bargaining is sometimes not clear.

The coexistence of consultation and bargaining procedures

177. Regarding the coexistence of consultation and bargaining machinery, in *France*, for example, section 8bis of Act No. 83-634 of 13 July 1983 on the rights and duties of public employees provides that public employees’ organizations are entitled to participate in negotiations in a number of areas (for example, as regards wages, career development, etc.), and section 9 establishes that public employees shall participate in

the determination of their terms and conditions of employment through their representatives serving on consultative bodies.⁸⁷

178. In the *Republic of Korea*, public sector trade unions have the right to conduct collective bargaining and conclude collective agreements; public employees can also participate in the determination of their terms and conditions of employment in consultation processes in which they take part through public officials' workplace associations, under the terms of the Act on the Establishment and Operation of Public Officials' Workplace Associations, and through labour-management councils, under the Act on the Promotion of Worker Participation and Cooperation.⁸⁸

179. In *Costa Rica*, the Higher Labour Council, a tripartite body, has overall responsibility for labour matters, both in the public and private sectors, except for public sector wages, which are the competence of a specific body, the National Public Sector Wage Council.

180. In *Namibia*, the agreement signed on 30 March 2006 by the Government and the most representative public employees' trade union (the Namibia Public Workers Union) provides for a division between the subjects covered by bargaining and those that are subject to consultation. The subjects for bargaining are the level of wages and other benefits, housing and social security; and the subjects of consultation are recruitment procedures, working hours, health and safety measures and essential services.

181. In *Switzerland*, the Act on Confederation Personnel of 24 March 2000 provides for exchanges of information, consultation and bargaining in the federal public service (see box below).

**Act on Confederation Personnel of 24 March 2000
(Switzerland)**

Section 33

1. The employer shall provide the personnel and the associations representing them with full information relating to important personnel issues in a timely manner.

2. It shall consult the personnel and the associations representing them, in particular:

- before amending the present Act;
- before issuing implementing provisions;
- before creating or modifying data processing systems relating to personnel;
- before transferring to a third party any areas of administration, an enterprise or part of an enterprise;
- on issues relating to occupational safety and health measures covered by section 6(3) of the Labour Act of 13 March 1964.

3. It shall conduct negotiations with personnel associations.

4. Implementing provisions shall regulate the participation of the personnel and their associations. They may provide for consultation, arbitration and decision-making bodies, which may be of joint composition.

⁸⁷ Report submitted under article 19 of the ILO Constitution. Consultation and negotiation procedures are described below in the relevant sections of the General Survey.

⁸⁸ Report submitted under article 19 of the ILO Constitution.

Consultations in bodies composed of neutral or independent persons

182. In *Japan*, with regard to national public service employees, the National Public Service Act established an authority composed of independent persons (the National Personnel Authority), the responsibilities of which include making recommendations to the Cabinet and the Diet (Parliament), on the improvement of conditions of work for national public sector employees (see box below). The Authority carries out studies, for example on remuneration, by comparing the situation with that of the private sector; it may also hear public employees' organizations and the public authorities concerned before making its recommendations. A similar system is established for local public service employees (the Local Public Service Act).

National Public Service Act (Japan)

Article 3. National Personnel Authority

The National Personnel Authority shall be established under the jurisdiction of the Cabinet. The National Personnel Authority shall report to the Cabinet pursuant to the standards provided for in this Act.

The National Personnel Authority shall, in accordance with applicable law, have authority over affairs concerning recommendations for improvement in personnel administration as well as in remuneration and other conditions of work; position classification; examination, appointment and dismissal; remuneration; training; change in employment status; disciplinary action; processing of complaints; maintenance of ethics relating to the performance of public duties; and other matters concerning the maintenance of fairness in personnel administration, the protection of the welfare of public officials and the like.

Article 5. Commissioners of the National Personnel Authority

Commissioners of the National Personnel Authority shall be appointed, with the consent of both Houses of the Diet, by the Cabinet from among persons 35 years of age or older, who are of the highest moral character and integrity, in known sympathy with the democratic form of government and efficient administration therein based on merit principles, and possess a wide range of knowledge and sound judgement concerning personnel administration.

Article 28. Principle of meeting changing conditions

The fundamental matters concerning remuneration, hours of work and other working conditions to be established pursuant to this Act may at any time be changed by the Diet to bring them into accord with general conditions of society. It shall be the duty of the National Personnel Authority to recommend such changes.

The National Personnel Authority shall report to the Diet and the Cabinet simultaneously on the propriety of the current salary schedules not less than once each year. When it is found that changes in conditions affecting the salary determination require an increase or decrease in salaries provided for in the salary schedules by 5 per cent or more, the National Personnel Authority, with such report thereon, shall make appropriate recommendations to the Diet and the Cabinet.

183. Furthermore, in the context of the preparations for public service reform, trade unions were consulted through committees established for that purpose and four civil service reform-related bills, including the right to conclude collective agreements for national public service employees in the non-operational sector, were submitted to the Diet.

184. In the *United States*, the relevant provisions with respect to federal government employees are indicated in the box below.

Title 5 of the United States Code (US Code)
National consultation rights

Section 7113

(a) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority [Federal Labor Relations Authority], shall be granted national consultation rights by the agency.

National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority.

Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

(b) (1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall –

- be informed of any substantive change in conditions of employment proposed by the agency; and
- be permitted reasonable time to present its views and recommendations regarding the changes.

(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization –

- the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and
- the agency shall provide the labor organization a written statement of the reasons for taking the final action.

... duty to consult

Section 7117

(d) (1) A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

(2) A labor organization having consultation rights under paragraph (1) of this subsection shall –

- be informed of any substantive change in conditions of employment proposed by the agency, and
- shall be permitted reasonable time to present its views and recommendations regarding the changes.

(3) If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization –

- the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and
- the agency shall provide the labor organization a written statement of the reasons for taking the final action.

185. Moreover, Executive Order No. 13522 (2009) created a new body, the National Council on Federal or Labor–Management Relations, which is of bipartite composition and is responsible for advising the President on matters involving labour–management relations in the federal executive branch. The Order also requires all federal agencies to

create appropriate forums to enhance cooperation, including in labour relations. Other initiatives along these lines can also be seen in the activities of the Federal Mediation and Conciliation Service.⁸⁹

186. With respect to state and local government, public sector workers may address, by legislative means, the issues usually dealt with in collective bargaining. A federal appeals court found that the state law in North Carolina prohibiting collective bargaining by public employees did not extend to a union's advocacy of a particular point of view.⁹⁰ It is the Committee's understanding that public employees are not prevented from engaging in collective activities to address, by legislative means, issues such as compensation, benefits, conditions and other elements of employment.

187. In the *United Kingdom*, an independent body (the Senior Salaries Review Body) is responsible for providing advice on the salaries of certain senior officials. In the public sector in general, unions are regularly associated with the process of developing reforms and any texts relating to the public services. More specifically, in the Civil Service there are numerous and frequent contacts between the unions and ministerial department management.

188. The Committee recalls as a general rule that the mere participation by organizations in the legislative process is insufficient under the provisions of Convention No. 151, since these organizations should be consulted with respect to the drafting of relevant bills by the executive branch.

Consultations in the absence of a specific body

189. In some countries, consultations are required by law, or carried out in practice even when there is no detailed formal framework for such procedures. Consultations may therefore be held, for example, by means of written communications.

190. In *Chile*, for example, the Government convenes an annual round-table meeting bringing together the public authorities and representatives of public employees, during which the terms and conditions of employment of public employees at the central level are discussed (the adjustment of salaries and other benefits, for example).⁹¹ In practice, consultations are also held at different levels.

191. In *Bulgaria*, under section 44(3) of the Civil Service Act, trade unions are able to represent and defend the rights of public employees on civil service and social security issues through proposals, claims and participation in the drafting of the relevant internal regulations and ordinances, as well as the discussion of issues of economic and social interest.⁹²

192. In *Honduras*, public servants have the right to submit "respectful statements" containing claims of interest to all members. In this regard, the Committee has recalled that a system in which public employees may only submit to the authorities "respectful statements", which shall not be the subject of any negotiation, particularly with regard to terms and conditions of employment, is not consistent with Convention No. 98.⁹³ The

⁸⁹ Report submitted under article 19 of the ILO Constitution.

⁹⁰ See *Hickory Fire Fighters Association v. City of Hickory*, 656 F.2d 917 (Fourth Cir., 1981).

⁹¹ Report submitted under article 19 of the ILO Constitution.

⁹² *Bulgaria*, CEACR, Convention No. 98, observation, 2012.

⁹³ *Honduras*, CEACR, Convention No. 98, observation, 2012.

Committee also considers that such a system is not sufficient to meet the requirements of Convention No. 151.

193. Similarly, the Committee noted in 2007 that in *Colombia*, under the terms of Act No. 411, public employees have the right to submit respectful claims to their respective entities and the latter must reply to the said claims.⁹⁴ In 2009, the Committee noted with satisfaction that the Government had issued Decree No. 535 of 24 February 2009 respecting collective bargaining in the public sector. The Committee observed that the objective of the Decree was to establish bodies to further dialogue between trade union organizations of public employees and public sector entities (section 1), with a view to determining conditions of work and regulating relations between employers and workers (section 2). The Decree also sets out the dialogue procedure.⁹⁵ A new Decree (No. 1092) regulating the right to collective bargaining in the public administration was adopted on 24 May 2012.

194. In *Germany*, the Committee noted that employees in the public service (*Arbeitnehmer des öffentlichen Dienstes*), such as teachers employed in the education services of the Länder under the Framework Collective Agreement for the Public Service, enjoy the right to collective bargaining, whereas civil servants (*Beamte*), including teachers with the status of civil servant (*Beamte*) do not have the right to bargain collectively because the legislative regulation of the civil service is a constitutionally endowed traditional principle of the civil service under section 33(5) of the Basic Law and because civil servants (*Beamte*) have the duty to exercise their functions lawfully, impartially and altruistically. In order to compensate for the inability of civil servants (*Beamte*) to enter into collective bargaining, federations of civil servants' unions take part in the initial preparation of the general regulations pertaining to civil service law, pursuant to section 118 of the Federal Law on Civil Servants (*Bundesbeamtengesetz (BBG)*) and section 53 of the Law on the Status of Civil Servants (*Beamtenstatusgesetz*).⁹⁶

Consultative bodies of general competence

195. Consultative bodies of general competence may be called upon to address the terms and conditions of employment of public employees. Depending on the country, they take the form essentially of national tripartite committees (very numerous as a result of ILO action, although in general they focus primarily on issues relating to the private sector), economic and social councils (which are often provided for in constitutions) or national labour councils, which are focal points for all national interests, in which the social partners and the administration, as well as representatives of civil society, engage in debate and are called upon to contribute to determining medium- and short-term economic and social policies, issuing opinions and making recommendations on any draft social and economic reforms, conducting research, engaging in multidisciplinary discussions and examining statistics on economic and social issues concerning public and private sector workers and their organizations.

196. For example, in *Senegal*, the Council of the Republic for Economic and Social Affairs is responsible for economic, social, cultural and institutional development, and its views have to be sought on draft programme laws of an economic and social nature.

⁹⁴ *Colombia*, CEACR, Convention No. 98, observation, 2008.

⁹⁵ *Colombia*, CEACR, Convention No. 98, observation, 2010.

⁹⁶ *Germany*, CEACR, Convention No. 98, observation, 2012.

The National Social Dialogue Committee, a tripartite body covering the public and private sectors, has also been created and is primarily responsible for examining general conditions of employment, among which wages, labour productivity and social protection may be modified in relation to model economic indicators.

197. National tripartite labour councils are responsible more specifically for labour issues. For example, in *Côte d'Ivoire*, the National Labour Council (CNT) was established by Decree No. 2007-608 of 8 November 2007 with responsibility for promoting social dialogue throughout the country. It is of tripartite composition. In *Latvia*, the National Council for Tripartite Cooperation brings together, in equal numbers, government representatives and the social partners. It is consulted before relevant draft legislation or regulations are submitted to the competent authorities.

198. The Committee wishes to point out that the existence of these consultative bodies of general competence (national labour councils, economic and social councils), which cover issues related to medium- and long-term policy formulation and draft legislation and reform, but which do not specifically cover terms and conditions of employment in public institutions and the labour problems encountered there, is not in itself sufficient to ensure that representatives of public employees participate in the determination of their terms and conditions of employment, within the meaning of Convention No. 151. If the national system opts for this type of procedure, it is important that mechanisms are established within the system which offer a substantial platform for public employees' trade union organizations so that the position of the representatives of public employees is not weakened in such bodies by the presence of many other actors and their terms and conditions of employment are discussed primarily on a bilateral basis.

199. In general, it would appear preferable for States to establish consultation machinery with specific competence for the public service.

Specific public service consultative bodies

200. Consultative bodies are provided for in public service regulations, or in specific laws that create them.

201. There is a wide range of sectoral and thematic consultative bodies for public employees that are bipartite, although not always with equal membership.

202. In the *Philippines*, Executive Order No. 180 of 1 June 1987 provides that public employees may form, in conjunction with appropriate government authorities, labour-management committees, works councils or other forms of workers' participation schemes in which conditions of work may be discussed. While the scope of collective bargaining is limited, public employees' unions may nevertheless submit proposals to the authorities on issues that are not covered by bargaining with a view to improving terms and conditions of employment. In the health sector, it is explicitly provided in the Magna Carta of Public Health Workers that trade unions shall be consulted on the formulation of national policies governing their social security. Consultative councils of health workers have been established at the national, regional and local levels.

203. In *Australia*, the public sector in the Northern Territory has a Public Sector Consultative Council composed of representatives of the public authorities and of public employees.⁹⁷

⁹⁷ Section 64, *Public Sector Employment and Management Act (PSEMA)*.

204. *India* has created a system of joint councils based on the Whitley councils established in the United Kingdom, which includes the operation of councils at various levels, namely the national, departmental and regional levels. The National Council is composed of 25 government representatives and 60 representatives from among the 400 public employees' associations. Its secretariat is located in the human resources department. The Council's sphere of competence encompasses all matters relating to conditions of service and work conditions, worker welfare, improvements, efficiency and work regulations, but as far as recruitment, promotion and discipline are concerned, consultation is limited to general principles. These joint councils operate through a substantial number of committees.

205. In some African countries, such as *Mali*, higher councils of the public service are provided for in law. In this country, it is a joint council composed of 18 members, nine government representatives and nine representatives of public employees' organizations. The council has to meet once every quarter and issues reports and recommendations on draft general public service regulations or on specific regulations. There are also consultative bodies at other levels, such as ministerial departments. In *Burkina Faso*, which has followed the same model, joint technical committees have been created for consultation on any issues relating to service organization and operation and staff management and training. In *Benin*, Act No. 86-013 of 26 February 1986 issuing the general regulations for permanent state employees, established the Public Service Joint Consultative Committee.⁹⁸

206. In *Algeria*, the Higher Council of the Public Service is responsible for deciding on the broad outline of government policy on the public service; determining public employees' training and development policies; analysing the employment situation in the public service in terms of both quantity and quality; ensuring respect for ethical rules in the public service; and proposing measures to promote public service culture. In addition, it has to be consulted on any draft legislation relating to the public service sector. The Higher Council of the Public Service is composed of representatives of the central State administrations, public institutions, regional authorities and the most representative national employees' organizations. In the context of the participation of public employees in the management of their careers, the public service general regulations have also established the following bodies, composed of an equal number of representatives of the administration and of the elected representatives of public employees:

- joint administrative committees: created, where appropriate, for a grade or group of grades, professional staff or groups of professional staff of equivalent qualification levels in public institutions and administrations, which are consulted on individual matters concerning the careers of public employees and act as grading panels and disciplinary boards;
- appeal boards, responsible for certain disciplinary sanctions; and
- technical committees, which are consulted on matters relating to general conditions of work and health and safety in the public institutions and administrations concerned.⁹⁹

⁹⁸ Report submitted under article 19 of the ILO Constitution.

⁹⁹ Sections 58–73 of Ordinance No. 06-03 of 19 Jumada II 1427, corresponding to 15 July 2006, issuing the public service general regulations.

207. In *Cameroon*, the main dialogue institution for the public authorities and representatives of public employees is the Higher Council of the Public Service (see box below).

Decree No. 2000/698/PM of 13 September 2000 determining the organization and operation of the Higher Council of the Public Service (Cameroon)

Section 2

(1) The Higher Council of the Public Service shall examine all general issues concerning the public service, including:

- any draft legislation on the status of public employees;
- all matters relating to the rights and duties of public employees;
- policy guidelines on continuing professional development in the public service;
- any proposed reorganization of the public service involving an increase in personnel or resulting in job losses;
- any policy relating to the review of the remuneration and social benefits received by public employees;
- any proposal to amend the public service general regulations, specific or special regulations.

(2) The Higher Council of the Public Service shall also rule on appeals lodged in the event of:

- disciplinary sanctions involving temporary suspension from service for a period of over four (4) months, downgrading or demotion;
- dismissal on grounds of professional inadequacy.

(3) In the field of its competence, the Higher Council of the Public Service shall issue opinions or recommendations.

Section 4

Chaired by the Prime Minister, the Higher Council of the Public Service shall be composed of twenty-four (24) members, twelve (12) of whom shall be representatives of the administration and twelve (12) representatives of public employees.

Section 5

The representatives of the administration shall include:

- the Minister of the Public Service;
- the Minister of Finance;
- the Minister of Local Administration;
- the Minister of National Education;
- the Minister of Justice;
- the Minister of Social Affairs;
- the Minister of Labour;
- the Minister of State Oversight;
- the Minister for Gender Issues;
- three (3) individuals appointed by the Prime Minister on the grounds of their expertise.

Section 6

(1) The staff delegates on joint administrative committees shall elect from among themselves the representatives of public employees on the Higher Council of the Public Service ...

208. In *Senegal*, a joint body exists for the public service, namely the Higher Council of the Public Service, in which state employees may be involved in the development of personnel regulations and policies and their management, through their trade union

representatives. Joint administrative committees specializing in the management of the individual careers of employees also operate alongside joint technical committees with the primary responsibility of contributing to the practical improvement of working conditions. In *Tunisia*, a similar system is in place, based on joint administrative committees (Decree No. 60-56 of 29 October 1990) and the Higher Council of the Public Service and Administrative Reform (established by section 15 of Act No. 83-122 of 12 December 1983 issuing the general regulations for State employees, local government and public administrative institutions, regulated by Decree No. 89 157 of 23 December 1989 determining the composition and operation of the Higher Council of the Public Service and Administrative Reform).

209. In *South Africa*, the National Economic Development and Labour Council (NEDLAC) was established as a body with competence in economic and social matters and is composed, among others, of representatives of employers' and workers' organizations and of the State. NEDLAC provides its opinion to Parliament on draft legislation relating to matters falling within its competence. For example, in 2007 a working group set up by NEDLAC examined government plans for the unification of the public service with a view to resolving the problems that this reform caused for the unions. With regard more specifically to the public service, the system established by the Labour Relations Act is more a system of bargaining than of consultation. However, on the basis of a framework agreement concluded in 2002 between the Government and the unions, joint ministerial and inter-ministerial structures have been established at the national and provincial levels to address issues relating to the transformation and restructuring of the public service.

210. The purpose of all of the above bodies is to obtain the advisory opinion of staff representatives on matters referred to them. Such opinions, however important they may be, are not legally binding on the administrative authority invested with the power of decision.

211. In some cases, these bodies also fulfil a mediation role in disputes between public employees and the administration, or between public employees and the government. This is the case, for example, in Benin (see box below).

**Decree No. 2002-571 of 31 December 2002 on the establishment,
organization and operation of the Joint Consultative
Committee of the Public Service (Benin)**

Section 2

The function of the Joint Consultative Committee of the Public Service is to examine general issues referred to it concerning the public service or public employees.

Section 3

The Joint Consultative Committee of the Public Service shall be consulted on:

- draft texts relating to the general regulations and draft specific regulations of the various services in the public service;
- draft texts on the common provisions for the application of the fundamental principles for the management of public service jobs and employees;
- draft texts on common provisions for the management rules applicable to permanent State employees and contractual employees in the public service;
- draft texts on the organization of posts for public employees or contractual workers, and any amendments thereto.

It shall also advise on broad policy outlines on vocational training for State public employees.

It shall issue its opinion on the proposed compensation to be awarded to permanent State employees, in accordance with section 151 of the general regulations of permanent State employees ...

Section 4

The Joint Consultative Committee of the Public Service shall prepare an annual report for the Minister of the Public Service, a report on the general status of the public service.

It may, in this context, make suggestions and proposals regarding public services and employees. To this end, the Joint Consultative Committee of the Public Service may request copies of the reports, minutes and conclusions of the work of all consultative and/or administrative bodies in the public administration.

Section 5

The Joint Consultative Committee of the Public Service shall act as a mediation body in disputes between State employees and the administration or between State employees and the Government.

212. In *Canada*, under the terms of the Public Service Labour Relations Act (Division 3, section 8), each deputy head must, in consultation with the bargaining agents representing employees in the portion of the federal public administration for which he or she is responsible, establish a consultation committee consisting of his or her representatives and those of the bargaining agents for the purpose of exchanging information and obtaining views and advice on issues relating to the workplace that affect those employees. These issues may include, among other things, harassment in the workplace and the disclosure of information concerning wrongdoing in the public service and the protection from reprisal of employees who disclose such information. The employer and the bargaining agent may engage in co-development of workplace improvements, which may take place under the auspices of the National Joint Council or any other body they may agree on. "Co-development of workplace improvements" means the consultation between the parties on workplace issues and their participation in the identification of workplace problems and the development and analysis of solutions to those problems with a view to adopting mutually agreed solutions. Consultation processes also exist in the context of the determination of procedures for hiring and dismissal. The Public Service Employment Act (section 14) provides that the Public Service Commission shall consult with the employer or any employee organization certified as a bargaining agent with respect to policies respecting the manner of making and revoking appointments, or with respect to the principles governing lay-offs or priorities for appointment.

213. In *Quebec*, the permanent consultation system may be organized along different lines, with each ministry having a Ministerial Labour Relations Committee (CMRP) and a Ministerial Committee on the Organization of Work (CMOT). First established in 1995, the CMOTs are composed of employer and union representatives and operate very flexibly. In most cases, they are information-sharing and discussion forums, but some have exercised real decision-making powers. A Sectoral Committee on the Organization of Work (CSOT) covers all government agencies meets every month to monitor the implementation of a Framework Agreement on the Organization of Work and the establishment of CMOTs.

214. In *France*, public employees' participatory bodies are based on joint representation and play an advisory role. These advisory bodies are the Joint Council of the Public Service (which examines all general matters common to the three public services – see

the box below), the higher councils for each of the three public services (the state public service, the regional and local public service and the public hospital service), which examine issues that are specific to the employees of the public service concerned, and technical service committees (established in each of the three public services).

**Section 9ter of Act No. 83-634 of 13 July 1983, as amended,
determining the rights and duties of public employees
(France)**

The Joint Council of the Public Service shall examine all general issues referred to it common to the three public services.

It shall examine draft bills and ordinances and, where legislative or regulatory provisions so provide, decrees common to the three public services, with the exception of texts specific to each public service.

...

Consultation of the Joint Council of the Public Service, when compulsory, shall replace consultation of the higher councils for the State public service, the regional public service and the public hospital service.

The Joint Council of the Public Service shall be chaired by the Minister of the Public Service, or her or his representative.

It shall include:

1. The representatives of public employees' organizations appointed by them; seats shall be distributed between trade union organizations in proportion to the number of votes obtained by each of them at the most recent elections for the appointment of members of the technical committees in the three public services and the advisory bodies for staff representation in accordance with the specific legislative provisions;

2. The representatives of State administrations and employers and their public establishments;

3. The representatives of regional public employers, including the President of the Higher Council of the Regional Public Service, appointed by the representatives of the municipalities, departments and regions in the Higher Council of the Regional Public Service, referred to in section 8 of Act No. 84-53 of 26 January 1984 issuing regulations for the regional public service;

4. The representatives of public hospital employers, appointed by the most representative organizations of the institutions referred to in section 2 of Act No. 86-33 of 9 January 1986 issuing regulations for the public hospital service.

The President of the Higher Council of the Public Hospital Service shall attend the meetings of the Joint Council of the Public Service, without the right to vote.

The opinion of the Joint Council of the Public Service shall be issued when the opinions of each of the categories of representatives referred to in 1, 2 and 3 above have been obtained.

215. In *Argentina*, in 1986, following the ratification of Convention No. 151, the national executive created the Public Sector Participatory Committee on Wage Policy and other Conditions of Employment (Decree No. 1598/86) composed, on the one hand, of representatives of the Ministries of the Economy and of Labour and of the Secretariat of the Public Service and, on the other, of representatives of the two national organizations representing public employees: the National Union of Civilian Personnel and the Association of State Workers. This experience only lasted two years and was not really successful. It gave way to a more elaborate system of bargaining following the ratification of Convention No. 154.

216. In *Spain*, in each electoral unit determined by the administration, in agreement with the trade union organizations, staff delegates and staff committees are elected for a period of four years, which may be renewed. Their functions include issuing reports at

the request of the administration on the total or partial relocation of facilities, or on the revision of arrangements for the organization of work and working methods, providing their views on working-time arrangements and systems of holiday leave, and they collaborate with the administration to develop measures necessary for the maintenance or improvement of productivity.

217. In *Madagascar*, two consultative bodies participate in determining the terms and conditions of employment of public employees: The Higher Council of the Public Service and Joint Administrative Commissions (see box below).

**Act No. 2003-011 issuing the general regulations for public employees
(Madagascar)**

Section 39

A Joint Administrative Commission shall be established for each professional body of public employees to examine the issues of recruitment, titularization, career advancement and discipline relating to such employees.

This Commission, composed of representatives of the administration and representatives of the personnel elected by a uninominal voting system, shall have an advisory role.

However, reasons must be given for any decision that is not in accordance with the opinion of the Joint Administrative Commission sitting as a disciplinary council.

The composition and functions of this Commission and the manner of the appointment of its members shall be determined by decree issued by the Council of the Government, after consultation with the Higher Council of the Public Service.

Section 40

A Higher Council of the Public Service shall be established as an advisory body to provide opinions, in the cases indicated in the existing general regulations, on draft laws and regulations concerning the public service.

It shall also be consulted on issues relating to the various regulations of public employees.

It shall be consulted on all general matters concerning public employees and the public service.

The composition of the Higher Council of the Public Service and the rules governing its organization and operation shall be determined by decree.

218. In *New Zealand*, the Partnership for Quality Agreement signed in 2000 between the Government and the principal union in the public sector, the Public Service Association (PSA), established an institution, a forum composed of the Minister of State Services, the State Services Commissioner, several chief executives of State administrations and bodies, and the PSA. The functions of the forum are more advisory than executive and it meets regularly (every six to eight weeks) to advise the Minister on the progress achieved in implementing partnership approaches in the various bodies and administrations. The forum also gives its views on other issues relating to the public sector, including remuneration systems and structures. Partnership forums have also been established in various bodies and agencies through agreements between the union and management at both the national and local levels, for example in the health sector. With regard more specifically to remuneration, the State Services Commission, the Treasury and the PSA have established a system for the identification of wage claims and priorities in the public service. The system includes two phases. The first consists of compiling and analysing, through a process involving ministers, departments and unions, data on wage claims and constraints, while the second consists of setting priorities within

these data. These general data are therefore applied at the level of each department in the context of the budget preparation.

219. In *Romania*, in accordance with Act No. 62/2011 on social dialogue and Decision No. 833/2007 on the rules governing the organization and operation of joint committees and the signing of collective agreements, there is an institutionalized framework (joint committees and social dialogue committees) for permanent consultation of the representatives of public employees on initiatives regarding administrative standards and measures.¹⁰⁰

The parties to and the subjects covered by consultation

Representatives of public employees for consultation purposes

220. The wording of the Convention is clear concerning the determination of the representatives of public employees as the counterparts of the State in consultation and participation procedures; the nature of the representation may differ according to whether it is a bargaining system or other methods of participation are used. Under the terms of Article 7, it is public employees' organizations, that is organizations the purpose of which is to promote and defend the interests of public employees, that intervene in negotiations, while in cases in which other methods are used, the term is broader, as it is representatives of public employees who participate in the determination of terms and conditions of employment. In other words, bargaining has to be conducted by the representatives of public employees' organizations, while consultations may be held either with such organizations, or with elected representatives. In the preparatory work for Convention No. 151, an amendment proposed during the second discussion by the Worker members with a view to reserving methods other than negotiation for public employees' organizations was finally rejected because it would have prevented the participation of representatives directly elected by the staff.¹⁰¹ The Committee recalls that where there exist, in the same bargaining unit, both trade union representatives and elected representatives, appropriate measures should be taken to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives.

221. However, it should be specified that when consultations are held with public employees' organizations, these must be carried out with the most representative organizations. Recommendation No. 159 addresses the issue of the representativeness of public employees' organizations and provides that in countries in which procedures for recognition of public employees' organizations apply with a view to determining the organizations to be granted, on a preferential or exclusive basis, the rights provided for under Convention No. 151, such determination should be based on objective and pre-established criteria with regard to the organizations' representative character. The Recommendation specifies that these procedures should be such as not to encourage the proliferation of organizations covering the same categories of employees. The issue of representativeness, which arises in similar terms in relation to both consultation and bargaining procedures, is examined in greater detail in the second part of the Survey. At

¹⁰⁰ Report submitted under article 19 of the ILO Constitution.

¹⁰¹ International Labour Conference, 64th Session, 1978, *Record of Proceedings*, p. 25/8, Report of the Committee on the Public Service, para. 57.

this stage, the Committee merely recalls that, as the ILO Constitution itself enshrines the concept of “most representative” organizations (article 3, paragraph 5), the simple fact that national legislation may make a distinction between the most representative trade union organizations and other organizations is not, in itself, reason for criticism. “However, such a distinction should not result in the most representative organizations being granted privileges which go beyond priority in representation for the purposes of collective bargaining, consultation by governments, or the appointment of delegates to international bodies.”¹⁰²

Subjects covered by consultation

222. The Committee wishes to recall that Article 7 of Convention No. 151 provides for consultation as a method of participation in the determination of the terms and conditions of employment of public employees. In this regard, the Committee considers that it should be possible for consultations to be held on any administrative or legislative measure concerning the terms and conditions of employment of public employees. This means in particular that relevant draft legislation should be subject to consultations.

223. However, the Committee wishes to observe that it is in the mutual interest of both the authorities and public employees’ organizations not to limit consultation to terms and conditions of employment and to extend the subjects covered by consultation to include issues of mutual interest, including the establishment of personnel policies in the public administration and managerial and human resource problems that may arise following a new form of organization of work or restructuring (these new challenges are discussed in detail in the second part of the General Survey under “Subjects covered by collective bargaining”). Indeed, consultation on these subjects, at the initiative of the authorities or of public employees’ organizations, is in many instances a means of preventing the occurrence of collective disputes and finding solutions that are more likely to be accepted by the public employees concerned and the public authorities.

¹⁰² General Survey, 2012, para. 226.

Part II

Collective bargaining in the public service

I. Advantages of collective bargaining in the public service

224. The Committee recalls that the public service must be effective and efficient in order to ensure the effective exercise of rights and improve citizens' quality of life (public safety, education, health, social security, culture, access to housing, law enforcement in the numerous areas of competence of the public service, etc.), as well as being a vital factor in sustainable economic and social development, the well-being of workers based on fair conditions of employment, and the progress of sustainable enterprises. This objective requires the provision of high-quality services by public institutions – which are often essential and highly complex – as well as sufficiently qualified and motivated staff and a dynamic and depoliticized public management and administrative culture, with an ethical focus, which combat administrative corruption, make use of new technologies and are founded on the principles of confidentiality, responsibility, reliability, transparent management and non-discrimination, both in access to employment and in the provision of benefits and services to the public.

225. The Committee emphasizes that the different forms of social dialogue and, in particular, collective bargaining between trade union organizations and the public service, are key to creating the necessary conditions to meet the above challenges. In this respect, the public service needs a sufficient number of qualified staff, with access to training and promotion and a reasonable workload (this is particularly important in times of economic crisis and structural adjustment), and with fair and competitive conditions of employment with respect to those in the private sector, including in terms of remuneration. Collective bargaining holds advantages not only for public employees, as a means of ensuring motivation, social recognition, respect and dignity, but also for the public service, which can harness the commitments undertaken by trade union organizations to help them implement the abovementioned core principles of public governance in democratic States, and to serve as an effective instrument for sound human resource management to improve the quality of services provided to the public.

226. In general terms, the right to organize and to bargain collectively is closely linked to the other fundamental rights at work. It is the corollary of freedom of association. It is a constructive means of promoting the protection of workers, often in vulnerable situations, and enables the promotion of all of the fundamental rights. It is a key instrument in ensuring non-discrimination and equality, including equal remuneration for men and women for work of equal value, embodying in the world of work the guarantee of fundamental rights at work for all, especially with a view to promoting social justice. Global recognition of the right to collective bargaining in the public service is a long-

standing demand of the trade union movement, which has rightly criticized the unequal treatment of public employees in this regard.

227. The Committee wishes to point out that collective bargaining is one of the most important and useful institutions developed since the end of the nineteenth century. As a powerful instrument of dialogue between workers' and employers' organizations, collective bargaining contributes to the establishment of just and equitable working conditions and other benefits, thereby contributing to social peace. It enables the prevention of labour disputes and the development of procedures to resolve specific problems, particularly in the context of adjustment processes in the event of economic crisis or cases of force majeure, as well as worker mobility programmes. Collective bargaining is therefore an effective instrument which facilitates adaptation to economic and technological change and to the changing needs of administrative management, often in response to demands from society.

228. The legitimacy of collective bargaining is strengthened by the additional fact that those who must bear the negative consequences of certain clauses of collective agreements have accepted them by the intermediary of their representatives within a process of mutual concessions agreed between the parties. At the same time, public employees occupy a special, unique position in the budgetary process given their substantial share of public finances. They also face unusual challenges in forming political coalitions to protect against pressures generated as a result of real or imagined economic imperatives. These factors reinforce the position that public employees should have access to a bargaining process based on their primary status as employees, not as citizens or voters.

229. The Committee underlines that collective bargaining can, moreover, effectively assist in the fight against corruption and for the promotion of equality.

230. The Committee also draws attention to the weakness of the State and public administration in many developing countries and in least developed countries, where vast areas of territory sometimes lie outside effective state control and where public revenues are very limited (in some African countries, for example, development assistance provided by other States or international organizations makes up a substantial proportion of the state budget, along with resources derived from taxes and agreements with multinational enterprises) owing to high levels of poverty and the extent of the informal sector. This has a negative impact on the real scope for economic and social development. The Committee points out that sustainable development can only be effective through the agency of democracy and its essential premises: free elections; the rule of law; the separation and independence of powers; and the effective observance of human rights, including social and economic rights and, in particular, freedom of association and the right to collective bargaining, which must be guaranteed irrespective of the level of development. The Committee recalls that Conventions Nos 151 and 154 can be ratified regardless of the size of the public service and its staff, of the population or the extent of informal employment.

II. Developments in public administration

231. As a result of the changes made to the status of public servants in recent decades, the traditional model and characteristics of public servants (nationality, merit, job security, administrative career and promotion through internal competitions, full-time employment, exclusion from private professional activities, salary scales and fixed pay supplements, pensions, unpaid leave, etc.) have undergone significant changes in different areas in a number of legislations. In many countries – both industrialized and non-industrialized – there is evidence, firstly, of the loss of one or more of these traditional characteristics of public administration and, secondly, of the introduction of new rules and procedures specific to private sector labour law. Accordingly, in many public administrations a significant number, or even the majority, of employees are either under contracts governed by the general rules of private sector labour law or otherwise excluded from the previous statutory regime. The Committee notes that this situation is becoming increasingly common.

232. In certain countries, traditional “administrative careers” have changed or even practically disappeared following the opening of public service posts to all citizens, the introduction of “horizontal” promotions (where moving to another post does not necessarily mean having to win a competition) and the admission of temporary public servants, agency workers and regular workers on a non-permanent recurrent basis or working part time (often authorized to hold other posts in the private sector). In other countries, a significant proportion of public servants are hired on civil or administrative contracts for the provision of services (many of which are sham contracts, even on the national level), including to carry out tasks that are specific to the public administration. Little by little, uncertainty linked to the geographical and functional mobility of public servants is increasing, along with the number of provisions for performance incentives and for administrative management and performance evaluation systems based on criteria typical of private enterprises. In other countries, the almost total “lifelong” job security that public servants used to have has been eroded or no longer exists. Many of these developments have potentially negative repercussions on the independence of public servants. In a large number of public institutions in *Guatemala*, the majority of public employees are freely appointed and can be freely dismissed (*empleados de libre nombramiento y remoción*). In *Colombia*, some public servants are subject to legislation governing administrative careers, others to the Labour Code, and still others to independent contracts for the provision of services.

233. There are multiple causes behind the problems and situations mentioned in the paragraphs above, exceeding the scope of this Survey, which does not intend to provide a comprehensive list. Some have political roots, such as the absence of democracy in certain countries, the opacity and absence of transparency; others are linked to the existence of structural adjustment programmes. Some of these causes are economic or financial, such as the significant rise in public spending and in the public deficit, linked to the growth in public services and to the increasingly expensive social benefits demanded by the public, as in the health sector. Other causes are linked to demographic factors, life expectancy, technological development and new forms of administrative management. Further causes are linked to successive economic crises, sometimes in the context of state economic integration processes based on the free movement of people, the liberalization of services and free competition. However, some of the decisions that have changed the public administration in a significant number of countries are linked to the programmes of its international or regional bodies that grant soft loans to certain States in times of economic crisis and that are conditioned by policies to cut public

spending and introduce structural adjustment measures, in particular through privatization and rationalization processes. This has often, in practice, resulted in a significant reduction in the size of government, which has had an impact on its operation. The Committee emphasizes, however, that these difficult and often dramatic situations bring freedom of association and the right to collective bargaining into their own as a way of humanizing the impact of these situations on the employment and living conditions of public employees and protecting fundamental social services.

234. It is clear that some of the developments described, such as the successive economic crises and procedures for the reduction of institutional structures and public spending, have weakened the trade union movement in many countries – the public sector being the sector in which trade union organizations have traditionally recruited the highest number of members – and diminished the collective bargaining capacity of public servants subject to legislation governing administrative careers, especially due to the weakening or disappearance of trade union organizations.

235. The penetration of labour law into public administrations and the various levels of “privatization” of public sector employment have, nevertheless, extended the right to collective bargaining and to strike to the public sector, thereby reaching a growing number of people working – directly or indirectly – for the State, many of whom are now subject to private sector labour law provisions (labour codes) and previously did not have access to the abovementioned trade union rights. However, this has been cited in a number of countries in conjunction with the replacement of statutory laws traditionally applied to public servants by laws more or less similar to those seen in the private sector. The excessive use of temporary labour contracts in the public service in some countries has had the effect of escaping constitutional requirements in public recruitment (in particular as regards capacity and merit) and creates obstacles to collective bargaining.

236. A change is therefore under way in the traditional status of public servants, which has been eroded in a large number of countries and justifies the need to strengthen collective bargaining and freedom of association in the public sector.

237. With regard to collective bargaining in the public administration worldwide, the adoption and ratification of Conventions Nos 151 and 154 by a significant number of States have in recent decades made the international community aware that employment conditions in the public sector cannot be established on a unilateral basis and that trade union organizations of public employees must participate fully in the process. In the context of this evolution, as well as widespread recourse to bipartite consultation, a clear expansion can be observed globally in the right to collective bargaining on employment conditions in the public administration sector in Europe, Oceania and Latin America, in a considerable number of African countries and in a number of Asian countries.

238. In the Preamble to the Labour Relations (Public Service) Convention, 1978 (No. 151), the International Labour Conference notes the great diversity of political, social and economic systems among member States and the differences in practice among them (for example, as to the respective functions of central and local government, of federal, state and provincial authorities, and of state-owned undertakings and various types of autonomous or semi-autonomous public bodies, as well as to the nature of employment relationships). The provisions of Convention No. 154, like those of Convention No. 151, provide for this diversity of systems and contain a number of flexibility clauses, which will be examined later, to enable the ratification of these Conventions by as many member States as possible.

III. ILO standards on collective bargaining and their evolution

239. One of the ILO's core mandates is to promote collective bargaining worldwide. This mandate was set out in 1944 in the Declaration of Philadelphia, which forms part of the ILO Constitution and recognizes "the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve ... the effective recognition of the right of collective bargaining". This concept was enshrined and developed in the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84) (which establishes that "[a]ll practicable measures shall be taken to assure to trade unions ... the right to conclude collective agreements ..."), and in the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which has since achieved almost universal endorsement in terms of ratification (currently 161 ratifications), attesting to the widespread acceptance of its principles in most countries. In June 1998, the ILO took a further step by adopting the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. This Declaration states that "all Members, even if they have not ratified the [fundamental] Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights". These principles include the effective recognition of the right to collective bargaining and should be respected regardless of ratification of the relevant Conventions.

240. Convention No. 98, adopted in 1949 to supplement certain aspects of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), has three main objectives: (i) protection against acts of anti-union discrimination, both at the time of taking up employment and in the course of employment, including during the termination of the employment relationship; (ii) protection against acts of interference in the internal affairs of workers' and employers' organizations; and (iii) the promotion of collective bargaining.

241. As has been indicated in previous paragraphs, Convention No. 98 has since been supplemented by the Rural Workers' Organisations Convention, 1975 (No. 141), and the accompanying Recommendation No. 149, reaffirming the right to collective bargaining for rural workers; by the Labour Relations (Public Service) Convention, 1978 (No. 151); and by the Collective Bargaining Convention, 1981 (No. 154), extending the right to collective bargaining to all public administration workers. The protection granted to workers and trade union leaders against acts of anti-union discrimination and acts of interference in the public administration sector, dealt with in the context of Convention No. 151, is an essential element of the right to organize, since such acts may in practice result in a denial of freedom of association and also, consequently, of collective bargaining.

IV. Special bargaining modalities in the public service

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

Article 7

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organisations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters.

Collective Bargaining Convention, 1981 (No. 154)

Article 1

1. This Convention applies to all branches of economic activity.
2. The extent to which the guarantees provided for in this Convention apply to the armed forces and the police may be determined by national laws or regulations or national practice.
3. As regards the public service, special modalities of application of this Convention may be fixed by national laws or regulations or national practice.

242. Article 1, paragraph 3, of Convention No. 154 refers to special modalities of application for collective bargaining in the public service. These modalities can be fixed by national laws or regulations or national practice, specifically by means of collective agreements, arbitration awards or in other ways (Article 4, Convention No. 154).

243. Before examining these special modalities in the following chapters, the Committee considered it necessary to focus on certain differences between public and private employment and the specific features of the public administration pointed out by many authors that justify these modalities:

- Public administration is structured in a very complex way, particularly in industrialized countries. Its mandates, powers and procedures are regulated by a large number of laws and regulations that cover most matters involving citizens and companies. The state structure is even more complex when it comes to federal States and highly decentralized States, where the number of organizations is sometimes in the thousands. There are ministerial departments, autonomous and semi-autonomous organizations, institutions, agencies, funds for the promotion of activities, public foundations, public trade and industry societies, coordinating bodies, consortiums, etc. Some of these public entities are also found in territorial collectivities. The public administration is generally the main employer in a State.
- Whereas private sector enterprises pursue private interests, such as financial profit, the State and the public administration have a duty to act in the public interest. Thus, when institutions founded or controlled by the State are governed by private law (for example, state-owned or public-private companies or state fiscal monopolies), their policies, management and objectives are heavily influenced by their aim to contribute to the general interest and satisfy the needs of citizens (for example, depending on the country, those that deal with electricity, banking, insurance, transport, the exploitation of natural resources, water supply, etc.). The general interest is even more significant when the services are publicly owned (monopolistic or not) with direct or indirect state management (for example, concessions).

- The huge complexity and variety of state duties are continuously changing because of new needs and challenges (information technology, electronic services, telecommunications, immigration, energy, etc.).
- In many countries, and often by constitutional mandate, the regulation of the general conditions of employment of public servants occurs to a greater or lesser extent by means of special laws within the framework of administrative law, not labour law (the Labour Code in particular). In some countries, different normative statutes apply to public servants (such as the armed forces, the police, teaching staff, social security personnel, etc.). For example, the report submitted by the Government of Algeria under article 19 of the ILO Constitution states that 59 separate statutes relating to the various branches of the public service have been enacted since 2006, in accordance with the general statute governing the public service.
- State spending – including the remuneration of public servants – requires prior approval from the corresponding sections of the state (and federal state) budget by the legislative assembly; public bodies also approve the budgets of territorial collectivities. Furthermore, public spending is overseen by special state supervisory bodies that can initiate proceedings to impose sanctions in the event of an offence. In many respects, collective bargaining in the public administration is governed by budget processes and their relevant regulations. In turn, state budget results rely on several economic factors: the level of economic growth; levels of revenue and inflation; interest rates; and prior debt. They also depend on the political–institutional framework (level of decentralization, degree of political stability and the weight of executive power versus legislative power), on the Government’s political tendencies, on demographics, on the unemployment rate, on the public sector share in GDP, on taxpayers’ preferences, on the evolution of economic cycles and on the budgetary rules that should apply (degree of budgetary discipline, economic forecast variables, strictness of rules regarding public debt).
- In view of the impact of public employee remuneration on public debt (for example, in 2011, public sector remuneration accounted for 22.1 per cent of total public expenditure in EU countries), during the negotiation process of public employee remuneration the authorities set out the guidelines for government economic policy and indicate the macroeconomic challenges, because public revenue does not principally depend on economic returns and profit – as is the case for enterprises – but on taxes, and the authorities are answerable to the public for their management.
- Recruitment procedures in the public administration impose requirements regarding transparency, merit and ability, as well as assurance that the principle of equality and equality of opportunity will be respected. These procedures are generally less flexible than those in the private sector.
- There is a greater degree of regulation, formality and rigidity in the decision-making procedures of public entities many times aimed at avoiding corruption and nepotism.
- The specific structure of public administration staff (branches of the public service, scales, sub-scales, classes and categories) is hierarchical and is coupled with a specific and generally strict wage structure.
- What is becoming more visible in many countries is the growing involvement of citizens in public administration management and new forms of citizen

participation – including supervision – via specific bodies and non-governmental organizations. This is a phenomenon that takes on a different shape in the private sector.

244. One aspect of public administration institutions that should be kept in mind is that they are always employers; they are only considered *entrepreneurs* when they are involved in entrepreneurial economic activities or economic-industrial activities, which constitute a greater or lesser part of the overall activities of public administrations, depending on the country.

245. In many countries, the abovementioned specific facets of the public administration give rise to specific modalities of collective bargaining pertaining to, as will be discussed below, the negotiating parties, the topics covered, and the levels of bargaining applicable to certain matters. They also pertain to the legal or non-legal nature, range and effects of the agreements concluded and, very often, a special scheme for collective clauses and agreements that have an impact on the budget. Lastly, making a bargaining system compatible with a regulatory framework is common practice in many countries.

V. Scope of Convention No. 154 and methods of application of Conventions Nos 151 and 154

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

Article 1

1. This Convention applies to all persons employed by public authorities, to the extent that more favourable provisions in other international labour Conventions are not applicable to them.

2. The extent to which the guarantees provided for in this Convention shall apply to high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature, shall be determined by national laws or regulations.

3. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

Collective Bargaining Convention, 1981 (No. 154)

Article 1

1. This Convention applies to all branches of economic activity.

2. The extent to which the guarantees provided for in this Convention apply to the armed forces and the police may be determined by national laws or regulations or national practice.

3. As regards the public service, special modalities of application of this Convention may be fixed by national laws or regulations or national practice.

Article 4

The provisions of this Convention shall, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or in such other manner as may be consistent with national practice, be given effect by national laws or regulations.

Collective Bargaining Recommendation, 1981 (No. 163)

1. The provisions of this Recommendation may be applied by national laws or regulations, collective agreements, arbitration awards or in any other manner consistent with national practice.

246. The scope of application of Convention No. 151 has already been addressed in Part I of this Survey. One issue that arises is whether the categories of public employees referred to in Article 1(2) of Convention No. 151 (under which States determine, by national laws and regulations, the extent to which the guarantees provided for in the Convention shall apply to high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature) can be excluded from the right to collective bargaining in the case of States that have ratified Convention No. 154. The Committee considers that, as Convention No. 151 applies specifically to public employees, the exclusion of these categories from the right to collective bargaining does not constitute a violation of Convention No. 154, which is general in scope and explicitly recognizes, in Article 1(3), that special modalities for its application may be fixed by national laws or regulations or national practice with regard to the public service. For example, the Committee notes the indication by the Government of the *Philippines*, in its report under article 19 of the ILO Constitution, that certain categories of public employees are excluded from collective bargaining, including high-level employees in highly confidential positions, members of the armed forces and other personnel authorized to carry firearms.

247. Convention No. 154 provides in Article 1 that the Convention applies to all branches of economic activity including, as noted above, the public service. It also provides that the extent to which the guarantees provided for in the Convention apply to the armed forces and the police may be determined by national laws or regulations or national practice (Article 1(2)).

248. In contrast with Conventions Nos 87 and 98, Conventions Nos 151 and 154 contain detailed provisions on alternative or complementary methods of application (laws or regulations, collective agreements, arbitration awards or other methods). Article 4 of Convention No. 154 provides that “The provisions of this Convention shall, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or in such other manner as may be consistent with national practice, be given effect by national laws or regulations.” Different methods of implementation can thus be foreseen, and while some States favour legislative measures, others prefer, or preferred, other approaches, such as satisfactory implementation in practice, or case law; for example, until recently in *Uruguay* collective bargaining was directly regulated by Convention No. 98 and case law.

249. The majority of provisions on the right to organize and collective bargaining are, however, generally developed in labour legislation, or in the legislation applicable to public employees, and are often based on the principles enshrined in many national constitutions. Other modalities of application are determined directly by collective agreements concluded between employers’ and workers’ organizations at the various levels. In general terms, the Committee encourages the use of methods of application of Conventions Nos 151 and 154 that have their origins in tripartism, social dialogue and frank and in-depth consultations between the social partners.¹⁰³ This is particularly important with regard to legislation on the rights protected by these two instruments with a view to guaranteeing the effective application of these principles and ensuring that the measures adopted are accepted and long term, and not dependent on the policies of successive governments. The Committee noted with interest, for example, the full consultation with the social partners in the preparation of the 2009 Fair Work Act in *Australia*.¹⁰⁴

250. As the Committee has already examined the scope of application of Conventions Nos 151 and 154 in Part I of this Survey, it will only dwell here on certain aspects of the subject. It will refer, in particular, to certain categories of public and private sector workers covered by their provisions, and any problems and progress noted.

251. *Armed forces and the police.* With regard to the application of Convention No. 154 to the armed forces and the police, the possibility of their exclusion from the scope of the Convention is to be inferred from: (i) Article 1(2) of the Convention, which provides that “the extent to which the guarantees provided for in this Convention apply to the armed forces and the police may be determined by national laws or regulations or national practice”; (ii) the preparatory work prior to the adoption of the Convention, during which the possibility of excluding these categories of workers, in part or in whole, from the scope of the Convention was specifically emphasized;¹⁰⁵ and (iii) the interpretation which has always been given to Article 5(1) of Convention No. 98, which was drafted in

¹⁰³ See, for example, *Cambodia* – CEACR, observation, 2011; and the *Republic of Moldova* – CEACR, observation, 2011.

¹⁰⁴ *Australia* – CEACR, observation, 2010.

¹⁰⁵ See, in this respect: *Record of Proceedings*, International Labour Conference, 67th Session, p. 22/2, para. 14, and p. 22/4, para. 29.

similar terms to Article 1(2) of Convention No. 154, which allows States that have ratified the Convention to exclude the armed forces and the police from its scope.¹⁰⁶ The Committee also recalls the possibility of excluding these categories from the application of the rights and guarantees provided for in Convention No. 151.

252. Thus, as with Conventions Nos 87 and 98, Conventions Nos 151 and 154 leave it to national legislation to determine whether their provisions will be applied to the armed forces and the police, and to what extent. The Committee notes the indication by the Government of *Estonia* in its report under article 19 of the ILO Constitution, that its legislation on collective agreements applies fully to the armed forces and the police. The Government of *Australia* indicates that at the federal level the police enjoys the right to collective bargaining, but the armed forces do not; with regard to legislation at the federal State level, it is interesting to note that the majority of states (*New South Wales, Queensland, Victoria, South Australia*) provide that certain categories of public servants, particularly those with high-level functions, do not enjoy the right to collective bargaining. The Government of *Romania* indicates that all public servants, public servants with special status, high-level public servants responsible for public decision-making and public administrators, with the exception of military officers engaged in the defence system, the maintenance of public order and national security, enjoy the right to collective bargaining.

253. The Committee recalls that *civilian staff in the armed forces* enjoy the rights and guarantees provided for by Conventions Nos 151 and 154, and that, even where certain persons employed in the private or public sectors carry a weapon in the course of their duties, but are not members of the police or armed forces, they cannot be automatically excluded from collective bargaining.¹⁰⁷

254. *Public sector.* Unlike Convention No. 87, Convention No. 98 excludes certain categories of public servants other than the police and the armed forces from its scope of application.¹⁰⁸ This restriction does not, however, affect the rights guaranteed to public servants under Convention No. 87. Article 6 of Convention No. 98 provides that the Convention does not deal with the position of public servants engaged in the administration of the State; it adds that it shall not be construed as prejudicing their rights or status in any way. Conventions Nos 151 and 154 were adopted, inter alia, to grant the right to consultation and/or collective bargaining to public servants engaged in the administration of the State, who could be excluded from the right to collective bargaining in the context of Convention No. 98.

255. The Preamble to Convention No. 151 takes into account the particular problems arising as to the scope of, and definitions for the purpose of, any international instrument owing to the differences in many countries between private and public employment, as well as difficulties of interpretation which have arisen in respect of the application of relevant provisions of Convention No. 98 to public servants, and the observations of the supervisory bodies of the ILO on a number of occasions that some governments have applied these provisions in a manner which excludes large groups of public employees from coverage by that Convention.

¹⁰⁶ See memoranda prepared by the International Labour Office in reply to requests for clarification concerning Conventions Nos 118 and 154, *Official Bulletin*, Vol. LXVII, 1984, Series A, No. 1, para. 3.

¹⁰⁷ *Morocco* – CEACR, direct request, 2011; as regards restrictions related to carrying weapons, see *El Salvador*, under a constitutional provision.

¹⁰⁸ General Survey, 1994, para. 199 et seq., and General Survey, 2012, paras 171–172.

256. The Committee emphasizes that Conventions Nos 151 and 154, whether in unitary or federal States, apply in particular to civil servants engaged in the public administration, such as public servants in ministries and other similar government bodies, as well as their auxiliary staff and all other persons employed by the government. They also apply to all public servants and employees of local authorities and their public bodies. The scope of application of Conventions Nos 151 and 154 also includes employees of public enterprises, municipal employees, employees of decentralized institutions¹⁰⁹ and public sector teachers,¹¹⁰ whether or not they are considered under the national legislation as being in the category of public servants. Furthermore, Convention No. 154 applies, without exception, to all private sector workers.

257. However, recognition in law of the right of public servants to collective bargaining continues to be limited or non-existent in some countries.¹¹¹ The Committee recalls that in the context of Convention No. 154 (applicable to the private and public sectors), the right to collective bargaining should cover, as well as employees in the public administration, the following categories of workers: prison staff;¹¹² firefighters;¹¹³ seafarers;¹¹⁴ self-employed and temporary workers;¹¹⁵ contract or outsourced workers;¹¹⁶ apprentices, non-resident and part-time workers;¹¹⁷ portworkers;¹¹⁸ workers in the agricultural sector;¹¹⁹ workers in charitable and religious organizations;¹²⁰ domestic workers, workers in export processing zones and migrant workers.¹²¹ The Committee also emphasizes that the right to collective bargaining should be recognized for teaching personnel in educational institutions, as well as those performing technical and managerial functions in the education sector.¹²²

258. Over recent years, the Committee has welcomed several positive developments. It noted with satisfaction the recognition in the Constitution of *Turkey*¹²³ of the right of

¹⁰⁹ See, for example, *Democratic Republic of the Congo* – CEACR, observation, 2011; and *Panama* – CEACR, observation, 2011.

¹¹⁰ See, for example, *Cambodia* – CEACR, observation, 2011; *Ecuador* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2010; and *Lesotho* – CEACR, observation, 2011.

¹¹¹ See, for example, *Cape Verde* – CEACR, observation, 2012; *Comoros* – CEACR, observation, 2012; and *Equatorial Guinea* – CEACR, observation, 2012.

¹¹² See, for example, *Bahamas* – CEACR, observation, 2010; *Kiribati* – CEACR, observation, 2011; *Saint Lucia* – CEACR, Convention No. 154, direct request, 2010; *Seychelles* – CEACR, observation, 2011; and *United Republic of Tanzania* – CEACR, observation, 2011.

¹¹³ See, for example, *Bahamas* – CEACR, observation, 2010; and *Saint Lucia* – CEACR, Convention No. 154, direct request, 2010.

¹¹⁴ See, for example, *Benin* – CEACR, direct request, 2010 (commercial shipping); *China (Macau Special Administrative Region)* – CEACR, direct request, 2010; *Iceland* – CEACR, observation, 2010; *Madagascar* – CEACR, observation, 2011; and *Panama* – CEACR, observation, 2011 (fishing sector).

¹¹⁵ See, for example, *Senegal* – CEACR, direct request, 2011; and *Tunisia* – CEACR, direct request, 2011.

¹¹⁶ See, for example, *Ecuador* – CEACR, observation, 2010; and the *Netherlands* – CEACR, observation, 2011.

¹¹⁷ See, for example, *China (Macau Special Administrative Region)* – CEACR, direct request, 2010.

¹¹⁸ See, for example, *Guinea-Bissau* – CEACR, observation, 2011.

¹¹⁹ *ibid.*

¹²⁰ See, for example, *Ethiopia* – CEACR, observation, 2010.

¹²¹ See, for example, *Bangladesh* – CEACR, observation, 2010; *China (Macau Special Administrative Region)* – CEACR, direct request, 2010. *Eritrea* – CEACR, observation, 2011; and *Kuwait* – CEACR, direct request, 2011.

¹²² See, for example, *Cambodia* – CEACR, observation, 2011; *Ecuador* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2010; and *Lesotho* – CEACR, observation, 2011.

¹²³ *Turkey* – CEACR, observation, 2011.

“public servants and other public officials” to conclude collective agreements; the adoption of specific legislation on collective bargaining in the public sector in *Colombia*¹²⁴ and *Uruguay*;¹²⁵ the recognition of the right to collective bargaining for public servants in *Lesotho*,¹²⁶ *Uganda*¹²⁷ and *Botswana*;¹²⁸ as well as the fact that, following a legislative reform that is under way in *Japan*,¹²⁹ several issues could, if the reform is adopted, be addressed through collective bargaining in the public sector. The Committee also welcomed the recognition by the Supreme Court of *Costa Rica*¹³⁰ of the principle of the constitutionality of collective agreements in the public sector and the confirmation by the court that the exercise of collective bargaining should be the rule, and that restrictions should be the exception.

259. The Committee has recently noted with satisfaction that the right to collective bargaining has been made universal for all workers, including public servants, in the Constitutions of the *Plurinational State of Bolivia*¹³¹ and of *Kenya*,¹³² as well as that amendments have been made to the Labour Code of *Chile*¹³³ which permit collective bargaining by temporary and casual workers. It also noted with interest the decision of the Quebec Superior Court (Canada),¹³⁴ which found unconstitutional the Act amending the Act on health services and social services and the Act amending the Act on early childhood centres and other nursery services, as they were in violation of the Canadian Charter of Rights and Freedoms (following this decision, rules were set out in law to ensure the recognition of associations in the sector and collective bargaining between these associations and the Government). In this regard, the Committee noted with interest the *Health Services and Support* decision of the Supreme Court of Canada in 2007 confirming that freedom of association, as guaranteed in section 2(d) of the Canadian Charter of Rights and Freedoms, includes the procedural right of employees in the public sector to collective bargaining, and the *Fraser* decision by the Supreme Court in 2011 confirming that section 2(d) of the Charter also protects the right to collective bargaining.¹³⁵

260. Many other countries, however, still do not fully guarantee the right of organizations of civil servants and public employees to negotiate their remuneration and other conditions of employment pursuant to the Convention,¹³⁶ or only grant public

¹²⁴ *Colombia* – CEACR, observation, 2010.

¹²⁵ *Uruguay* – CEACR, observation, 2011.

¹²⁶ *Lesotho* – CEACR, observation, 2006.

¹²⁷ *Uganda* – CEACR, observation, 2007.

¹²⁸ *Botswana* – CEACR, observation, 2005.

¹²⁹ In its report under article 19 of the Constitution, the Government of *Japan* states that it is in the process of determining a system for the recognition of the right to conclude collective agreements in the public sector.

¹³⁰ *Costa Rica* – CEACR, observation, 2010 (several unanimous decisions (Chamber II of the Supreme Court of Justice)).

¹³¹ *Plurinational State of Bolivia* – CEACR, observation, 2010.

¹³² *Kenya* – CEACR, observation, 2011.

¹³³ *Chile* – CEACR, observation, 2002.

¹³⁴ *Canada* – CEACR, observation, 2010.

¹³⁵ *Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia*, 2007 CSC 27 [2007] 2 R.C.S. 391 and *Ontario (Attorney General) v. Fraser*, 2011 CSC 20 [2011] 2 R.C.S. 3.

¹³⁶ See, for example, *Bulgaria* – CEACR, observation, 2010; *Burundi* – CEACR, observation, 2011; *Cambodia* – CEACR, observation, 2011; *Chile* – CEACR, observation, 2010; *Democratic Republic of the Congo* – CEACR, observation, 2011; *El Salvador* – CEACR, direct request, 2009; *Equatorial Guinea* – CEACR, observation, 2011;

servants the right to consultation, but not negotiation, on issues relating to their terms and conditions of employment.¹³⁷

Eritrea – CEACR, observation, 2011; *Gambia* – CEACR, observation, 2012; *Guinea-Bissau* – CEACR, observation, 2011; *Honduras* – CEACR, observation, 2010; *Japan* – CEACR, Convention No. 87, observation, 2010; *Liberia* – CEACR, observation, 2011; *Madagascar* – CEACR, observation, 2011; *Malaysia* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; *Sao Tome and Principe* – CEACR, observation, 2011; *Sri Lanka* – CEACR, observation, 2011; *Uganda* – CEACR, observation, 2011; *United Republic of Tanzania (Zanzibar)* – CEACR, observation 2010; *Uzbekistan* – CEACR, observation, 2011; and *Zimbabwe* – CEACR, observation 2011.

¹³⁷ See, for example, *China (Hong Kong Special Administrative Region)* – CEACR, observation, 2010. Furthermore, in its report supplied under article 19 of the Constitution, the Government of the *United States* indicates that Executive Order No. 13522 of December 2009 created the National Council on Federal Labor–Management Relations, responsible for advising the President on matters involving labour–management relations in the executive branch. It requires all federal agencies to create labour–management forums and establishes pilot programmes under which certain executive departments will choose to negotiate on certain issues. The experience acquired in these projects will be compiled in a report containing recommendations on the bargaining process for federal employees.

VI. Concept of collective bargaining, parties to bargaining and nature of collective agreements

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

Article 2

For the purpose of this Convention, the term “public employee” means any person covered by the Convention in accordance with Article 1 thereof.

Article 3

For the purpose of this Convention, the term “public employees’ organisation” means any organisation, however composed, the purpose of which is to further and defend the interests of public employees.

Article 7

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees’ organisations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters.

Collective Bargaining Convention, 1981 (No. 154)

Article 2

For the purpose of this Convention the term “collective bargaining” extends to all negotiations which take place between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more workers’ organisations, on the other, for–

- (a) determining working conditions and terms of employment; and/or
- (b) regulating relations between employers and workers; and/or
- (c) regulating relations between employers or their organisations and a workers’ organisation or workers’ organisations.

Article 3

1. Where national law or practice recognises the existence of workers’ representatives as defined in Article 3, subparagraph (b), of the Workers’ Representatives Convention, 1971, national law or practice may determine the extent to which the term “collective bargaining” shall also extend, for the purpose of this Convention, to negotiations with these representatives.

2. Where, in pursuance of paragraph 1 of this Article, the term “collective bargaining” also includes negotiations with the workers’ representatives referred to in that paragraph, appropriate measures shall be taken, wherever necessary, to ensure that the existence of these representatives is not used to undermine the position of the workers’ organisations concerned.

Article 4

The provisions of this Convention shall, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or in such other manner as may be consistent with national practice, be given effect by national laws or regulations.

Article 8

The measures taken with a view to promoting collective bargaining shall not be so conceived or applied as to hamper the freedom of collective bargaining.

Collective Bargaining Recommendation, 1981 (No. 163)

2. In so far as necessary, measures adapted to national conditions should be taken to facilitate the establishment and growth, on a voluntary basis, of free, independent and representative employers' and workers' organisations.

Labour Relations (Public Service) Recommendation, 1978 (No. 159)

2.(1) In the case of negotiation of terms and conditions of employment in accordance with Part IV of the Labour Relations (Public Service) Convention, 1978, the persons or bodies competent to negotiate on behalf of the public authority concerned and the procedure for giving effect to the agreed terms and conditions of employment should be determined by national laws or regulations or other appropriate means.

(2) Where methods other than negotiation are followed to allow representatives of public employees to participate in the determination of terms and conditions of employment, the procedure for such participation and for final determination of these matters should be determined by national laws or regulations or other appropriate means.

261. *Concept of collective bargaining and parties to bargaining.* Convention No. 154 defines the concept of "collective bargaining" and Convention No. 151 defines the terms "public employee" and "public employees' organisation". In the context of public administration it is not always easy to determine which employer (or employers' organization) should be a party to bargaining. Depending on the country, collective bargaining in public administration can take place at a very decentralized level, in which case it is relatively simple to determine who the employer is. If the negotiations are held at the sectoral level or are highly centralized, however, identifying the employer is not so straightforward. National legislation sometimes specifies which representatives at central, sectoral or institutional level should represent employers on bargaining committees. Paragraph 2(1) of Recommendation No. 159 leaves it to national laws or regulations or other appropriate means to determine the persons or bodies competent to negotiate on behalf of the public authority. In some countries, the existence of employers' associations of local authorities has made it possible for the employers' side to be involved in collective bargaining at this level, while other countries have public employers' confederations.

262. Regarding the concept of the "public authority" acting as employer, while no explicit definition of this term exists in Convention No. 151 or in Recommendation No. 159, during the preparatory work in 1977 and 1978 leading to the adoption of Convention No. 151, it was agreed that the term "public authority" would be understood to mean all bodies or institutions invested with public authority or public functions irrespective of the method whereby its guidance, policies or activities are determined.¹³⁸ With regard to "public employees' organisations", Article 3 of Convention No. 151 defines them as "any organisation, however composed, the purpose of which is to further and defend the interests of public employees"; a close definition to that used in Article 10 of Convention No. 87. The Committee emphasizes that this definition covers primary organizations, federations and confederations. As regards federations and confederations,¹³⁹ the Committee considers that any restriction or prohibition of their right to collective bargaining would constitute a violation of Conventions Nos 98, 151 and 154.¹⁴⁰ This view is also based on Paragraph 3 of Recommendation No. 163, which

¹³⁸ See Report VII(2) of 1977: *Freedom of association and procedures for determining conditions of employment in the public service*, p. 25.

¹³⁹ See, for example, *Namibia* – CEACR, direct request, 2011; and *Uganda* – CEACR, observation, 2010.

¹⁴⁰ General Survey, 2012, paras 222–223, and General Survey, 1994, para. 249.

uses representativeness as a criterion for recognizing organizations for the purposes of collective bargaining, and provides that collective bargaining is possible at all levels. In Paragraph 2, the Recommendation promotes the “growth, on a voluntary basis, of free, independent and representative employers’ and workers’ organisations”.

263. *The principle of legality and collective agreements.* In some countries, collective bargaining in the public service has certain specific features in comparison with collective bargaining in the private sector. These specificities are related to the legal ranking or force of clauses or agreements on terms and conditions of employment for public servants. In this regard, it should be recalled that many countries consider private sector collective agreements (and sometimes, depending on the country, public sector collective agreements) to be legally binding on the parties, or, at the very least, to have contractual status. In others, such as *Costa Rica*, the right of trade unions to conclude “collective agreements” is provided for in the Constitution, which endows the agreements with the highest legal ranking, and, in order to enforce them, allows recourse not only to ordinary courts, but also, when necessary, to courts competent to handle violations of constitutional rights, generally through special and rapid procedures of redress. The Committee points out that Conventions Nos 98, 151 and 154 do not require that collective agreements concluded in the public service have contractual status or are legally binding on the parties, or have constitutional rank.

264. By allowing special modalities of application, Convention No. 154 affords a certain degree of flexibility in implementation, so that account can be taken of different national systems and procedures. The public service can be included in the scope of application of Convention No. 154 because its provisions are more flexible than those of Convention No. 98. Unlike Convention No. 98, it does not provide for the regulation of terms and conditions of employment through collective agreements. If the International Labour Conference had included such a provision and the concept of “collective agreement” when it adopted Convention No. 154, its scope of application could not have been extended to include the public service, given the opposition from States that, while prepared to recognize collective bargaining in the public service, are unwilling to give up the particularities and requirements of the public service regulations.

265. These elements were clearly set out in a memorandum prepared by the International Labour Office¹⁴¹ in reply to a request from a government for clarification on the implementation of Convention No. 154 with regard to the public service. The Office pointed out, in this regard, that:

... there is no element at all either in the Convention or in the preparatory work before its adoption from which it can be inferred that where collective bargaining culminates in a settlement between the parties such settlement must take the form and have the status of a collective agreement. While in most (if not all) countries this is the usual outcome of collective bargaining in different branches of the public service, in some countries collective bargaining in the public service results in settlements which do not have the status of a collective agreement. The conclusion may be drawn that a State ratifying the Convention may have recourse to special modalities of application in the case of the public service as provided by Article 1, paragraph 3, of the Convention. Hence, if a settlement is reached through collective bargaining within the context of the public service, this settlement may in form and nature be different from a collective agreement. In countries where, for example, the conditions of employment of public servants are governed by special laws or provisions, negotiations with a view to the amendment of these special laws or provisions need not necessarily lead to legally binding agreements, so long as account is taken in good faith of the results of the negotiations in question.

¹⁴¹ ILO: *Official Bulletin*, Vol. LXVII, Series A, No. 1, 1984, p. 29.

266. It follows that the key factor in the implementation of Conventions Nos 151 and 154 is not the form of the collective agreement or its legal force, or whether it should be integrated into a legal enactment to be effective, or whether it can be applied directly without having been approved by another body, but rather whether it is being applied in practice (principle of effectiveness). In this regard, both Conventions take account of the considerable diversity among national systems with regard to the public administration, and allow for collective agreements that have purely “pragmatic” force, or that constitute a sort of “gentlemen’s agreement”, provided that they are implemented in practice.

267. In this regard, approaches vary widely in practice. In *Norway* and *Trinidad and Tobago*, for example, collective agreements in the public service are concluded without prior approval or incorporation into legislation, while in some countries the same legislation on collective bargaining is applied to public servants and the private sector alike. In the *United States* and *Canada*, parliament or another authority must approve agreements for federal public servants. In *Sweden*, collective agreements applying to the public service do not require such approval in order to be applied in law. In the *United Kingdom*, the Whitley Council agreements are directly applicable (they must be submitted to Cabinet, which may amend them, although in practice Cabinet is only informed about issues of national significance); in other cases, bargaining leads to a recommendation to the competent secretary, and, if it is approved, the terms of the agreement are incorporated into a statutory regulation. In *Belgium*, collective bargaining takes place prior to the adoption of laws or administrative regulations covered by collective agreements. In *France*, according to the Government’s report, while collective bargaining is expressly enshrined in the General Public Service Regulations, and the criteria for recognizing the validity of collective agreements are set in law, collective agreements do not have force of law. The Committee understands that in France the ultimate decision on a collective agreement is, in practice, taken by the authority (legislative or administrative) competent for setting standards on the issue. Lastly, in *Spain* collective agreements (*acuerdos*) require the formal approval of the Council of Ministers (in the context of the central administration) or other competent administrative bodies. Certain subjects must be regulated through legislation but may be covered by a collective agreement between the public authorities and public service unions, with the authorities undertaking to submit a bill amending the legislation on the issue.

268. In conclusion, the provisions of Conventions Nos 151 and 154 with regard to collective bargaining in the public service allow for different approaches to harmonizing the principle of collective bargaining with the statutory nature of relationships between the State, as an employer, and public servants. Conventions Nos 151 and 154 are compatible, inter alia, with systems that require intervention by the authorities after a collective agreement has been concluded (approval by an administrative body, the council of ministers or the legislature) or the incorporation of the content of the agreement, to enable its application, into a regulation, administrative enactment or law, provided that the outcomes of collective bargaining are respected in practice. It is not necessary for collective agreements in the public service to be given force of law though legislation, provided that they are applied in practice. Lastly, the aim of Conventions Nos 151 and 154 is not to constantly challenge the stability of the fundamental rules and principles applicable to public servants (often enshrined in legal provisions) – which would not make sense – but to ensure that the determination and amendment of such rules is carried out through a process of social dialogue, as necessary, when the parties so agree.

269. The Committee points out that it may also happen that it is not legislative and constitutional obstacles, but rather practical considerations that prevent public servants

from engaging in collective bargaining: for example, authorities may refuse to recognize trade unions on the grounds of an alleged delay in holding elections of the executive committees of public service staff organizations;¹⁴² difficulties may arise in identifying employers at certain levels of negotiation; or excessive delays can be caused by unwillingness to negotiate.

270. *Bipartite or tripartite bargaining.* In practice, collective bargaining in the public administration is almost always bipartite. Conventions Nos 151 and 154 tend essentially to promote bipartite negotiation of terms and conditions of employment, that is, between employers and employers' organizations, on the one hand, and workers' or public employees' organizations, on the other, without the involvement of the public authorities (unless they are acting in the capacity of an employer in collective bargaining in the public service, except – as will be seen below – when wages or economic clauses are negotiated). The Committee recalls, however, that tripartism as a method of social dialogue, which includes the public authorities, may be appropriate for addressing broader issues, such as the drafting of legislation on economic or social policy, or certain framework agreements. The presence of the government may also be justified if the general collective agreement is limited to setting the minimum wage, while the negotiation of other terms and conditions of employment should generally be undertaken in a bipartite context; and the parties must enjoy a certain degree of autonomy. The Committee has issued comments with regard to certain national legislation providing for tripartite collective bargaining, contrary to the principles of Conventions Nos 98, 151 and 154. In the case of *Togo*,¹⁴³ for example, the Committee recalled that the right to negotiate freely with employers concerning working conditions is an essential element of freedom of association, and that the promotion of collective bargaining is applicable in the private sector, in nationalized enterprises and in public institutions, and thus cannot be limited to a single agreement that must be negotiated at national level and that must obtain the approval of government representatives as well as trade unions and employers. In its observation on *China (Macau Special Administrative Region)*,¹⁴⁴ the Committee, replying to the Government's statement that the mechanism of tripartite coordination in place works well, recalled that the collective bargaining referred to in the Convention does not refer to a tripartite mechanism.

271. *The principle of voluntary negotiation.* Regarding the voluntary nature of collective bargaining, during the preparatory work for Convention No. 154, in the Committee on Collective Bargaining the term "promotion" (of collective bargaining) was interpreted as follows: "the word 'promotion' should not be capable of being interpreted in a manner suggesting an obligation for the State to intervene to impose collective bargaining" thereby allaying the fear expressed by the Employer members that the text of the Convention could imply the obligation for the State to take enforcement measures.^{145, 146}

¹⁴² *Bolivarian Republic of Venezuela* – CEACR, observation, 2011. The Committee requested the Government to ensure that organizations can conduct union elections without any interference from the National Electoral Council (which is not a judicial body and can intervene on the basis of any request by a small number of workers and hold up the endorsement of the elections).

¹⁴³ *Togo* – CEACR, observation, 2011.

¹⁴⁴ *China (Macau Special Administrative Region)* – CEACR, observation, 2012.

¹⁴⁵ See ILC, *Record of Proceedings*, 67th Session, 1981, p. 22/7. In a number of countries the parties are subject to an obligation to negotiate. See also: ILO: Joint Committee on the Public Service, Fourth Session, Geneva, 1988, Report II, p. 25. See also: ILO: Joint Committee on the Public Service, First Session, Geneva, 1970, Report II.

272. The Committee emphasizes, however, that the voluntary nature of collective bargaining implies, in the Convention's drafting, a strong encouragement for its stimulation and promotion; in the context of the special modalities of collective bargaining for the public service allowed by Convention No. 154, member States may stipulate that collective bargaining with representative organizations of public employees is obligatory for public authorities acting as employers (this is the case in *Spain*, for example). The Committee's position stems in particular from the fact that the State already has the right, through legislation, to enact provisions on terms and conditions of employment in the public service, and can thus provide for the obligation to negotiate in order to effectively promote collective bargaining in the public service. Moreover, in some countries the obligation to negotiate may simply be a response to the practical issue of avoiding potential sanctions under administrative law for exceeding the powers of a public authority acting as an employer.

273. *Negotiation with elected workers' representatives and negotiation with non-unionized workers.* Since, under Convention No. 151, the right to collective bargaining lies with public employees' organizations at any level, with the public authorities concerned (employers) and with their organizations, collective bargaining with non-unionized workers' representatives should only be possible in the absence of trade unions at the relevant level (although Article 7 of Convention No. 151 provides for other methods – such as consultations – through which public employees' representatives may participate in determining terms and conditions of employment).

274. The Committee recalls that Article 3 of Convention No. 154 leaves it to national law or practice to determine the extent to which the term “collective bargaining” also extends to negotiations with elected representatives (elected by public employees or workers), and stipulates that the existence of these representatives (as defined in the Workers' Representatives Convention, 1971 (No. 135)) should not be used to undermine the position of the workers' organizations concerned. Article 5 of Convention No. 135 (referred to in Article 3 of Convention No. 154) provides that: “where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives”. The Collective Agreements Recommendation, 1951 (No. 91), provides that the term “collective agreements” means:

... all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more representative workers' organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorized by them in accordance with national laws and regulations, on the other.

The Committee refers to paragraph 220 above.

¹⁴⁶ For information purposes, it may be useful to recall that the Committee on Freedom of Association has considered that, if it is to be effective, collective bargaining must be voluntary and not involve recourse to measures of compulsion which would alter its voluntary nature. It recalled that nothing in Article 4 of Convention No. 98 places a duty on a government to enforce collective bargaining by compulsory means with a given organization, which would clearly alter the voluntary nature of bargaining (see *Digest*, 2006, op. cit., paras 926 and 927); see also Case No. 2149 (Romania), 328th Report (June 2002), para. 581, in which the Committee on Freedom of Association considered that Article 4 of Convention No. 98 in no way places a duty on the government to enforce collective bargaining, nor would it be contrary to this provision to oblige social partners, within the framework of the encouragement and promotion of the full development and utilization of collective bargaining machinery, to enter into negotiations on terms and conditions of employment; the Committee recalled, however, that the public authorities should refrain from any undue interference in the negotiation process.

275. The Committee notes that it is quite common in European and other countries for legislation to provide for the election of staff representatives and works councils within enterprises and/or public institutions. These bodies have, inter alia, the right to distribute publications among workers and receive information from employers, the right to hold opinions and submit proposals, and the right of veto on certain issues. They may also initiate administrative or legal proceedings, undertake certain inspection duties and supervise compliance with the law. Depending on the country, the representatives on these bodies may be either exclusively trade union representatives, or non-union representatives. Union representatives within an enterprise or public institution should have the same opportunities as other workers to stand in these elections. In some countries, such as *Estonia*, *Latvia*, *Lithuania* and *Spain*, elected representatives are predominantly union members; in *Spain*, the number of staff representatives or members of works councils is used to determine representativeness of trade unions and their confederations. Generally speaking, these staff representatives and works council members (the latter in larger enterprises and public institutions) are assigned, by law, certain tasks relating to consultation and collaboration with employers, as well as some negotiation functions and a certain degree of protection against prejudicial measures.

276. The Committee considers that the existence of elected representatives does not pose a problem with regard to conformity with Conventions Nos 151 and 154, unless in practice it effectively undermines the position of the trade unions, particularly in respect of collective bargaining. The Committee points out that, in some cases, there are far more collective agreements concluded between employers and groups of non-unionized workers than those concluded with workers' organizations.¹⁴⁷ The Committee notes with interest, however, that a recent ruling handed down in 2011 by the constitutional chamber of the Supreme Court of *Costa Rica* prioritizes, in enterprises with an active trade union, collective bargaining on collective agreements over "accords" with non-unionized workers.

277. The Committee's attention has been particularly drawn to the tendency in certain legislation to favour individual employment rights to the detriment of collective rights. This trend is contrary to the principles of the ILO and, in particular, to the provisions of Recommendation No. 91, which recalls the principle of the binding nature of collective agreements and their primacy over individual contracts of employment (except when they contain stipulations more favourable to the workers than those prescribed by the collective agreement).

¹⁴⁷ See, for example, *Costa Rica* – CEACR, observation, 2010.

VII. Good faith, representativeness and recognition of organizations

Labour Relations (Public Service) Recommendation, 1978 (No. 159)

1.(1) In countries in which procedures for recognition of public employees' organisations apply with a view to determining the organisations to be granted, on a preferential or exclusive basis, the rights provided for under Parts III, IV or V of the Labour Relations (Public Service) Convention, 1978, such determination should be based on objective and pre-established criteria with regard to the organisations' representative character.

(2) The procedures referred to in subparagraph (1) of this Paragraph should be such as not to encourage the proliferation of organisations covering the same categories of employees.

Collective Bargaining Recommendation, 1981 (No. 163)

3. As appropriate and necessary, measures adapted to national conditions should be taken so that –

- (a) representative employers' and workers' organisations are recognised for the purposes of collective bargaining;
- (b) in countries in which the competent authorities apply procedures for recognition with a view to determining the organisations to be granted the right to bargain collectively, such determination is based on pre-established and objective criteria with regard to the organisations' representative character, established in consultation with representative employers' and workers' organisations.

278. *Good faith in collective bargaining.* The principle of negotiating in good faith is enshrined in the national legislation of many countries and often developed in national case law. In the preparatory work for Convention No. 154, the Committee on Collective Bargaining recognized that “collective bargaining could only function effectively if it was conducted in good faith by both parties”. It emphasized the fact that “good faith could not be imposed by law, but could only be achieved as a result of the voluntary and persistent efforts of both parties”.¹⁴⁸

279. As regards bargaining in good faith in the public service in particular, a memorandum issued by the International Labour Office¹⁴⁹ in response to a request for clarification on Convention No. 154 from a government indicated that: “... In countries where, for example, the conditions of employment of public servants are governed by special laws or provisions, negotiations with a view to the amendment of these special laws or provisions need not necessarily lead to legally binding agreements, so long as account is taken in good faith of the results of the negotiations in question.”

280. Generally, courts of special jurisdiction are responsible for assessing whether the parties have respected the obligation to negotiate in good faith and any consequences arising therefrom. The legislation of several countries stipulates that the employer shall be subject to penalties if it refuses to recognize the representative trade union (an attitude which may be deemed to constitute an unfair labour practice), or if it fails to observe the requirement of good faith in the bargaining process.¹⁵⁰ For example, in its report provided under article 19 of the Constitution, the Government of *New Zealand* indicates that the Employment Relations Authority and the Employment Court may have regard to

¹⁴⁸ See ILC, *Record of proceedings*, 67th Session, 1981, p. 22/11.

¹⁴⁹ *Official Bulletin*, Vol. LXVII, 1984, para. 243.

¹⁵⁰ General Survey, 2012, para. 198, and General Survey, 1994, para. 243.

an approved code of good faith to determine if the employers and unions have dealt with each other in good faith while conducting collective bargaining; penalties may apply in some circumstances for breaches of good faith, including undermining collective bargaining.

281. The principle of good faith is thus inherent in collective bargaining and takes the form, in practice, of the duty or obligation of the parties to recognize representative organizations, but also implies: (i) endeavouring to reach agreement (including a certain number of meetings and discussions); (ii) engaging in genuine and constructive negotiations, including through the provision of relevant and necessary information; (iii) avoiding unjustified delays in negotiation or obstruction thereof; (iv) taking into account the results of negotiations in good faith; and (v) mutually respecting the commitments entered into and results achieved through bargaining. The principle of mutually respecting the commitments entered into in collective agreements is recognized expressly by the Collective Agreements Recommendation, 1951 (No. 91) (Paragraph 3), which provides that “collective agreements should bind the signatories thereto and those on whose behalf the agreement is concluded”.¹⁵¹ Lastly, the Committee recalls that Conventions Nos 151 and 154 do not require the parties to reach an agreement as a result of negotiations.¹⁵²

282. One of the core principles of Conventions Nos 151 and 154 is the link between the right to collective bargaining and attaining a certain threshold of representativeness, among other factors, an issue which will be dealt with in further detail below, as the lack of a minimum level of representativeness poses all sorts of problems in relation to collective bargaining objectives and the independence of organizations, since only independent, representative organizations are able to defend the interests of workers effectively. The determination of representativeness depends on various factors and should also be seen in the context of the specific collective bargaining system of each country. It takes a different form depending on whether the national system provides that collective agreements apply to all the workers in the bargaining unit or only to members of the union; or whether the system provides for an exclusive bargaining agent or allows for several or all of the trade union organizations of the bargaining unit to be able to participate in the process. Lastly, when collective agreements pertain to an industry or have provincial, regional or national coverage, the determination of representativeness may rest on criteria that go beyond the number of members of the organization, and may include geographical coverage or presence in a certain number of sectors, for example.

283. *Means of recognition of organizations.* By virtue of Article 7 of Convention No. 151, the right to collective bargaining rests with public employees’ organizations and the public authorities concerned. Accordingly, recognition by an employer of the main unions represented in the enterprise or bargaining unit, or the most representative of these unions, constitutes the very basis for any procedure of collective bargaining at

¹⁵¹ This Recommendation is cited for information purposes only, as it does not apply directly to the public service.

¹⁵² For information, it is worth recalling that the Committee on Freedom of Association has indicated that collective bargaining implies an ongoing engagement in the give-and-take process, recognizing the voluntary nature of collective bargaining and the autonomy of the parties. In the Committee’s view, the duty to consider employee representations in good faith, which merely obliges employers to give a reasonable opportunity for representations and listen or read them – even if done in good faith, does not guarantee such a process. The Committee recalled the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations, and recalls that it is important that both employers and trade unions bargain in good faith and make every effort to reach an agreement; moreover, genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties (363rd Report, Case No. 2704, *Canada*, para. 398).

the enterprise level.¹⁵³ Consequently, unjustified refusal to recognize the most representative organizations, or the imposition of a high percentage requirement for the recognition of a collective bargaining agent, may impair the promotion and development of free and voluntary collective bargaining within the meaning of the Convention.¹⁵⁴ The determination of the criteria for the designation of bargaining agents is therefore a central issue. Although the Convention allows a certain flexibility, the Committee considers that, at the very least, in the event of controversy, the determination of bargaining agents should be carried out by a body offering every guarantee of independence and objectivity on the basis of two criteria: representativeness and independence.¹⁵⁵

284. *Representativeness and rights of minority unions.* In the view of the Committee, both systems of collective bargaining which grant exclusive rights to the most representative union and systems under which several unions in an enterprise or a bargaining unit may conclude different collective agreements, are compatible with the provisions of the Convention. The Committee observes that certain countries envisage the grouping of trade unions with a view to achieving the required representativeness threshold, in cases where it is not met by one organization on its own. These systems provide, for example, that trade unions may form a grouping so that the unions which have not obtained the required percentage may participate in collective bargaining;¹⁵⁶ or, if no trade union meets the representativeness requirements, that trade unions may conclude an agreement on merger for that purpose.¹⁵⁷ In *Poland*, all trade unions of the bargaining unit participate in collective bargaining. In *Ecuador*, the legislation concerning the public sector provides for the grouping of trade union organizations for bargaining.

285. The Committee considers that both systems under which the collective agreements concluded by the representative organization apply only to the signatories and their members (and not to all workers) and the opposite practice under which all the workers in a bargaining unit are covered, are compatible with the provisions of the Convention. These considerations are also applicable to public service collective bargaining.

286. As the ILO Constitution itself enshrines the notion of “most representative” organizations (article 3, paragraph 5), the mere fact that legislation draws a distinction between the most representative trade union organizations and other organizations is not, in itself, reason for criticism. However, such a distinction should not result in the most representative organizations being granted privileges which go beyond priority in representation for the purposes of collective bargaining, consultation by governments or the appointment of delegates to international bodies.¹⁵⁸ In other words, this distinction should not have the effect of depriving trade unions which are not recognized as being among the most representative (“minority” organizations) of the essential means of defending the interests of their members, organizing their administration and activities and formulating their programmes. Accordingly, whatever the representativeness threshold chosen, while it is acceptable that the union which represents the majority or a high percentage of workers in a bargaining unit should enjoy preferential or exclusive

¹⁵³ Committee on Freedom of Association, *Digest*, 2006, op. cit., para. 953.

¹⁵⁴ *Hungary* – CEACR, observation, 2011.

¹⁵⁵ Committee on Freedom of Association, *Digest*, 2006, op. cit., para. 967.

¹⁵⁶ *Morocco* – CEACR, direct request, 2011.

¹⁵⁷ *Montenegro* – CEACR, direct request, 2011.

¹⁵⁸ General Survey, 1994, para. 239, and General Survey, 2012, para. 226.

bargaining rights, the Committee considers that in cases where no union meets these conditions, or does not enjoy such exclusive rights, minority trade unions should at least be able to conclude a collective agreement or accord on behalf of their own members.

287. In this context, the Committee noted with satisfaction in 2004 the recognition of minority unions (where there is no majority union) for the purposes of collective bargaining in *Fiji*¹⁵⁹ (since then, the situation in the country with regard to trade union rights has seriously deteriorated) and the legislation in *Swaziland*,¹⁶⁰ which now provides that, where in an establishment employees are represented by more than two trade unions whose respective membership does not cover at least 50 per cent of the employees eligible to join the union, the employer shall grant collective bargaining rights to the unions to negotiate on behalf of their own members.

288. *Recognition procedure and criteria of representativeness.* With regard to the criteria to be applied to determine the representative status of organizations for the purposes of bargaining, the Committee recalls Paragraph 1 of Recommendation No. 159 and Paragraph 3(b) of Recommendation No. 163, which provide that representativeness must be based on pre-established and objective criteria. The latter Recommendation states that these criteria must be defined in consultation with employers' and workers' organizations. Accordingly, the Committee emphasizes the importance of ensuring, in case controversy should arise, that these criteria are objective, pre-established and precise so as to avoid any opportunity for partiality or abuse. Furthermore, in the event of a dispute, such determination should be carried out in accordance with a procedure that offers every guarantee of impartiality, by an independent body that enjoys the confidence of the parties, and without political interference. Governments should then be guided exclusively by the criterion of representativeness in their relations with employers' and workers' organizations. Both systems of "compulsory" recognition of trade unions, whereby the employer, under certain conditions, must recognize the existing trade union(s), and those which envisage a system of "voluntary" recognition, are acceptable. Nevertheless, in the latter case, the public authorities are invited to encourage employers to recognize trade unions which can prove their representativeness. Finally, recognition may also be "voluntary" when provided for in a bipartite or tripartite agreement, or where it constitutes a well-established practice.¹⁶¹

289. When national legislation provides for a procedure for recognizing unions as exclusive bargaining agents through a worker ballot, the Committee considers that certain safeguards should be attached, namely: (i) the certification to be made by an independent body; (ii) the representative organization to be chosen by a majority vote of the employees in the units concerned; (iii) the right of an organization, which in a previous trade union election failed to secure a sufficiently large number of votes, to request a new election after a stipulated period; and (iv) the right of any new organization other than the certified organization to demand a new election after a reasonable period has elapsed.¹⁶² Finally, where the legislation provides that only registered trade unions may be recognized as bargaining agents, it should be ensured that the conditions required for registration are not excessive, as otherwise there would be a risk of the development of collective bargaining being seriously impaired.

¹⁵⁹ *Fiji* – CEACR, observation, 2004.

¹⁶⁰ *Swaziland* – CEACR, observation, 2011.

¹⁶¹ General Survey, 2012, para. 228, and General Survey, 1994, paras 238–240.

¹⁶² General Survey, 2012, para. 229, and General Survey, 1994, para. 240.

290. In practice, the major difficulties encountered by the Committee in this field include the incompatibility of the criteria applied by States for the determination of the organizations to be engaged in collective bargaining with the requirements of precision and objectivity established by the Committee.¹⁶³ Other elements may also give rise to risks of partiality or abuse. These include, for example, systems which allow third parties to raise objections during the procedure of recognition of a trade union;¹⁶⁴ which require the relevant union to undergo a “competency check” to ascertain whether the majority of the class of workers in the enterprise are members of the union;¹⁶⁵ or which cite by name in the legislation the organizations which are to form part of dialogue bodies, rather than referring in general terms to the “most representative” organizations.¹⁶⁶ In certain cases, the Committee requests the provision of information on any sanctions against employers which have opposed the directives of the authorities respecting recognition.¹⁶⁷

291. *Disputes concerning representativeness.* The settlement of disputes concerning representativeness, when they arise, should be achieved through independent and objective mechanisms, such as a ballot or an arbitrator’s decision. The Committee has recently recalled the importance of introducing into the legislation a formal requirement for the holding of ballots to determine trade union representativeness in the context of a national situation in which the arbitrator could in such cases decide to conduct a ballot only when she or he considered it appropriate.¹⁶⁸ It has also requested an amendment to ensure that a ballot is possible when a trade union claims that it has more affiliated members in the bargaining unit than the other trade unions already established as bargaining agents.¹⁶⁹

292. With regard to the average duration of the recognition procedure, the Committee considers that it must be “reasonable”. For example, it has considered that an average duration of nine months is excessively long.¹⁷⁰ It has also considered that the three-year time span that was required before an organization which had previously failed to obtain recognition as most representative, or a new organization, could seek a new decision, should be reduced to a more reasonable period.¹⁷¹ In this context, it has noted that the legislation in certain countries requires the holding of a ballot within a certain period of the request being made by a trade union with a view to ensuring that the recognition procedure is not hampered by excessive delays, which may be caused by the wish of certain employers to identify trade union activists.¹⁷²

¹⁶³ See, for example, *Ghana* – CEACR, observation, 2010; *Madagascar* – CEACR, observation, 2011; *Malaysia* – CEACR, observation, 2011; *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2011; *Trinidad and Tobago* – CEACR, observation, 2011.

¹⁶⁴ See, for example, *Cambodia* – CEACR, observation, 2011 (section 1 of Prakas No. 13 of 2004).

¹⁶⁵ See, for example, *Malaysia* – CEACR, observation, 2011.

¹⁶⁶ See, for example, *Portugal* – CEACR, observation, 2011 (section 9 of Act No. 108/91 respecting the Economic and Social Council).

¹⁶⁷ See, for example, *Malaysia* – CEACR, observation, 2011.

¹⁶⁸ *Lesotho* – CEACR, observation, 2011.

¹⁶⁹ See, for example, *Jamaica* – CEACR, observation, 2010.

¹⁷⁰ *Malaysia* – CEACR, observation, 2011.

¹⁷¹ *Serbia* – CEACR, observation, 2011.

¹⁷² *Sri Lanka* – CEACR, observation, 2011.

293. *Threshold of representativeness.* As the issue of the representativeness of bargaining agents is central to the recognition procedure, the determination of the threshold of representativeness to be able to negotiate is consequently essential. Considering that the representativeness threshold must be assessed on the basis of the specific characteristics of the industrial relations systems, the Committee stresses that Conventions Nos 151 and 154 do not impose a predetermined compulsory percentage for an organization to be considered “representative”. However, it considers that the requirement of too high a percentage for representativeness for an organization to be authorized to engage in collective bargaining may hamper the promotion and development of free and voluntary collective bargaining within the meaning of the Convention. In practice, the principal distinction to be made relates to the persons who are to be covered by the agreement: if the national system in force only authorizes organizations to negotiate on behalf of their own members, the issue of a representativeness threshold does not arise. However, the situation is different when collective agreements negotiated by the organizations concerned are designed to be applied to all workers in a sector or establishment, and therefore more broadly than their own unionized workers.

294. *Fifty per cent.* In practice, the legislation in many countries provides that a trade union must receive the support of 50 per cent of the members of a bargaining unit to be recognized as a bargaining agent.¹⁷³ Such systems are based, in particular, on the notion that this democratic representation justifies extension of the collective agreement to all workers in the bargaining unit. In the view of the Committee, however, such a system may raise problems of compatibility with the Convention, as it means that a representative union which fails to secure the absolute majority may thus be denied the possibility of bargaining. Therefore, given the duty to promote collective bargaining laid down in ILO instruments, the Committee reiterates that under a system of the designation of an exclusive bargaining agent, if no union represents the required percentage of workers to be declared the exclusive bargaining agent, collective bargaining rights should be granted to all the unions in the unit, at least on behalf of their own members. The Committee refers to its 2012 General Survey (see paragraph 235).

295. *Other thresholds.* Under other systems, representativeness thresholds are established below or higher than 50 per cent. For example, thresholds are envisaged of around 30 per cent,¹⁷⁴ 40 per cent¹⁷⁵ or between 10 and 20 per cent.¹⁷⁶ Such thresholds are not all compatible with the Convention. For example, the Committee considers that

¹⁷³ See, for example, *Belize* – CEACR, observation, 2010 (section 27(2) of the Trade Unions and Employers’ Organizations (Registration, Recognition and Status) Act); *Dominican Republic* – CEACR, observation, 2010 (sections 109 and 110 of the Labour Code); *Lesotho* – CEACR, observation, 2011 (section 198A(1)(b) of the Labour Code); *Namibia* – CEACR, direct request, 2011 (section 64(1) of the Labour Act); *United Republic of Tanzania* (Zanzibar) – CEACR, observation, 2011 (section 57(2) of the Labour Relations Act); and *Turkey* – CEACR, observation, 2011 (section 12 of Act No. 2822). In the United States, a union needs to meet a threshold of 50 per cent of the bargaining unit in the case of a card check, but if recognition is through a ballot, the threshold to be met is 50 per cent of those voting.

¹⁷⁴ See, for example, *Bangladesh* – CEACR, observation, 2011 (section 202(15) of the Labour Act); *Botswana* – CEACR, observation, 2011 (section 48 of the Trade Union and Employers’ Organizations (Amendment) Act, read with section 32 of the Trade Disputes Act); *Gambia* – CEACR, observation, 2010 (section 130 of Labour Act No. 5 of 2007); and *Pakistan* – CEACR, observation, 2010 (section 24(1) of the Industrial Relations Act).

¹⁷⁵ See, for example, *Jamaica* – CEACR, observation, 2010 (section 5(5) of Act No. 14 of 1975 and section 3(1)(d) of its regulations); *Sri Lanka* – CEACR, observation, 2011 (Circular of 19 September 2000 and section 32A of the Industrial Disputes (Amendment) Act); and *United Kingdom* – CEACR, observation, 2009 (the Trade Unions and Labour Relations Act – TULRA).

¹⁷⁶ See, for example, *The former Yugoslav Republic of Macedonia* – CEACR, observation, 2011 (sections 212 and 213 of the Law on Labour Relations).

requiring the support of one third of the workers concerned, at the level of the branch or in a large enterprise, so that an organization can be registered and then negotiate on their behalf¹⁷⁷ may be difficult to achieve and does not allow the promotion of collective bargaining within the meaning of the Conventions on collective bargaining. Other countries require a representativeness threshold that is even higher (up to 65 per cent of workers for a single union).¹⁷⁸ The Committee recalls that if no union in a specific negotiating unit meets the required percentage for representativeness to be able to negotiate on behalf of all workers, minority unions should be able to negotiate, jointly or separately, on behalf of their own members.¹⁷⁹

296. In this context, as regards the private sector, the Committee has noted with satisfaction, among other changes, the abolition of the requirement that the conclusion and signature of a collective agreement should be approved by two-thirds of the members of the union concerned in *Guatemala*;¹⁸⁰ and the fact that, in *Peru*,¹⁸¹ the dual requirement of a majority of the number of workers and of the number of enterprises to be able to conclude a collective agreement covering a branch of activity or an occupation is now only required if the outcome of collective bargaining in a branch of activity or occupation is to achieve general coverage of all the workers in the sector (in cases where this dual requirement is not met, the outcome of the bargaining has effects that are limited to the workers who are members of the corresponding trade union organization(s)).

297. *Representativeness of employers' organizations.* With regard to the issue of the representativeness threshold required for the recognition of employers' organizations, the Committee has considered, for example, that the requirement for an employers' association to represent at least 10 per cent of employers to be able to engage in collective bargaining is particularly high, especially for negotiations at the sectoral or national level.¹⁸² It has also requested a considerable reduction or the repeal of the minimum requirements for the definition of an "authorized association of employers" in a case in which the members of the association had to employ a minimum of 25 per cent of employees in the country and to represent a minimum of 25 per cent of the gross domestic product, so as to enable employers and employers' associations to conclude collective agreements in the manner that they consider most appropriate.¹⁸³ As regards public administration, it is sometimes difficult to ascertain – particularly at regional, national or sectoral level – which party is authorized to negotiate as employer. In some countries there are associations or federations of local authorities or confederations of public employers.

¹⁷⁷ See, for example, *Bangladesh* – CEACR, observation, 2011.

¹⁷⁸ *Hungary* – CEACR, observation, 2011. Trade unions have to represent 65 per cent of the workforce (for a single union), a threshold which can hardly be achieved under a plural trade union structure, in order to be able to participate in collective bargaining (section 33(5) of the Labour Code), amend or renegotiate the collective agreement (section 37(1) and (2) of the Labour Code). The Government has indicated that it would be ready to discuss an amendment of this provision.

¹⁷⁹ See General Survey, 2012, para. 235.

¹⁸⁰ *Guatemala* – CEACR, observation, 2002.

¹⁸¹ *Peru* – CEACR, observation, 2005.

¹⁸² *Serbia* – CEACR, observation, 2011 (section 222 of the Labour Act).

¹⁸³ *Montenegro* – CEACR, direct request, 2011 (article 161 of the Labour Act).

VIII. Autonomy of the parties to collective bargaining and the principle of non-interference

298. The Committee emphasizes that the overall aim of Conventions Nos 98, 151 and 154 is to promote collective bargaining aimed at reaching agreement on terms and conditions of employment that are more favourable than those already established (although concession bargaining has become more frequent, especially in light of the global economic crisis).¹⁸⁴ The duty to promote free and voluntary collective bargaining precludes interference by the public authorities, which are not party to collective bargaining aimed at reaching agreements or deciding on content. In general, interventions by the authorities which have the effect of cancelling, or modifying the content of collective agreements freely concluded by the social partners, or unilaterally extending their duration, would therefore be contrary to the principle of free and voluntary negotiation.¹⁸⁵ The detailed regulation of negotiations by law would also infringe the autonomy of the parties.¹⁸⁶ The Committee recalls that, in the context of the special modalities of collective bargaining in the public service, certain interventions by the public authorities in the bargaining process are admissible, as has already been indicated: for example, approval of collective agreements entailing amendment of the legal provisions on the status of civil servants, since the agreements may require Cabinet approval in order to take effect; or in the case of negotiation of clauses with economic and budgetary implications, which are examined below.

299. *Approval by the authorities.* One of the main restrictions on the principle of free and voluntary collective bargaining consists of the obligation to submit private sector collective agreements concluded and signed, for approval by the authorities for example, due to economic reasons. In the view of the Committee, such provisions are only compatible with Conventions Nos 98 and 154 when they are confined to stipulating that approval may be refused if the agreement has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation. The Committee wishes to point out that interventions by the legislative or administrative authorities which have the effect of cancelling or modifying the content of agreements freely concluded, including the content of wage clauses, are contrary to the principle of voluntary collective bargaining. Such interventions include the suspension or cancellation of collective agreements by decree without the consent of the parties, the interruption of agreements negotiated previously, the requirement to renegotiate agreements freely entered into, the cancellation of collective agreements and the forced renegotiation of agreements that are in force. Another type of intervention, such as the compulsory extension by law of the validity of collective agreements, is only admissible in times of crisis and for short periods.¹⁸⁷

¹⁸⁴ “Collective agreements” have force of law in many countries, while “direct agreements” do not always have this binding force.

¹⁸⁵ In this regard, it is interesting to note that judgments at the highest level have recognized collective bargaining rights for the public service (see, for example: *Demir and Bakara v. Turkey* – 34503/97 [2008] ECHR 1345 (12 Nov. 2008) – European Court of Human Rights; *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27 – Supreme Court of Canada).

¹⁸⁶ *Cuba* – CEACR, observation, 2010.

¹⁸⁷ However, in this regard, the Committee has noted with satisfaction the removal in *Argentina* (CEACR, observation, 2005) of provisions restricting free collective bargaining by requiring the approval of the Ministry of Labour for collective agreements which were broader in coverage than enterprise agreements; the repeal of a provision in *Singapore* (CEACR, observation, 2005) under the terms of which, in certain enterprises, the approval

300. With regard to the public service, however, for the reasons previously indicated, submission of the outcome of collective bargaining to an administrative or legislative body with a view to its incorporation into law or regulations is compatible with Conventions Nos 151 and 154. Moreover, while the Committee has on occasion considered that systems requiring parliamentary approval for certain conditions of employment or financial clauses of collective agreements in the public sector could be compatible with the Convention,¹⁸⁸ it considers that problems of compatibility with the Convention arise in relation to provisions requiring agreements to be negotiated in commissions appointed or controlled by the government.¹⁸⁹

301. *Taking the public interest into account.* While the discretionary power of the authorities to approve collective agreements is contrary to the principle of voluntary bargaining, the Committee recognizes that the public authorities may establish machinery for discussion and the exchange of views to encourage the parties to collective bargaining to take voluntary account of government, social and economic policy considerations and the protection of the public interest. In the event of dispute, the issue could, for example, be submitted for advice and recommendation to an appropriate joint body, provided that the final decision rests with the parties.¹⁹⁰

302. *Restructuring and privatization of enterprises.* As emphasized by the Global Jobs Pact, in order to “prevent a downward spiral in labour conditions and build the recovery, it is especially important” to emphasize “the effective recognition of the right to collective bargaining” as an enabling mechanism for “productive social dialogue in times of increased social tension, in both the formal and informal economies”.¹⁹¹ The Committee considers that the restructuring or privatization of an enterprise should not result automatically in the extinction of the obligations resulting from the collective agreement in force, and that the parties should be able to take a decision on this subject and to participate in such processes through collective bargaining.¹⁹² Furthermore, in the event of enterprise closure, the relevant clauses of agreements that are in force, particularly respecting benefits and compensation, should be respected.

303. *Intervention of higher-level organizations.* The interference, as set out in law, of higher-level organizations in the bargaining process undertaken by lower-level organizations is incompatible with the autonomy that must be enjoyed by the parties to bargaining.¹⁹³ The same applies to the requirement that organizations must be affiliated

of the competent minister had to be sought if the annual leave and sick leave benefits stipulated in the collective agreement were more favourable than those set out in law; the repeal in *Zimbabwe* (CEACR, observation, 2007) of provisions establishing a requirement for collective agreements to be submitted for ministerial approval in order to ensure that their provisions were equitable to consumers, to members of the public generally or to any other party to collective bargaining; the new legislation in the *United Republic of Tanzania* (CEACR, observation, 2005) which brings an end to the power of the Industrial Court to refuse the registration of a collective agreement if it is not in conformity with the Government’s economic policy; and the repeal in the *Syrian Arab Republic* (CEACR, observation, 2002) of the provision which allowed the authorities to refuse approval of a collective agreement or to quash any clause liable to harm the country’s economic interests.

¹⁸⁸ See, for example, *Philippines* – CEACR, observation, 2011.

¹⁸⁹ See, for example, *Bangladesh* – CEACR, observation, 2011 (section 3 of Act No. X of 1974 (fixing of wage rates and other conditions of employment of public servants)); and *Rwanda* – CEACR, observation, 2011 (section 121 of the Labour Code).

¹⁹⁰ General Survey, 2012, para. 203, and General Survey, 1994, paras 252–253.

¹⁹¹ *Recovering from the crisis: A Global Jobs Pact*, ILC, 98th Session, Geneva, 2009, para. 14(1)(ii).

¹⁹² *Armenia* – CEACR, direct request, 2010.

¹⁹³ *Egypt* – CEACR, observation, 2011.

with a national organization in order to be able to conclude sectoral and branch-level agreements.¹⁹⁴

304. *Excessive use of appeal of the constitutionality of collective agreement.* In the view of the Committee, while it is not only admissible but also important and necessary to ensure that there are no instances of breaches of fundamental constitutional rights in certain clauses of collective agreements (for example, if they establish wage discrimination on the basis of sex), collective bargaining, as an instrument of social peace, cannot be systematically and abusively subjected to judicial scrutiny as to constitutionality without losing its credibility and usefulness.¹⁹⁵ One instance of this problem arose in *Costa Rica*; developments in recent years have been positive, and collective agreement clauses are now no longer declared to be unconstitutional on a recurrent basis, but only rarely and only on specific clauses.

305. The Committee considers that a practice whereby the authorities systematically challenge the benefits awarded to public sector workers on the basis of considerations related to “rationality” or “proportionality” with a view to their cancellation by the courts (by reason, for example, of their cost deemed to be excessive) would seriously jeopardize the very institution of collective bargaining and weaken its role in the settlement of collective disputes. However, if the collective agreement contains provisions that are contrary to the minimum standards of protection established by the law or infringe on the management, organizational and supervisory authority reserved by law for the public administration, the judicial authority must be able to cancel them.

306. *General increase in wages in excess of the increases provided for in collective agreements.* In some cases submitted to the Committee on Freedom of Association, including by employers’ organizations, regarding laws establishing general wage increases in the private sector over and above those already agreed in the collective agreements, the Committee has established a number of principles.¹⁹⁶

¹⁹⁴ *Bulgaria* – CEACR, observation, 2011 (section 51(b)(1) and (2) of the Labour Code).

¹⁹⁵ *Costa Rica* – CEACR, observation, 2010.

¹⁹⁶ See Committee on Freedom of Association, 2006, op. cit., paras 881, 926, 1010, 1044 and 1045.

IX. Collective bargaining procedures

Collective Bargaining Convention, 1981 (No. 154)

Article 5

1. Measures adapted to national conditions shall be taken to promote collective bargaining.

2. The aims of the measures referred to in paragraph 1 of this Article shall be the following:

- (a) collective bargaining should be made possible for all employers and all groups of workers in the branches of activity covered by this Convention;
- (b) collective bargaining should be progressively extended to all matters covered by subparagraphs (a), (b) and (c) of Article 2 of this Convention;
- (c) the establishment of rules of procedure agreed between employers' and workers' organisations should be encouraged;
- (d) collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules;
- (e) bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining.

Article 7

Measures taken by public authorities to encourage and promote the development of collective bargaining shall be the subject of prior consultation and, whenever possible, agreement between public authorities and employers' and workers' organisations.

Article 8

The measures taken with a view to promoting collective bargaining shall not be so conceived or applied as to hamper the freedom of collective bargaining.

Collective Bargaining Recommendation, 1981 (No. 163)

6. Parties to collective bargaining should provide their respective negotiators with the necessary mandate to conduct and conclude negotiations, subject to any provisions for consultations within their respective organisations.

307. Article 5 of Convention No. 154 provides that measures adapted to national conditions shall be taken to promote collective bargaining and that the aims of these measures shall be, among others, that collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules and that the bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining (paragraph 2(d) and (e)). In addition, Article 5 of Convention No. 154 provides that the aims of measures taken to promote collective bargaining include encouraging "the establishment of rules of procedure agreed between employers' and workers' organisations". The Committee highlights the importance that this provision attaches to the autonomy of the parties to bargaining. Article 5 does not, however, prevent national legislation from establishing certain rules of procedure that should in any case be the subject of consultations with the most representative organizations.

308. In this regard, the Committee refers to national legal systems which provide that a collective agreement in the public administration must be approved in full by the parties at the end of the bargaining process, while others allow negotiating procedures to result in successive agreements on certain points (these laws provide that the administrative authority shall take appropriate measures with respect to the points on which agreement could not be reached). The Committee emphasizes that both systems are in conformity with Conventions Nos 151 and 154 in regard to the public administration. In some legal systems, collective bargaining is closely supervised by the administrative or judicial authority so that the parties are limited in the negotiating process. The Committee refers

to its principles with regard to dispute settlement, which stress the voluntary nature of these mechanisms (conciliation, mediation and arbitration) and the least possible intervention of the authorities in the negotiating process. In some legal systems, collective bargaining is still seen as a step which necessarily leads either to a collective agreement or to a strike; this is not satisfactory even from a strictly technical point of view. Furthermore, the Committee wishes to highlight the advantage of having legislation on collective bargaining in the public sector that is clear and easily understood by public employees, so that their representatives can manage the different stages of collective bargaining without calling in experts. It also points out that excessively numerous or complex rules of procedure may hinder the development of collective bargaining. The Committee also refers to the preparatory work for Convention No. 151, during which it was agreed “that the proposed Convention did not deal in one way or the other with the question of the right to strike”.¹⁹⁷

309. Many countries have specific legislation or provisions on the right to collective bargaining in the public administration (for example, Argentina, Portugal, Spain). In this regard, a recent law that has the merit of being short and of containing a minimum of references to the state budget is Decree No. 1092 of 24 May 2012 of *Colombia*, which is reproduced below.

Decree No. 1092 (Colombia)

The President of the Republic of Colombia,
In the exercise of his constitutional and legal powers, especially those conferred by article 189, paragraph 11, of the Political Constitution,

Whereas:

International Labour Organization (ILO) Convention No. 151 was approved by Act No. 411 of 1997, article 7 of which states the need to adopt “measures appropriate to national conditions to encourage and promote the full development and utilization of machinery for negotiation between the public authorities concerned and public employees' organizations”;

Article 8 of the same law provides, moreover, that the settlement of disputes relating to conditions of employment “shall be sought, as may be appropriate to national conditions, through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration”;

Act No. 4 of 1992 provides for consultation as a factor in the improvement of service delivery by the State and of working conditions;

DECREES:

Article 1. Purpose

The purpose of this Decree is to regulate the conditions and procedures for negotiations between trade unions of public employees and public entities in determining the terms and conditions of employment of public employees of public entities at the national, departmental, district and municipal levels, supervisory bodies, the Electoral Organization, and autonomous and independent bodies.

Article 2. Scope

This Decree applies to public employees of all public sector entities and organizations, with the exception of high-level employees occupying institutional management, leadership and guidance positions involving the adoption of policies and guidelines.

¹⁹⁷ International Labour Conference (ILC), 64th Session, 1978, *Record of Proceedings*, p. 25/9, report of the Committee on the Public Service, para. 62. Concerning the question of the right to strike and Convention No. 154, during the preparatory work for that Convention, in 1980, an amendment was proposed by the Worker members and subamended by the Government member of Italy, adding the following: “The right to strike should not be affected by any measure taken by the public authorities with a view to promoting collective bargaining.” However, it was rejected following a record vote requested by the Employers’ members (see ILC, 66th Session, 1980, *Record of Proceedings*, p. 41/9, report of the Committee on Collective Bargaining, para. 66).

This Decree does not apply to uniformed personnel of the armed forces and the national police.

Article 3

For the purposes of this Decree, the terms below shall be understood as follows:

Respect for constitutional and legal authority: Negotiations must respect the exclusive powers conferred by the Constitution and the law on public authorities.

Public employee: Anyone employed in the public administration through a legal and statutory relationship.

Public employees' union: A trade union organization that promotes and defends the interests of public employees covered by this Decree.

Mediator: A person who brings the parties together to seek agreement in the negotiating process. The proposals made by the mediator to the parties must respect the exclusive powers conferred by the Constitution and the law on public authorities, in accordance with paragraph 1 of this article.

Terms and conditions of employment: Matters relating to the labour relations that are the subject of negotiations with the unions.

Negotiation of the list of demands: The negotiating process between representatives of trade unions and the employer, aimed at determining terms and conditions of employment and regulating relations between the public administration and the public employees' unions, which are subject to consultation in accordance with this Decree.

Scope of negotiation: Negotiations on working conditions shall exclude matters not related to work, such as organizational structure, staffing, managerial powers, state administration and supervision, administrative procedures, the public administration, and disciplinary rules. Wages may be subject to consultation. Without prejudice to the foregoing, at the territorial level, the limits set by the national Government shall be respected.

Entities are not entitled to engage in consultation on benefits.

Article 4. Guarantees of trade union immunity and union leave

Under article 39 of the Political Constitution, Act No. 584 of 2000 and Decree No. 2813 of 2000, public employees covered by this Decree shall, during the collective bargaining process, enjoy guarantees of trade union immunity and union leave in accordance with the relevant legal provisions in force.

Article 5. Conditions for negotiation of the list of demands

Negotiation of the list of demands is subject to the following requirements:

The trade union organization representing public employees must be validly registered in the trade union register of the Ministry of Labour;

The demands must be adopted by the union's general assembly;

The employer public entity shall take account of the need to secure budget availability if expenditure is generated on matters subject to negotiation;

The lists of demands must be presented in the first quarter of each calendar year.

Article 6. Parameters for negotiation

Negotiation of the list of demands shall take place as follows:

Negotiations must take place within the framework of this Decree.

Negotiations may be conducted by the union or jointly by several unions, with one or more entities, but in no case may there be more than one negotiation process in each entity.

Each of the parties shall have an equal number of representatives.

The employer may negotiate only on matters within its remit.

Article 7. Negotiating procedure

Negotiation of the list of demands shall take place between the public entity and the trade union federations and/or trade unions representing public employees in accordance with the following procedure:

1. *Appointment of negotiators.* The organization representing public employees shall appoint its negotiators at a membership meeting. Upon receiving the trade union's list of demands, the employer shall appoint its representatives within five (5) working days following the presentation of the list.

2. *Initiation and duration.* Discussion of the list of demands shall begin within five (5) working days following the appointment of the negotiators. Negotiations shall take place over a period of twenty (20) working days, renewable by agreement between the parties for up to ten (10) more working days.

3. When the list of demands includes financial items relating to matters subject to negotiation, in accordance with article 3(7) of this Decree, the discussion shall take into account the need to secure budget availability, as provided in article 5(3) of this Decree.

4. If, during negotiations, issues remain outstanding, the parties may select a mediator from a single national list of mediators prepared by the Ministry of Labour, after verbal consultation, acceptance by the mediator, and the latter's entry into his or her duties within two working days, so that the mediator may, within ten working days, submit proposals to the parties aimed at bringing them to agreement on the negotiations; if agreement cannot be reached based on the proposals put forward by the mediator, the latter shall submit written recommendations to the public entity.

5. *Close of negotiations.* Once the negotiation stage is over, the parties shall draw up a final record indicating the points of agreement and disagreement; this record shall also contain the arguments presented by each of the parties during negotiations. The employer, based on the final record signed by the parties, shall take the necessary administrative decisions or give reasons for its rejection of the demands, within a period not exceeding 15 working days from the date on which the final record is signed.

6. *Registration.* A copy of the record referred to in the preceding paragraph shall be sent to the Ministry of Labour, which shall register it.

Article 8. Awareness-raising programme

The national Government, through the Ministry of Labour, in coordination with the trade union confederations, shall, within six (6) months following the promulgation of this Decree, carry out an awareness-raising programme consisting of television and radio broadcasts, publication of a document, and national and regional seminars, to provide background information and as a prerequisite for the implementation of this Decree.

310. *Costa Rica's Regulations on the negotiation of collective agreements in the public sector* provide another relatively short example of procedure.

Regulations on the negotiation of collective agreements in the public sector (Costa Rica)

Negotiating procedure

Article 8

Once the negotiating authority of the trade union organization or organizations has been established and a proposed collective agreement has been formally presented to each institution or agency, the committee representing the employer, as referred to in article 6 above, shall be appointed and authorized. The period allowed for making such appointment shall not exceed 15 calendar days from the date on which the requirements referred to in this article are met.

The trade unions shall, within the same period, appoint their representatives, whose number shall not exceed that of the employer delegation, unless several trade union organizations are involved, in which case each trade union shall have a maximum of three representatives and one adviser.

Where several trade union organizations are involved in the bargaining process, and each of them has presented its own proposed collective agreement, they shall be asked to prepare a joint proposal before negotiations begin. If, within one calendar month from the date on which notice is given to them by the head of the institution or enterprise concerned, they have not complied with the requirement set forth herein, negotiations shall take place with the majority union, without prejudice to individual negotiations with the other unions.

It is understood that any party to the negotiations, or both parties together, may seek the good offices of one or more officials of the Ministry of Labour and Social Security; such request shall not be binding on the Ministry if it lacks sufficient resources to carry out the negotiations.

Article 9

Negotiations shall cover all aspects of the proposal submitted to the administration. A record of each working session shall be drawn up and signed by the representatives of both parties.

Article 10

In addition to the individual records of each session, at the end of the negotiating process, a closing document shall be drawn up, containing the full text of the clauses that were negotiated and indicating which clauses of the proposal were rejected or could not be negotiated owing to lack of agreement on them.

Article 11

The outcome which is finally approved by the negotiating committee shall constitute a valid agreement between the parties and shall remain in force for one to three years, as determined by the parties. A copy of the final outcome of the negotiations shall be sent to the Directorate-General of Labour Affairs of the Ministry of Labour for registration and deposit. The parties may indicate the period of validity of each clause individually or of the entire collective agreement.

311. Another example of regulations of collective bargaining in the public administration can be found in *Uruguay* in a succinct Decree (104/05) that was later developed into a more elaborate piece of legislation (Act No. 18.508 of 2009).

X. Content of collective bargaining and progressive application

Collective Bargaining Convention, 1981 (No. 154)

Article 2

For the purpose of this Convention the term “collective bargaining” extends to all negotiations which take place between an employer, a group of employers or one or more employers’ organizations, on the one hand, and one or more workers’ organizations, on the other, for –

- (a) determining working conditions and terms of employment; and/or
- (b) regulating relations between employers and workers; and/or
- (c) regulating relations between employers or their organizations and a workers’ organization or workers’ organizations.

Article 5

1. Measures adapted to national conditions shall be taken to promote collective bargaining.

2. The aims of the measures referred to in paragraph 1 of this Article shall be the following:

- (a) collective bargaining should be made possible for all employers and all groups of workers in the branches of activity covered by this Convention;
- (b) collective bargaining should be progressively extended to all matters covered by subparagraphs (a), (b) and (c) of Article 2 of this Convention;
- (c) the establishment of rules of procedure agreed between employers’ and workers’ organizations should be encouraged;
- (d) collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules;
- (e) bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining.

312. The ILO instruments (Conventions Nos 98, 151 and 154 and Recommendation No. 91) focus the content of collective bargaining on terms and conditions of work and employment, and on the regulation of relations between employers and workers and between employers or their organizations and workers’ organizations.

313. The Committee recalls that Conventions Nos 151 and 154 may be applied by various methods, including through collective agreements that regulate the bargaining procedures and matters for negotiation. This variety of methods justifies in particular the right granted to States to *progressively* apply the subjects of collective bargaining referred to in Article 2 of Convention No. 154. A memorandum of the International Labour Office on requests for clarification concerning Convention No. 154 mentions that Article 5, paragraph 1, of the Convention imposes on ratifying States the obligation to “promote” collective bargaining. According to the memorandum, the general view at the Conference appears to have been that the obligation to “promote” collective bargaining leaves the possibility open for ratifying States to introduce collective bargaining gradually, beginning, if necessary, with measures which do not as yet constitute genuine collective bargaining. However, the Convention requires further measures for the promotion of collective bargaining to be taken in due course. According to Article 5, paragraph 1, these measures should be adapted to national conditions. Article 5, paragraph 2, specifies what the aims of such measures should be.¹⁹⁸ Ratification of Convention No. 154 can lead to the adoption of mechanisms to promote collective

¹⁹⁸ *Official Bulletin*, Vol. LXVII, 1984, Series A, No. 1, para. 6.

bargaining, at least in certain areas, so as to gradually extend it within a reasonable time to all areas (terms and conditions of employment, relations between the parties, etc.).

314. The determination of matters subject to negotiation and of their scope and content is not a simple matter, because it depends on what is meant by terms and conditions of work and employment and the relations between the parties. During the preparatory work for Convention No. 154, within the Committee on Collective Bargaining, the Worker members subamended an amendment which they had submitted concerning the aim of collective bargaining by removing the reference to “conditions of life” and “social measures of all kinds” and replacing it with the words “determining working conditions and terms of employment”. They asked, however, that the Committee confirm the interpretation of the term “working conditions and terms of employment” which had already been given in 1951 and according to which “the parties are entirely free to determine, within the limits of law and public order, the content of their agreements and consequently also to agree to clauses dealing with all conditions of work and of life, including social measures of any kind”.¹⁹⁹ The amendment, as subamended, was adopted and the Committee agreed to confirm the above interpretation.²⁰⁰ The concept of working conditions used by the supervisory bodies, which is in keeping with this interpretation, encompasses not only traditional working conditions (working day,²⁰¹ overtime, rest, wages, etc.), but also includes other matters (for example, “those that are normally included in the field of terms and conditions of employment”, such as promotion, transfer, dismissal without notice, etc.).²⁰² This is consistent with the current tendency for countries to recognize “managerial” collective bargaining concerning procedures to resolve problems such as restructuring, staff cuts, schedule changes, relocation and other matters that go beyond the scope of terms and conditions of employment strictly speaking.

315. In the opinion of the Committee of Experts, “measures taken unilaterally by the authorities to restrict the range of subjects that may be negotiable are often incompatible with the Convention”.²⁰³ That said, although the range, scope and content of subjects that can be negotiated are very wide, they are not unlimited, as they must be specifically related to conditions of work and employment, or in other words, matters which are “primarily or essentially questions relating to conditions of employment”. Moreover, the Committee considers it acceptable to exclude from negotiable issues the employer’s managerial prerogatives, such as assignments and recruitment,²⁰⁴ and to prohibit certain content in legislation for reasons of public policy, for example discriminatory clauses, union security clauses, or clauses contrary to the minimum level of protection provided for by law. The Committee on Freedom of Association considered that “matters which clearly appertain primarily or essentially to the management of government business” can reasonably be considered as outside the scope of bargaining.²⁰⁵ In a case concerning

¹⁹⁹ International Labour Office, *Industrial Relations*, Report V(2), International Labour Conference (ILC), 34th Session, 1951, p. 51.

²⁰⁰ See ILC, *Record of Proceedings*, 1981, pp. 22/5–6.

²⁰¹ For example, according to the Committee of Experts, it should be possible, through collective agreements, to have a working day of shorter duration than that which is provided by law (see Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), 1998).

²⁰² General Survey, 2012, paras 215–217, and General Survey, 1994, para. 250.

²⁰³ *ibid.*, para. 250.

²⁰⁴ See ILC, 86th Session, 1998, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) p. 276.

²⁰⁵ See Committee on Freedom of Association, *Digest*, 2006, op. cit., para. 920.

negotiable issues in the public education sector, the Committee on Freedom of Association considered, for example, that “determining the broad lines of educational policy”, although it is a matter on which it may be normal to consult the teachers’ organizations, does not lend itself to collective bargaining between these organizations and the authorities concerned, but that “collective bargaining on the consequences on conditions of employment of decisions on educational policy” should be possible.²⁰⁶

316. In terms of negotiable issues concerning relations between the parties, which are mentioned in Convention No. 154 as a subject of collective bargaining, it should be recalled that the Workers’ Representatives Convention, 1971 (No. 135), (mentioned in Recommendation No. 159, Paragraph 4) and its accompanying Recommendation No. 143 provide for protective measures for workers’ representatives and for facilities to be granted to them either by collective agreements or by other means (this issue is covered in greater detail in the chapter on facilities to be granted to workers’ representatives).

317. The Committee points out that relations between the parties as a subject of negotiation include not only trade union guarantees and facilities, but also all forms of consultation, communication and cooperation between the parties and the means they use for settling disputes (joint bodies, access to management, facilities granted to union representatives, consultations, rules on dispute prevention and settlement, etc.). In practice, although traditional conditions of work and employment remain the principal subjects dealt with by most collective agreements, the range of issues addressed has gradually expanded in many countries to reflect developments in industrial relations. Collective agreements deal increasingly often with matters such as recruitment levels, safety and health, restructuring processes (early retirement, downsizing, etc.), training, discrimination, etc. In some cases, collective agreements are also used to obtain arrangements for the benefit of workers, particularly in terms of their welfare (company stores, loan agreements, housing assistance, etc.).²⁰⁷

318. The Committee notes that, increasingly frequently, collective agreements introduce new content: protection of fundamental rights and individual privacy, dignity at work, gender and parity issues, anti-harassment measures, protection of the workplace, family responsibilities, maternity, prevention of occupational risks, etc. In practice, the Committee has considered that issues relating to transfer, dismissal and reinstatement must, if the parties so agree, be subject to negotiations and could not be determined solely by law,²⁰⁸ and that the same applied to issues relating to the check-off of union dues and other facilities for union representatives.²⁰⁹ Tripartite discussions to develop voluntary guidelines on the matter are, in the Committee’s view, a particularly appropriate method.²¹⁰ In some countries, in addition to matters related to employment, collective bargaining covers flexible work arrangements (geographical or functional mobility such as workday accounts, telecommuting, etc.).

²⁰⁶ See Committee on Freedom of Association, Report No. 311, Case No. 1951 (*Canada*), para. 220.

²⁰⁷ In the United States, for example, in addition to non-discrimination clauses, many collective agreements call for final and binding arbitration of workplace grievances by a neutral third party, the production of information by signatory employers and unions to be shared among the parties, to facilitate subsequent collective bargaining efforts, and the payment of wages by employers to bargaining units employees for time performing “official duties” in support of rights under the collective agreement.

²⁰⁸ See, for example, *Malaysia* – CEACR, observation, 2010 (concerning section 13(3) of the Industrial Relations Act 1967).

²⁰⁹ *Congo* – CEACR, direct request, 2011.

²¹⁰ General Survey, 2012, para. 215, and General Survey, 1994, para. 250.

319. Moreover, it is observed that in some countries, beyond the regulation of employment conditions, collective bargaining is increasingly used, especially in times of crisis, as a means of achieving greater efficiency and better management of the enterprise or public institution. This development tends to reconcile the search for better employment conditions with the degree of efficiency and competitiveness that the business or bargaining unit needs in order to be sustainable in the face of fiscal or related challenges. Unions in the public sector have been prepared to accept adjustments in conditions when the public employer demonstrates severe straits; this reflects a mutual commitment to share economic responsibility and address political reality.

320. The Committee recalls that, in the context of public administration, matters for negotiation cover all terms and conditions of employment and relations between the parties. However, in general, the Committee emphasizes the importance of expanding the content of collective bargaining in many countries, and of ensuring that it is not limited to addressing mainly wage issues, as is still too often the case. In the Committee's opinion, it is in the interests of both workers and employers to negotiate together, if they so wish, other aspects of industrial relations, including matters relating to fundamental rights at work, equal remuneration for work of equal value, maternity protection, training, career advancement, dispute prevention and settlement, anti-discrimination measures, harassment issues, reconciliation of work and family life, etc., and, in the context of public administration, any measure shared by the parties which is likely to improve the functioning of public institutions and the application of principles of public governance of democratic States.

321. The Committee considers it useful to illustrate the above with some examples of collective bargaining content in national legislation. In *Uruguay*, Act No. 18.508 on public administration provides, in section 4, for the following content:

Act No. 18.508 (Uruguay)

**Section 4
Collective bargaining**

Collective bargaining in the public sector takes place, on the one hand, between one or more public agencies or one or more organizations representing them, and, on the other hand, between one or more organizations representing public servants, with the aim of reaching agreements covering:

- (a) working conditions and occupational health and hygiene;
- (b) the development and planning of professional training for public servants;
- (c) the administrative career structure;
- (d) the system of state management reform; the requirements of efficiency, effectiveness, quality and professionalism;
- (e) relations between employers and public servants;
- (f) relations between one or more public agencies and the public servants' organization or organizations, and all matters on the agenda for negotiation that has been agreed on by the parties.

The parties are obliged to negotiate; this does not impose an obligation to reach agreements.

322. In *Costa Rica*, the Regulations on the negotiation of collective agreements in the public sector provide for the following matters for negotiation:

**Regulations on the negotiation of collective agreements
in the public sector (Costa Rica)**

Matters subject to negotiation

Section 3

The following matters shall be subject to negotiation:

- (a) Trade union rights and guarantees both for union leaders and for trade unions themselves as legal entities of indefinite duration. These rights and guarantees include freedom of assembly, facilities for the use of premises, paid and unpaid union leave, facilities for publicizing activities, and any other particulars contained in ILO Recommendation No. 143 or in the specific recommendations of the ILO Committee on Freedom of Association.
It is understood that the application of the guarantees mentioned herein shall not seriously or imprudently impair the efficient operation and continuity of the essential services provided by each institution or agency.
- (b) All matters concerning the application, interpretation and regulation of the collective agreement.
- (c) The application of disciplinary measures, provided that there is no express or tacit waiver of the legal or regulatory powers conferred in this regard on the heads of each institution or agency.
- (d) Supervision of the administration of the hiring, promotion and career systems, without prejudice to any laws and regulations that may exist in each institution or agency, compliance with which shall be mandatory.
- (e) The internal development of job description manuals, and the implementation of internal procedures for the assignment, reassignment, retraining and restructuring of posts within the limits set by the general guidelines of the budgetary authority, the rules of the Public Service Statute, and its regulations or other statutes. It is understood that any agreements made in this field that do not expressly contravene the general guidelines of the said authority or the provisions of these regulations may in no case be contested by that authority.
- (f) Occupational safety, hygiene and health, and precautionary measures in the event of natural disasters. Trade unions and the heads of each institution or agency may establish bipartite and joint bodies to determine the needs of the institutions or agencies and of their workers in the field of occupational safety and health.
- (g) Procedures and policies for awarding scholarships and work incentives.
- (h) The establishment of incentive-based compensation for productivity, provided that it is within the framework of the policies adopted by the governing body of each entity or by the executive branch in terms of general aims and public spending limits.
- (i) Matters relating to the granting, calculation and payment of all types of salary bonuses, such as full-time, availability, mobility, zoning, and hazard bonuses, etc., provided that the negotiations abide by the general framework of the laws, the regulations issued by the executive branch, and the general guidelines of the budgetary authority in these matters.
- (j) The establishment and operation of bipartite and joint bodies, provided that the public law powers of the heads of institutions, as defined by law or regulations, are not delegated to any of these bodies.
- (k) The right of workers and their organizations to have timely and accurate information about the plans and decisions of corporate bodies and of the management of each institution or agency, when these directly affect them or when they may be of public interest.
- (l) The right of workers' organizations and their leaders to have their requests responded to and acted upon as soon as possible by the heads of each institution or agency, with the exception of requests that are blatantly irrelevant or unnecessary.
- (m) Additional matters, benefits or incentives that do not exceed the purview of the administrative body signing the collective agreement.

323. One example of legislation that is quite broad in terms of the matters for negotiation mentioned in Conventions Nos 151 and 154 for public administration is Act No. 7 of 2007 of *Spain* (the Basic Public Employee Statute), section 37 of which, reproduced below, draws a distinction between matters which are subject to negotiation and those which are not:

Act No. 7 of 2007 (Spain)
Matters subject to negotiation

Section 37

1. The following matters shall be negotiated in their respective fields, in relation to the responsibilities of each public administration and to the extent provided by law in each case:

- (a) Application of the increase in remuneration of the staff of the public administrations stipulated in the Budget Law of the State and Autonomous Communities.
- (b) The determination and application of additional benefits for public servants.
- (c) Rules establishing the general criteria for hiring, promotion, management of vacancies, job classification systems, and human resources planning.
- (d) Rules establishing the general criteria and mechanisms for performance evaluation.
- (e) Supplementary social security plans.
- (f) General criteria for planning and financing internal training and promotion.
- (g) General criteria for determining the social security benefits and pensions of government retirees and pensioners.
- (h) Proposals concerning trade union rights and participation.
- (i) General criteria for social welfare.
- (j) Matters stipulated in the regulations on occupational risk prevention.
- (k) Matters affecting the working conditions and remuneration of officials, the regulation of which requires a provision having the force of law.
- (l) General criteria for public employment offers.
- (m) Matters concerning working time, hours, leave, functional and geographical mobility, and the general criteria for strategic human resources planning in those areas which affect the working conditions of public employees.

2. The following matters shall be excluded from compulsory negotiation:

- (a) Decisions of public administrations that affect their organizational powers. When the consequences of the decisions of public administrations that affect their organizational powers have an impact on the working conditions of the public servants referred to in the previous section, such conditions shall be negotiated with the trade unions referred to in this Statute.
- (b) Regulation of the exercise of the rights of citizens and of users of public services, and the procedure for drafting administrative acts and provisions.
- (c) Determination of the working conditions of managerial staff.
- (d) Powers of direction and supervision characteristic of the hierarchical relationship.
- (e) Regulation and determination in each case of the systems, criteria, bodies and procedures for access to public employment and career advancement.

XI. Collective bargaining on public employees' remuneration and the state budget

324. The Committee emphasizes that under Convention No. 154, which covers terms and conditions of employment as a whole, public employees should be able to negotiate wages collectively (mere consultation of the unions concerned, which would be allowed only under Convention No. 151, since it affords member States the choice between collective bargaining and other methods of determining public employees' terms and conditions of employment, is not sufficient – after a certain time has passed since the ratification – to meet the requirements of Convention No. 154 in this respect).²¹¹ However, the special characteristics of the public service justify a certain degree of flexibility in collective bargaining on wages, for instance, in view of the complexity of the budgetary procedure, where the state authorities must take economic constraints into account and reconcile various different interests – including those of trade union organizations – taking into account and within the possibilities of prevailing economic and social conditions.

325. Collective bargaining on public employees' remuneration currently takes place in almost all countries in Europe, and the Americas, in a considerable number of African countries and in some countries in Asia and Oceania. While some States exclude wages from the scope of collective bargaining in the public service,²¹² the Committee has welcomed the progress achieved in others, including *Kiribati*,²¹³ *The former Yugoslav Republic of Macedonia*²¹⁴ and *Mauritius*.²¹⁵

326. The Committee observes that, in general, the majority of governments indicate, in their reports submitted under article 19 of the ILO Constitution, that collective bargaining in the public service is limited by the obligation on the State as employer to abide by the budgetary constraints imposed by law on the state budget. Several governments specifically indicate that wages and certain other benefits are excluded from the scope of collective bargaining in the public service. For example, the Government of the *Philippines* states that Rule XII, section 3, of Public Sector Labor–Management Council Resolution No. 2 of 2004 stipulates that salary increases, allowances, travel expenses and other benefits that are specifically provided by law are not negotiable. The Government of *Romania* indicates that, under section 138 of Act No. 62/2011 and the Public Servants Regulations, wages and other related entitlements are not subject to collective bargaining; it specifies that wage entitlements can be negotiated, under certain conditions, within the limits of the budget approved by the institution concerned. The Government of *Serbia* states that wages are excluded from collective bargaining in the public service and in government bodies, while other benefits are open to collective bargaining. The Government of the *United States* indicates that the wage rates of most federal executive branch employees are determined by federal law and are therefore not subject to collective bargaining.

327. In general, public spending – including public employees' remuneration, whether or not it is determined through collective bargaining – requires prior approval by the

²¹¹ See, for example, *Bangladesh* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2009.

²¹² See, for example, *Burundi* – CEACR, observation, 2011; *Philippines* – CEACR, observation 2011; and *Romania* – CEACR, observation, 2011.

²¹³ *Kiribati* – CEACR, observation, 2011.

²¹⁴ *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2005.

²¹⁵ *Mauritius* – CEACR, observation, 2011.

legislative assembly of the relevant sections of the draft state budget submitted by the government. The same principle of prior approval by the competent authorities applies to federal States or territorial corporations. Preparation of the state budget is an extraordinarily complex exercise which requires a high level of coordination among government bodies to establish overall criteria, priorities and objectives, as well as to analyse expected expenditure and allocations based on economic data and forecasts (revenues, inflation, growth rate, interest rates, level of indebtedness, etc.), while taking the preferences of the population into account. Political parties, local authorities and various organizations and interest groups have an influence on this procedure. Accordingly, during the collective bargaining process, it may happen that public administration representatives adjust their initial positions on overall wage increases for the budgetary period to take account of calculations, economic forecasts and consultations with other authorities or the actions of other stakeholders.

328. In countries with a parliamentary system, the adoption of the draft budget submitted by the government to the legislative assembly is contingent on the degree of political cohesion within the government, and the situation may thus change depending on whether the governing political party holds the majority in the legislative body, or whether it is a coalition or minority government. In other words, the success of the vote depends on the respective weight of the executive and legislative powers and, in bicameral systems, of the powers of the legislative chambers. Depending on the country and the context, the legislative assembly (whose committees meet with public employees' organizations in a number of countries) may make minor or substantial amendments or may be unable to adopt the budget, which in certain countries can lead to new legislative elections. The budgets adopted may have different degrees of flexibility allowing the transfer of funds between different programmes and may provide for unforeseeable expenses or extraordinary funding on which subsequent votes must be held.

329. Normally, collective bargaining on public employees' remuneration is separate from bargaining on other terms and conditions of employment, which often involves different public bodies, and may or may not take place every year, depending on the length of national budgetary periods (annual in some States and multi-annual in others). Depending on the country, collective bargaining is held before or after the adoption of the budget by the legislative assembly.

330. For example, in *Costa Rica*, bargaining on wages takes place twice a year in the Bargaining Committee for Public Sector Wages. The negotiation of other terms and conditions of employment, including those with economic implications, is governed by specific regulations on the bargaining rights, of the most representative trade unions in terms of members, on the one hand and of each public institution or body on the other, with bargaining by occupational category also being permitted in certain cases. These negotiations on non-wage clauses, including those with economic implications, are supervised by a committee on collective bargaining policy in the public sector.

331. Some countries provide for the possibility of introducing subsequent wage adjustments in the budget in the event of inflation or in other situations. In some countries, collective bargaining on wages is centralized (sometimes applying the rule of setting an overall wage increase percentage for all public service employees); in such cases, representatives of several ministries and autonomous bodies represent the public administration on the bargaining committees. In other countries, collective bargaining takes place in each ministerial department or public institution. In still others, bargaining is carried out at both the central and the sectoral or public institution levels.

332. Lastly, some countries have mechanisms in place to preserve purchasing power as far as possible or, especially in industrialized countries, to ensure consistency with private sector wages. Others apply mechanisms whereby wage increases are based on productivity. Moreover, it should be noted that in many countries the bodies with economic or budgetary authority are required to issue reports or recommendations on the scope for wage increases as part of the collective bargaining process at the central or sectoral level, or in each public institution. Representatives of these budgetary bodies may sometimes be called upon to participate in collective bargaining, alongside the employer, directly or indirectly (through written recommendations) – a practice which is often strongly criticized by trade unions. Governments highlight the many underlying constraints in budgetary procedures and the need to reconcile wide-ranging interests.

333. The Committee draws attention to the fact that Conventions Nos 151 and 154 are compatible with systems where the collective bargaining concerning public employees is carried out either before or after the approval of state budgets. The Committee notes that, in general, legislative assemblies do not amend the budgetary items concerning the wages of public employees' wages, and that the Committee on Freedom of Association has, so far, not received any complaint in this regard.

334. The Committee considers that legislative provisions that allow the competent budgetary authority to set upper and lower limits for wage negotiations or to establish an overall "budgetary package", within which the parties may negotiate monetary or standard-setting clauses, are compatible with the Conventions. Provisions that give financial authorities the right to participate in collective bargaining alongside the direct employer are also compatible with the Convention, provided that they give collective bargaining a significant role. It is essential, however, for workers and their organizations to be able to participate fully in designing this overall framework, which implies in particular that they must have access to all the financial, budgetary and other data required, in a transparent manner.²¹⁶ The Committee emphasizes that this role of the financial and budgetary authorities must be carried out in good faith within a framework of constructive dialogue in which the views of the trade union organizations are taken into account.

335. The Committee also draws attention to the fact that, for collective bargaining on public employees' wages to work properly, the inflation and growth forecasts of the government bodies that prepare the state budget must be drawn up using objective and transparent mechanisms that are trusted by the population and by the trade unions, thereby excluding "creative accountancy" and deliberately pessimistic or optimistic calculations motivated by political opportunism, which indirectly hinder the proper exercise of the right to collective bargaining. Successive economic crises have highlighted the need for competent independent bodies to determine and verify fundamental economic data and, in particular, macroeconomic figures, including the real level of public deficit.

336. The Committee stresses that, when the public authorities and the trade union organizations conclude a collective agreement on wage increases in the public administration or other clauses with budgetary implications, it is essential that the legislative assembly ratifies the outcome of collective bargaining. The Committee also highlights the importance of this culture of respect of collective agreements within legislative assemblies, including in cases where the government does not hold the majority in Parliament, and that it is acceptable and, in certain cases, very useful for

²¹⁶ General Survey, 2012, para. 219, and General Survey, 1994, para. 263.

parliamentary committees or their members to be involved, formally or informally, in the negotiation or consultation process, under the special modalities of collective bargaining in the public service, in order to ensure that the legislative assembly abides by the collective agreements adopted.

337. *Intervention of international or regional bodies in times of crisis.* In this regard, the Committee wishes to point out that some of these situations have been brought to the attention of the ILO supervisory bodies. In some countries, collective bargaining in the public administration and in the public sector in general is shaped by the requirements of international or regional bodies. Firstly, this is the case of processes of economic and political integration between States (for example, membership of the European Union (EU) or of its monetary union)²¹⁷ and secondly, of lending conditions imposed on States by international financial institutions such as the International Monetary Fund (IMF) or the World Bank and, in the EU, the European Central Bank, for the approval of loans to States. The conditions of these loans often have repercussions on many aspects of the public sector, including public employees' wages, thereby affecting collective bargaining on economic clauses in the state administration. The second point will be covered in the chapter dealing with economic stabilization policies and economic crises.

338. The Committee notes that governments often highlight the fact that a high public deficit can mean that it is difficult for the State to obtain loans from the private sector, or that it can do so only at very high interest rates, which can lead to severe sovereign debt crises, as has occurred since 2007 in a number of European countries, and was also the case, a few decades ago, in many Latin American countries. Some governments have also indicated that, in the past, crisis situations often led to inflation rates which were particularly detrimental for workers.

339. The Committee considers that where States freely and democratically join regional bodies, within a regional integration process, the regulations on public deficit and debt thresholds – which, in practice, indirectly restrict the level of wage increases through collective bargaining in public administration – are not, in principle, incompatible with the provisions of Conventions Nos 151 and 154 provided that these regulations are adopted after intensive discussions and consultations with the parties concerned. Lastly, the Committee recalls that any dispute between the parties regarding wages can be submitted to the different dispute settlement mechanisms referred to in Article 8 of Convention No. 151.

²¹⁷ The Committee, for example, notes that under the accession requirements of the European Union Stability and Growth Pact (1997), Member States must have a public deficit below 3 per cent of GDP and their debt must not exceed 60 per cent of GDP.

XII. Collective bargaining and the economic crisis

340. In the ILO Conventions on collective bargaining, there are no provisions covering possible conflicts between the specific interests of the parties and the general interest of the population. This omission was deliberate, rather than a result of negligence²¹⁸ and has to do with the difficulty of giving a precise definition of “the general interest”. In practice, in situations of extremely serious economic or other grave crises that have occurred over recent decades in several continents (such as situations of war or in the subsequent periods of economic reconstruction or cases of natural disaster) or in order to combat inflation, achieve a balance of payments or combat unemployment or other economic objectives, governments have resorted to wages and incomes policies with a view to achieving a correlation between general rates of wages and incomes and general productivity levels so as to avoid the impact of wage increases on prices. These have been implemented through measures to cut or freeze wages or confine rises to certain limits, and have included mechanisms requiring the approval, modification or annulment of collective agreements that are in force, under the asserted justification of the substantial proportion of state expenditure accounted for by the wages of employees in the public service and the public sector in general and the enormous volume of wages in the private sector in relation to the total income of the country. Depending on the country, the measures taken to pursue these policies may or may not have been adopted with the agreement of employers’ and workers’ organizations, which are sometimes consulted or included in commissions responsible for developing the policies. The measures adopted may or may not include price freezes and guaranteed minimum wage levels for the least well-paid workers.

341. In some cases, legislation makes, in general terms, wage increases subject to productivity or prohibits outright the indexation of wages to the cost of living thus restricting collective bargaining rights. While taking full account of the serious financial and budgetary difficulties facing governments at times, the Committee considers that the authorities should give preference as far as possible to collective bargaining in determining the conditions of employment of public servants. Moreover, it considers that the compulsory extension of the validity of collective agreements by law is only

²¹⁸ During the preparatory work for Convention No. 154 on collective bargaining, a Government member submitted an amendment designed to reconcile the specific interests of the parties with the general interest. The discussion and its outcome were as follows: “The Government member noted that this issue had been discussed by the Committee last year and that there was widespread recognition of the need to bring about a reconciliation between the general interest and the specific interests of the parties, since, for example, there could be instances where the results of collective bargaining might conflict with national economic objectives. Even though the concept of the general interest did give rise to problems of definition, it was still essential to recognise it. Moreover, he felt that the required reconciliation could be achieved without prejudice to collective bargaining and the basic interests of the parties since there were adequate safeguards for their autonomy and for the principle of freedom of association in this and other instruments and the text itself provided for prior consultations. The proposed amendment was supported by certain Government members who thought that it was in line with the development plans of many developing countries. However, it was opposed by other Government members, who pointed out that having to judge what was in the general interest would transform Labour Ministries into Supreme Courts. The two parties should have as much freedom as possible to conclude collective agreements directly between them. The Worker members expressed strong opposition to the amendment since, in their view, the concept of the general interest was too nebulous to be introduced into an international instrument, and in fact, was incapable of precise definition in democratic societies. Moreover, they saw serious dangers in the wording of the amendment, since the public authorities were being called upon not just to take account of the general interest but also to reconcile the specific interest of the parties with it. They felt that such a provision would do nothing to promote collective bargaining, the basic objective of the instrument. For similar reasons, the Employer members also opposed the amendment. The amendment was withdrawn.” [See ILC, *Record of Proceedings*, 1981, Committee on Collective Bargaining, pp. 22/8 and 22/9.]

admissible, on an exceptional basis, in cases of acute national or local economic crisis and only for short periods (this is different from the case of legislation allowing a collective agreement to remain in force when, upon its expiry, the parties fail to agree on the terms of a new collective agreement).

342. Over the years, the Committee has had to examine the impact on collective bargaining rights of successive economic crises affecting groups of countries on different continents. For more than 30 years, it has based its approach in addressing such problems on the principle that collective agreements must be respected and that limitations on the content of future collective agreements, particularly in relation to wages, imposed by the authorities by virtue of economic stabilization or structural adjustment policies that have become necessary, are admissible on condition that they have been subject to prior consultations with workers' and employers' organizations and meet the following conditions: (i) they are applied as an exceptional measure; (ii) they are limited to the extent necessary; (iii) they do not exceed a reasonable period; and (iv) they are accompanied by safeguards to protect effectively the standard of living of the workers concerned, in particular those who are likely to be the most affected.²¹⁹ Both the Committee of Experts and the Committee on Freedom of Association, fully aware of the implications of their position, have stated that collective agreements in force must be respected and that economic stabilization measures should only come into effect upon the expiry of their term. As regards this general principle, exceptions may only be made in cases of serious and insurmountable difficulty, for the preservation of jobs and the continuity of enterprises and institutions. Such exceptions should be examined prior to their implementation through a process of social dialogue that should not be applied arbitrarily and should be based on law. This position is justified by the nature of the fundamental right to collective bargaining on the one hand and, on the other, by the need to ensure that this institution, which has grown essential to democratic society through its contribution to justice and social peace, does not lose the confidence of trade unions and their worker members, which could give rise to incalculable risks in times of crisis.

343. The Committee on Freedom of Association has given some indications as to the periods during which such wage restrictions may be placed on collective bargaining. As regards the duration of restrictions with regard to future collective bargaining in serious economic situations, the Committee has considered, in particular, that a three-year period of limited collective bargaining on remuneration within the context of a policy of economic stabilization constitutes a substantial restriction, and the legislation in question should cease producing effects at the latest at the dates mentioned in the Act, or indeed earlier if the fiscal and economic situation improves.²²⁰ Moreover, when a government adopts wage restraint measures intended to impose financial controls, it should take care to ensure that collective bargaining on non-monetary matters remains unaffected.²²¹ Furthermore, the Committee understands that in times of serious economic crisis, applying measures to protect the sustainability of enterprises and preserve as many jobs as possible is a legitimate approach.

344. The latest economic crisis, which began in 2007, was linked to excessive levels of public debt, among other economic factors, and had a severe impact on several European countries, even affecting countries on other continents. Against this backdrop, a number

²¹⁹ General Survey, 2012, para. 220, and General Survey, 1994, para. 260. See, for example, *Greece* – CEACR, Convention No. 98, observation, 2011; and *Romania* – CEACR, observation, 2011.

²²⁰ Committee on Freedom of Association, *Digest*, 2006, op. cit., para. 1025.

²²¹ *ibid.*, para. 1027.

of countries have adopted measures which have serious social and labour repercussions, which must be evaluated in connection with the application of several ILO Conventions, and especially those pertaining to collective bargaining. The types of measures adopted by States include, inter alia: wage freezes or cuts for public servants (25 per cent in some cases and more than 20 per cent in others); reduction in public employment by as much as 15 or 20 per cent, sometimes through redundancies linked to the dissolution of many semi-public enterprises, public bodies and agencies, or through non-replacement of retiring public servants; pushing back the retirement age; and freezing or cutting pensions and benefits in the event of redundancy.²²²

345. These measures may at times run counter to express provisions of collective agreements and at times be accompanied by provisions amending strategic elements of industrial relations and collective bargaining systems. Some of these provisions, for example, allow the employer to withdraw either unilaterally or under certain conditions from certain collective agreements or certain wage clauses in force. Others begin to favour collective bargaining at the enterprise level, contrary to previous practice, yet others promote collective bargaining with groups of non-unionized workers, which is objectionable from the viewpoint of ILO principles. The Committee emphasizes that its comments do not refer to the continuity of previous labour and collective bargaining provisions – issues which must be decided in consultation with the social partners – but to the procedures used to amend them. Some countries have adopted these measures either without consulting trade unions or in spite of their opposition in the wake of emergency EU, IMF or World Bank bail-out packages requiring rapid, or even hasty, responses, which have not always had the desired effect. The Committee notes that when national social dialogue mechanisms have been applied, they have tended not to lead to agreements for the most part or have only helped to find shared solutions on isolated issues (see, for example, the box below).

The economic crisis and collective bargaining in Greece

The Committee wishes to highlight several aspects taken from its observations on Conventions Nos 98 and 154 and from the discussion in the Conference Committee on the Application of Standards on the application of Convention No. 98 by *Greece* at the International Labour Conference (2011), the report of the ILO High-level Mission to *Greece* in September 2011, which met with representatives of the European Commission and the IMF in Brussels and Washington, DC, in October 2011, and a follow-up mission sent to *Greece* in April 2012:

- The Government representative of *Greece* stated before the Committee on the Application of Standards (June 2011) that “due to the seriousness of the situation, the pay cuts had to be prompt and collective bargaining in these circumstances was not time efficient”; she emphasized that, in her view, “the critical economic situation and the complicated negotiations at international level provided no room for consultation with the social partners prior to the legislative reforms”. The Committee on the Application of Standards requested the Government to intensify its efforts and undertake full and frank dialogue with the social partners and recalled its principles with regard to economic stabilization policy.²²³ It also welcomed the Government’s indication that it was working on arrangements with the ILO for the visit of the High-level Mission proposed by the Committee of Experts in 2010 so as to fully understand the problems that had arisen. It considered that contacts with the IMF and the EU would also assist the mission in its understanding of the situation.

²²² See examples from multiple countries around the world described in, Recurrent Item Report on Social Dialogue, 2013.

²²³ See *Greece* – ILC (ILCCR), 2011.

- Following various meetings with social partners, the High-level Mission (2011) took special note of “the desire expressed by all social partners to evaluate the impact of the reforms introduced in the framework of the support mechanism on the industrial relations system and social dialogue more generally”. The report of the High-level Mission also emphasized that “the ILO can play an important role in supporting the Government and the social partners in the development and implementation of relevant and appropriate reforms to the labour market and its institutions in order for them to conform with ratified international labour standards”.²²⁴
- The Committee of Experts, in its observation of November–December 2011, took note of the allegations from the Greek General Confederation of Labour stating that new collective bargaining provisions are paving the way for a dismantling of a solid collective bargaining system, in operation for some 20 years, and negotiating with non-unionized workers. It observed with deep concern the legal changes concerning the level at which collective bargaining takes place, which were adopted without full, in-depth discussions with social partners, and “expresses the firm hope that the Government and the social partners will be in a position to come together in the very near future to review these measures and elaborate a system that will be relevant to Greece and its traditions”. The Committee of Experts trusted that “the social partners will be fully involved in the determination of any further alterations within the framework of the agreements with the EC, the IMF and the European Central Bank (ECB) that touch upon such aspects which go to the heart of labour relations, social dialogue and social peace, and that their views will be taken fully into account”.²²⁵
- The Committee of Experts, in its observation of November–December 2011, also welcomed the openness of the European Commission and the IMF to ILO assistance, in the areas of its mandate, in finding avenues for the advancement of the country that would be in conformity with relevant ratified Conventions.²²⁶
- According to the report of the follow-up mission (April 2012) to the High-level Mission of 2011, “the ILO must, as a matter of priority, be in a position to assist social partners in discussing the future model for social dialogue and collective bargaining so that they can retain their institutional role, particularly in the context of sectoral collective bargaining”.
- The follow-up mission (April 2012) emphasized that “the participation of the ILO within the scope of its long-standing expertise and mandate will not only serve to safeguard the core values of the ILO and EU itself, but will also help open the way for the Troika, enabling it to focus on the core areas of expertise under its mandate, such as liquidity, the future of the monetary union and the viability of the European financial system, with a view to promoting a global solution to this complex problem”.

In June 2012, a Greek civil court of original jurisdiction (“Court of the Peace”) took into account Conventions Nos 151 and 154 and the stabilization policy principle of the ILO supervisory bodies when issuing a ruling.

In its examination of the Greek case in November 2012, the Committee on Freedom of Association underlined that: Deeply aware that the measures giving rise to this complaint have been taken within a context qualified as grave and exceptional, provoked by a financial and economic crisis, and while recognizing the efforts made by the Government and the social partners to tackle these daunting times, the Committee recommends that the Government promote and strengthen the institutional framework for collective bargaining and social dialogue and urges, as a general matter, that permanent and intensive social dialogue be held on all issues raised in the complaint and in its conclusions with the aim of developing a comprehensive common vision for labour relations in the country in full conformity with the principles of freedom of association and the effective recognition of collective bargaining and the relevant ratified ILO Conventions.

²²⁴ See International Labour Office, *Report on the High-level Mission to Greece* (Athens, 19–23 Sep. 2011).

²²⁵ See *Greece* – CEACR, Convention No. 98, observation, 2011.

²²⁶ See *Greece* – CEACR, Convention No. 98, observation, 2011.

The Committee expected that the social partners would be fully implicated in the determination of any further alterations within the framework of the agreements with the European Commission, the IMF and the European Central Bank (ECB) that touched upon matters core to the human rights of freedom of association and collective bargaining and which are fundamental to the very basis of democracy and social peace.

346. The Committee is aware that violations of the principles of collective bargaining in times of economic crisis are often born out of long-standing neglect or abuse where national or international mechanisms of economic and financial control have failed to work. The Committee recognizes that all workers and all employers have suffered on account of past errors and stresses the importance of identifying their causes and establishing accountability. The Committee reiterates the views it has expressed concerning stabilization policies, emphasizing, above all, the importance of protecting the most vulnerable categories in the recovery process. On the basis of the ILO missions to Greece, the Committee takes note of the need for effective consultations at the national level with workers' and employers' organizations and for these organizations to be consulted by EU, IMF and World Bank authorities when such crisis situations occur. The Committee considers it important that, when adopting measures in times of economic crisis, all international organizations take fully into account the obligations of States arising from their ratification of ILO Conventions, and particularly those concerning collective bargaining.

347. Lastly, the Committee notes that in a recent case involving *Canada*, the Committee on Freedom of Association emphasized that "adequate mechanisms for dealing with exceptional economic situations can be developed within the framework of the public sector collective bargaining system".²²⁷ In matters concerning labour in general and collective bargaining more specifically, the Committee considers that mechanisms bringing together representatives of States' highest executive bodies and the most representative workers' and employers' organizations should be implemented promptly in the event of a serious crisis, so as to address any ensuing economic and social consequences in a united approach, giving special attention to the most vulnerable categories. Such mechanisms should be able to draw on the dispute settlement methods provided for in Article 8 of Convention No. 151 when, in cases of emergency, it becomes apparent that certain aspects of labour legislation or collective agreements should be quickly amended and/or renegotiated on a temporary or permanent basis. The need for such a mechanism is all the more urgent when the impact of recovery measures is so dramatic that trade unions and employers' organizations are at a loss when faced with the sheer scale of the problems and challenges and unable to generate global, coordinated responses within the established dialogue system. The Committee emphasizes that it is of prime necessity that the measures aimed at confronting the crisis be subjected to prior and informed dialogue and that intensive consultations be held with the social partners on the economic and social context, the contents of the measures considered and their consequences.

348. The Committee emphasizes that when national economies return to normality, intensive tripartite dialogue must be undertaken to ensure that the exceptional measures adopted are not consolidated and to review the necessity of maintaining the adjustments made during the crisis, with a particular focus on the Conventions on fundamental rights at work.

²²⁷ See Committee on Freedom of Association, 364th Report, Case No. 2821 (*Canada*), para. 378.

XIII. Bargaining level and coordination of levels

Collective Bargaining Recommendation, 1981 (No. 163)

4. (1) Measures adapted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking, the branch of activity, the industry, or the regional or national levels.

(2) In countries where collective bargaining takes place at several levels, the parties to negotiations should seek to ensure that there is co-ordination among these levels.

349. The examination of the bargaining structure in different countries indicates that national collective bargaining systems and, in particular, the bargaining level or levels and the connections between the various types of agreement are extremely varied. The question of the most appropriate bargaining level(s) depends on the strength, interests, objectives and priorities of the parties concerned, on the structure of the trade union movement and of employers' organizations, and on traditional rules governing labour relations in the country concerned.²²⁸ Within the ambit of public administration, collective bargaining is often conducted at national and institutional levels.

350. Under the terms of Paragraph 4(1) of the Collective Bargaining Recommendation, 1981 (No. 163), "[m]easures adapted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking, the branch of activity, the industry or the regional or national levels". On various occasions, the Committee has recalled the need to ensure that collective bargaining is possible at all levels, both at the national level,²²⁹ and at the enterprise level. It must also be possible for federations and confederations.²³⁰ Accordingly, legislation that unilaterally imposes a level of bargaining or makes it compulsory for bargaining to take place at a specific level raises problems of compatibility with the Convention. In practice, this issue is essentially a matter for the parties, who are in the best position to decide the most appropriate bargaining level including, if they so wish, by adopting a mixed system of framework agreements supplemented by local or enterprise-level agreements.²³¹

²²⁸ In the private sector, enterprise-level bargaining predominates in some countries, while in others it mainly occurs at the sectoral level. In certain countries bargaining occurs at three levels (inter-sectoral – bipartite or tripartite, with additional bargaining at the sectoral and enterprise levels). In some cases, systems give predominance to enterprise-level bargaining, with sectoral bargaining in specific industries. These systems are often compatible with occupation-specific agreements and sometimes with national framework agreements. In certain countries, sectoral agreements enable the employer and the works council to engage in bargaining over certain questions at the enterprise level. Some national or sectoral agreements allow the parties to collective bargaining at the enterprise level to move away, to a certain extent, from the employment conditions established at the sectoral or national levels. In some countries, collective bargaining is structured at several levels: enterprise, works council, provincial, inter-provincial, regional, interregional and national. This diversity of situations points to the importance of having appropriate coordination between collective agreements. According to Convention No. 154, the most desirable coordination solution is based on an agreement between the parties, but the Convention does not prevent national legislation from establishing certain coordination rules. The coordination of collective agreements takes on particular importance at times of severe economic crisis, when employers' organizations tend to call for bargaining to be decentralized and for a degree of flexibility in order to respond to difficult situations.

²²⁹ See, for example, *Albania* – CEACR, observation, 2010; and *Bosnia and Herzegovina* – CEACR, observation, 2010.

²³⁰ See, for example, *Namibia* – CEACR, direct request, 2010; and *Uganda* – CEACR, observation, 2010.

²³¹ General Survey, 2012, para. 222, and General Survey, 1994, para. 249.

351. The text of Paragraph 4 of Recommendation No. 163 concerning bargaining levels presupposes the bargaining rights of first-level organizations, federations and confederations of workers and employers. According to the Committee, the choice of bargaining level should normally be left to the discretion of the parties themselves since they are in the best position to decide on the most appropriate bargaining level. Consequently, the bargaining level should not be imposed by law or by a decision of the legislative authority.²³² The Committee considers that where disagreements arise concerning the bargaining level, parties should have recourse to dispute settlement machinery (such as the mechanisms provided in Article 8 of Convention No. 151) and, for example, refer their problem to an independent body which has the confidence of the parties. In the event of persistent disagreement concerning the level of bargaining, the Committee on Freedom of Association has considered that the best procedure is to provide for a system established by common agreement between the parties so as to take into account the interests and points of view of all concerned, rather than having recourse to a legal ruling to determine a specific level of bargaining. Nevertheless, if it is decided that this issue is to be determined by an independent body, the Committee on Freedom of Association has considered that in such cases the body concerned should be truly independent.²³³

352. As regards the special modalities that may be resorted to in the public sector, the Committee wishes to point out that Article 1, paragraph 3, of Convention No. 154 in respect of collective bargaining, suggests that it is possible to establish through legal channels the areas (for example remuneration, etc.) that pertain to the most centralized level, while other areas can be determined at a less centralized or sectoral level, depending on the authority competent in these areas. Sometimes, legislation establishes representativeness requirements for organizations that are so high that in practice bargaining at the level of the occupation or the branch of activity becomes very difficult, or even impossible, raising problems of compliance with the ILO collective bargaining Conventions. The Committee wishes to point out that in the case of the public administration and the specific modalities recognized in Article 1, paragraph 3 of Convention No. 154, collective bargaining may take place at the central level when the general employment conditions of public sector employees are being negotiated.

353. In countries where collective bargaining takes place at several levels, the parties to negotiations should seek to ensure that there is coordination among these levels.²³⁴ The Committee underlines the importance for the economy of good coordination between the collective agreements established at the various levels. The Committee accepts both systems that leave it to collective agreements to determine the means for their coordination (which is the best solution) and systems characterized by legal provisions that stipulate the areas to be covered by the agreements concluded at the various levels.

²³² With regard to the private sector, the Committee on Freedom of Association examined a case concerning Peru involving the construction sector. In this case, the trade union organization had submitted its request to bargain at the branch level to the judicial authority on the grounds that bargaining at another level would not be appropriate given the temporary nature of the construction work, the rotation of workers and the precarity of their status. In the end, following various appeals, the Supreme Court sided with the trade union, in view of the arguments put forward.

²³³ Committee on Freedom of Association, Case No. 2375 (*Peru*), Report No. 338, para. 1226; and Committee on Freedom of Association, Case No. 2326 (*Australia*), Report No. 338, para. 457 (the Committee requests the Government to take the necessary steps to ensure that the determination of the bargaining level is left to the discretion of the parties and is not imposed by law, by decision of the administrative authority or by the case law of the administrative labour authority).

²³⁴ Paragraph 4(2) of the Collective Bargaining Recommendation, 1981 (No. 163).

354. The Committee wishes to point out, for information purposes, that a framework agreement exists in *Argentina* on the coordination of agreements in the public service.

355. Moreover, in *Uruguay*, sections 8 to 14 of Act No. 18.508 concerning collective bargaining in the framework of labour relations in the public sector contain provisions on the level and coordination of collective agreements.

**Collective bargaining in the framework of
labour relations in the public sector (Uruguay)
(Act No. 18.508)**

Section 8. Scope

This Act applies to the executive, the legislature, the judiciary, the Administrative Court, the Court of Accounts, the Electoral Court, autonomous bodies, decentralized services and local government departments (town councils, departmental councils and elective autonomous local councils).

Section 9. Powers of the Ministry of Labour and Social Security

The Ministry of Labour and Social Security shall be the body in charge of ensuring the implementation of this Act.

To this end, it shall coordinate, facilitate and promote labour relations and collective bargaining in the public sector, perform the functions of conciliation and mediation, and take appropriate measures to ensure respect for agreements.

Section 10. Bargaining levels in the executive and in autonomous bodies and decentralized state industrial and commercial services

Collective bargaining in the executive and in autonomous bodies and decentralized state industrial and commercial services shall be carried out at three levels.

Section 11. The Higher council for collective bargaining for public sector workers

The Higher council for collective bargaining for public sector workers shall be composed of two representatives of the Ministry of Labour and Social Security (one of which shall chair the council), two representatives of the Ministry of Economic Affairs and Finance, two representatives of the Planning and Budget Office, two representatives of the National Civil Service Office and eight representatives of the most representative trade union organizations for high-ranking national level civil servants, in accordance with the principles established in Conventions Nos 151 and 154 of the International Labour Organization (ILO) and ILO Recommendation No. 159. These representatives may be assisted by technical advisers.

The Higher council for collective bargaining for public sector workers shall oversee high-level collective bargaining on a consensual basis and shall act at the request of any party represented within it.

The mission of the Higher council for collective bargaining for public sector workers shall be to conclude agreements at the highest level on the subjects referred to in article 4 of this Act and on any subject indicated by the parties as long as it does not entail any constitutional or legal limits or constraints.

Section 12. Second level

Negotiations at the sectoral level or by collective bargaining branch in the executive and in autonomous entities and decentralized services shall be carried out by two representatives of the Planning and Budget Office, two representatives of the Ministry of Economic Affairs and Finance, two representatives of the National Civil Service Office, two representatives of the Ministry of Labour and Social Security and eight delegates appointed by the organization representing public servants in the sector or branch concerned.

In the case of autonomous bodies and decentralized services, negotiations may also include representatives of these institutions.

Collective bargaining at the sector or branch level shall seek to conclude second-level agreements on the questions referred to in article 4 of this Act.

Section 13. Third level

At the entity or organization level, the entity or organization authorities and the trade unions representing the rank and file shall participate in negotiations. Representatives of the Ministry of Labour and Social Security, the Ministry of Economic Affairs and Finances, the Planning and Budget Office, the National Civil Service Office and trade union delegates representing the branch may also participate.

Collective bargaining at a lower level or at the entity or organization level shall seek to conclude agreements on the questions referred to in article 4 of this Act.

Section 14. Negotiations

For the purposes of collective bargaining in the legislature, the judiciary, the Administrative Court, the Electoral Court, the Court of Accounts, autonomous public education bodies and in local government departments (town councils, departmental councils and elective autonomous local councils), negotiations shall be held in accordance with specific criteria recognized by the Constitution.

Participants in the negotiations shall be as follows: two representatives of the corresponding organization, three delegates appointed by the organization representing public servants and one representative of the Ministry of Labour and Social Security, acting in accordance with the provisions of article 9 of this Act. Representatives of the Planning and Budget Office, of the National Civil Service Office and of the Ministry of Economic Affairs and Finance may also take part as advisers.

Each negotiation shall define its scope and procedural levels according to the needs and specificities of each organization. The objective of the collective bargaining shall be to conclude agreements on the questions referred to in article 4 of this Act.

XIV. Examples of collective bargaining systems

356. The Committee sets out the examples below in French alphabetical order with the aim of illustrating different bargaining systems and providing possible inspiration but emphasizes that their description does not necessarily imply that the totality of the elements of collective bargaining are in full conformity with Conventions Nos 98, 151 and 154.

357. *South Africa.* In contrast with the bargaining councils in the private sector, which are the outcome of a voluntary process, the Labour Relations Act of 1995 (section 35) establishes the Public Service Co-ordinating Bargaining Council (PSCBC) for the public service as a whole.²³⁵ The PSCBC may perform all the functions of a bargaining council as envisaged in the law in respect of those matters that are regulated by uniform rules, norms and standards that apply across the public service, or terms and conditions of service that apply to two or more sectors.

358. The representatives of the State as the employer in the PSCBC, who are 35 in number, are lead by the Chief Negotiator of the Department of Public Service and Administration (DPSA). The Chief Negotiator receives a mandate from a committee bringing together the Ministers heading the most important departments and the Government then continues to control the bargaining process. The representatives of provincial administrations are members of the labour relations forum, which is regularly convened by the Chief Negotiator to prepare for collective bargaining. However, the Parliament does not intervene directly in the bargaining procedure.

359. With regard to the representation of employees, the constitution of the PSCBC sets a minimum threshold requirement of 50,000 members (or around 5 per cent of the total employees in the public service) to be represented, which allows eight union organizations or groups of organizations to sit on the PSCBC. Since its establishment in October 1997, the PSCBC has played an important role in the restructuring of the public service and the elimination of the discrimination that originated under the apartheid regime. In total, it has adopted 80 resolutions corresponding to the agreements concluded. These agreements cover such varied subjects as wages, pensions, training, housing, medical assistance, disciplinary and appeal procedures and, for example, the establishment of an agency shop system. The importance of the subjects covered in these resolutions, which are applicable to the public service as a whole, reinforce the centralized nature of bargaining. Nevertheless, the Labour Relations Act permits bargaining councils in the public service to be designated and established by the PSCBC (section 37). If the parties in a designated sector cannot agree to a constitution for the bargaining council, the Registrar (an official in the Department of Labour) is required to determine its constitution. The Labour Relations Act has a model constitution in a schedule to the Act. A sectoral bargaining council has exclusive jurisdiction in respect of matters that are specific to that sector and in respect of which the State as employer has the requisite authority to conclude collective agreements. Any jurisdictional dispute between bargaining councils, at the request of either of the parties, is referred to the Commission for Conciliation, Mediation and Arbitration (an independent agency established under the Labour Relations Act) for settlement by conciliation, or possibly arbitration. A bargaining council may monitor and enforce compliance with its collective agreements (section 33A). Collective agreements have to provide for a procedure of conciliation and then arbitration to resolve any dispute about their interpretation or

²³⁵ On the history of social dialogue in the public service in South Africa and the functioning of the PSCBC, see S. Huluman: *The practice of social dialogue in the South African public service*, PSCBC, 2005.

application (section 24). There are four sectoral bargaining councils in the public sector: the Education Labour Relations Council (covering 350,000 persons employed under the terms of the Employment of Educators Act), the General Public Service Sectoral Bargaining Council (covering 250,000 employees who are not covered by a specific bargaining council, including civilian personnel in the National Defence Force and non-teaching staff in the education services), the Public Health and Welfare Sectoral Bargaining Council (240,000 employees in national and regional health and welfare departments) and the Safety and Security Sectoral Bargaining Council (covering the police and the corresponding ministry, or 125,000 employees). There is a specific council for local government. The provincial chambers of the PSCBC act as bargaining councils (36 in total) for matters for which the provinces are competent. However, taking into account the centralized nature of bargaining, agreements concluded in the provincial chambers have to be approved by the PSCBC. More generally, the State may be a party to any bargaining council if it is an employer in the sector in respect of which it is established. In this case, any reference to a registered employers' organization includes a reference to the State as a party (section 27). This provision allows the State to participate in bargaining in sectors in which it is a party through public enterprises.

360. *Argentina.* Between 1973 and 1975, a collective bargaining system had already been introduced in five sectors of the public administration (the National Cereal Board, the National Meat Exchange, the National Customs Service, the General Directorate of Taxes and the National Refuse Service). These services were included in the collective bargaining system in view of their special characteristics in terms of the type of activities performed or their employment system. Following the suspension of these bargaining systems during the military regime, public employees were finally granted the right to collective bargaining in 1992 by Act No. 24.185. Similar provisions were adopted in certain provinces, although fewer than half of them recognize collective bargaining by employees in the public administration. However, it was not until six years after the adoption of the Act that the first collective agreement applicable to the public sector as a whole was concluded. The implementation of collective bargaining in practice required the modification of the legal framework applicable to public employees, who were covered by new legislation in 1998 (the Framework Act regulating national public employment, No. 25164). It was understood that the rights and guarantees accorded by this Act to employees in the public administration constituted minimum standards that had to be respected in collective agreements. Employees in the public administration are currently covered by the second general collective labour agreement concluded between the administration and the trade unions, approved by Decree No. 214/2006.²³⁶ In its introductory section, the collective agreement recognizes the contribution of ILO Conventions Nos 151 and 154 to the democratization of labour relations and the recognition of the right to collective bargaining of state employees. The general collective agreement may be supplemented by sectoral collective agreements, on the understanding that the general collective agreement is the higher source of law and that, in any dispute relating to the law, the general collective agreement prevails. In accordance with the law, in the context of collective bargaining, the representation of the State is composed of representatives of the Ministries of the Economy, Public Works and Services and the Secretariat of the Public Service (as a minimum, at the level of Sub-Secretary of State), and employees are represented by unions accorded special legal personality at the national level. For a specific sector, the organizations participating in collective bargaining are those that are representative in the sector and the national

²³⁶ See: M. Cremona, "El Nuevo Convenio Colectivo de Trabajo en la Administración Pública Nacional: La opción por la autonomía", in *Derecho del Trabajo*, July 2006.

organizations that include the sector concerned in their coverage. All matters relating to employment may be covered by collective bargaining, with the exception of the organic structure of the national public administration, the executive powers of the State and the recognition of the principle of compatibility (*adecuación*) as a basis for pay and training in administrative careers. With regard to remuneration and other matters with economic implications, agreements have to be in conformity with the budgetary legislation. With a view to carrying out negotiations, a bargaining commission is established at the request of one of the parties. The latter are under the obligation to bargain in good faith, which involves attendance at meetings, the designation of appropriate representatives, the exchange of the necessary information and the commitment to conclude agreements which take into account the various circumstances of the case. Under the terms of clause 1, the general collective agreement concluded in 2006 applies to all employees covered by the Act and engaged in an employment relationship with the public administration, as well as employees of the many decentralized bodies referred to in the annex to the agreement. The general collective agreement establishes a Standing Labour Relations Commission (COPAR) composed of three titular and three substitute members representing the State as employer and the same number of representatives of the unions. The functions and mandate of the Commission are to interpret the collective agreement, supervise the coherence of sectoral collective agreements with the general collective agreement, intervene in the settlement of controversies and disputes and in collective disputes relating to interests, and to assess the application of the collective agreement every six months and propose potential improvements. The decisions of the Commission have to be adopted unanimously in writing and are binding, unless otherwise determined by administrative decision issued by the executive within 30 days. Where its decisions have economic and financial implications, the prior intervention of the two Secretaries of State competent for budgetary matters is envisaged so that they can assess the feasibility of implementing the decisions. Although the general legislation applicable to teachers permits collective bargaining at the provincial level, certain provinces have not adopted the relevant legislation. In view of the decentralization of education, in many cases there is no legislative framework at the provincial level allowing for collective bargaining. Labour relations in the sector therefore tend to be unilateral, with the employer adopting decisions in the form of regulations, often as a result of claims put forward by trade unions. For example, teachers in the province of Buenos Aires are governed by the Teachers' Statute (provincial Act No. 10579). Teachers are therefore subject to a system that is principally statutory, even though negotiations take place before decisions are adopted by the administration. In view of this situation, the unions are claiming access to collective bargaining as a means of concluding agreements. The main features of the Act respecting collective bargaining by teachers (Act No. 23929 of 1991) are the same as those applying to state employees in general. It explicitly excludes from collective bargaining the constitutional powers of the State in relation to education and the organic structure of the education system.

361. *Australia. Federal public service.* On 31 January 2011, the Government announced new bargaining arrangements to support employment in the different agencies of the Australian Public Service (APS), the Australian Public Service Bargaining Framework.²³⁷ The new bargaining framework affects only the APS agencies.²³⁸ Non-APS agencies continue to be covered by the Australian Government Employment Bargaining Framework. The APS Bargaining Framework covers

²³⁷ See Australian Government, Australian Public Service Commission: Australian Public Service (APS) Bargaining Framework, Supporting Guidance, Jan. 2011.

²³⁸ An APS agency is an agency that employs employees under the Public Service Act 1999.

bargaining in agencies with their employees and their representatives with regard to terms and conditions of employment, and is itself covered by the Fair Work Act 2009 (FWA), the Public Service Act 1999 and other Commonwealth legislation. The Public Service Act provides for delegation of staffing powers to agency heads, who act as employers, particularly in relation to hiring, dismissal and determination of conditions and terms of reference of employment. Agency heads are responsible for applying the Bargaining Framework in their agencies. Under the FWA, the Fair Work Regulations 2009, the Fair Work (Registered Organizations) Act 2009, and the Fair Work (Registered Organizations) Regulations 2009, the national system covers constitutional corporations, the Commonwealth and its authorities, employers who employ flight crews, maritime employees or waterside workers in connection with interstate or overseas trade or commerce, all employers in Victoria, the Northern Territory and the Australian Capital Territory, private sector employers in New South Wales, Queensland, South Australia and Tasmania and local government employers in Tasmania. The following categories of employer are not covered by the FWA: (1) the state public sector, local government and non-constitutional corporations in the private sector in Western Australia; (2) the state public sector and local government in New South Wales, Queensland and South Australia; and (3) the state public sector in Tasmania.

362. The FWA sets out a framework for the negotiation of agreements at the central level. Each agency head must engage in negotiations with his or her employees or their representatives in order to conclude enterprise agreements. The agency head must also obtain the agreement of the Special Minister of State for the Public Service and Integrity before concluding a collective agreement. In the case of previous commitments made by the Government, existing Australian workplace agreements (AWAs) continue to apply until their expiry date. At the beginning of bargaining, notice must be provided to employees as detailed in section 174 of the FWA. Such notice must be given as soon as possible, and at the latest 14 days after notification of an agreement. In the context of the APS, the notification will generally be the moment when the agency agrees to negotiate or begins to negotiate the agreement. Under the FWA, employees have a representative to negotiate on their behalf, but this is not obligatory. There is no limit on the number of representatives who may take part in bargaining. However, if collective bargaining is delayed by an excessive number of representatives, Fair Work Australia²³⁹ may issue a decision. The FWA provides that bargaining must be undertaken in good faith. If the workers' representatives believe that negotiations are not being undertaken in good faith, they may make an application to Fair Work Australia, which may then issue a decision or a declaration enjoining the parties to take certain measures. The Act provides that agreements may not contain provisions considered to be illegal (for example, discriminatory or contrary to the provisions of the FWA). Issues that are not related to the employer–employee or employer–union relationship may not be governed by agreements. The FWA also provides that certain clauses must be expressly stated in agreements: date of expiry of the contract (maximum duration of four years), consultation on major changes in the enterprise, individual flexibility and dispute resolution. With regard to the latter, all enterprise agreements must provide for a procedure enabling Fair Work Australia or an independent third party to settle disputes (section 186(6) of the FWA). They must also provide for procedures to facilitate dispute settlement in the workplace first of all. Only if the dispute cannot be resolved internally

²³⁹ Under the FWA, Fair Work Australia is considered to be an arbitration tribunal which has a number of functions with regard to collective bargaining: approval of enterprise agreements; the power to issue decisions regarding negotiation in good faith; the negotiation process (particularly the presentation of advance notice of negotiation and strikes); and any ensuing dispute. It also has powers of conciliation and mediation.

may it be referred to an external body. Such outside assistance may be in the form of mediation or conciliation. If the dispute is still not resolved following conciliation or mediation, the dispute settlement clauses must provide for access to arbitration by Fair Work Australia, only following the exhaustion of all other means. Dispute settlement in the APS must be undertaken in good faith and thus follow the same principles as the good faith bargaining requirements set out in section 228 of the FWA. To be valid, an enterprise agreement must be supported by a majority of votes cast and must be approved by Fair Work Australia. With regard to remuneration of public employees, although it may be negotiated with the agencies, the Australian Public Service Commission recommends that salary increases not exceed 3 per cent above a base rate.

363. *Canada.* At the federal level, collective bargaining is recognized as the means of determining the terms and conditions of employment of public employees. The bargaining system is based on the determination of terms and conditions of employment in units considered “appropriate for collective bargaining” and on the certification of the majority trade union as bargaining agent in each bargaining unit (Division 5 of the Public Service Labour Relations Act). The Public Service Labour Relations Board determines the group of employees that constitutes a unit appropriate for bargaining and certifies trade unions as bargaining agents. For this purpose, specific procedures are envisaged in the Public Service Labour Relations Act, including the possibility of directing that a vote be taken to ensure that the majority of the employees concerned wish to be represented by the organization seeking certification. The bargaining agent or the employer may, by notice in writing, require the other to commence bargaining with a view to entering into, renewing or revising a collective agreement. This notice may be given at any time if no collective agreement or arbitration award is in force or within four months before it ceases to be in force. The parties must then, within 20 days, meet and commence to bargain effectively in good faith and make every effort to enter into a collective agreement. A collective agreement may not, directly or indirectly, alter or eliminate any existing term or condition of employment or establish any new term or condition of employment if doing so would require the enactment or amendment of a Federal Act, except for the purpose of appropriating money required for the implementation of the term or condition, or the term or condition is one that has been or may be established under the Public Service Employment Act, the Public Service Superannuation Act or the Government Employees Compensation Act. Subject to the appropriation by or under the authority of Parliament of money that may be required by the employer, the parties must implement the provisions of a collective agreement within the period specified in the collective agreement for that purpose or within 90 days after the date it is signed. Until very recently, collective bargaining was not considered as being protected under the Charter of Rights and Freedoms. However, in a ruling dated 8 June 2007, the Supreme Court found that the freedom of association guaranteed by the Charter includes the collective bargaining process. On these grounds, it found to be unconstitutional certain provisions of the Health and Social Services Delivery Improvement Act of British Columbia which restricted collective bargaining in the health sector. This decision constitutes a change in the case law of the Supreme Court and an important development in the protection of collective bargaining in the public sector.²⁴⁰

364. *Spain.* Under the legislation, persons employed by the administration have the right to collective bargaining, to representation and to institutional participation for the determination of their terms and conditions of employment. In this context, collective

²⁴⁰ See *Health Services* and *Fraser* judgments above.

bargaining is understood as the right to negotiate for the determination of their terms and conditions of employment. Collective bargaining for non-statutory public employees is governed by the labour legislation. However, collective bargaining of the terms and conditions of employment of public employees is covered by the Conditions of Service and is subject to the principles that it must be lawful, its outcomes are covered by the budget and that it is compulsory, undertaken in good faith and is in the public domain and is transparent. For this purpose, bargaining “tables” (*mesas*) are established consisting of representatives of the public administration, on the one hand, and those of the most representative unions, on the other (those with 10 per cent of the staff representatives in the area concerned covered by the bargaining table). In particular, a general bargaining “table” is established for the general state administration, for each autonomous community and for each local authority. The functions of these general bargaining tables are to negotiate the common terms and conditions of employment of the public employees whom they cover. With the agreement of these general bargaining tables, sectoral tables may be established to cover the specific terms and conditions of employment in a particular sector. At all these bargaining tables, each party is obliged to negotiate in good faith and to provide the information required for bargaining. For a bargaining table to be validly constituted, the participating trade unions have to represent as a minimum the majority of the members of the representative bodies in each field. Trade union representation is reviewed every two years on the basis of the certificates issued by the Office of the Public Registrar. In the general bargaining tables, compulsory subjects for negotiation include the implementation of pay increases for the staff, as determined by the Budget Act, the determination of supplementary compensation, the rules setting out general criteria governing access to employment, careers, job classification and human resources planning, the rules establishing the general criteria and procedures for job appraisal, supplementary social benefit plans, general criteria for the determination of social benefits and pensions, proposals relating to trade union rights and participation, general criteria for social action, the prevention of occupational risks, working conditions and remuneration requiring provisions with the rank of law, general criteria relating to vacancies, working time arrangements, schedules, working hours, holidays, functional and geographical mobility and the strategic planning of human resources (in so far as the working conditions of public employees are affected). With regard to the remuneration of personnel, increases are limited to the general increase for the overall payroll set by the general state budget. In practice, through its budgetary laws, the State maintains the competence in the new Conditions of Service to exercise control over staff costs, which are an essential component of public expenditure. This approach is in conformity with the long-standing case law of the Constitutional Court. Nevertheless, these rules do not prevent greater autonomy in the determination of supplementary remuneration, which may legitimately vary in the various administrations. There is consequently a margin for decision-making so that the remuneration system established by laws on the public service of the general state administration and of the autonomous communities can adapt pay systems. The parties can conclude agreements and “accords” in the bargaining tables for the determination of the terms and conditions of employment of public employees. Agreements are applied directly to the personnel concerned, whereas “accords”, which address matters relating to government bodies, have to be explicitly and formally approved by such bodies. Where “accords” address matters relating to the law, the government body with the legislative initiative has to submit draft legislation to Parliament or the assemblies of the autonomous communities in accordance with the accord within the period established by the parties. If the accord is not approved by the legislative body, the subjects covered are renegotiated within a period of one month if the majority of one of the parties so requests. Joint commissions

are established to monitor agreements and accords, and the implementation of an accord is guaranteed except where, on an exceptional basis and for a serious reason relating to the public interest deriving from a substantial alteration in economic circumstances, the executive bodies of public administrations suspend or modify the implementation of agreements or accords that have already been concluded to the extent that is strictly necessary to safeguard the public interest. In such cases, the public administrations concerned have to inform the trade unions of the reasons for such suspension or modification. In the case of health service personnel, their specific Framework Conditions of Service, adopted in 2003, confirm their right to collective bargaining.

365. *United States.* Although certain labour organizations have been in existence since the nineteenth century, it was not until the 1960s that a union was officially recognized by a government employer. The courts have found that public employees have no constitutional right to require their employers to engage in bargaining, unless a statute compels them to do so. No law formally recognized the right to collective bargaining of federal employees before the adoption of the Civil Service Reform Act, 1978. Under the FSLMRA, any agency shall accord exclusive recognition to a labour organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in the unit concerned (US Code, section 7111). Bargaining units are determined by the Federal Labor Relations Authority (FLRA, an administrative agency) on the basis of a clear and identifiable community of interest among the employees (US Code, section 7112).

366. An organization that has been accorded exclusive recognition is entitled to negotiate collective agreements covering all employees in the unit. It is responsible for representing the interests of all employees in the unit without discrimination and without regard to labour organization membership. The agency and the organization have to meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. The duty to negotiate in good faith includes the obligation to approach the negotiations with a sincere resolve to reach a collective bargaining agreement, to be represented at the negotiations by duly authorized representatives, to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays, and to furnish data necessary for the discussion, understanding and negotiation. The refusal of one of the parties to negotiate in good faith is considered an unfair labour practice (US Code, section 7116). An agreement that is concluded is submitted to the head of the agency, who must approve it within 30 days if it is in accordance with the legislation (US Code, section 7114). If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive bargaining representative subject to the provisions of the applicable legislation.

367. The law reserves a number of issues as “management rights”, which are not therefore subject to negotiation (US Code, section 7106). These include the mission, budget, organization, number of employees and internal security practices of the agency, as well as internal management matters (hiring, assignment, direction, laying off, retention, disciplinary action, etc.). Bargaining covers measures relating to the personnel and conditions of employment, with the exception of matters specifically provided for by federal statute, such as remuneration and social benefits (US Code, section 7102). However, even for matters that are not negotiable, an agency may negotiate the procedures which it will observe in exercising authority and arrangements for employees adversely affected by the exercise of authority. It may also negotiate, if it so wishes, the numbers, types and grades of employees or positions assigned to any subdivision, and the technology, methods and means of performing work (US Code, section 7106). In the

event of disagreement between an agency and a union on whether the duty to bargain extends to any specific matter, the law provides for the possibility of appealing to the FLRA within 15 days and determines the time limits for responding to the appeal and for the subsequent procedure. At the federal level, unions of Postal Service employees have identical collective bargaining rights to those in the private sector, with the exception of the provisions relating to trade union security and the right to strike.

368. In November 2006, the Committee on Freedom of Association examined a case concerning the denial of collective bargaining rights to 56,000 federal airport baggage screeners as a result of an order issued by the Transportation Security Administration, in accordance with the authority accorded to it under the Aviation and Transportation Security Act. In this regard, the Committee on Freedom of Association requested the Government to review carefully the matters covered in the terms and conditions of employment of the employees concerned which are not directly related to national security issues and to engage in collective bargaining on those matters with their freely chosen representative.²⁴¹ In its most recent report on this case, the Committee noted with interest the recent developments in this regard and welcomed the recognition of the right to organize and bargain collectively for Transport Security Officers.²⁴² Following these positive developments, the Committee welcomes the news that an initial collective agreement covering the 45,000 employees of the Transport Security Administration was signed in 2012. Over half the states of the United States recognize the right of many or all of their employees to collective bargaining. These states include: Alaska, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Washington and the District of Columbia. In a recent ruling (May 2007), the Supreme Court of Missouri held that public sector employees have a constitutional right to engage in collective bargaining with their government employers, thereby overturning case law dating back 60 years.

369. However, certain states prohibit collective bargaining by public employees.²⁴³ This is the case in Arizona, North Carolina, South Carolina, Mississippi, Utah and Virginia. In other states, collective bargaining is only recognized for very limited groups of employees: Kentucky (firefighters and the police), Tennessee (teachers), Texas (firefighters and the police, if the population of the municipality so approves by referendum) and Wyoming (firefighters). Many states which do not have statutes on collective bargaining in the public sector nevertheless follow the policy of authorizing public employers to conclude collective agreements with representatives of the employees:

- *Arkansas*. In *City of Fort Smith v. Arkansas State Council* (1968), the Arkansas Supreme Court held that a municipality cannot be compelled to bargain collectively with its employees, reasoning that the fixing of wages, hours and other conditions of employment is a legislative responsibility which cannot be delegated or bargained away. However, the Court, *in dicta*, appeared to differentiate that situation from those cases where the municipality voluntarily engages in collective bargaining with its employees' representative. Accordingly, the Office of the State Attorney General has interpreted the above case as permitting, but not requiring, a

²⁴¹ See: Committee on Freedom of Association, 343rd Report, Case No. 2292, paras 705–798.

²⁴² See: Committee on Freedom of Association, 362nd Report, Case No. 2292 (*United States*), para. 57.

²⁴³ See: Committee on Freedom of Association, 284th and 291st Reports, Case No. 1557, paras 758–813 and 247 to 285, respectively.

public employer to bargain collectively with its employees. The scope of permissible collective bargaining, however, is restricted by the legislature's authority to fix wages, hours and other matters relating to working conditions.

- *Louisiana*. A public employer may enter into a collective bargaining agreement with its employees in the absence of express statutory authorization, provided the agreement does not violate any specific statutory or constitutional provision. However, a public employer cannot be compelled to bargain with its employees.
- *West Virginia*. In *Local 598, Council 58, AFSCME v. City of Huntington* (1984), the West Virginia Supreme Court held that a municipality may enter into a binding collective bargaining agreement in the absence of statutory authorization.

370. The Committee on Freedom of Association has recently examined a case concerning North Carolina.²⁴⁴ The North Carolina General Statute (NCGS), sections 95–98, declares any agreement or contract between the government of any city, town, county, other municipality or the state of North Carolina and “any labour union, trade union or labour organization, as bargaining agent for any public employees” to be illegal and null and void. The validity of these provisions has been upheld by the courts on the grounds that there is nothing in the Constitution, including in the right to associate freely recognized in the First Amendment, that compels a party to enter into a contract with another party. Moreover, according to one court, the prohibition of public sector bargaining agreements is an entirely appropriate way of balancing the citizenry's competing interests by failing to grant any one interest group special status and access to the decision-making process. The courts concluded that states are free to decide through the people's democratically elected representatives whether to enter into agreements.²⁴⁵ The Committee on Freedom of Association requested the Government to promote the establishment of a collective bargaining framework in the public sector in North Carolina and to take steps aimed at bringing the state legislation, in particular through the repeal of sections 95–98 of the NCGS, into conformity with the principles of freedom of association. Following the examination of the case by the Committee on Freedom of Association, bills repealing the prohibition on collective bargaining by state and local employees have been proposed in the North Carolina legislature.

371. *Finland*. Collective negotiations have existed in the public sector since 1943, although the State and the local authorities remained free to determine the pay and working conditions of their employees. In 1970, with the adoption of the Act respecting collective agreements for the civil service and the Act respecting municipal employees' collective agreements, the system came to be based on contractual freedom. Agreements may cover pay (wages and benefits in kind), as well as other conditions of employment (working hours, holidays, sickness, maternity, mission expenses, leave of absence, part-time work ...). The 1988 Act on codetermination broadened the fields covered by collective bargaining to include, in particular, transfers, technological change, cessation of activity, changes affecting the size, type and structure of the personnel, equal rights programmes, staff development and training. However, the legislation excludes certain subjects from bargaining, such as the qualifications required for a specific position, reasons for promotion, the responsibility of civil servants, discipline, bonuses, the remuneration of diplomatic personnel based on their posting, pensions, official housing, certain forms of leave without pay and indemnities related to death. Bargaining

²⁴⁴ See: Committee on Freedom of Association, 344th Report, Case No. 2460, paras 940–999.

²⁴⁵ See: *Atkins v. City of Charlotte*, 296 F. Supp. 1068 (WDNC1969) and *Winston-Salem/Forsyth County Unit, NC Association of Educators v. Phillips*, 381 F. Supp. 644 (MDNC 1974).

procedures were established in a framework agreement concluded between the Ministry of Finance as the public employer and the representative trade unions. In general, terms and conditions of employment in the public sector are determined by collective agreement. The agreements are normally valid for one or two years. The national collective agreement for government employees is concluded between the Office for the Government as Employer, operating under the Ministry of Finance, on the one hand, and the three union bargaining agents, on the other. Specific collective agreements may be concluded for certain sectors of the administration. A new pay system for the central administration has been in operation since 2005. It is based on collective bargaining at the level of the various government agencies, although within the framework of the general principles established by national agreement. The basic salary is determined in relation to the requirements of the job, although a personal component, of a maximum level of 50 per cent of the basic salary, depends on the competence and performance of the employee. In the case of personnel employed at the local level, collective agreements are concluded between the Commission for Local Authority Employers and the bargaining agents representing the personnel. Five different sectors participate in these negotiations. For example, educational and medical personnel have their own contractual provisions that take into account the special nature of their work. Agreements can also be concluded at the local level. In November 2002, an agreement was reached at the central level that the parties concerned would take the necessary measures to conclude collective agreements covering local agencies with a view to the introduction of a new pay system based on the difficulty of the work, personal performance and qualifications. Local bargaining has therefore increased in recent years, particularly in view of the new pay structures. The various government agencies and unions also conclude their own collective agreements: there are around 100 agency-level agreements in existence for public servants, and around 70 for other categories of personnel. The Ministry of Finance sets guidelines for government representatives in the negotiations. The agreement concluded at the central level (the national collective agreement for government employees and contract employees) establishes the overall framework for costs and contains provisions on the terms of service of central government employees as a whole, as well as bargaining and revision clauses. It enters into force when it has been approved by the Government. If it involves additional expenditure, it has to be submitted for approval by the Parliamentary Finance Committee. Agreements relating to a specific government agency or a sector of an agency, which principally relate to specific issues concerning pay and working time, are approved by the Ministry of Finance. With a view to covering negotiations in services governed by private law but owned or managed by local authorities, the municipalities, in common with the enterprises responsible for these services, have established the Association of Social Services Employers and Businesses, which engages in negotiations with the most representative workers' organizations.

372. *France.* There was no collective bargaining in the public service until 1961, when a protocol agreement was concluded on remuneration, hours of work and trade union rights in the public service. The practice of annual wage negotiations was introduced in 1970. It was made official in 1983 in the General Conditions of Service of the Public Service and it remains the only officially recognized subject for bargaining since, under the General Conditions of Service, the union organizations representing public employees are entitled to engage in bargaining at the national level prior to the determination of changes in remuneration and to discuss with the authorities responsible for management at the various levels issues relating to the conditions and organization of work. However, the official nature of wage bargaining has not sufficed to ensure its success, as negotiations frequently end up without any agreement being reached. These

difficulties are due to several reasons: the schedule of negotiations is not fixed and is in practice determined by the goodwill of the Government; their coordination with the budgetary calendar is not ensured, particularly where negotiations begin after the budget has been voted by Parliament; wage agreements, in the same way as all agreements concluded in the public service, are not legally binding on the Government, even though it normally gives effect to them; and the authorities are supposed to comply with the European Union Stability and Growth Pact, which imposes a strategy of the containment of public expenditure. Since 1989, negotiations have been engaged on various subjects and have led to the conclusion of protocol agreements, particularly in the fields of end-of-career leave and the integration of precarious employees by the three public services; further training, safety and health and the employment of workers with disabilities by the state public service; training for the territorial public service; and working conditions, training, night work and social dialogue in the public hospital service. At the local level, the practice of bargaining is still more recent and therefore not well developed. In the absence of any legal framework, the administration decides whether to engage in bargaining on a particular subject. The current legislation only establishes an obligation to bargain in one particular case, namely a strike notice in the public services. And even then, this provision would not appear to be applied regularly. Moreover, the agreements concluded do not yet have legal value in their own right and are only binding on the signatories in moral and political terms. For agreements to be applied in practice, it is therefore necessary for the competent public authorities to take additional measures, in the form of decrees or ministerial orders, or decisions by territorial communities. It would appear that in most cases the administration adopts the necessary measures to give effect to agreements. There may, however, be delays in their implementation. Despite these limitations, collective bargaining has developed in the public service. In 2006, two important protocol agreements were signed in the state public service, one on the improvement of careers and the development of social action, and the other on vocational training. The development of collective bargaining in the public service has therefore resulted in a discrepancy between law and practice. The Council of State has accordingly recalled that agreements concluded between the public authorities and unions cannot have the effect of changing the legal status of employees, which means that unions cannot make use of them in the context of disputes with the administration. A change in the situation has, however, been observed in the context of the public hospital service, where local bargaining is now recognized by law in the form of a “social project” negotiated between the management of the establishment and the representative trade unions (Act respecting social modernization of 17 January 2002). The coverage of social projects includes training, the improvement of working conditions, the management of social insurance and employment prospects, qualifications and acquired professional benefits.

373. A new law entered into force in 2010, the Act of 5 July 2010 on renewal of social dialogue, containing several provisions relating to the public service. It was adopted pursuant to the Bercy agreements concluded on 2 June 2008 between the Ministry of the Public Service and six of the eight representative organizations of the public service (CGT, CFDT, FSU, UNSA, Solidaires and CGC). The Act of 5 July 2010 amends Act No. 83-634 of 13 July 1983 on the rights and obligations of public servants. The new Act of 2010 modifies the requirements for representativeness and access to elections of organizations in the different public services. Thus, unions’ access to occupational elections will no longer be contingent on a presumption of representativeness. Unions must meet certain requirements (having been established at least two years previously and adhering to republican values and independence) in order to put forward candidates. The Act creates a Joint Public Service Council responsible for examining draft

legislation relating to the three main branches of the public service (the state administration, local government and the hospital service). Another new feature introduced by the law, relating to collective bargaining, established the principle of majority agreement: as from 2013, an agreement will be valid if it is signed by unions representing an electoral base of more than 50 per cent of voters. This system will cover the main forums for dialogue in the public service: technical committees (CTs), joint administrative commissions (CAPs), national consultative committees (CCNs), etc. In addition, the Law expands the scope of negotiation in the public service to all subjects, beyond purely wage matters, and specifies the criteria for determining the validity of an agreement (number and level of representativeness of the signatory organizations, absence of opposition from organizations which have received the majority of votes in the latest occupational elections, etc.). The Act has been supplemented by an implementing Decree of 17 February 2012, made under the Act of 5 July 2010, published in the *Official Journal* on 17 February 2012, which redefines the exercise of trade union rights in the state public service. Inter alia, it amends the rules governing union representativeness, union meetings and working hour arrangements granted to union organizations. Union representativeness is now based on the results of elections to technical committees. Unions are deemed to be representative, firstly, if they hold at least one seat on the technical committee for the service or group of services concerned, and secondly, if they hold at least one seat on the ministerial technical committee or the technical committee of a related public institution. Representative organizations are authorized to hold monthly information meetings during working hours. Each member of staff has the right to participate in one such monthly meeting, up to a limit of one hour per month. When the services are dispersed, meetings may now be grouped together up to a quarterly limit of three hours per agent. Any organization that is a candidate for an election to renew a dialogue body may now hold special information meetings, not to exceed one hour per agent, during the six weeks preceding the ballot. An overall quota of union time credit is fixed by the ministry, based on the number of voters on the electoral roll for election to the ministerial technical committee. For public institutions that have not been assigned to a ministerial technical committee or for independent administrative authorities, the quota is calculated based on the number of voters on the electoral roll for the technical committee of the institution or that of the independent administrative authority. Half of the quota of union time credit is allocated to the unions represented on the technical committee concerned and half to all the unions that have presented their candidacy to that technical committee, in proportion to the number of votes that they obtained. Unions may use this annual quota of union time credit for time off or special leave. The Decree entered into force on 1 March 2012 for the ministries, public administration institutions and independent administration authorities that had renewed their technical committees in 2011. In the ministries responsible for education and agriculture, it entered into force on 1 September 2012. In other cases, it will be applicable as from the next renewal of the technical committee. Decree No. 2012-148 of 30 January 2012 establishes the Joint Public Service Council. A Decree of 19 March 2012 relates to appointments to the Council. A Decree of 31 January 2012 provides for appointments to and composition of the Council: the College of Representatives of the unions is composed as follows: CGT – nine seats; CFDT – six seats; FO – six seats; UNSA – three seats; FSU – two seats; Solidaires – two seats; the CFTC, CGC, FAFPT and SNCH/SMPS – one seat. This is the consultative body responsible for all general matters common to the three branches of the public service. It examines draft laws, ordinances and, where a legislative or regulatory provision so provides, decrees that are common to the three branches, except for regulations specific to each branch. Consultation of the Joint Public Service Council, when it is required, replaces that of the

Higher Councils of the state public service, the local government service and the hospital service. The Joint Public Service Council is chaired by the minister responsible for the public service or his or her representative. It is composed as follows: representatives appointed by the public servants' organizations (the seats are divided among the organizations in proportion to the number of votes obtained by each of them in the last elections to the technical committees in each of the three branches of the public service and the consultative bodies ensuring staff representation under specific legislative provisions); representatives of the administrations, state employers and public institutions; representatives of local government employers, including the president of the Higher Council of the Local Public Service, appointed by the representatives of the municipalities, departments and regions to the Higher Council of the Local Public Service; and representatives of public hospital employers appointed by the most representative organizations of the hospital service.

374. *Public enterprises in France.* The situation is different in public enterprises, where enterprise agreements have been recognized by law since 1982 as a means of supplementing statutory provisions or specifying the manner in which they are to be given effect. This development has been confirmed in enterprises in which the conditions of service have been modified and which recognize bargaining with trade unions, such as France Télécom and the Post. Nevertheless, the Council of State has confirmed that, in the case of personnel who are recognized as public employees, the agreements cannot modify the statutory rules applicable to them.²⁴⁶ In the case of categories of personnel who are not subject to specific legislative conditions of service or regulations, their conditions of employment and work and social benefits may be determined by collective labour agreements under the conditions established by the Labour Code. Moreover, the employer is under the obligation to engage in bargaining with the representative unions at the enterprise level on the procedures for the exercise of the right to organize (time off to participate in trade union meetings, conditions governing the dispensation from employment duties for permanent union officials, conditions and limits on time off for union leaders, the collection of contributions). Similarly, in the electricity and gas industries, occupational agreements may supplement statutory provisions, under conditions that are more favourable to employees, or determine the modalities for their application within the limits set out by the national conditions of service of the employees concerned. The rules established by the Labour Code in relation to collective labour agreements are applicable in these cases. In public bodies and social security institutions, measures relating to elements of remuneration must, before any decision is taken, be transmitted to the Minister concerned, who submits them, for opinion, to the Inter-ministerial Public Sector Wage Audit Commission, which is chaired by the Minister of Finance. In addition to annual wage increases, the Commission examines the draft texts of agreements and conditions of service establishing permanent rules for staff remuneration (Decree No. 53-707 of 9 August 1953, section 6). The Commission does not supervise the whole of the public sector, but only 94 entities with over ten employees, including the Post, the National Railway Company, the Independent Parisian Transport Board, the Bank of France, Social Security, Électricité de France and Gaz de France, which have the largest number of employees.

375. *Japan. Public service.* The Committee firstly observes that several bills providing for basic labour rights for the public service, including the right to conclude collective

²⁴⁶ "Conseil d'Etat": Ruling of 8 Feb. 1999, "Association syndicale des cadres supérieurs et ingénieurs aux Télécommunications – Fédération syndicale SUD des PTT".

agreements, had been submitted to the Diet (Parliament). The Committee observes that, in the current system, collective bargaining is provided for in section 5 of the National Public Service Act and section 55 of the Local Public Service Act. The term “bargaining” has, however, been contested by RENGO, the principal trade union confederation in the country, which considers that it consists of a system of consultation and not a real system of negotiation, as the organizations do not have the right to conclude collective agreements. In practice, in view of the specific status of public employees and the public nature of their functions, and in order to guarantee the common interests of the population as a whole, the pay, working time and other working conditions of national public employees in the non-operational sector are covered by the legislative and budgetary powers conferred upon the Diet. The national system is based on a body, the National Personnel Authority, which is a neutral third-party agency established with a view to compensating for the restrictions on the fundamental labour rights of public employees. The National Personnel Authority carries out comparative studies of pay in the public and private sectors and hears the organizations of public employees before submitting its recommendations to the Government on the adjustment of the pay and other working conditions of public employees. The recommendations made by the Authority may go beyond annual measures relating to pay and working conditions. In 2005, it proposed a drastic reform of the pay system, particularly by proposing to give priority to the duties and responsibilities of the employee rather than seniority, and to the performance of each employee, while advocating that salaries in the private sector should be taken into account at the local level. The Government also decided to follow the recommendations made by the Authority in full on this point. It should be noted that even organizations of public officials that are not registered may engage in the collective bargaining process. The report of the Advisory Board on the Public Service Personnel System indicated in 1973 that, when an unregistered organization of public employees requests the authorities to bargain, the authorities may not reject the request if there are no reasonable grounds for doing so. Public employees in the operational sector have the right to collective bargaining, through which they may conclude collective agreements. At the local level, the pay and conditions of employment of public employees are subject to the budgetary authority of local assemblies. Local governments have to take appropriate measures to ensure that pay and other working conditions are adapted to the prevailing social conditions and that salaries are determined taking into account the cost of living, pay and working conditions of national public employees, other local public bodies and the private sector. Independent and neutral local staff committees fulfil the same functions at the local level as the National Personnel Authority at the national level. Prior to the review of pay in accordance with the ordinance issued by the local assembly, these committees make recommendations with a view to ensuring that wage scales are adapted to the prevailing social conditions. Unions representing office and administrative employees may negotiate fundamental terms and conditions of employment, which are the subject of a written agreement. However, these agreements are not binding, as they are not recognized in law. Moreover, the scope of collective bargaining is limited, as it excludes issues relating to administration and management, although conditions of work which could be affected by administrative or managerial measures are subject to negotiation. Since 1997, a constantly increasing number of agreements have only been partially applied or not applied at all due to the decisions of local authorities not to take these agreements into account in view of economic and social circumstances or a critical budgetary situation. The Supreme Court has considered that even where a pay review is not undertaken in accordance with a recommendation of the competent staff committee, this must not be interpreted as meaning that the staff

committee is not fulfilling its compensatory functions where this situation is due to inevitable reasons relating to the budgetary situation.

376. *Public enterprises in Japan.* The right to collective bargaining is guaranteed for the employees of national public enterprises and Independent Administrative Institutions, including the right to conclude collective agreements. Under the terms of the Local Public Enterprise Labour Relations Act (section 8), the issues covered by collective bargaining include: (1) pay, working time, rest periods, leave; (2) promotions, transfers, dismissals, seniority and disciplinary measures; (3) occupational safety, health and accidents; and (4) other working conditions. Problems relating to the administration and management of public enterprises are excluded from collective bargaining. Following the privatization of the postal services, around 60 per cent of the employees in the national public service acquired the right to conclude collective agreements in 2001. In the health sector, in its meetings with directors of institutions, the Ministry gave instructions to promote collective bargaining in accordance with the legislation and the “bargaining procedures” agreed upon with the National Hospital Workers’ Union. As of 1 April 2004, national hospitals and care homes (154 establishments employing over 40,000 employees), with the exception of highly specialized medical centres, became specified Independent Administrative Institutions and became governed by the labour relations law applicable to this sector. By virtue of the Act issuing general rules for specified Independent Administrative Institutions, the issues of pay, hours of work and other working conditions are determined by the establishments.

377. *New Zealand.* The object of the Employment Relations Act adopted in 2000 is to build productive employment relationships by improving trust and confidence between employers and employees, promoting collective bargaining procedures in which workers choose the union which represents them, while also providing that individuals may negotiate their own salaries and conditions of employment individually when they choose not to be members of a union. Bargaining is based on the principle of good faith (sections 32 and 33 of the Employment Relations Act). It applies to all of the partners (unions, employers and employees) and brings with it certain consequences, such as the need for the parties to meet from time to time and to respond to proposals made by each other. However, the parties are not under the obligation to reach an agreement. Collective agreements may cover one or more employers. For example, in the health sector, priority has been given to multi-employer collective agreements at the regional level. This is a type of negotiation that the Public Service Association (PSA) would like to develop in other sectors, such as education, transport and justice. With the emergence of the Partnership for Quality and the agreement concluded for this purpose between the competent authorities and the PSA, the traditional model of collective agreements which were confined to determining working conditions and remuneration has developed towards a new model encompassing a broader perspective with a view to improving work and management and achieving better results and services provided to the population. The PSA nevertheless complains that, despite this new context, many employers in the public service are not willing to negotiate issues relating to remuneration both in terms of pay levels and the definition of remuneration systems. It calls in this respect for the Public Service Departments to be treated in the same way as other components of the public sector, such as health and education, where these matters are freely negotiated. In practice, according to State Services Commission data,²⁴⁷ there was little change in the data relating to the coverage of collective bargaining in the

²⁴⁷ State Services Commission: *Yearly Human Resources Capability Survey of Public Service Departments and Selected State Organisations*, June 2000, June 2005 and June 2006.

public service over the five years following the adoption of the Employment Relations Act. In 2000, some 48 per cent of employees in the public service were covered by collective agreements, 9.4 per cent were covered by collective agreements which had expired and 42.6 per cent were covered individual contracts. In June 2005, these figures were 49 per cent, 6 per cent and 45 per cent, respectively. It was only in 2006 that the proportion covered by collective bargaining increased significantly, rising to 56 per cent.

378. *Philippines*. Recognized in the Constitution (Article XIII, section 3), the right to collective bargaining also applies to the public service, although it is subject to a number of restrictions related in particular to the legislative and budgetary powers of the State. When a union has been registered, where it has the support of the majority of the employees in the unit that it covers, it may apply for accreditation by the Civil Service Commission as the sole and exclusive agent for the negotiation of terms and conditions of employment, except those that are fixed by law. To be accredited, the union has to file a petition for accreditation signed by the majority of the employees of the negotiating unit and certification from the Bureau of Labor Relations that the organization seeking accreditation is the only registered organization in the negotiating unit and that no other employees' organization is seeking registration. Where more than one organization is registered in a particular unit and claims to represent the majority of employees, each of the organizations concerned or the management may file a petition with the Bureau of Labour Relations for a certification election. The status of an accredited employees' organization union may be challenged one year after accreditation where it has not maintained the support of the majority of employees concerned or if it has failed to submit a proposal for a Collective National Agreement (CNA) leading to the conclusion of an agreement within two years following accreditation. The terms and conditions of employment may be negotiated and agreed upon between the management of the accredited union in the form of a CNA of a maximum duration of three years, except where they are fixed by law. Negotiable matters include the schedule of vacations, the assignment of pregnant women, protection and safety, facilities for persons with disabilities, first aid medical services, medical examinations and recreational, social, athletic and cultural activities. However, the negotiable matters do not include those which require the allocation of funds or which are covered by management prerogatives. These include salaries, allowances, pensions, travel expenses and appointments, promotions, transfers, reclassifications and disciplinary penalties. Once a CNA has been concluded, it has to be submitted for ratification by the employees concerned and has to be approved by a majority of them. Finally, it is filed for registration by the Civil Service Commission, which issues a certificate of registration of the Agreement.

379. *Senegal*. On 22 November 2002, the National Charter for Social Dialogue was concluded for a maximum period of five years and applies to the public, para-public and private sectors. It covers employers within the meaning of the Labour Code and the General Conditions of Service of the Public Service. Signed by the representatives of the State, employers' organizations and trade unions, it is intended to strengthen social dialogue machinery (collective bargaining, conciliation and consultations in a bipartite or tripartite context) so that negotiations can be held with the full participation of the State, in its capacity as both employer and the guarantor of the general interest. The Charter also establishes the permanent machinery for social dialogue, namely the National Social Dialogue Committee. Following facilitation by the Committee, protocol agreements have been signed between the Government and the unions, among others in the education sector: a protocol was signed on 23 September 2009 on a research and documentation allowance without affecting hours of work, an increase in the housing allowance from 40,000 to 60,000 CFA francs and an increase in the special allowance

for contractual staff (from 15,000 to 35,000 CFA francs). In the health sector, a protocol agreement was concluded between the Government and the unions on 2 May 2007 covering, among other matters, the payment of benefits for a total amount of 2 billion CFA francs and the recruitment of personnel. Although progress has therefore been achieved in collective bargaining in the public sector, it is nevertheless subject to significant limitations related to the powers of the Council of Ministers and the Parliament in the determination of remuneration (for example, in setting the value of the index point).

* * *

380. The Committee hopes that these examples, like the other examples of legislation and national bargaining systems mentioned in this General Survey, can be of assistance to the ILO constituent when elaborating policy on legislation in the field of social dialogue, collective bargaining and dispute resolution machinery.

XV. Period of validity of collective agreements

Labour Relations (Public Service) Recommendation, 1978 (No. 159)

3. Where an agreement is concluded between a public authority and a public employees' organisation in pursuance of Paragraph 2, subparagraph (1), of this Recommendation, the period during which it is to operate and/or the procedure whereby it may be terminated, renewed or revised should normally be specified.

381. Paragraph 3 of Recommendation No. 159 provides that collective agreements in the public sector should normally specify the period during which they are to operate and the procedures for renewing or revising them. The Committee notes that collective agreements, whether in the public or the private sector, generally stipulate the duration of their application or the manner in which they may be terminated; it is up to the parties to specify these matters. The relevant legislation often establishes rules governing the maximum duration of collective agreements, as well as the applicability or otherwise of collective agreements once their period of validity has expired. The importance of having clear rules on the possibility of extending the validity of agreements beyond the period set down in the agreement itself is illustrated by specific situations, such as where a collective agreement has been automatically renewed for decades; sometimes, these agreements provided for the indexing of wages to the cost of living, or contained other very advantageous financial clauses.

382. National legislation adopts widely varying approaches to the issue of extending the validity of collective agreements. Some countries provide that collective agreements have an indefinite duration and can be denounced at the request of one of the parties, or both parties, with the result that the agreement automatically expires and has to be renegotiated. Other countries envisage that the duration of the agreement can be extended once and for the same period, if the parties fail to agree on its renewal. Some legislation provides that, if the parties do not agree, the agreement is automatically extended and will continue to apply²⁴⁸ (in Spain, however, the automatic extension excludes the provisions that deal with remuneration, which are frozen. The objective of the law in such cases is to find a reasonable balance between the need to secure the rights of the workers and, at the same time, to provide an incentive to renew agreements by freezing wages).

383. The Committee wishes to recall that Conventions Nos 151 and 154 give preference to the rules established by the negotiating parties themselves concerning the period of validity of agreements. In practice, the legislation in member States often provides for a maximum period of validity, such as two, three or four years, which is accepted by the ILO supervisory bodies. If Recommendation No. 159 insists on the need for precise rules on the duration of collective agreements, this is because one of the functions of collective bargaining is to adapt the rules established between the parties to the changing situation and needs of enterprises and their economic situation, as well as to the demands of the trade unions. However, neither Conventions Nos 151 and 154, nor Recommendation No. 159, contain any rule preventing the automatic extension of the duration of collective agreements when they expire. Recommendation No. 159 simply calls for precise rules, for example in the legislation, collective agreements or case law, concerning the renewal or revision of collective agreements.

²⁴⁸ See *Greece* – CEACR, Convention No. 98, observations, 2011 and 2012; *Uruguay* – CEACR, observation, 2012.

384. Finally, while it is important that the rules on collective bargaining be shared by the parties as far as possible, it should be recalled that the question of the duration of collective agreements and the possibility of their period of validity being automatically extended may raise problems in relation to the principles of freedom of association, in particular where the signatory organization is not, or ceases to be, the most representative. The Committee on Freedom of Association has considered²⁴⁹ that the conclusion of collective agreements for a very long term, at least potentially, entails a risk that a union with borderline representativeness may be tempted to consolidate its position by accepting an agreement for a longer term to the detriment of the workers' genuine interests.

²⁴⁹ Committee on Freedom of Association, *Digest*, 2006, op. cit., para. 1048.

XVI. Promotion of collective bargaining

Collective Bargaining Convention, 1981 (No. 154)

Article 5

1. Measures adapted to national conditions shall be taken to promote collective bargaining.

2. The aims of the measures referred to in paragraph 1 of this Article shall be the following:

- (a) collective bargaining should be made possible for all employers and all groups of workers in the branches of activity covered by this Convention;
- (b) collective bargaining should be progressively extended to all matters covered by subparagraphs (a), (b) and (c) of Article 2 of this Convention;
- (c) the establishment of rules of procedure agreed between employers' and workers' organisations should be encouraged;
- (d) collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules;
- (e) bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining.

Article 6

The provisions of this Convention do not preclude the operation of industrial relations systems in which collective bargaining takes place within the framework of conciliation and/or arbitration machinery or institutions, in which machinery or institutions the parties to the collective bargaining process voluntarily participate.

Collective Bargaining Recommendation, 1981 (No. 163)

2. In so far as necessary, measures adapted to national conditions should be taken to facilitate the establishment and growth, on a voluntary basis, of free, independent and representative employers' and workers' organisations.

3. As appropriate and necessary, measures adapted to national conditions should be taken so that: (a) representative employers' and workers' organisations are recognised for the purposes of collective bargaining; (b) in countries in which the competent authorities apply procedures for recognition with a view to determining the organisations to be granted the right to bargain collectively, such determination is based on pre-established and objective criteria with regard to the organisations' representative character, established in consultation with representative employers' and workers' organisations.

4.(1) Measures adapted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking, the branch of activity, the industry, or the regional or national levels.

(2) In countries where collective bargaining takes place at several levels, the parties to negotiations should seek to ensure that there is co-ordination among these levels.

5.(1) Measures should be taken by the parties to collective bargaining so that their negotiators, at all levels, have the opportunity to obtain appropriate training.

(2) Public authorities may provide assistance to workers' and employers' organisations, at their request, for such training.

(3) The content and supervision of the programmes of such training should be determined by the appropriate workers' or employers' organisation concerned.

(4) Such training should be without prejudice to the right of workers' and employers' organisations to choose their own representatives for the purpose of collective bargaining.

6. Parties to collective bargaining should provide their respective negotiators with the necessary mandate to conduct and conclude negotiations, subject to any provisions for consultations within their respective organisations.

7.(1) Measures adapted to national conditions should be taken, if necessary, so that the parties have access to the information required for meaningful negotiations.

(2) For this purpose–

- (a) public and private employers should, at the request of workers' organisations, make available such information on the economic and social situation of the negotiating unit and the undertaking as a whole, as is necessary for meaningful negotiations; where the disclosure of some of this information could be prejudicial to the undertaking, its communication may be made conditional upon a commitment that it would be regarded as confidential to the extent required; the information to be made available may be agreed upon between the parties to collective bargaining;
- (b) the public authorities should make available such information as is necessary on the over-all economic and social situation of the country and the branch of activity concerned, to the extent to which the disclosure of this information is not prejudicial to the national interest.

8. Measures adapted to national conditions should be taken, if necessary, so that the procedures for the settlement of labour disputes assist the parties to find a solution to the dispute themselves, whether the dispute is one which arose during the negotiation of agreements, one which arose in connection with the interpretation and application of agreements or one covered by the Examination of Grievances Recommendation, 1967.

Prior consultation on the measures to be taken to promote collective bargaining

Collective Bargaining Convention, 1981 (No. 154)

Article 7

Measures taken by public authorities to encourage and promote the development of collective bargaining shall be the subject of prior consultation and, whenever possible, agreement between public authorities and employers' and workers' organisations.

385. Convention No. 154 emphasizes the formal obligation to consult employers' and workers' organizations on measures to promote collective bargaining. The Committee considers that these include measures intended to modify national rules on collective bargaining, whether or not they are set out in law, as well as measures of other types, such as those indicated in Article 5 of Convention No. 154 and Paragraphs 2 to 7 of Recommendation No. 163 (some of these measures have already been covered in previous chapters, and others are discussed in the following paragraphs). The importance of this obligation is emphasized by the objective to achieve agreement, *whenever possible*, between public authorities and employers' and workers' organizations (Article 7 of Convention No. 154). In the view of the Committee, collective bargaining can also be promoted by the holding of full and frank consultations regularly with the employers' and workers' organizations concerned on the evaluation and possible revision of the collective bargaining system, while respecting the principle of the autonomy of the parties and in the light of the long-term implications of any change for the standard of living of workers,²⁵⁰ and at the same time taking into account the need to ensure that the rules of the system are durable, which implies a broad degree of

²⁵⁰ *Greece* – CEACR, Convention No. 98, observation, 2011.

acceptance by the parties. Moreover, when a government seeks to alter bargaining structures in which it acts actually or indirectly as employer (as is the case in the public administration), the Committee on Freedom of Association has considered that “it is particularly important to follow an adequate consultation process, whereby all objectives perceived as being in the overall national interest can be discussed by all parties concerned” in keeping with the principles established in the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113).²⁵¹ It is also necessary to hold consultations in good faith and in which the parties have all the information that they require “prior to the introduction of legislation through which the government seeks to alter bargaining structures in which it acts actually or indirectly as employer”.²⁵² These in-depth consultations are important in order to ensure that the essential principles and rules of the industrial relations system in each country enjoy the support of the most representative workers’ and employers’ organizations and that the rules are therefore stable and durable, unaffected by the policies of successive governments.

386. *Measures to promote collective bargaining.* Article 5 of Convention No. 154 lists certain measures and objectives for promoting collective bargaining, which should be adapted to national conditions and ensure that: (1) collective bargaining should be made possible for all workers and employers covered by the Convention; (2) collective bargaining should be progressively extended to all matters covered by the Convention (working conditions and terms of employment, relations between the parties, etc.); (3) the establishment of appropriate rules of procedure agreed between employers’ and workers’ organizations should be encouraged; and (4) bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining. The Committee observes that the first measure to promote collective bargaining is the promotion of freedom of association, that is, the freedom to establish workers’ and employers’ organizations in member States. In that respect, Recommendation No. 163 proposes measures to facilitate the establishment and growth, on a voluntary basis, of free, independent and representative employers’ and workers’ organizations. Recommendation No. 163 also proposes other means of facilitating, promoting or making possible collective bargaining, and especially measures so that: (a) procedures are established for the recognition of the most representative organizations; (b) collective bargaining is possible at any level; (c) negotiators have the opportunity to obtain appropriate training and the parties have access to the information required for meaningful negotiations (for example, information on the economic situation of the enterprise, subject however to reasonable guarantees of the objectivity and confidentiality of such economic data); and (d) measures adapted to national conditions so that the procedures for the settlement of labour disputes assist the parties to find a solution to the dispute themselves.²⁵³ The issues referred to in (a), (b) and (d) are addressed in other chapters of this Survey.

387. *Additional measures.* In the view of the Committee, the measures for the promotion of collective bargaining with a view to achieving the aims referred to in Convention No. 154 and Recommendation No. 163 are extremely varied and depend on national circumstances and on the specific system of industrial relations. The Committee wishes to outline certain measures set out in different national legislation or that have been promoted in practice, which may prove useful:

²⁵¹ Committee on Freedom of Association, *Digest*, 2006, op. cit., para. 1086, and *Digest*, 1996, op. cit., para. 856.

²⁵² Committee on Freedom of Association, *Digest*, 1996, op. cit., para. 857.

²⁵³ General Survey, 1994, paras 241–242 and 247.

- acquiring and disseminating knowledge of national laws and case laws in the field of collective bargaining and trade union rights, and of other legislation of which the satisfactory operation could serve as a model for improving national laws and regulations;
- acquiring and disseminating knowledge of the ILO Conventions and Recommendations on collective bargaining and the fundamental values of the Organization, and of the principles established by the ILO supervisory bodies;
- acquiring and disseminating knowledge of the experience and practices, good or bad, of collective bargaining in the country concerned and in other countries;
- acquiring and disseminating knowledge of negotiating techniques and of the rights and responsibilities of the parties;
- acquiring and disseminating knowledge of trade union and employer structures in the various countries;
- understanding of the working environment and the operation of collective bargaining, inter alia, through the preparation of labour statistics on all matters relating to collective bargaining (the workers and subjects covered, the sectors affected, etc.) and through studies and research;
- regular reviews, on a tripartite basis, of the operation of the collective bargaining system;
- the organization of seminars or exchanges between trade unions and employers' organizations on topical social and economic problems which may arise in the medium or long term;
- the establishment of national tripartite bodies and dispute resolution machinery;
- the reinforcement, if necessary, of the bodies responsible for the application of labour law;
- the creation of trade union training institutions and discussion forums on matters of common interest to the bargaining parties;
- knowledge of the responses given by different countries to economic crisis situations and efforts to adopt collective bargaining to changes in the working environment and in negotiating units; and
- ILO training activities.

388. The Committee notes that in some countries, such as *Canada*, the parties can have recourse to *preventive mediation*, made available through the good offices of a mediator who is independent of the parties. Well before the start of collective bargaining, the mediator attempts to identify the real problems that may arise, facilitate contacts and communication between the parties, provide them with information on relevant experience, and studies and statistics, as needed, and help the parties to analyse all this information. The Committee also recalls that for the purpose of promoting collective bargaining it is also necessary for the social partners to address improper practices which may occur in the course of collective bargaining, such as proven bad faith, unwarranted delays in the bargaining process or the failure to comply with concluded agreements.²⁵⁴

²⁵⁴ The Committee emphasized this point in an observation concerning Switzerland, without however concluding that there is such a problem in that country (*Switzerland* – CEACR, observation, 2011).

389. The Committee also recalls that the *dispute settlement machineries* referred to in Article 8 of Convention No. 151 *may assist in overcoming difficulties in the collective bargaining process* (see the next chapter). The Committee on Freedom of Association has considered that although certain rules and practices can facilitate negotiations and help to promote collective bargaining, all legislation establishing machineries and procedures for mediation and conciliation designed to facilitate bargaining between social partners must guarantee the autonomy of the parties to collective bargaining.²⁵⁵

390. In this connection, some national regulations address the question of the promotion of collective bargaining by linking it to dispute resolution machineries. There is an interesting example in the United States, where the *Alternative Dispute Resolution (ADR) services*, Title 5 of the Code of Federal Regulation (5 CFR) provides:

United States: Alternative Dispute Resolution (ADR) services, 5 CFR

Section 2423.2

- (a) Purpose of ADR services. The Office of the General Counsel furthers its mission and implements the agency-wide Federal Labor Relations Authority Collaboration and Alternative Dispute Resolution Program by promoting stable and productive labor–management relationships governed by the Federal Service Labor–Management Relations Statute and by providing services that assist labor organizations and agencies, on a voluntary basis to:
 - (1) develop collaborative labor–management relationships;
 - (2) avoid unfair labor practice disputes; and
 - (3) informally resolve unfair labor practice disputes.
- (b) Types of ADR Services. Agencies and labor organizations may jointly request, or agree to, the provision of the following services by the Office of the General Counsel:
 - (1) Facilitation. Assisting the parties in improving their labor–management relationship as governed by the Federal Service Labor–Management Relations Statute;
 - (2) Intervention. Intervening when parties are experiencing or expect significant unfair labor practice disputes;
 - (3) Training. Training labor organization officials and agency representatives on their rights and responsibilities under the Federal Service Labor–Management Relations Statute and how to avoid litigation over those rights and responsibilities, and on using problem-solving and ADR skills, techniques, and strategies to resolve informally unfair labor practice disputes; and
 - (4) Education. Working with the parties to recognize the benefits of, and establish processes for, avoiding unfair labor practice disputes, and resolving any unfair labor practice disputes that arise by consensual, rather than adversarial, methods.
- (c) ADR services after initiation of an investigation. As part of processing an unfair labor practice charge, the Office of the General Counsel may suggest to the parties, as appropriate, that they may benefit from these ADR services.

Federal mediation and conciliation service, FCMS, 29 USC

Section 173 – Functions of service

- (e) Encouragement and support of establishment and operation of joint labor–management activities conducted by committees. The Service is authorized and directed to encourage and support the establishment and operation of joint labor–management activities conducted by plant, area, and industry-wide committees designed to improve labor–management relationships, job security and organizational effectiveness, in accordance with the provisions of section 175a of this title.

²⁵⁵ See *Digest*, 1996, op. cit., para. 859.

391. In *Mauritius*, the Employment Relations Act 2008, applying to the public sector, provides for the establishment of a Commission for Conciliation and Mediation (see box below).

Employment Relations Act 2008 (Mauritius)

87. Establishment of the Commission

(1) The Industrial Relations Commission established under section 41 of the repealed Industrial Relations Act is deemed to have been established under this Act and is renamed as the Commission for Conciliation and Mediation.

(2) The Commission shall be reconstituted and shall consist of—

- (a) a President;
- (b) a Vice-President; and
- (c) not more than 6 other members who shall be appointed by the Minister for such period as he may determine after consultation with the most representative organisations of workers and employers; and
- (d) not more than 2 independent members who shall be appointed by the Minister for such period as he may determine.

(3) The President and the Vice-President shall be appointed by the Minister on such terms and for such period as he may determine.

88. Functions of the Commission

(1) The Commission shall have such functions as are specified in this Act or as may be prescribed.

(2) Without prejudice to the generality of subsection (1), the Committee shall—

- (a) provide a conciliation or mediation service on any labour dispute referred to it under this Act;
- (b) investigate into any labour dispute reported to it;
- (c) enquire into and report on any question referred to it under section 89; and
- (d) provide a conciliation or mediation service for the assistance of workers, trade unions and employers.

(3) The Commission may—

- (a) advise a party to a labour dispute on procedures to be followed in accordance with this Act;
- (b) publish guidelines in relation to any matter dealt with in this Act; and
- (c) conduct research into matters relevant to its functions and publish reports on such research.

(4) The Commission may provide workers, trade unions, group of trade unions, joint negotiating panels or employers with advice relating to the primary objects of this Act, which includes—

- (a) establishing collective bargaining structures;
- (b) creating deadlock-breaking mechanisms;
- (c) designing, establishing and functioning of workplace councils;
- (d) preventing and resolving disputes and grievances;
- (e) setting up of disciplinary procedures;
- (f) addressing industrial relations issues relating to the restructuring of organisations.

89. Reference by Minister

(1) The Minister may refer to the Commission any question relating to employment relations generally or to employment relations in any particular industry, and the Commission shall enquire into and report upon any question so referred.

(2) The report of the Commission on any question referred to it under subsection (1) may be published in such manner as the Minister may, after consultation with the Commission, determine.

392. In *Senegal*, the National Social Dialogue Committee is entrusted with several functions relating to the settlement of labour disputes. These include promoting the prevention of disputes through the early warning mechanism of *preventive negotiation*. It also has to ensure compliance with the National Charter on Social Dialogue concluded in 2002 for the implementation of collective bargaining, mediation and arbitration procedures and the investigation of any disputes arising out of the application of the Charter. The Council of the Republic for Economic and Social Affairs may also be called upon to propose mediation or solutions to labour disputes.

393. In *Colombia*, section 8 of Decree No. 1092 of 24 May 2012 on collective bargaining in the public service provides that the Government, through the Ministry of Labour and in coordination with the trade union confederations, shall conduct within six months of its adoption an educational information campaign – television, radio, publication of a document, national and regional seminars – with a view to its appropriate application.

394. In practice, the Committee has in recent years welcomed a number of positive measures for the promotion of collective bargaining. For example, it has welcomed the training and information activities organized for the social partners in *Burkina Faso*;²⁵⁶ the awareness-raising and training initiatives on bargaining techniques organized for staff representatives, trade union delegates and other workers in *Madagascar*;²⁵⁷ the prohibition of unfair practices and the guaranteed right of access to the necessary information in all sectors, including export processing zones, in *Mauritius*;²⁵⁸ the awareness-raising and information activities on the applicable legislation and the support measures for collective bargaining procedures in *Mozambique*;²⁵⁹ the adoption of provisions prohibiting the establishment of penalties or financial incentives related to unacceptable restrictions on collective bargaining in *Australia*;²⁶⁰ the establishment of new labour courts to reduce delays in judicial procedures in *Guatemala*;²⁶¹ and measures to limit the cost of bargaining procedures in *Australia*²⁶² and *Cape Verde*.²⁶³

²⁵⁶ *Burkina Faso* – CEACR, observation, 2011.

²⁵⁷ *Madagascar* – CEACR, observation, 2011.

²⁵⁸ *Mauritius* – CEACR, observation, 2011.

²⁵⁹ *Mozambique* – CEACR, direct request, 2011.

²⁶⁰ *Australia* – CEACR, observation, 2010.

²⁶¹ *Guatemala* – CEACR, observation, 2010.

²⁶² *Australia* – CEACR, direct request, 2010.

²⁶³ *Cape Verde* – CEACR, Convention No. 98, observation, 2011.

Right to information

Collective Bargaining Recommendation, 1981 (No. 163)

7.(1) Measures adapted to national conditions should be taken, if necessary, so that the parties have access to the information required for meaningful negotiations.

(2) For this purpose—

- (a) public and private employers should, at the request of workers' organisations, make available such information on the economic and social situation of the negotiating unit and the undertaking as a whole, as is necessary for meaningful negotiations; where the disclosure of some of this information could be prejudicial to the undertaking, its communication may be made conditional upon a commitment that it would be regarded as confidential to the extent required; the information to be made available may be agreed upon between the parties to collective bargaining;
- (b) the public authorities should make available such information as is necessary on the over-all economic and social situation of the country and the branch of activity concerned, to the extent to which the disclosure of this information is not prejudicial to the national interest.

395. The provisions contained in Recommendation No. 163 concerning the access of the parties to the information necessary to be able to conduct meaningful negotiations are both very clear and very broad so as to take account of the specific characteristics of each sector and of the enterprises or institutions concerned. The Recommendation calls for public and private employers to make available the necessary information concerning the negotiating unit, and also for public authorities to make available such information as is necessary on the overall economic and social situation of the country and the branch of activity concerned. In all cases, the aim of such access to information is based, in the view of the Committee, on the principle of good faith, so that the disclosure of the information is not prejudicial either to the enterprise or to the national interest. The Recommendation suggests that the parties may be bound if necessary by a confidentiality undertaking, and that information regarded as confidential should be determined by agreement between the parties.

396. For example, in *Uruguay*, section 6 of Act No. 18.508 contains the following provisions on the right to information of the parties to collective bargaining.

Act No. 18.508 (Uruguay)

Section 6. Right to information

The parties are required to supply, in advance and on a reciprocal basis, the information necessary so that bargaining can be carried out in knowledge of the facts.

At the request of the representative organizations of public sector workers, the State shall provide them with the available information on:

- (a) progress in preparing draft budgets and national accounts and the situation of budgetary expenditures;
- (b) the economic situation of executive bodies and units and the social situation of public service employees;
- (c) planned technological changes and operational restructuring;
- (d) workers' education and training plans;
- (e) possible changes in working conditions, security and occupational safety and health.

Training for the parties to collective bargaining and for negotiators

Collective Bargaining Recommendation, 1981 (No. 163)

5.(1) Measures should be taken by the parties to collective bargaining so that their negotiators, at all levels, have the opportunity to obtain appropriate training.

(2) Public authorities may provide assistance to workers' and employers' organisations, at their request, for such training.

(3) The content and supervision of the programmes of such training should be determined by the appropriate workers' or employers' organisation concerned.

(4) Such training should be without prejudice to the right of workers' and employers' organisations to choose their own representatives for the purpose of collective bargaining.

6. Parties to collective bargaining should provide their respective negotiators with the necessary mandate to conduct and conclude negotiations, subject to any provisions for consultations within their respective organisations.

397. Recommendation No. 163 calls for the parties to collective bargaining to provide training for negotiators and for public authorities to provide assistance to workers' and employers' organizations, at their request, for that purpose. The content and supervision of training programmes should be determined by the appropriate workers' or employers' organization concerned, and the training should be without prejudice to the right of the organizations to choose their own representatives for collective bargaining. The Committee understands that this assistance may include facilities such as information and education materials, the availability of premises and possibly a financial contribution, on the understanding that, as it is a Recommendation, this provision does not place any formal obligation on the member States of the Organization. The Committee also recalls that, under the terms of Paragraph 6 of Recommendation No. 163, *parties to collective bargaining should provide their respective negotiators with the necessary mandate to conduct and conclude negotiations, subject to any provisions for consultations within their respective organisations.*

XVII. Coverage of collective bargaining in practice

398. The Committee wishes to emphasize that the application of Conventions Nos 151 and 154 implies, in the sectors concerned, a satisfactory level of coverage both for public employees, and for other workers in the public and private sectors. However, the Committee has noted with concern that in some countries the application of the legislation has not resulted in practice in satisfactory levels of coverage, as collective bargaining is very limited or even practically inexistent in those countries. For example, in *Cape Verde*, the Committee noted that the total number of collective agreements concluded in all sectors is extremely low. It should however be emphasized that the Committee has noted with interest the adoption of the Deliberation of 17 June 2011 establishing the National Committee for the Promotion of Collective Bargaining;²⁶⁴ in *Comoros*,²⁶⁵ the Committee has noted that collective bargaining is neither structured nor supported at any level; and in *Equatorial Guinea*,²⁶⁶ the Committee has noted that the legal framework for collective bargaining is still defective and ambiguous. The Committee observes that these situations have resulted in a very limited number of collective agreements and very low coverage of workers.

399. The Committee observes in general terms that the ratification of the Conventions on collective bargaining should result in significant coverage of workers by collective agreements, and that this coverage should include the various productive sectors in the country and, at least progressively, all the subjects of bargaining mentioned in Conventions Nos 151 and 154. Finally, the Committee observes that when problems arise in practice in implementing the requirement to promote collective bargaining, it follows up the matter by requesting statistical data and, where appropriate, reminding the government concerned that technical assistance is available from the Office.

400. The Committee notes that several governments, in their reports submitted under article 19 of the ILO Constitution, have provided statistics on the collective agreements concluded in the public sector. The Government of the *United Kingdom*, indicating that its national law does not draw any distinction between employees in the private and the public sectors, states that the number of trade union members is much higher in the public sector (56 per cent) than in the private sector (14 per cent), and that 64.5 per cent of the public sector is covered by a collective agreement. According to the Government of the *United States*, based on the available data, the number of trade union members is over five times higher in the public sector (37 per cent, or around 7.6 million workers) than in the private sector (6.9 per cent, or around 7.2 million workers). The Government of *Costa Rica* indicates that 70 collective agreements have been registered in the public sector. The Government of *Denmark* emphasizes that 98 per cent of public sector employees are covered by a collective agreement. The Committee notes that certain countries, such as *Argentina*, *Brazil* and *Cuba*, and the Nordic countries in general, have very high rates of trade union membership and of collective bargaining coverage.

²⁶⁴ See *Cape Verde* – CEACR, observation, 2012.

²⁶⁵ See *Comoros* – CEACR, observation, 2012.

²⁶⁶ See *Equatorial Guinea* – CEACR, observation, 2012.

Part III

Dispute settlement in the public service

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

Article 8

The settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought, as may be appropriate to national conditions, through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved.

Collective Bargaining Convention, 1981 (No. 154)

Article 5

1. Measures adapted to national conditions shall be taken to promote collective bargaining.

2. The aims of the measures referred to in paragraph 1 of this Article shall be the following:

- (a) collective bargaining should be made possible for all employers and all groups of workers in the branches of activity covered by this Convention;
- (b) collective bargaining should be progressively extended to all matters covered by subparagraphs (a), (b) and (c) of Article 2 of this Convention;
- (c) the establishment of rules of procedure agreed between employers' and workers' organizations should be encouraged;
- (d) collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules;
- (e) bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining.

Article 6

The provisions of this Convention do not preclude the operation of industrial relations systems in which collective bargaining takes place within the framework of conciliation and/or arbitration machinery or institutions, in which machinery or institutions the parties to the collective bargaining process voluntarily participate.

Collective Bargaining Recommendation, 1981 (No. 163)

Paragraph 8

Measures adapted to national conditions should be taken, if necessary, so that the procedures for the settlement of labour disputes assist the parties to find a solution to the dispute themselves, whether the dispute is one which arose during the negotiation of agreements, one which arose in connection with the interpretation and application of agreements or one covered by the Examination of Grievances Recommendation, 1967.

401. Conventions Nos 151 and 154 both contain provisions on settling disputes, but differ in their focus. Convention No. 151 deals with finding solutions to disputes “arising in connection with the determination of terms and conditions of employment”, placing

the emphasis on the guarantees that should be part of such procedures, while Convention No. 154 approaches the issue of dispute settlement with emphasis on the voluntary nature of parties' participation and conceiving procedures that contribute to promoting collective bargaining.

402. Article 8 of Convention No. 151 expressly mentions various ways of settling disputes: negotiation between the parties, mediation, conciliation and arbitration. Article 6 of Convention No. 154 lists the same methods, except for mediation. The issues concerning disputes and conciliation bodies were first examined in the context of the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), in which the right to conclude collective agreements was also enshrined for the first time.²⁶⁷

403. Convention No. 154 and Recommendation No. 163 favour dispute settlement procedures in which the parties themselves find a solution to their dispute through negotiation and/or conciliation and/or arbitration procedures. Article 6 of Convention No. 154 (which applies to all branches of activity, including public administration) allows for systems in which collective bargaining takes place within the framework of conciliation and/or arbitration machinery or institutions in which the parties to the collective bargaining process participate voluntarily.

404. The principles of Conventions Nos 151 and 154 with regard to settling disputes derive from Recommendations Nos 91 and 92, which do not specifically refer to public servants:

- on the one hand, the Collective Agreements Recommendation, 1951 (No. 91), stipulates, with regard to disputes over the interpretation of a collective agreement, that “disputes arising out of the interpretation of a collective agreement should be submitted to an appropriate procedure for settlement established either by agreement between the parties or by laws or regulations as may be appropriate under national conditions”;
- on the other hand, the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92) contains the following provisions:

1. **Voluntary conciliation** machinery, appropriate to national conditions, should be made available to assist in the prevention and settlement of industrial disputes between employers and workers.

2. Where voluntary conciliation machinery is constituted on a joint basis, it should include equal representation of employers and workers.

²⁶⁷ For more information, see the following Articles of Convention No. 84: Article 3. All practicable measures shall be taken to assure to trade unions, which are representative of the workers concerned, the right to conclude collective agreements with employers or employers' organizations; Article 4. All practicable measures shall be taken to consult and associate the representatives of organizations of employers and workers in the establishment and working of arrangements for the protection of workers and the application of labour legislation; Article 5. All procedures for the investigation of disputes between employers and workers shall be as simple and expeditious as possible; Article 6(1). Employers and workers shall be encouraged to avoid disputes, and if they arise to reach fair settlements by means of conciliation. (2) For this purpose all practicable measures shall be taken to consult and associate the representatives of organizations of employers and workers in the establishment and working of conciliation machinery. (3) Subject to the operation of such machinery, public officers shall be responsible for the investigation of disputes and shall endeavour to promote conciliation and to assist the parties in arriving at a fair settlement. (4) Where practicable, these officers shall be officers specially assigned to such duties; Article 7(1). Machinery shall be created as rapidly as possible for the settlement of disputes between employers and workers. (2) Representatives of the employers and workers concerned, including representatives of their respective organizations, where such exist, shall be associated where practicable in the operation of the machinery, in such manner and to such extent, but in any case in equal numbers and on equal terms, as may be determined by the competent authority.

3.(1) The procedure should be free of charge and expeditious; such time limits for the proceedings as may be prescribed by national laws or regulations should be fixed in advance and kept to a minimum.

(2) Provision should be made to enable the procedure to be set in motion, either on the initiative of any of the parties to the dispute or ex officio by the voluntary conciliation authority.

4. If a dispute has been submitted to conciliation procedure with the consent of all the parties concerned, the latter should be encouraged to abstain from strikes and lockouts while conciliation is in progress.

5. All agreements which the parties may reach during conciliation procedure or as a result thereof should be drawn up in writing and be regarded as equivalent to agreements concluded in the usual manner.

6. If a dispute has been submitted to **arbitration for final settlement with the consent of all parties concerned**, the latter should be encouraged to abstain from strikes and lockouts while the arbitration is in progress and to accept the arbitration award.

7. No provision of this Recommendation may be interpreted as limiting, in any way whatsoever, the right to strike.

405. In the course of the preparatory work on Convention No. 151 and, in particular, on the provision thereof concerning the settlement of disputes, the Committee on the Public Service considered that the words “as may be appropriate to national conditions” (Article 8) should be interpreted in the light of the other parts of the Article, which specify two different approaches, one of which might follow the other – negotiation and recourse to an independent and impartial machinery, at least one of which should exist – and that the key words in the Article were “shall be sought”, as the provision did not deal with what would happen afterwards, either if a settlement had been reached or in the event of failure to settle a dispute. It also specified that the term “negotiation” covered any form of discussion, formal or informal, that was designed to reach agreement.²⁶⁸

406. Lastly, the Committee recalls that: (1) during the preparatory work on Convention No. 151, it was established that the Convention did not deal in any way with the right to strike;²⁶⁹ and (2) in the course of the preparatory work on Convention No. 154, in 1980, an amendment proposed by the Worker members and subamended by the Government member of Italy, the intent of which was to add the words “the right to strike should not be affected by any measure taken by the public authorities with a view to promoting collective bargaining”, was rejected after a roll-call vote requested by the Employer members.²⁷⁰

407. The Committee underlines the fact that the importance of having procedures to settle collective disputes in the public administration sector seems as obvious in countries where strikes are prohibited in this sector as in other countries. It notes that, in many countries, mediation, conciliation or arbitration procedures have been established under general legislation on labour disputes, specific regulations on the public service, or collective agreements. In some cases, the same labour legislation applies to all employees in the public service and to those in the private sector.

²⁶⁸ International Labour Conference, 64th Session, 1978, *Record of Proceedings*, p. 25/9, Report of the Committee on the Public Service, paras 63 and 64.

²⁶⁹ International Labour Conference, 64th Session, 1978, *Record of Proceedings*, p. 25/9, Report of the Committee on the Public Service, para. 62.

²⁷⁰ International Labour Conference, 66th Session, 1980, *Record of Proceedings*, p. 41/9, Report of the Committee on Collective Bargaining, para. 66.

408. The Committee points out that Article 6 of Convention No. 154 refers to machinery or institutions “in which ... the parties to the collective bargaining process voluntarily participate”. Likewise, Paragraph 8 of the Collective Bargaining Recommendation, 1981 (No. 163), clearly opts for dispute settlement procedures that “assist the parties to find a solution to the dispute themselves”.²⁷¹ The Committee points out that such assistance is the very purpose of conciliation.

409. *Different types of dispute.* First of all, the Committee wishes to recall that, among the disputes in which trade unions may become involved, some occur within a single organization and some arise between trade unions or even with other associations, such as consumer groups. Disputes can also arise as a result of anti-union practices by an employer or the authorities (dismissal of union officials, refusal to grant an organization legal personality, etc.) that contravene labour legislation or collective agreements, or as a result of policy, legislative or economic and social measures taken by the Government. Other disputes are not directed towards an employer (which may have ceased to exist, for example following the closure of an enterprise), but towards the authorities, with a view to finding a solution to social problems posed. The Committee points out that the instruments covered by the present survey concern disputes arising in connection with the determination of terms and conditions of employment and with collective bargaining, rather than any others. However, it frequently happens in practice that, in addition to claims arising in connection with the determination of terms and conditions of employment and collective bargaining, trade unions present other demands, such as reinstatement of dismissed workers or union officials, payment of social benefits, etc.

410. From another standpoint, disputes can be classified as “disputes over interests” or “disputes over rights”. A dispute can arise in the course of determining terms and conditions of employment if the parties claim new rights or seek to establish new obligations (dispute over interests) or in the interpretation and application of the terms and conditions of employment contained in existing agreements, violation of which may be alleged, or in current laws and regulations (dispute over rights).

411. The Committee underlines the fact that Paragraph 8 of the Collective Bargaining Recommendation, 1981 (No. 163), states: “Measures adapted to national conditions should be taken, if necessary, so that the procedures for the settlement of labour disputes assist the parties to find a solution to the dispute themselves, whether the dispute is one which arose during the negotiation of agreements, one which arose in connection with the interpretation and application of agreements or one covered by the Examination of Grievances Recommendation, 1967.” Recommendation No. 163 therefore deals with both disputes over interests and conflicts of interpretation. This Recommendation also refers to the disputes covered by the Examination of Grievances Recommendation, 1967 (No. 130), which applies to disputes between one or more workers and an employer. It stipulates: “The provisions of this Recommendation are not applicable to collective claims aimed at the modification of terms and conditions of employment.” In view of this exception, the Committee observes that Recommendation No. 130, which deals essentially with individual grievances, does not fall within the scope of the present survey.

412. The concepts of disputes over interests and disputes over rights feature in many countries’ legislation. In some countries, they are given identical legal treatment, but it is more common for different rules to apply to the two cases. The Committee observes that

²⁷¹ The Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92) encourages provision to be made so that the (conciliation) process “can be set in motion, either on the initiative of any of the parties to the dispute or ex officio by the voluntary conciliation authority”.

the distinction is not always easily drawn and that, in practice, disputes over rights can turn into disputes over interests.

413. *Conflicts of interpretation (disputes over rights)*. The Committee notes that, in many countries, the settlement of disputes arising from the interpretation of legislation or clauses in collective agreements falls within the purview of bodies created by the parties in their collective agreements. The legislation of some countries establishes procedures that generally exclude the right to strike over such conflicts of interpretation and grants competence to resolve them to the judicial authorities or other bodies. In this regard, the Committee recalls that Paragraph 8 of Recommendation No. 163 advocates the submission of conflicts of interpretation to a procedure established by agreement between the parties or by laws and regulations. Article 8 of Convention No. 151 expressly requires guarantees of independence and impartiality in such procedures, so as to ensure the confidence of the parties. The Committee points out that the settlement of conflicts of interpretation by independent judicial authorities is likely to meet these requirements, although other mechanisms might also be admissible if they provide the above guarantees.

414. In some countries, disputes arising in connection with rights in the public service sector are settled by bodies within the general administration system. Claims may be brought first before the director of personnel or a joint body, then, if disagreement persists, various avenues for redress are available at different levels of the administrative hierarchy. Subsequently, the courts may have to become involved.

415. In several countries, disputes over rights are, from the outset, referred to bodies that are separate from the parties. Depending on national practice, they take various forms: labour courts or courts at common law, special official bodies, or independent arbitrators or arbitration boards. In *Australia*, for example, only disputes over interests may be referred to extrajudicial dispute settlement procedures, as disputes over rights fall within the exclusive purview of the courts.

416. In its 1994 General Survey, the Committee noted that some industrial relations systems see the collective agreement as a social peace treaty of fixed duration during which strikes and lockouts are prohibited, with the parties being afforded arbitration machinery. The Committee considered that “if legislation prohibits strikes during the term of collective agreements, this major restriction on a basic right of workers’ organizations must be compensated by the right to have recourse to impartial and rapid arbitration machinery for individual or collective grievances concerning the interpretation or application of collective agreements”.²⁷²

417. The Committee also wishes to refer to the following principles of the Committee on Freedom of Association:

- The solution to a legal conflict as a result of a difference in interpretation of a legal text should be left to the competent courts. The prohibition of strikes in such a situation does not constitute a breach of freedom of association.²⁷³
- If strikes are prohibited while a collective agreement is in force, this restriction must be compensated for by the right to have recourse to impartial and rapid

²⁷² General Survey, 1994, paras 166 and 167.

²⁷³ Committee on Freedom of Association, *Digest*, op. cit., para. 532.

mechanisms, within which individual or collective complaints about the interpretation or application of collective agreements can be examined.²⁷⁴

418. The Committee considers that procedures for settling conflicts of interpretation established either by agreement between the parties or in accordance with laws and regulations are compatible with Conventions Nos 151 and 154, if these procedures – judicial or otherwise – provide guarantees of independence and impartiality and ensure the confidence of the parties, such as independent judicial procedures, for instance.

419. The Committee considers it useful to give some examples here of legislation on settling conflicts of interpretation.

420. In *South Africa*, section 23, paragraph 1, of the Labour Relations Act stipulates that any collective agreement must provide for a procedure to resolve any dispute about its interpretation or application. The procedure must first require the parties to attempt to resolve the dispute through conciliation and, if the dispute remains unresolved, to resolve it through arbitration.

421. In *Algeria*, Act No. 90-02 of 6 February 1990 on the prevention and settlement of collective labour disputes and the exercise of the right to strike makes provision for conflicts of interpretation to be referred to the joint council for the public service.

422. In *Argentina*, the general collective agreement for the national public service,²⁷⁵ concluded in 2006, includes a provision on dispute settlement. The collective agreement creates a Standing Committee on Application and Labour Relations (COPAR), comprising three delegates and alternates representing the State, as employer, and the same number representing the trade unions. The Standing Committee's mandate is to interpret the general collective agreement, ensure that sectoral agreements are in keeping with the general agreement, intervene to resolve points of controversy, disputes and collective disputes over interests, and, twice a year, assess the extent to which the collective agreement is being applied and suggest possible improvements. The collective agreement establishes a voluntary system for settling collective labour disputes arising between the State, as employer, and its agents. This written procedure operates on the principles of voluntarism, speed, equality, bilateralism, listening to the parties, and impartiality. It provides for three types of procedure: the parties settling the dispute themselves within COPAR; mediation; and arbitration.

423. In *Canada*, section 57, paragraph 1 of the Labour Code stipulates that every collective agreement should contain a provision for final settlement without stoppage of work, by arbitration or otherwise, of all differences between the parties to, or employees bound by, the collective agreement, concerning its interpretation, application, administration or alleged contravention.

424. In *Finland*, under a 1974 Act, the Labour Court receives disputes concerning collective agreements in both the private and public (central and local) sectors, including where such disputes relate to the validity, duration, content or scope of an agreement or the interpretation of a particular clause thereof.

425. In *Latvia*, the Labour Act, which applies to the public sector in the absence of provisions to the contrary in other acts, states:

²⁷⁴ *ibid.*, para. 533.

²⁷⁵ According to section 1 of the general collective agreement concluded in 2006, the agreement applies to all workers who are covered by law and who are in an employment relationship with the public service, along with all workers employed by the numerous decentralized bodies listed in the annex to the agreement.

Labour Act (Latvia)

Section 26. Settlement of disputes regarding rights

(1) If a conciliation commission does not reach agreement on a dispute regarding rights, such dispute shall be settled by a court or an arbitration board.

(2) A court shall have jurisdiction to rule on any dispute regarding rights between parties to a collective agreement in respect of the following:

1. claims arising from the collective agreement;
2. application of provisions of the collective agreement; and
3. validity or invalidity of provisions of the collective agreement.

(3) The parties to a collective agreement may agree to refer any dispute regarding rights – both a dispute that has already arisen and such as may arise between the parties to the collective agreement – for settlement to an arbitration board. An agreement to refer a dispute for settlement to an arbitration board shall be entered into in writing. Such agreement may be incorporated into the collective agreement as a separate provision (arbitration clause).

426. *Disputes over interests. Voluntary nature of bodies for settling disputes over interests.* Procedures for the settlement of disputes arising in connection with the determination of terms and conditions of employment vary widely among national legal systems. These systems are often very different in nature and do not always ensure that conciliation, mediation and arbitration are voluntary.

427. The traditional forms of third-party intervention are very familiar: conciliation (aiming to bring the parties and their positions closer together); mediation (presenting the parties with non-binding proposals or recommendations); and arbitration (by which the parties submit to the decision of an arbitrator). If conciliation and mediation are voluntary in nature and are accepted by the parties, they pose no problem with regard to the principles of collective bargaining, as their role is to support bargaining. However, if systematically imposed by law, they may, after a certain time and in certain cases, hamper or even restrict the parties' collective autonomy to varying degrees, depending on the nature of the process and how it is regulated in law. The aim of these mechanisms may be to resolve disputes between parties, but, like arbitration, they can also be used in the early stages to determine what the parties want. This can often reduce tensions and enable interim or general solutions to be found.

428. Some developing countries have historically opted for compulsory conciliation and mediation, and in many cases also for compulsory arbitration. The stated objective of such systems is often to compensate for weak trade unions or to ensure that the Government's economic policies are followed, or even to make it difficult or impossible to exercise the right to strike in practice, even in public services that are not essential in the strict sense of the term. On this issue, these countries sometimes refer to the need for political stability, the demands of economic and social development, and the excessive politicization or lack of maturity of trade unions. In such systems, legislation lays down an extensive judicial or administrative framework for the collective bargaining process, in which conciliation and mediation are compulsory or automatic and arbitration can be sought either at the request of one of the parties or on the initiative of the administrative or judicial authorities.

429. In industrialized countries, the most common mechanism is conciliation at the request of one or more of the parties. Some countries also provide for mediation. Resorting to compulsory arbitration is very infrequent in practice, but is generally authorized by national legislation when a dispute affects essential services (for example,

Spanish air traffic control) or lasts too long in one of the country's strategic sectors (for example, the fishing sector in Iceland or the petroleum sector in Norway).

430. Furthermore, the Committee wishes to point out that in some places, such as the Nordic countries, the approach to collective disputes that relate to collective bargaining is governed by the principles of the obligation to ensure peace in society and in the workplace, by virtue of which the possibility of direct action, during the limited term of the collective agreement, is excluded either by the parties to the collective agreement or by jurisprudence. These principles may stem from a legal provision (Sweden), national jurisprudence (Switzerland, Germany, Austria), a general agreement between trade union and employer federations (Denmark) or express provisions of collective agreements concluded at various levels (United States). In the countries concerned, collective agreements frequently make provision for settling disputes arising in connection with the interpretation or application of clauses contained therein.

431. Other countries deal with the issue of settling disputes that arise within the framework of collective bargaining as part of procedures to tackle *unfair practices*, which in general mainly concern threats to the exercise of trade union rights, including some aspects of the right to bargain collectively (for example, problems with recognition of a representative trade union organization for the purposes of bargaining), discriminatory practices against trade unionists, lack of good faith shown by a party during the bargaining process, etc. These procedures can be administrative (United States) or parajudicial (Japan, Canada).

432. In some countries of the Commonwealth, monitoring the application of legislation on trade union rights, including collective bargaining, falls within the remit of an independent expert body (labour commission) that deals with problems relating to the constitution of organizations, collective bargaining and other union rights, and which, if necessary, undertakes conciliation, mediation and essentially arbitration, as well as prevents unfair practices and has powers of sanction.

433. The Committee wishes to stress that legal systems that provide for conciliation and mediation by a ministerial body, in the public service or in other sectors, without a request from either party, once a specified period has expired in the bargaining process, would not appear to comply with the principles laid down in Conventions Nos 151 and 154. Such systems involve administrative or judicial intervention that has not been requested by the parties, contrary to the principles of free and voluntary collective bargaining, which opens the door to potential interference or pressure on one or other of the parties, depending on the Government's political stance. This problem is quite often made worse in some countries by excessive legalism. The Committee underlines the fact that systems enshrining voluntary arbitration as a means of settling disputes comply with the Convention. This is not the case where legislation allows for compulsory arbitration at the request of a single party or at the decision of the authorities, except in certain cases, such as in the state administration if negotiations have failed and conciliation and/or mediation procedures have been exhausted.

434. *Independence and impartiality of procedures and confidence of parties.* It follows from Article 8 of Convention No. 151 that, if the parties to bargaining provide for specific dispute settlement mechanisms, the requirements of the Convention with regard to the parties' confidence in the procedure are met. Important progress has been made in this regard in certain countries (for example, South Africa).

435. When dispute settlement procedures are established by legislation or on the basis of practice, it should be verified, based on the content of Article 8 of Convention No. 151, that the procedures are sufficiently independent and impartial and will ensure the

confidence of the parties. Some bodies and procedures are specific to public sector disputes; others apply across the board.

436. The Committee notes that the following dispute settlement bodies are provided for by various systems:

- Bodies established in collective agreements, joint bodies and tripartite bodies.
- Conciliators and mediators designated by occupational organizations.
- (Specialized) labour courts, ordinary courts, bipartite or tripartite courts, and administrative courts (for disputes involving public servants).
- Bodies composed of independent or neutral figures.
- Semi-judicial, semi-administrative bodies (labour commissions).
- Labour inspection services.

437. The Committee observes that, very often, with a view to guaranteeing the independence and impartiality of bodies and procedures in a manner that will ensure the parties' confidence, national legislation and legal systems grant dispute settlement bodies a large degree of autonomy from the public authorities, so as to ensure greater neutrality. In some countries, this autonomy is sought when it comes to setting the criteria that members of dispute settlement bodies must meet. Some legislations stipulate that such bodies must have an equal number of employer and union representatives, and sometimes independent members. Provision is sometimes made for a rotating chairmanship. Other legislations provide for independent conciliators designated jointly by unions and employers' organizations. In *Italy*, the members of the *Commissione di Garanzia* (responsible for settling disputes that involve the executive authorities, for instance, in relation to determining minimum services in the event of a strike) are appointed by the President and chosen by the chambers of parliament from among a number of experts in trade union law, labour law or administrative law. Lastly, as indicated above, conciliation, mediation and even arbitration bodies can be established and regulated by collective agreements.

438. The Committee emphasizes, however, that whether a system or dispute settlement body can guarantee the impartial and independent settlement of disputes, in accordance with Article 8 of Convention No. 151, depends on its capacity to ensure the confidence of the parties *in practice*. The Committee therefore underlines the fact that a system that provides for conciliation, mediation or arbitration bodies that are administrative in nature and composition for the settlement of disputes (over interests) in connection with collective bargaining in the public service, does not meet the requirements of the Convention with regard to the independence and impartiality of procedures and their ability to ensure the confidence of the parties.

439. The Committee on Freedom of Association has pointed out that Article 8 of Convention No. 151 allows a certain flexibility in the choice of procedures for the settlement of disputes concerning public servants on condition that the confidence of the parties involved is ensured.²⁷⁶

440. Lastly, the Committee wishes to draw attention to the importance it attaches to dispute settlement procedures and bodies (voluntary conciliation, mediation and arbitration) being designed appropriately and able to contribute to settling disputes fairly

²⁷⁶ Committee on Freedom of Association, *Digest*, 2006, op. cit., para. 778; for example, 226th Report, Case No. 1113 (*India*), para. 203.

and quickly, on the understanding that it should be possible to have recourse to these procedures at various stages of bargaining and at the request of the parties, for instance, if difficulties (isolated or otherwise) arise in bargaining, in order to avoid a dispute becoming intractable. These procedures should also be available to parties in the event of a strike.

441. *Preventing disputes.* Collective bargaining can be prepared for and facilitated in various ways. In some countries, such as *Canada*, the parties can access “preventive mediation”, which is provided through the good offices of an independent third party. Well before the start of collective bargaining, the mediator tries to identify the real issues likely to arise, facilitate contact and communication between the parties, provide them with information on relevant experiences, studies and statistics, according to their needs, and help them to analyse it. The chapter on promoting collective bargaining deals with the various ways of preventing disputes.

442. In *Senegal*, the National Committee for Social Dialogue performs various functions connected with settling labour disputes. It is charged with promoting dispute prevention by establishing a warning mechanism, namely preventive negotiation. It must also ensure that the National Charter on Social Dialogue, concluded in 2002, is applied through the creation of collective bargaining, mediation and arbitration procedures, and examine all complaints relating to the application of the Charter. The National Council for Economic and Social Affairs may also be called upon to mediate in, or propose solutions to, social disputes.

443. In *Algeria*, section 15 of Act No. 90-02 of 6 February 1990 on the prevention and settlement of collective labour disputes and the exercise of the right to strike states that “the state of socio-labour relations shall be examined by public institutions and administrations during *regular meetings* between workers’ representatives and authorized representatives of the public institutions and administrations concerned”. In *Brazil*, Decree No. 7674 of 20 January 2012 creates a mechanism for settling disputes in the public sector by applying a special system for social dialogue.

444. *Mediation and conciliation.* Conciliation or mediation procedures are commonly used to settle disputes in the public service and generally involve intervention by a third party or neutral body.

445. The mandate of a conciliator is essentially to create favourable conditions and a calm atmosphere so that the parties to the dispute can find a solution themselves; the conciliator’s involvement in settling a dispute is therefore reduced to a minimum, as he or she plays the role of a facilitator.

446. A mediator has a wider and more active role than that of facilitator in the event of a dispute. It may include proposing solutions to the parties, working with them individually or together, proposing acceptable alternatives or solutions that they may accept voluntarily, etc. Mediation sometimes ends with written recommendations or a report on the dispute (listing the issues resolved and outstanding) for decision by another body (administrative or otherwise) if the dispute has not been settled.

447. In some countries, conciliation is compulsory, in that the two parties are obliged to attend conciliation meetings convened by the public authorities. In others it is automatic, being set in motion once the deadline established in law for direct negotiation between the parties has expired.

448. In *Argentina*, Act No. 14,786 on labour disputes establishes a mechanism for compulsory conciliation (participation in conciliation is compulsory, if called for by the competent administrative authority, before any direct action can be taken in the public

sector; however, the parties are not obliged to accept the outcome) and voluntary arbitration.

449. Similarly, in the province of Buenos Aires, the Provincial Undersecretariat for Labour, in accordance with section 20 of Act No. 10,149 and in the absence of agreement or any solution to a dispute arising between the provincial executive authority and its employees, may decide that the dispute should be referred for compulsory conciliation in order to achieve consensus and reach a peaceful settlement. For the period specified in section 28 of the Act, for instance 15 days, the parties are not allowed to take direct action (section 29 of Act No. 10,149).

450. In other countries, the conciliation mechanism can be set in motion at the request of one or both parties. In some systems, agreement from the parties is necessary before mediation procedures can begin.

451. In *Spain*, irrespective of the powers that the parties give to joint committees for monitoring pacts and agreements, the public administration and trade union organizations may decide to create, organize and develop systems for the extrajudicial settlement of collective disputes. Disputes dealt with in this way may relate to collective bargaining or to the application and interpretation of agreements (except those that must be ratified by law). These systems may include mediation and arbitration procedures. Mediation is compulsory when one of the parties requests it, but solutions proposed by the mediator may be freely accepted or rejected by the parties.

452. In *Finland*, under the terms of the Act on Mediation for Labour Disputes, no work stoppage may be called or held unless the Office of the National Conciliator and the opposing party are advised at least two weeks before the strike is due to begin. The Ministry of Social Affairs and Health may delay the start of the action by a maximum of 14 days, which may be extended by seven days for special reasons, in order to allow sufficient time if the dispute affects society's vital functions or may seriously damage the general interest. The conciliator helps to resolve the dispute through negotiation and may, if negotiations stall, propose a draft agreement to the parties for their approval.

453. The basic agreement for local civil servants establishes a specific system of four successive levels of action to settle disputes (direct negotiation with the employer, local administration, central level and then settlement through the labour courts).

454. The Committee wishes to point out that, in order to play his or her role effectively, the conciliator or mediator must inspire confidence in the parties, and must therefore enjoy a status that confers a large degree of independence. In the context of public administration, a person who occupies a post or fulfils functions in the service of the Government or in an organization of public servants should not be appointed unless the parties agree otherwise. In addition to having the objectivity needed for the task, the conciliator or mediator should be familiar with the peculiarities of labour relations in the public sector and the limits of the role.

455. In *Algeria*, section 21 of Act No. 90-02 of 6 February 1990 on the prevention and settlement of collective labour disputes and the exercise of the right to strike establishes "a joint council for the public service, consisting of representatives of the administration and workers and operating under the auspices of the authority responsible for the public service". Section 22 of the Act states that "the joint council for the public service shall constitute a conciliation body for collective labour disputes within public institutions and administrations".

456. In *Australia*, the Fair Work Act 2009 stipulates that the parties to a collective agreement must establish in the collective agreement a mechanism for settling disputes

relating to it (section 186) and establishes a public body, Fair Work Australia (FWA), that may be designated as the dispute settlement mechanism. It also allows disputes to be settled by another person independent of the parties (sections 739 and 740 of the Fair Work Act).

457. The Australian Government states, in its report submitted under article 19 of the ILO Constitution, that it is the Government's policy that all workplace arrangements in the federal public sector must include procedures which facilitate the resolution of disputes at the workplace level. Only in cases where a dispute cannot be resolved at this level should it be referred to an external party for assistance with resolution, in the form of mediation or conciliation and only if all other options have been unsuccessful should the dispute be referred to FWA for arbitration.

458. In *Canada*, the Public Service Labour Relations Act establishes a Public Service Labour Relations Board with the mandate of providing adjudication services, mediation services and compensation analysis and research services. Members are appointed by the Governor in Council. Other than the Chairperson or a Vice-Chairperson, they must be appointed from among eligible persons whose names are included on a list prepared by the Chairperson after consultation with the employer and the bargaining agents. The bargaining agent notifies the Board of the process it has chosen – either arbitration or conciliation – to be the process for the resolution of disputes to which it may be a party, on the understanding that it may request a change to the process initially chosen.

459. If the process chosen for the resolution of a dispute is conciliation and the parties have bargained in good faith but are unable to reach agreement on a term or condition of employment, either party may, by notice in writing, request conciliation in respect of any term or condition of employment that may be included in a collective agreement. The Chairperson of the Public Service Labour Relations Board then recommends to the Minister that a public interest commission be established for conciliation of the matters in dispute. The Chairperson may act on his or her own initiative if he or she considers that establishing a public interest commission might assist the parties in reaching agreement and that the parties are unlikely to reach agreement otherwise. As soon as possible, the commission must endeavour to assist the parties to the dispute in entering into or revising a collective agreement. If the parties agree in writing that one or more recommendations to be made by the public interest commission are to be binding, each such recommendation is binding on them. If the Minister is of the opinion that it is in the public interest, he or she may give employees the opportunity to accept or reject the offer of the employer last received in respect of all matters remaining in dispute by secret ballot among all of the employees concerned. The direction that a vote be held, or the holding of that vote, does not prevent the declaration or authorization of a strike if it is not otherwise prohibited, nor does it prevent the participation in a strike by an employee if the employee is not otherwise prohibited from participating. If a majority of the employees participating in the vote accept the employer's last offer, the parties are bound by that offer and must, without delay, enter into a collective agreement that incorporates the terms of that offer.

460. In the *United States*, the Federal Mediation and Conciliation Service (FMCS) publishes annual statistics on its mediation activities in the collective bargaining process. Established in 1947, the Service's primary goal is to avoid work stoppages, which are costly for employers, unions and the Government. The Service has estimated that its services have saved the national economy US\$1.2 billion, compared to its annual budget

of US\$48 million, by preventing and reducing the length of stoppages in workplace disputes.²⁷⁷

461. If an impasse is reached in the collective bargaining process, the FMCS provides assistance and services to parties in the public sector, both at federal and state level. If voluntary arrangements, including the services of the Federal Mediation and Reconciliation Service, or any other third-party mediation, fail to resolve a negotiation impasse, either party may request the Federal Service Impasse Panel to consider the matter, or the parties may agree to binding arbitration, but only if the procedure is approved by the Panel. This Panel, which is an entity within the Federal Labor Relations Authority (FLRA),²⁷⁸ is composed of a chairman and at least six other members chosen for their fitness to perform the functions involved. Once the Panel has been informed of an impasse by one of the parties, it must promptly investigate and recommend to the parties procedures for the resolution of the impasse or assist the parties in resolving it. If, despite the Panel's assistance, a settlement cannot be reached, the Panel may hold hearings and take whatever action is necessary to resolve the impasse. Notice of any final action of the Panel must be promptly served upon the parties, and the action is binding on such parties during the term of the agreement, unless the parties agree otherwise (United States Code of Federal Regulations, section 7119).

462. In 1996, the FLRA introduced the voluntary Collaboration and Alternative Dispute Resolution (CADR) Programme with the aim of promoting stable and productive labour-management relations.²⁷⁹ The FLRA estimates that approximately 900 cases were fully or partially resolved through the CADR programme in 2011.²⁸⁰

463. In *France*, no procedure for settling collective labour disputes is included in the civil service statute. However, in statutory public enterprises and public industrial and commercial establishments, collective disputes may be referred for conciliation, the form of which is set out in a protocol agreed between management, representative trade union organizations and the minister responsible for the enterprise. The three parties take part in the process under the chairmanship of the minister. If the dispute concerns remuneration, representatives of the Ministries of Labour, Finance and Economic Affairs must be present.

464. If specific procedures are not established in a protocol, disputes may be submitted to the conciliation procedure under ordinary law.

465. In *Japan*, collective disputes are dealt with in Act No. 25/1946 of 27 September, which includes mechanisms for conciliation, mediation and arbitration developed through technical tripartite bodies (labour relations commissions) coordinated by a central commission under the jurisdiction of the Ministry of Labour. However, in practice, the country's culture favours the settlement of disputes through dialogue between the parties, without third-party assistance.

²⁷⁷ FMCS Annual Report 2010.

²⁷⁸ The Federal Labor Relations Authority is an independent institution created by the 1978 Civil Service Reform Act. Postal workers, uniformed military personnel and staff of governmental bodies involved in internal security activities, gathering foreign information and formulating or implementing foreign affairs policy are, however, excluded from the scope of the Act.

²⁷⁹ United States Code of Federal Regulations, title 5, sections 2423.2 and 2424.10.

²⁸⁰ Report submitted under article 19 of the ILO Constitution.

466. In *Latvia*, the Labour Act, which applies to the public sector in the absence of provisions to the contrary in other acts, establishes the procedure applicable to the settlement of disputes (see box below).

Labour Act (Latvia)

Section 25. Settlement of disputes in a conciliation commission

(1) Disputes regarding rights and interests which arise from the collective agreement relations or which are related to such agreement shall be settled by a conciliation commission. A conciliation commission shall be established by the parties to a collective agreement, both authorizing an equal number of their representatives.

(2) In case of a dispute, the parties to the collective agreement shall draw up a report regarding the differences of opinion and not later than within a three-day period submit it to the conciliation commission. The conciliation commission shall examine the report within a seven-day period.

(3) The conciliation commission shall take a decision by agreement. The decision shall be binding on both parties to the collective agreement and it shall have the validity of a collective agreement.

Section 27. Settlement of disputes regarding interests

If a conciliation commission does not reach agreement on a dispute regarding interests, such dispute shall be settled in accordance with the procedures prescribed by the collective agreement.

467. In *Luxembourg*, the Act of 16 April 1979 regulating strikes in state services and public establishments placed under the direct control of the State specifies, in section 2(1), that “collective disputes ... shall be subject to a compulsory conciliation procedure before a conciliation board”. The relevant provisions of this Act are reproduced in the box below.

**Act of 16 April 1979 regulating strikes in state services
and public establishments placed under the
direct control of the State (Luxembourg)**

Section 2.1

...

In addition to its chairman, a judicial magistrate, the conciliation board shall be jointly composed of five representatives of the public authorities and five representatives of the trade union organization or organizations to which those workers involved in the dispute belong.

The chairman shall be appointed by the Grand Duke for a period of three years; the representatives of the public authorities shall be appointed by the minister of State; and the representatives of trade union organizations shall be designated by their organizations, bearing in mind the following criteria:

- (a) If the collective dispute is generalized, the most representative trade union organization or organizations at national level in the sectors covered by the present Act shall have sole right to designate the five representatives from among their members.
- (b) If the collective dispute is not generalized, but is limited either to a single administration, or to a single occupation, the most representative trade union organization or organizations at national level shall designate three representatives, and the trade union organization or organizations representing the sector concerned, and more particularly those involved in the dispute, shall designate the other two.

3. If conciliation is unsuccessful, the dispute shall be referred, at the request of one of the parties and within 48 hours, to the President of the Council of State or to the member of the Council of State whom the President has delegated the role of mediator.

The mediator shall attempt to achieve reconciliation between the parties. If this is unsuccessful, he shall submit to them, within eight days, proposals, in the form of recommendations, with the aim of settling the dispute.

Section 3

If, in the event of deadlock in conciliation and, where relevant, mediation procedures, the staff decides to call a strike, this organized work stoppage shall be preceded by notification in writing.

468. In *Mauritius*, as indicated in paragraph 391, the 2008 Employment Relations Act, which applies to the public sector, provides for the creation of the Commission for Conciliation and Mediation.

469. In *New Zealand*, the new institutions established by the Labour Relations Act encourage problems to be resolved informally and at the appropriate level as soon as possible after a dispute occurs. A mediation service has been introduced within the Ministry of Labour. Employers and employees may contact mediators to assist them if they feel the need. Their involvement can range from simple consultation to assisting the two parties to negotiate an agreement. The Act also creates a labour relations authority that can deal quickly, informally and non-confrontationally with problems that have not been solved through mediation.

470. The Employment Court deals with matters referred to it by the Employment Relations Authority and hears appeals against decisions of the Authority.

471. In the *Philippines*, the Civil Service Commission offers services for conciliation/mediation and arbitration to prevent and resolve disputes between employees and management. These services are provided at the request of management or unions, or when a situation requires immediate intervention to protect the public interest.

472. There is a Public Sector Labor Management Council, composed of the Chairman of the Civil Service Commission (chairman), the Labor and Employment Secretary (vice-chairman) and the Secretaries of Justice, Finance, and Budget and Management. It also includes elected representatives of the four civil service sectors. The Council has exclusive competence in disputes over bargaining if the dispute needs to be settled or if deadlock is reached, as well as in disputes arising from the interpretation of collective negotiation agreements and disputes relating to unfair labour practices on the part of the employer or management or a union. It is also solely competent to determine whether a mass action amounts to a strike. The council is competent in all these cases if they meet the following conditions: there is a dispute; it remains unresolved; all available remedies under existing laws, rules and procedures have been exhausted; either or both of the parties have referred the dispute to the Council; and the Commission's Personnel Relations Office has certified that the dispute remains unresolved or irreconcilable.

473. In *Portugal*, Act No. 59/2008 stipulates that collective labour disputes in the public service may be referred for conciliation (section 384) with the agreement of both parties, or of one party in the absence of a reply from the other (section 385). Conciliation is undertaken by a person selected from a list proposed by the workers, the employers and the chairperson of the Economic and Social Council. Section 388 states that conciliation may become mediation. Finally, sections 371 and 372 stipulate that the parties may decide at any time to seek voluntary arbitration on issues relating to the interpretation,

conclusion or revision of a collective agreement. Each party nominates an arbitrator, and the arbitration award has the force of the provisions of a collective agreement.

474. *Voluntary arbitration.* The Committee wishes to point out that voluntary arbitration, for instance at the request of both parties, is always legitimate and in full conformity with Conventions Nos 151 and 154. In this regard, it recalls that, in 1977, the Committee on the Public Service voted to reject an amendment proposed by the Employers to delete the word “voluntary” before the word “arbitration”; in 1978, contrary to the outcome of the discussion in 1977, an amendment to delete the word “voluntary” before “arbitration” was adopted after a vote during the debate, with the result that the text of Convention No. 151 speaks only of “arbitration”.²⁸¹

475. In many countries, it is possible to refer disputes to arbitration, usually after one of the preliminary procedures has been exhausted. Arbitration procedures may be defined in legal provisions or based on a collective agreement or a one-off agreement between the authorities and the main civil service union organizations made during the collective bargaining process.

476. Responsibility for arbitration is sometimes conferred upon joint committees or mixed union-management bodies. In other countries, settling collective disputes in the public service is the task of official bodies made up entirely of neutral individuals. This is the case in Japan, which has a committee for industrial relations in public societies and national enterprises.

477. In some countries, legislation defines and limits the issues that may give rise to arbitration to matters that may form the subject of bargaining. In others, legislation or current agreements exclude certain issues from the scope of arbitration. Some legislations expressly stipulate that voluntary arbitration implies the prohibition of strike action while an arbitration award remains in force.

478. In *Spain*, through the arbitration procedure, the parties may decide voluntarily to refer a dispute to a third party for settlement, undertaking from that point onwards to accept the content of any arbitration award. An appeal may be brought against the award if due formalities, as established in law, have not been observed during the procedure or if the award covers issues that were not submitted for arbitration, and also if there has been any violation of current legislation.

479. In *Romania*, the Social Dialogue Act (No. 62/2011), published on 10 May 2011, provides for the amicable settlement of collective labour disputes through compulsory conciliation, through mediation and through arbitration (compulsory if the parties reach agreement to that effect).²⁸²

480. *Compulsory arbitration.* With regard to compulsory arbitration, imposed either directly under the law, or by administrative decision or at the initiative of one of the parties, in cases where the parties have not reached agreement, or following a certain number of days of a strike, the Committee has previously pointed out that this constitutes “one of the most radical forms of intervention by the authorities in collective bargaining”. The expression “compulsory arbitration” gives rise to a degree of confusion. If the term refers to the compulsory effects of an arbitration procedure resorted to voluntarily by the parties, this does not raise difficulties in the Committee’s opinion, since the parties

²⁸¹ International Labour Conference, 63rd Session, 1977, *Record of Proceedings*, p. 640, Report of the Committee on the Public Service, para. 96; and International Labour Conference, 64th Session, 1978, *Record of Proceedings*, p. 25/9–10, para. 66.

²⁸² Report submitted under article 19 of the ILO Constitution.

should normally be deemed to accept being bound by the decision of the arbitrator or arbitration board they have freely chosen. The real problem arises in the case of compulsory arbitration which the authorities may impose in an interest dispute at the request of one party, or at their own initiative, the effects of which are compulsory for the parties. Compulsory arbitration in the case that the parties have not reached agreement is generally contrary to the principles of collective bargaining. However, the Committee accepts compulsory arbitration as an exception in the case of disputes in the public service involving public servants engaged in the administration of the State and in the case of the conclusion of a first collective agreement examined below (see paragraph 485). Outside public administration, the Committee only accepts compulsory arbitration in certain specific circumstances, namely: (i) in essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (ii) when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities; or (iii) in the event of an acute crisis (for example, war, natural disaster, civil war, bankruptcy). However, arbitration accepted by both parties (voluntary) is always legitimate.²⁸³

481. Based on the premise that a negotiated agreement, however unsatisfactory, is to be preferred to an imposed solution, the parties should always retain the option of returning voluntarily to the bargaining table, which implies that whatever disputes settlement mechanism is adopted should incorporate the possibility of suspending the compulsory arbitration process, if the parties want to resume negotiations.²⁸⁴ For example, in *Canada*, sections 137(2) and 144(2) of the 2003 Public Service Labour Relations Act stipulate that “the Chairperson [of the Public Service Labour Relations Board] may delay establishing an arbitration board until he or she is satisfied that the party making the request has bargained sufficiently and seriously with respect to the matters in the dispute” and that “if, before an arbitral award is made, the parties reach agreement on any matter in dispute that is referred to arbitration and enter into a collective agreement in respect of that matter, that matter is deemed not to have been referred to the arbitration board and no arbitral award may be made in respect of it.”

482. *Dispute settlement and compulsory arbitration.* The main difficulties encountered by the Committee in its consideration of national legislation relate to the possibility that exists in certain countries to impose arbitration at the request of one of the parties only,²⁸⁵ a third party²⁸⁶ or an authority,²⁸⁷ particularly in services that are not essential in the strict sense of the term, or when considerations are imposed relating to the protection of certain interests. Depending on the system, the public administrative or

²⁸³ General Survey, 2012, paras 246 and 247.

²⁸⁴ General Survey, 1994, para. 259.

²⁸⁵ See, for example, *Indonesia* – CEACR, observation, 2010; *Republic of Moldova* – CEACR, observation, 2011; *Uganda* – CEACR, observation, 2011; *Zambia* – CEACR, observation, 2011. Furthermore, in its report under article 19 of the Constitution, the Government of the United States indicates that the Federal Labor Relations Authority performs functions for federal employee labour organizations, including the resolution of complaints of unfair labour practices and disputes over the scope of collective bargaining negotiations. In addition, the Federal Mediation and Conciliation Service has authority to help resolve bargaining disputes between federal agencies and labour organizations. If the dispute cannot be resolved voluntarily, either party may request the Federal Service Impasses Panel (FSIP) to consider the matter. The FSIP has authority to take whatever action is necessary to resolve the impasse, including direct assistance or binding arbitration.

²⁸⁶ See, for example, *Portugal* – CEACR, observation, 2011.

²⁸⁷ See, for example, *Kuwait* – CEACR, direct request, 2011; *Malaysia* – CEACR, observation, 2011; and *Mauritania* – CEACR, direct request, 2011.

legislative authorities, either intervening at their own initiative or at the request of one of the parties, may be authorized either to endeavour to settle the dispute themselves, or to submit the dispute to specific bodies (a conciliation board or an arbitration body), or to refer the dispute to the judicial authorities. In the Committee's opinion, all of these systems raise problems of compatibility with the Convention, except in the situations described in the preceding paragraphs.²⁸⁸

483. In contrast, certain countries provide that, once the conciliation attempt between the parties to a dispute has failed, the dispute is referred to a specific independent body entrusted with issuing a report or recommendations which, after a certain period, become enforceable if the parties to the dispute have not challenged them.²⁸⁹ The Committee considers that this type of provision is compatible with the Convention if the legal period referred to above is reasonable.

484. In the *United Kingdom*, the system of review bodies, which are made up of independent experts and cover those employed in the public sector, includes sectors as varied as doctors and dentists employed in the National Health Service, nurses and health professionals, the armed forces, prison services, school teachers and senior salary civil servants. Each review body is established as a public body supported by the relevant ministerial department. It submits independent recommendations on remuneration after considering proposals and information presented by the parties concerned (Government, employers and workers). The existence of a review body does not necessarily prevent collective bargaining, but the review body must make recommendations before a negotiated agreement can be put in place.

485. *Conclusion of a first collective agreement.* While the Committee considers that arbitration imposed by the authorities at the request of one party is generally contrary to the principle of the voluntary negotiation of collective agreements, it can envisage an exception in the case of provisions allowing workers' organizations to initiate such a procedure for the conclusion of a first collective agreement. As experience shows that first collective agreements are often one of the most difficult steps in establishing sound industrial relations, these types of provisions may be considered to constitute machinery and procedures intended to promote collective bargaining. The Committee has noted in this respect that, in *Portugal*,²⁹⁰ where protracted and fruitless negotiations have ended in a stalemate deemed impossible to resolve, recourse to compulsory arbitration would be limited to the negotiation of a first collective agreement.

486. The Committee stresses that, in the public service, where collective bargaining does not result in agreement and legislation does not grant certain civil servants the right to strike, the workers should be afforded adequate protection so as to compensate for the restrictions imposed on their freedom of action during arising disputes. Such protection should include, for example, impartial conciliation and eventually arbitration procedures which have the confidence of the parties, in which workers and their organizations could

²⁸⁸ Several countries have been requested to amend their legislation on these points: see, for example, *Angola* – CEACR, observation, 2010; *Botswana* – CEACR, observation, 2011; *Cuba* – CEACR, observation, 2010; *Egypt* – CEACR, observation, 2011; *Iceland* – CEACR, observation, 2010; *Jamaica* – CEACR, observation, 2010; *Lebanon* – CEACR, direct request, 2011; *Mozambique* – CEACR, direct request, 2011; *Nepal* – CEACR, observation, 2011; *Papua New Guinea* – CEACR, observation, 2011; *Russian Federation* – CEACR, observation, 2011; *Rwanda* – CEACR, observation, 2011; *Seychelles* – CEACR, observation, 2011; *Sudan* – CEACR, observation, 2011; *United Republic of Tanzania* – CEACR, observation, 2011; *Togo* – CEACR, observation, 2011; and *Zimbabwe* – CEACR, observation, 2011.

²⁸⁹ See, for example, sections 242–248 of the Labour Code of the *Congo*.

²⁹⁰ *Portugal* – CEACR, observation, 2011.

be associated. Such arbitration awards should be binding on both parties and once issued should be implemented rapidly and completely.²⁹¹

487. In *Colombia*, the Labour Code states that workers may choose either to call a strike, or to refer a dispute to an arbitration tribunal (see box below).

Labour Code (Colombia)

Section 444. Workers' decision

If direct negotiations end without the parties having reached full agreement regarding the labour dispute, the workers may opt to declare a strike or to refer their differences for decision by an arbitration tribunal.

A decision on whether to strike or request arbitration shall be taken within ten (10) working days of the end of the direct negotiation phase by secret, individual and non-delegable ballot, requiring an absolute majority of workers at the enterprise or of the general assembly of members of the trade union or unions that together represent more than half of those workers.

Section 452. Arbitration process

1. The following shall be subject to compulsory arbitration:

- (a) collective labour disputes arising in the essential public services that it has not been possible to resolve through direct negotiation;
- (b) collective disputes in which the workers opt for arbitration, in accordance with the provisions of section 444 of this Code;
- (c) collective labour disputes involving minority trade unions, when and if an absolute majority of workers at the enterprise have not opted for strike action where this is provided for.

2. Collective disputes in other enterprises may be referred for voluntary arbitration by agreement between the parties.

488. In *Algeria*, title V of Act No. 90-02 of 6 February 1990 on the prevention and settlement of collective labour disputes and the exercise of the right to strike establishes a national arbitration commission (see box below).

Act No. 90-02 (Algeria)

Section 49

The national arbitration commission shall be competent to deal with collective labour disputes:

- that involve persons who are prohibited from striking;
- that are referred to it under the conditions stipulated in section 48 of the present Act.

Section 50

The national arbitration commission shall rule, within thirty (30) days, on collective disputes referred to it:

- by the relevant minister, provincial governor or chairperson of a People's Communal Assembly, in accordance with the provisions of section 48 above;
- by the minister concerned or workers' representatives for those staff covered by section 43 above.

It shall receive all information relating to the collective dispute, along with any document drawn up as part of the conciliation and mediation procedures provided for.

²⁹¹ General Survey, 2012, para. 141.

Section 51

The national arbitration commission shall be chaired by a justice of the Supreme Court and shall be composed, in equal number, of representatives appointed by the State and representatives of workers.

Regulations shall govern the composition of, and procedures for appointing members of, the commission, together with its methods of organization and work.

Section 52

Arbitral awards shall become enforceable by order of the first president of the Supreme Court.

The parties shall be notified of an award within three (3) days of the date on which a decision is taken by the chairperson of the national arbitration commission.

489. In *Canada*, arbitration applies whenever the process for the resolution of a dispute is arbitration and the parties have bargained in good faith with a view to entering into a collective agreement but are unable to reach agreement on a term or condition of employment that may be included in an arbitral award. Either party may, by notice in writing, request arbitration in respect of such a term or condition. The Chairperson of the Board must then establish an arbitration board for arbitration of the matters in dispute, but may delay until he or she is satisfied that the party making the request has bargained sufficiently and seriously with respect to the matters in dispute. As soon as possible after being established, the arbitration board must endeavour to assist the parties to the dispute in entering into or revising a collective agreement. In so doing, it must take a number of factors into account: the necessity of attracting competent persons to, and retaining them in, the public service; offering compensation and other conditions that are comparable to those of employees in similar occupations in the public and private sectors; maintaining appropriate relationships as between different classification levels within an occupation and as between occupations in the public service; establishing compensation and other terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered; and the state of the Canadian economy and the Government of Canada's fiscal circumstances.

490. In *Canada*, an arbitral award may not alter or eliminate any term or condition of employment, or establish any new term or condition of employment, if, in particular, doing so would require the enactment or amendment of any legislation by Parliament, except for the purpose of appropriating the necessary money, or if the term or condition relates to standards, procedures or processes governing the appointment, appraisal, promotion, deployment, rejection on probation or lay-off of employees, or if doing so would affect the organization of the public service or the assignment of duties to, and the classification of, positions and persons employed in the public service. The arbitral award may not deal with a term or condition of employment that was not the subject of negotiation between the parties during the period before arbitration was requested. The arbitral award binds the employer and the bargaining agent, and also the employees in the bargaining unit. To the extent that it deals with matters referred to in the Financial Administration Act, the arbitral award is also binding on every deputy head responsible for any portion of the federal public administration that employs employees in the bargaining unit. However, as with a collective agreement, subject to the appropriation by or under the authority of Parliament of any money that may be required by the employer, the parties must implement the provisions of the arbitral award within 90 days after the day on which the award becomes binding on them or within any longer period that the parties may agree to or that the Board, on application by either party, may set.

491. *Some examples of national mechanisms for settling disputes in the public service.* In *South Africa*, the Labour Relations Act (section 35) establishes a Public Service Co-ordinating Bargaining Council (PSCBC) for the entire public service. In 1998, the PSCBC adopted its own system for settling rights and interest disputes. Rights disputes (such as individual labour practices or the interpretation and application of a collective agreement) are referred to the Council for Conciliation which must be conducted within 30 days, failing which the dispute must be referred within 90 days to arbitration (or in a limited number of circumstances to the Labour Court). Disputes of interest are referred to the Council for Conciliation and if the parties are not able to resolve the dispute within 30 days (or such longer period that they may agree) the parties may exercise their rights (i.e. the right to strike, refer the dispute to arbitration if an essential service or if the parties agree). There are detailed procedures providing for conciliation including the joint establishment of panels of conciliators and arbitrators.

492. In *Argentina*, as part of efforts to ensure that disputes are settled by the parties themselves, the general collective agreement for the national public service, concluded in 2006, stipulates that any party to a collective agreement may request intervention from the Standing Committee on Application and Labour Relations (COPAR), which acts independently to achieve conciliation within a maximum of 15 days. In the case of deadlock, the parties may request mediation and/or arbitration.

493. In the mediation process, COPAR appoints one or more mediators, who have ten working days to complete the procedure. During hearings at which both parties must be present, the mediator acts as moderator in an attempt to reach agreement. If the parties accept the outcome of mediation, it is formalized in writing and becomes binding. If there is no agreement at the end of the mediation process, the parties may opt for arbitration or go to court. Arbitration may not begin until both parties have expressly agreed to it. In this case, an arbitral award must be given within a period set by the parties or within a maximum of ten days. It must be well founded, and its effects are binding. No appeal may be brought in respect of such awards unless arbitral authority is exceeded, a procedural error occurs or the process does not meet legal or constitutional standards.

494. In *Burundi*, sections 32 to 35 of Act No. 1/015 of 29 November 2002, which governs the exercise of trade union rights and the right to strike in the public service, deal with collective disputes and the procedures to be followed. During a strike, negotiations must continue between the parties. If the parties so agree, this may take place under the guidance of an approved mediator. In the event of disagreement over the mediator or deadlock in mediation, an arbitration council is appointed by the Ministry of the Public Service at the request of one of the parties. Within four full days of its appointment, the arbitration council makes an arbitral award, which is transmitted to the parties immediately. If the conciliation does not arrive at an agreement, the dispute is referred to the Administrative Court by the losing party. While noting the Government's statements regarding the effect of the Court's action and, in particular, the fact that the decision of the Administrative Court is not legally binding if one of the parties appeals, and that in practice no cases have been referred to the Administrative Court because the Government tries to settle all disputes amicably, the Committee has repeatedly observed that recourse to the Administrative Court appears to result in a system of compulsory arbitration to end a dispute.²⁹²

²⁹² *Burundi* – CEACR, Convention No. 87, direct request, 2012.

495. In *Canada*, apart from the various aspects of the dispute settlement process already covered in the relevant sections above, two provisions of the Public Sector Labour Relations Act are of interest for the purposes of this survey (see box below).

Public Service Labour Relations Act (Canada)

182.(1) Despite any other provision of this Part, the employer and a bargaining agent for a bargaining unit may, at any time in the negotiation of a collective agreement, agree to refer any term or condition of employment of employees in the bargaining unit that may be included in a collective agreement to any eligible person for final and binding determination by whatever process the employer and the bargaining agent agree to.

207. Subject to any policies established by the employer or any directives issued by it, every deputy head in the core public administration must, in consultation with bargaining agents representing employees in the portion of the core public administration for which he or she is deputy head, establish an informal conflict management system and inform the employees in that portion of its availability.

496. *Mediation mechanisms under the auspices of the ILO.* The ILO International Labour Standards Department has promoted tripartite dispute settlement mechanisms at the request of governments against which complaints have been presented to the Committee on Freedom of Association by trade union organizations. These mechanisms, which offer mediation and which are based on the acceptance and attendance of the parties involved, include the possibility of requesting the presence of the national authorities with competence for supervising standards and interpretation. These mechanisms have allowed solutions to be found to problems raised in formal complaints presented to the Committee on Freedom of Association concerning freedom of association and collective bargaining, for example, with regard to Colombia and Panama, leading to complaints being withdrawn.

497. These mechanisms also enable complaints of violation of trade union rights to be examined at national level, where appropriate, before being brought to the attention of the Committee on Freedom of Association. This type of mechanism promotes, in a creative manner, the exercise of trade union rights and the settlement of freedom of association issues at national level.

498. As far as the effectiveness of these mechanisms is concerned, it is desirable for a national mediator (initially assisted by high-level ILO staff members) with a permanent status to be designated by the most representative employers' and workers' organizations.

Part IV

Positive developments and difficulties for ratification

499. The Committee observes that many countries have adopted measures along the lines of the provisions of Conventions Nos 151 and 154. The Committee wishes to set out below the state of ratification to date, the various stages of consideration of ratification and the requests for ILO technical assistance. The Committee considers that this situation is positive.

500. The Committee notes that 48 member States have ratified the Labour Relations (Public Service) Convention, 1978 (No. 151), and that 43 have ratified the Collective Bargaining Convention, 1981 (No. 154). Twenty-nine member States have ratified both Conventions (see Appendix III).

501. The Committee notes with **satisfaction** that, since 2010, *Brazil, Slovakia and Slovenia* have ratified Convention No. 151 and that *Benin* and the *Russian Federation* have ratified Convention No. 154.

502. The Committee notes with **interest** that various governments indicate in their reports that *important steps have been taken towards ratifying these Conventions*. For example:

- the Government of *Morocco* indicates that following an agreement concluded as a result of social dialogue, the procedure of ratification of Convention No. 151 is now in its final phase and the instruments of ratification will very shortly be sent to the ILO;
- the Government of *The former Yugoslav Republic of Macedonia* indicates that the Decent Work Country Programme (2010–13) provides for the ratification of Conventions Nos 151 and 154 in 2012.

503. The Committee **welcomes** the information provided by certain governments on *tripartite or bipartite discussions that will take place in the future*:

- the Government of the *Czech Republic* indicates that the question of ratification of Conventions Nos 151 and 154 is on the agenda of the national tripartite committee;
- the Government of *Croatia* states that additional consultations with the relevant stakeholders are needed (Convention No. 154);
- the Government of *Kenya* indicates that tripartite discussions on matters relating to public sector employees are being held within the National Tripartite Consultative Committee;
- the Government of *Benin* indicates that bipartite discussions were held on Convention No. 151 within the National Labour Council in 2011.

504. The Committee notes that *certain governments are envisaging ratification*:

- the Government of the *Syrian Arab Republic* indicates that Conventions Nos 151 and 154 will be examined by the National Tripartite Consultative Committee, with a view to possible ratification;
- the Government of *El Salvador* indicates that the issue has not been raised within the national tripartite committee, but that ratification is envisaged (Convention No. 154).

505. The Committee notes that some governments mention *planned legislative amendments* on matters covered by Conventions Nos 151 and 154:

- the Government of the *Philippines* indicates that legislative amendments have been drafted with a view to achieving conformity with Conventions Nos 151 and 154, but that these will have to be examined by the National Tripartite Industrial Peace Council;
- the Government of the *Seychelles* indicates that it intends to review its legislation in the light of Convention No. 154;
- the Government of *Viet Nam* explains that legislative reforms are under way and that the possibility of ratifying Conventions Nos 151 and 154 will be examined at a later date;
- the Government of *Zimbabwe* indicates that a workshop was held in November 2011 with ILO support to enable bipartite discussion on Conventions Nos 151 and 154 in preparation for their ratification; these bipartite consultations led to an agreement on the importance of these ratifications; however, the Government points out that it needs to review and align the legislation before taking a decision on ratification, and that reforms are under way;
- several other governments (*Plurinational State of Bolivia, Eritrea, Estonia, Mozambique*) indicate that legislative reforms are under way in areas covered by Conventions Nos 151 and 154.

506. In this respect, the Committee wishes to encourage these governments to continue to take measures to bring legislation into conformity with Conventions Nos 151 and 154 in order to make progress towards ratification of these Conventions.

507. The Committee notes that several member States indicate that *no detailed analysis of national legislation* has been carried out to assess conformity with the Conventions Nos 151 and 154 (these include Australia, Bosnia and Herzegovina, Canada, Israel, Nicaragua and Senegal; and Guatemala and Honduras, as regards Convention No. 151 only).

508. The Committee hopes that the States concerned will, in the near future, carry out an analysis of national law and practice in order to assess their conformity with Conventions Nos 151 and 154 and the possibility of ratifying these Conventions. The Committee recalls that ILO assistance is available to them.

509. The Committee notes that some governments *do not envisage ratification*:

- the Government of *Indonesia* points out that progress still needs to be made with regard to the political will of the social partners in order to ratify Conventions Nos 151 and 154;
- the Government of *Singapore* indicates that the ratification of Conventions Nos 151 and 154 is not envisaged;

- the Government of *Denmark* indicates that no consensus has been reached within the national tripartite committee in charge of examining the question of ratification of Convention No. 154;
- the Government of *Namibia* indicates that Convention No. 151 was placed on the agenda of the tripartite labour council (the body competent to issue recommendations on possible ratification by Namibia) in November 2011; while referring to a ministerial decision adopted in the Southern African Development Community (SADC), providing that member States should make every effort to ratify Conventions, the Government points out that ratification of Convention No. 151 is not envisaged at the national level.

510. The Committee notes that several governments indicate that *the question of possible ratification of Conventions Nos 151 and 154 has not been discussed in the competent body*:

- the Government of *South Africa* indicates that the possible ratification of Conventions Nos 151 and 154 has not been discussed in the National Economic Development and Labour Council (NEDLAC);
- the Government of *Australia* indicates that the possible ratification of Conventions Nos 151 and 154 has not been discussed in the Australian Government's International Labour Affairs Committee (ILAC) ;
- the Government of *Bosnia and Herzegovina* indicates that it will consider the possibility of holding tripartite discussions on the ratification of Conventions Nos 151 and 154;
- the Government of the *United States* indicates that the possible ratification of Conventions Nos 151 and 154 has not been discussed by the Tripartite Panel on International Labour Standards;
- the Government of *New Zealand* indicates that its legislation does not make a distinction between private sector and public sector employees and that the possible ratification of the Conventions has not been formally discussed;
- the Governments of *Bulgaria, Egypt, Japan, Senegal, Seychelles, Swaziland and Bolivarian Republic of Venezuela* indicate that the possible ratification of Conventions Nos 151 and 154 has not been the subject of tripartite discussion.

511. The Committee invites these governments to engage in tripartite dialogue on possible ratification.

512. The Committee notes that other member States indicate that they are not in a position to ratify the Conventions owing to fundamental discrepancies between national law and practice and the provisions of the Conventions:

1. *Labour Relations (Public Service) Convention, 1978 (No. 151)*. Some countries indicate that they are not in a position to ratify the Convention owing to discrepancies between national law and practice and the provisions of the Convention. Some countries (*Republic of Korea, Japan, Lithuania*) state, in general, that certain provisions are not compatible with their domestic legislation and prevent ratification, while other States point to specific aspects of the Convention that pose problems with regard to ratification. For example, the Government of *Germany* indicates that German legislation specifies that the determination of public employees' terms and conditions of employment falls within the competence of the legislative authority; the Government of *Austria*

explains that a legal analysis has shown that some of the provinces do not have legislative provisions relating to provincial and municipal employees; the Government of *Bangladesh* indicates that issues relating to public employees are subject to government procedures and are not submitted for tripartite discussion; the Government of *France* points out that the State as employer cannot use procedures such as mediation, conciliation or arbitration to settle disputes over the determination of statutory and regulatory conditions applicable to public employees; the Government of *Malaysia* considers that its national law and practice give rise to problems of compatibility with Articles 4 and 5 of the Convention; the Government of *Mauritius* points to three types of obstacle to ratification: the extension of the guarantees established in the Convention to the police force, the extension of the right to strike to firefighters and prison staff, and the fact that collective bargaining is practically non-existent in the public sector; the Government of *Mexico* refers to a decision adopted in 1981 by the Senate establishing the reasons preventing ratification of the Convention, in particular relating to its scope (Article 1 of the Convention) and to the methods of determining terms and conditions of employment (Article 7). The Government of *Romania* does not deem it necessary to ratify the Convention, which in its view merely supplements the provisions of Convention No. 98; it also refers to budgetary constraints in the context of the crisis.

2. *Collective Bargaining Convention, 1981 (No. 154)*. A number of countries indicate that they are not in a position to ratify the Convention owing to discrepancies between national law and practice and the provisions of the Convention. Some countries (*Republic of Korea, Honduras, Japan*) state, in general, that certain provisions are not compatible with their domestic legislation and prevent ratification, while other States point to specific aspects of the Convention that pose problems with regard to ratification. For example, the Government of *Germany* indicates that German legislation specifies that the determination of public employees' terms and conditions of employment falls within the competence of the legislative authority; the Government of *Bangladesh* indicates that issues relating to public employees are subject to government procedures and are not submitted for tripartite discussion; the Government of *France* points out that, although bargaining is explicitly enshrined in the general regulations on the public service and that the criteria for the recognition of the validity of agreements have been established by law, agreements cannot have legal effect; the Government of *Malaysia* indicates that government employees cannot bargain collectively with the employer and that the conditions of service are determined unilaterally by the latter; the Government of *Mexico* refers to a decision adopted in 1982 by the Senate establishing the reasons preventing ratification of the Convention, in particular relating to its scope (Articles 1 and 5, paragraph 2(a), of the Convention); the Government of *Portugal* states that if no agreement is reached during the negotiation of a collective agreement in the public administration sector, one of the parties may request arbitration, which could raise problems in regard to conformity with the Convention.

513. The Committee notes that a number of the obstacles raised should not prevent ratification and hopes that this Survey will help clarify the scope of the provisions of the Convention for the countries concerned. The Committee refers in particular to the parts of the General Survey dealing with compatibility of collective bargaining in the public service with statutory systems, under the conditions described, and recalls that the incorporation of collective agreements in legal texts (legislation, regulations or a circular)

so that they may be applied is in conformity with Conventions Nos 151 and 154. The Committee also refers to its conclusions on dispute settlement mechanisms. The Committee further hopes that in the light of a new analysis, these countries will be able to move forward towards ratification of the Conventions. The Committee recalls that Office technical assistance is available to the countries concerned to provide the necessary explanations and to work to remove obstacles.

514. Lastly, the Committee notes that some States cite *other reasons* preventing them from ratifying the Conventions or discussing ratification. For example, some member States have referred to economic and financial difficulties preventing ratification (*Guatemala*) or to the context of the crisis (*Romania*).

515. The Government of *Canada* states that as regards ratification of ILO Conventions, priority is given to the ratification of the fundamental and governance Conventions.

516. The Government of *Panama* indicates that priority is being given to the reforms needed to bring national law and practice into conformity with Conventions Nos 87 and 98.

517. The Government of *Serbia* indicates that the possibility of ratifying Conventions Nos 151 and 154 will be examined once the ratification procedures currently under way (Conventions Nos 181, 184 and 150) have been completed.

518. The Committee notes that the following States *have not submitted the instruments* referred to in this Survey to the competent national authority in accordance with article 19 of the ILO Constitution:

- *Sierra Leone*:
 - the Labour Relations (Public Service) Convention, 1978 (No. 151);
 - the Collective Bargaining Convention, 1981 (No. 154);
 - the Labour Relations (Public Service) Recommendation, 1978 (No. 159);
 - the Collective Bargaining Recommendation, 1981 (No. 163).
- *Haiti*:
 - the Collective Bargaining Convention, 1981 (No. 154);
 - the Collective Bargaining Recommendation, 1981 (No. 163).
- *El Salvador*:
 - the Collective Bargaining Convention, 1981 (No. 154).
- *Congo*:
 - the Collective Bargaining Recommendation, 1981 (No. 163).

519. In this respect, the Committee recalls that under article 19 of the ILO Constitution, each member State must bring Conventions and Recommendations “*before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action*”. The Committee hopes that these States will bring the instruments concerned before the competent authorities in the near future, if necessary with ILO technical assistance.

520. *Requests for technical assistance.* The Governments of *Bangladesh*, *Eritrea* and *Kenya* point to the need for technical assistance to prepare for the possible ratification of Conventions Nos 151 and 154.

521. The Government of *Benin*, recalling the recent ratification of Convention No. 154, requests ILO technical assistance to bring national legislation into conformity with the Convention and to raise awareness of it. Regarding Convention No. 151, it stresses the need for technical and financial assistance.

522. The Government of the *Plurinational State of Bolivia* highlights the need for technical assistance to develop new legislation concerning public employees.

523. The Governments of *Bosnia and Herzegovina*, *Brazil*, *Honduras*, *Indonesia*, *Panama* and *Serbia* indicate that detailed information on the instruments and examples of good practice in implementation would be useful.

524. The Government of *Chile* points to the need for ILO experts to provide training for public servants and the social partners, who require knowledge of these instruments to carry out their functions.

525. The Government of *Colombia*, which has ratified the Conventions, considers that it might be useful to carry out a comparative analysis of legislation on collective bargaining in the countries of the Americas.

526. The Government of *Costa Rica* emphasizes the need for capacity building on bargaining techniques in the public sector, and for activities promoting unionization and collective bargaining in this sector.

527. The Government of the *Czech Republic* indicates that technical assistance would help to clarify some of the terms of the Conventions and that it would also be useful to have an overview of the legislation in similar countries.

528. The Government of *Jordan* considers that technical assistance would be useful in the following areas: raising awareness on the contents of the instruments among all the parties concerned and training for public officials responsible for issues relating to international labour standards.

529. The Government of *Paraguay* indicates that in 2008 and 2009 it received technical assistance from the ILO on the matters covered by the instruments under consideration and expresses its wish to continue this cooperation in the following areas: capacity building on collective bargaining in the public sector and integration of the principles of decent work in public employment, paying particular attention to access to public employment for indigenous persons and to conciliation.

530. The Government of *Senegal* considers that a revision of the instruments would be useful, since the relevance of the distinction between private and public sector workers needs to be reconsidered. It also indicates that it already receives technical assistance under the PAMODEC programme, but that this should be extended, in particular, in order to carry out a comprehensive assessment of labour relations in the public sector and collective bargaining in the country.

531. The Government of *Seychelles* states that it has received ILO technical assistance in the areas covered by the instruments and would like to continue this cooperation, in particular with a view to carrying out a reform of the Industrial Relations Act 1994.

532. The Government of *Viet Nam* requests ILO technical and financial assistance to examine the possibility of ratifying Conventions Nos 151 and 154 and to discuss future legislative amendments.

533. The Government of *Zimbabwe* indicates that the technical assistance provided by the ILO to date, particularly in regard to legislative realignment, should continue and that the capacities of the tripartite national stakeholders need to be strengthened.

534. Noting that some governments have received ILO technical assistance and others have requested it, the Committee invites them – if they have not already done so – to provide the Office with specific requests for technical assistance, and trusts that this will help improve the implementation of the principles of Conventions Nos 151 and 154 and to move towards possible ratification.

Part V

Observations made by employers' and workers' organizations

Workers' organizations

535. The Committee notes that, according to the 140 observations sent by trade union organizations concerning Conventions Nos 151 and 154, there are a number of countries in which substantial categories of public employees are denied the rights and advantages laid down in these Conventions, or are subject to restrictions of varying degrees of severity.

536. The Committee further notes that one of the main concerns raised by trade union organizations is the use of administrative restructuring to eliminate or reduce the number of workers' organizations in the public service and to prevent or limit the application of collective agreements, as well as the negative impact on trade union rights and worker protection of precarious forms of employment, which are increasingly common and are used by certain governments in their own public service for the performance of statutory permanent tasks.

537. Some trade unions report that under restructuring processes in their countries, the practice of forced resignation with payment of compensation has been introduced for unionized public employees. Certain types of contract (such as short-term temporary contracts, subcontracting or contracts for the provision of services – the latter ruling out collective bargaining by definition) often deny workers the right to collective bargaining, particularly when they hide a real and permanent employment relationship. It appears from the comments made by workers' organizations that restructuring, staff cuts in the state administration and the rise in precarious employment in the public service have led to a significant decrease in unionization rates and in the number of trade unions.

538. The Committee notes that, while legislation generally provides for protection against acts of interference and anti-union discrimination, facilities to be afforded to workers' representatives or bilateral collective bargaining mechanisms – although some legal gaps remain in certain countries – many trade unions report difficulties in having such provisions applied in practice.

539. As regards protection against acts of interference and anti-union discrimination, the comments indicate that the applicable sanctions are all too often insufficiently dissuasive, and threats, transfers or dismissals of trade union officials are common. The Committee notes that in some countries bonuses are offered to non-unionized workers, or access to certain posts is conditional on membership of a particular union (one example from the education sector cites a condition of this kind for access to a teaching post). Workers' organizations also complain of the slowness of proceedings with a view to obtaining justice.

540. As regards the facilities afforded to workers' representatives, the main problems highlighted by the trade unions are as follows: inadequate legislation on time off for trade union officials, and difficulty of obtaining such leave, which is often refused without valid reason and unilaterally reduced by the employer despite the collective agreements in place; difficulty of access to the workplace; difficulty of obtaining the deduction of trade union dues by the employer and numerous obstacles to access to financial information of public institutions or government bodies.

541. As regards collective bargaining, it appears that in some countries little use is made of it to determine the terms and conditions of employment of public servants, who often have to accept minimum conditions laid down by law. Other comments report the absence of (or failure to publish) statistics on collective bargaining (only one workers' organization sent statistics), or that public employers do not provide the necessary information to workers' organizations.

542. In some countries, there does not appear to be a formal mechanism for collective bargaining in the public service. In others, the content of bargaining is considerably limited, with the Government exercising its prerogative to regulate many matters unilaterally, including wages in many cases. When collective bargaining does take place and agreements are reached, trade unions reportedly face difficulties in obtaining recognition of their binding force and securing their application. In some countries, the authorities have ruled out collective bargaining with representative organizations on grounds of delays in renewing the executive committees of those organizations – such delays being the result of interference by state bodies in the elections.

543. The Committee also notes that trade unions complain of the absence or poor functioning of dispute settlement procedures. In some countries, there is little point in referring disputes to arbitration or to the ordinary courts, as their awards and rulings are not complied with or executed by the public administration. Some organizations state that arbitration is compulsory under national legislation. Others point out that they have little confidence in dispute settlement mechanisms, as they are not impartial given the fact that they are often set up or managed by public institutions (for example, the process of appointing arbitrators). Moreover, some governments reportedly flout the principle of trade union representativeness for purposes of collective bargaining, giving preference to organizations close to the government.

544. The Committee notes that, according to some trade union organizations, problems arise in application with regard to the coordination of collective agreements. In some countries, when agreements are negotiated by national level trade unions, consultation of trade unions at the local level could be strengthened.

545. The Committee notes that trade unions refer to unilateral revision of collective agreements in the public sector: many organizations report that, in recent years, governments have, without prior consultation, adopted legislation leading to unilateral modification of public employees' terms and conditions of employment that had been previously established by collective agreement. Certain measures taken to address the economic crisis have prevented the negotiation of new salary increases, while others have even imposed pay reductions in the coming years, often disregarding existing collective agreements. The Committee notes that some unions complain of the presence and role of budgetary authorities in the collective bargaining process during discussions on remuneration and clauses with financial implications. In some countries, public employers that do not comply with the directives of the budgetary authorities may be criminally liable.

546. Lastly, according to trade unions, governments hold few or no consultations prior to the amendment or adoption of new legislation on conditions of work in the public sector. Some organizations highlight the need for ILO technical assistance for the application of trade union rights in the public administration with regard to collective bargaining. Others suggest that a comparative legal survey on the public sector be carried out at regional level.

547. The Committee points out that these comments, on the whole, are consistent with the issues raised in this Survey and in the Committee's observations in recent years. It refers to the general conclusions below in this regard. However, it highlights the fact that these problems vary in nature and number from one country to another, and could be the subject of a tripartite analysis in each country. It invites governments to examine, together with public employees' organizations and employers in the state administration, the application of Conventions Nos 151 and 154 in the light of the problems raised in this Survey and the conclusions drawn. At the same time, however, the Committee wishes to draw attention to the increasingly precarious situation of public servants in both law and practice in many countries, to which it refers in several of its general conclusions.

Employers' organizations

548. The Committee notes that five national employers' organizations have sent their observations. Three indicate that in the countries concerned, the legislation and the practice are in conformity with Conventions Nos 151 and 154; one of these organizations adds that the collective bargaining mechanisms in the public sector are informal. Another organization states that in that country, public servants may send a "respectful memorandum" (according to the organization, this is an instrument similar to a collective agreement), and that voluntary collective bargaining may take place in autonomous, semi-autonomous and decentralized institutions in the public sector. The organization adds that in the country concerned, there is protection against acts of anti-union discrimination and interference against trade union officials, but it does not cover public servants. It also refers to draft legislation on the administrative career system in the public service, which reportedly includes the right to paid trade union leave, the right to strike and strengthened protection of union officials against dismissal and other prejudicial measures. Another organization states that the matters covered by Conventions Nos 151 and 154 are already addressed in national legislation, and that it is therefore opposed to ratification of these Conventions.

549. In the past, employers and their organizations have reported serious obstacles in the exercise of freedom of association and the right to collective bargaining.²⁹³

²⁹³ The Committee wishes to refer to the main issues mentioned to the supervisory bodies by employers' organizations over the years in regard to freedom of association and collective bargaining in the private sector, cited in an ILO publication: *Employers' organizations and the ILO supervisory machinery* (International Training Centre, Turin, 2006):

- (a) violations of fundamental human rights relating to the exercise of the rights of employers' organizations, their leaders and members, including murders of employers' leaders; detention of employers' leaders; and violent acts against the property of employers' organizations;
- (b) restrictions relating to the establishment and operation of employers' organizations and the rights of their leaders; and
- (c) marginalization or exclusion of the most representative employers' organizations from social dialogue and favouritism towards employers' organizations that are unrepresentative or close to governments in the processes of negotiation or consultations on matters directly affecting employers and their organizations.

General conclusions and final observations

550. The Committee welcomes this opportunity to address, for the first time, Conventions Nos 151 and 154 and Recommendations Nos 159 and 163 in a General Survey on trade union and collective bargaining rights in the public service.

551. The Committee notes with interest that, as may be seen in the previous chapters, the provisions and principles laid down in Conventions Nos 151 and 154 are applied by a considerable number of countries through legislation, collective agreements or the case law of their national courts, regardless of whether the State has ratified these Conventions. The Committee, therefore, notes the impact of these Conventions and highlights that in recent years it has noticed a considerable number of cases of progress in their implementation.

552. Despite these positive developments, the Committee notes with concern that problems persist in a large number of countries. The three main concerns relating to Conventions Nos 151 and 154 are: (1) the slowness of administrative and judicial procedures in cases of anti-union discrimination or interference in trade union matters and the lack of sufficiently dissuasive sanctions; in some cases, protection against acts of anti-union discrimination or interference only partially covers such acts; (2) certain problems that can give rise in practice to a denial of the right to collective bargaining to all public servants and, in particular, the requirement for trade unions to represent an excessively high proportion of workers in order to be recognized or to engage in collective bargaining; (3) some countries exclude certain subjects from collective bargaining, restrict the right of the parties to determine the level of bargaining or prohibit collective bargaining for specific categories of workers or by federations and confederations.

553. As regards the private sector, the Committee notes that in some countries, employers' organizations also face problems with regard to organizing freely outside the pre-established structure determined by governments or legislation and exercising their right to free and voluntary collective bargaining at the level of their own choosing and as determined by mutual agreement with workers' organizations. In some cases, officials of employers' organizations also suffer reprisals for their actions in defence of employers' interests. Part V gives a summary of the main problems reported to the supervisory bodies by employers or their organizations with regard to freedom of association and the right to collective bargaining.

554. Recalling that the Governing Body has called on member States to consider ratification of Conventions Nos 151 and 154, the Committee accordingly invites those member States that have not yet ratified these Conventions to do so. The Committee notes with interest that some States have decided to ratify or have begun procedures with a view to ratification, and that many others are examining the possibility of ratification, including with ILO technical assistance. In this respect, the Committee wishes to reiterate its conclusions set out in Part IV.

555. Moreover, in the context of the recent financial and economic crisis, the implementation of these Conventions has been compromised in a number of countries.

The Committee emphasizes that particular vigilance is needed in times of economic downturn to ensure the full application of these Conventions.

556. The Committee would like to recall that the public service must be effective and efficient in order to ensure the rule of law and the effective exercise of citizens' rights and improvement of their quality of life (public security, education, health, social security, culture, access to housing, law enforcement in the many remits of the public administration, etc.) thus constituting an essential factor in sustainable economic and social development, workers' well-being through fair terms of employment and progress of sustainable enterprises. This objective requires high-quality services in an array of public institutions – often of vital importance and highly complex – as well as properly qualified and motivated staff and a dynamic and depoliticized public governance and administrative culture with an ethical focus that fights administrative corruption, adopts new technologies and is based on the principles of confidentiality, responsibility, reliability, transparency in management and non-discrimination, both in access to employment and in the services provided to citizens.

557. The Committee emphasizes that social dialogue in its different forms, and especially collective bargaining between trade union organizations and the public administration, are key to creating the necessary conditions to meet the challenges outlined above and ensure good governance. While collective bargaining yields benefits for public servants in terms of motivation, social recognition and human dignity, it is also beneficial for administrations, as the commitments made by unions support them in their efforts to implement the key principles of public governance mentioned above, and serve as an effective tool for sound human resource management, which in turn enhances the quality of services provided.

558. The Committee notes that the evolving status and conditions of public servants over the last decades has brought with it substantial changes in the traditional public service model in the legislation of many countries (nationality of public servants, merit, job security, administrative career, promotion by internal competition, full-time employment, exclusion of private work, fixed wage supplements and pay scales, post adjustments, pensions, leave without pay, etc.). In many countries – both industrialized countries and elsewhere – one or more of these traditional features of the public service have disappeared, along with the introduction of new rules and working methods more characteristic of private sector labour law. In many public administrations, a large part or even the majority of the staff are employed under a contract that is governed by the provisions of labour law applicable to the private sector. The Committee notes that this practice is becoming increasingly widespread. The Committee observes that the evolutions described have had an impact on the impartiality and independence of the public administration and its capacity and conditions for carrying out its work.

559. The Committee notes that in some countries, it is very common for public servants to be employed on a temporary, recurrent fixed-term or part-time basis (and often to be allowed to hold other jobs in the private sector). In other countries, a large proportion of public servants are hired under civil or administrative contracts for the provision of services, including those engaged in performing tasks inherent in public administration. In other countries, the virtually absolute job security – “a job for life” – formerly enjoyed by public servants has been undermined or disappeared. In some countries, most of the employees in many public institutions are freely appointed and removed.

560. In this regard, the Committee notes that one of the main concerns indicated by trade union organizations in the public administration is the negative impact of precarious forms of employment on trade union rights and worker protection, notably:

(i) the use of short-term temporary contracts repeatedly renewed or of civil or administrative contracts for the provision of services in order to perform permanent statutory tasks; and (ii) the non-renewal of contracts for anti-union reasons. Some of these modalities *deny* workers access to freedom of association and collective bargaining rights, particularly when they hide a real and permanent employment relationship. Some forms of precariousness *can dissuade* workers from trade union membership. The Committee wishes to highlight the importance for the member States concerned of examining, within a tripartite framework, the impact of these forms of employment on the exercise of trade union rights.

561. **Civil and political rights.** The Committee emphasizes that the guarantees set out in the international labour Conventions relating to freedom of association and collective bargaining, including Conventions Nos 151 and 154, can be effective only if the civil and political rights enshrined in the Universal Declaration of Human Rights and other relevant fundamental international instruments, in particular the International Covenant on Civil and Political Rights, are genuinely recognized, protected and respected. The Committee further emphasizes that, in the absence of a democratic system in which fundamental rights and civil liberties are respected, freedom of association and collective bargaining cannot be fully developed.

562. The Committee points out that sustainable economic and social development can be effective only through democracy and its essential premises: the rule of law; the separation and independence of the powers of the State; and effective respect of human rights, including freedom of association and the right to collective bargaining, which should be guaranteed irrespective of the level of development. The Committee recalls that ratification of Conventions Nos 151 and 154 is possible irrespective of the size or staffing levels of the public service, the number of citizens or the extent of the informal sector.

563. The Committee considers that the interdependence of respect for human rights and freedom of association implies, in particular, that the public authorities cannot interfere in the legitimate trade union activities of organizations by means of arrests or arbitrary detention of trade union officials or members, or by using the pretext of alleged criminal conduct in view of workers' trade union membership or legitimate trade union activities. The Committee notes with concern that murders of trade union leaders and members in the public sector and violent repression of demonstrations continue to occur in certain countries. It recalls that in these cases, independent judicial investigations should be carried out without delay with a view to establishing the facts and violations and determining responsibilities, punishing the perpetrators and instigators and preventing the recurrence of such acts. In this regard, the Committee also recalls that excessive delays in the procedures set in motion in response to such allegations create, in practice, a situation of impunity, which reinforces the existing climate of violence and insecurity. Lastly, it recalls that a truly free and independent trade union movement can only develop in a climate free from violence, pressure and threats of any kind against the leaders and members of such organizations, and that workers' and employers' organizations are essential to democracy and respect of fundamental rights.

564. The Committee points out that public employees' organizations should also have the opportunity to express their views publicly on general economic and social policy issues directly affecting their members' interests. Nevertheless, in expressing their opinions, trade union organizations should respect the limits of propriety and refrain from the use of insulting language.

565. In the vast majority of countries that have ratified Convention No. 151, the civil and political rights of public employees are guaranteed by national constitutions and legislation and the main challenge relates to their effective implementation. The Committee notes that most countries lay down certain restrictions on some of these rights, for example on the freedom of expression, right of public assembly and demonstration of public employees, mainly related to their duty of loyalty, discretion (professional secrecy) and confidentiality. The Committee considers that where conditions of full democracy are met, the restrictions are generally not incompatible with Convention No. 151.

566. ***Protection against acts of anti-union discrimination and interference.*** In general terms, the Committee emphasizes the importance of specific legislative provisions on anti-union discrimination and interference applicable to the public administration. While the Convention requires protection against all acts of anti-union discrimination in relation to all public employees (and thus both at the time of recruitment and in the course of employment), the protection provided for in the Convention is particularly important in the case of trade union representatives and officials.

567. Determining the scope of the concept of “adequate protection” within the meaning of Article 4, paragraph 1, of the Convention is central to issues relating to anti-union dismissal and measures of prevention and compensation. The Committee considers that systems are compatible with the Convention which envisage: (i) preventive measures (such as the need in the public service, to obtain prior authorization from the judicial authorities, an independent authority or the labour inspectorate, the role of the labour inspectorate is normally carried out by administrative bodies – for the dismissal of a staff representative or a trade union delegate); (ii) compensation and sufficiently dissuasive sanctions; and (iii) the reinstatement of a public employee dismissed by reason of trade union membership or legitimate trade union activities with retroactive compensation which, in the absence of preventive procedures of prior authorization, constitutes the most effective remedy for acts of anti-union discrimination. Excessive slowness of reinstatement procedures and failure to comply with court orders for the reinstatement of dismissed trade unionists constitute, in the Committee’s opinion, grave restrictions on the exercise of trade union rights. The Committee recalls that the practice of “blacklisting” trade union officials, members or unionized public employees in the context of hiring procedures is incompatible with the principles of the Convention.

568. Under Article 5 of Convention No. 151, public employees’ organizations shall enjoy adequate protection against any acts of interference by a public authority in their establishment, functioning or administration. In particular, acts which are designed to promote the establishment of public employees’ organizations under the domination of a public authority, or to support public employees’ organizations by financial or other means, with the object of placing such organizations under the control of a public authority, shall be deemed to constitute acts of interference. The Committee emphasizes the importance of national legislation prohibiting the different types of interference referred to in Convention No. 151.

569. The Committee further draws attention to the importance of independent, expeditious and in-depth investigations in cases of allegations of anti-union discrimination or interference. The Committee has noted with concern the excessive delays in national procedures or the possibility of successive appeals which may postpone a final ruling for several years (five to seven years in some cases). The Committee emphasizes that excessive delays in judicial proceedings in cases of anti-union discrimination constitute a violation of the Convention. “Adequate protection” against acts of anti-union discrimination and interference within the meaning of the

Convention requires the establishment of rapid appeal procedures and sufficiently dissuasive sanctions against such acts.

570. The effectiveness of legal provisions prohibiting acts of anti-union discrimination and interference depends not only on the effectiveness of the remedies envisaged, but also the sanctions provided for, which should, in the view of the Committee, be effective and sufficiently dissuasive. Sanctions vary from one legal system to another, and may consist of fines or other sanctions, which may include imprisonment. As regards the form of compensation, its purpose should be to compensate fully the prejudice suffered by the public employee, both in financial and in professional terms. Sanctions which have the dual purpose of punishing those responsible and acting as a deterrent can serve to strengthen protection against anti-union discrimination.

571. *Facilities to be afforded to representatives of recognized public employees' organizations.* The facilities to be afforded to representatives of public employees in order to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work, are essential for the exercise of trade union rights and the functions of trade union organizations. The Committee considers that granting facilities to public employees' representatives strengthens social dialogue and builds trust in public institutions, helping to promote sound labour relations. At the same time, the granting of such facilities should not impair the efficient operation of the administration or service concerned, and should take account of the characteristics of the industrial relations system of each country, as well as the needs, size and capabilities of the administration concerned. Accordingly, the Committee wishes to emphasize that the Convention is compatible both with systems that grant exclusive access to facilities to trade union representatives and with those that recognize both trade union representatives and representatives elected for public institutions as a whole, provided that the existence of elected representatives cannot be used to undermine the position of the workers' organizations concerned.

572. In view of the flexibility allowed in methods of implementation of the Convention, the Committee encourages governments to provide for the grant of facilities through legislation or collective bargaining, on the understanding that it is desirable for tripartite consultations to be held prior to the adoption of legislation on facilities, and for negotiations to take place in good faith, in order to ensure harmonious development of labour relations. If a State opts to apply Convention No. 151 by means of collective agreements, such agreements should apply to a large number of workers and ensure in practice a substantial number of facilities. In any case, it is important for the parties concerned to subscribe to the principles laid down so that the measures adopted are sustainable and not contingent on successive changes of government or administration.

573. The number and nature of the facilities to be afforded depend on the size and specific characteristics of each public institution. The most important facilities are the granting of time off for workers' representatives without loss of pay or benefits, the collection of trade union dues, access to the workplace and prompt access to management. In the light of the objectives of the Convention, special consideration should be given to the granting of these facilities.

574. The Committee wishes to emphasize the considerable impact of Conventions Nos 151 and 154 in many countries: there is no doubt that, thanks to the facilities afforded through legislation and/or through collective agreements, representatives of public employees' organizations today play a crucial role in carrying out key functions of trade unions in public institutions, which in turn enables these organizations to

perform their fundamental roles (collective bargaining, consultation, supervision of legislation, etc.) in accordance with the ILO Constitution and ILO standards.

575. *Consultation as a means of determining terms and conditions of employment under Convention No. 151.* The Committee notes that the vast majority of member States grant public employees' organizations the right to participate in the determination of their terms and conditions of employment (Article 7 of Convention No. 151) through consultation, collective bargaining or both. Moreover, the review of the reports submitted under article 19 of the Constitution shows that many countries that have not ratified Convention No. 151 appear to be already in conformity with Article 7 of the Convention.

576. As regards consultation, the Committee notes that States have chosen different consultation systems and methods in accordance with their national circumstances and cultural and legal traditions: (1) specific consultation bodies for the public administration, including those comprising independent persons and experts, or bipartite bodies; (2) tripartite bodies dealing with all labour-related matters in the private and public sectors; (3) economic and social councils or national labour councils with a general remit, which often have a broader composition than that of tripartite bodies; (4) intermediate systems, such as bodies whose members are neutral or independent of the parties, for example experts who submit recommendations to the public authorities after having heard and consulted public employers and public employees' organizations; (5) frequent or occasional forms of consultation based on practice and not on any legal requirement.

577. The Committee emphasizes the importance of in-depth, frank, full, detailed and free consultations with the most representative organizations on terms and conditions of employment and any related legislation or measure. The Committee stresses that the parties should make sufficient efforts to reach joint solutions as far as possible. It has also highlighted the importance of consultations taking place in good faith, confidence and mutual respect, and of the parties having sufficient time to express their views and discuss them in full with a view to reaching a suitable compromise.

578. The Committee notes that the principal mandate of formal consultation bodies is often centred on examining draft legislation or legislative reform, or considering general administrative measures concerning public employees. It emphasizes that under Convention No. 151, it should be possible to hold consultations on all matters relating to terms and conditions of employment, at all levels – national, sectoral, local and public entity – with the representative organizations at each level. It draws attention to the fact that mere consultation on administrative measures or draft legislation on public employees' general conditions of employment does not fully meet the objectives and requirements of Convention No. 151, and that it should also be possible to hold consultations at the different levels so as to cover the *specific* terms and conditions of employment of public employees at each level.

579. The Committee points out that the existence of consultative bodies with a general remit (such as national labour councils or economic and social councils) covering matters relating to medium- and long-term policy formulation, draft legislation and reform of general conditions of employment, but not expressly including specific terms and conditions of employment in public institutions or labour issues arising in such institutions, is thus not sufficient in itself to guarantee fully that public employees' representatives participate in the determination of their terms and conditions of employment, within the meaning of Convention No. 151. If the national system opts for this type of procedure, it is also important for mechanisms to be established within that procedure that afford enough space to public employees' trade unions, to ensure that the

position of public employees' representatives is not undermined by the presence of multiple actors, and to enable bilateral discussion of terms and conditions of employment.

580. The Committee would like to point out that it is in the interests of both the authorities and public employees' trade unions not to limit the subject matter of consultations to terms and conditions of employment, but to extend coverage to issues of common concern, including personnel policy in the public administration and human resources and management issues such as those arising from new forms of work organization or restructuring. Consultation on these matters, at the initiative of either the authorities or public employees' organizations, as the case may be, is a method that can often help prevent collective disputes and achieve solutions that are more acceptable to the public employees or public authorities concerned.

581. **Collective bargaining.** As regards collective bargaining in the public administration throughout the world, in recent decades the adoption (and ratification by a large number of States) of Conventions Nos 151 and 154 has led to a common understanding in the international community that terms and conditions of employment in the public service cannot be determined unilaterally, and that an adequate framework for doing so must include full participation of public employees' trade unions. As part of this trend, a global tendency may be observed towards widespread bipartite consultation and a marked expansion in the right to bargain collectively on terms and conditions of employment in the public administration in Europe and Latin America, a large number of African countries and a number of countries in Asia and Oceania.

582. Convention No. 154, in Article 1, paragraph 3, allows for special modalities of application as regards the right to collective bargaining in the public service. These modalities may be fixed by national laws or regulations or national practice, including by means of collective agreements, arbitration awards or other methods (Article 4 of Convention No. 154).

583. In many countries, these special characteristics of the public administration have given rise to specific modalities of collective bargaining in regard to the parties to collective bargaining, the matters covered, the levels of bargaining and the nature, rank and legal effect – or lack thereof – of the agreements reached, often with a special system applicable to clauses and collective agreements with budgetary implications.

584. The Committee emphasizes that in both unitary and federal States, Conventions Nos 151 and 154 apply to civil servants in the public administration (for example, civil servants in government ministries and other comparable bodies, and ancillary staff), and to all other persons employed by the government, by public enterprises or by autonomous public institutions. They also apply to all civil servants and employees of local authorities and their public bodies. The scope of application of Conventions Nos 151 and 154 include, for instance, employees in public enterprises, municipal employees and those in decentralized entities and public sector teachers, whether or not they are considered in national law as belonging to the category of public servants. In addition, Convention No. 154 applies to all workers in the private sector, without exception.

585. However, as regards the application of Conventions Nos 151 (which allows the choice between collective bargaining and consultation) and 154, recognition of the right to collective bargaining in law or in practice continues to be limited or non-existent in a significant number of countries in the case of public servants. The Committee recalls that, under Convention No. 154, the right to collective bargaining should cover, in addition to employees of the public administration, in particular organizations representing

permanent and temporary public employees and those working under civil or administrative contracts for the provision of services or under outsourcing or part-time contracts.

586. The provisions of Conventions Nos 151 and 154 are compatible with different approaches as regards harmonization of the principle of collective bargaining with the statutory nature of the relations between the State as employer and public servants. In particular, they are compatible with systems requiring intervention by the authorities following the conclusion of a collective agreement (approval by an administrative body, the council of ministers or the legislative assembly, or making application of the agreement conditional on embodying its content in a set of regulations, an administrative act or a law, provided that the outcome of collective bargaining is ratified in practice). Neither is it necessary for collective agreements in the public service to be given force of law through legislation, provided that they are applied in practice. Lastly, the aim of Conventions Nos 151 and 154 is not to constantly challenge the stability of the fundamental rules and principles applicable to public servants (often enshrined in legal provisions) – which would be pointless – but to ensure that the determination or amendment of such rules is carried out in a process of social dialogue, as necessary, when the parties so agree.

587. In general terms, Conventions Nos 151 and 154 seek to promote the bipartite negotiation of terms and conditions of employment, namely between employers and employers' organizations, on the one hand, and workers' or public employees' organizations, on the other, without interference by the public authorities (other than those acting in the capacity of an employer in the case of collective bargaining in the public administration, except as regards negotiation of economic or wage clauses).

588. The Committee emphasizes that the principle of good faith is inherent in collective bargaining, and takes the form, in practice, of the duty or obligation of the parties concerned to recognize representative organizations, in addition to: (i) endeavouring to reach agreement (including a certain number of meetings and discussions); (ii) engaging in genuine and constructive negotiations including through the provision of relevant and necessary information; (iii) avoiding unjustified delays in negotiation, or obstruction of negotiation; (iv) taking the outcome of negotiations into account in good faith; and (v) mutually respecting the commitments made and the results achieved through bargaining. The Committee recalls that Conventions Nos 151 and 154 do not lay down an obligation to achieve a result in negotiation.

589. In the view of the Committee, both systems of collective bargaining which grant exclusive rights to the most representative union, and systems under which several unions in an enterprise, a public institution or a bargaining unit may conclude different collective agreements, are compatible with the principles of Conventions Nos 151 and 154.

590. The Committee considers that both systems under which the collective agreements concluded by the representative organization only apply to the signatories and their members (and not to all workers) and the opposite practice under which all the workers in a bargaining unit are covered are compatible with Conventions Nos 151 and 154.

591. As regards the criteria to be applied to determine the representative status of organizations for the purposes of bargaining, the Committee refers to Paragraph 2 of Recommendation No. 159 and Paragraph 3(b) of Recommendation No. 163, which provide that the determination of representativeness should be based on objective and pre-established criteria.

592. In view of the duty to promote collective bargaining laid down in ILO instruments, the Committee considers that under a system of the designation of an exclusive bargaining agent, if no union represents the percentage of workers required by law (say, 50 per cent) to be declared the exclusive bargaining agent, collective bargaining rights should be granted to all the unions in the unit, at least on behalf of their own members

593. The Committee emphasizes that interventions by the authorities which have the effect of cancelling or modifying the content of collective agreements freely concluded by the social partners would be contrary to the principle of free and voluntary negotiation. It recalls, however, that under the specific modalities applicable to collective bargaining in the public service, certain acts of intervention by the public authorities in the bargaining process may be allowed, for example in the case of negotiation of clauses with economic and budgetary implications, which will be examined below.

594. The Committee refers to national legal systems which provide that a collective agreement in the public administration must be approved in full by the parties at the end of the bargaining process, while others allow bargaining procedures to result in successive agreements on certain points, and provide that the administrative authority shall take appropriate measures on the items on which agreement could not be reached. The Committee emphasizes that both systems are compatible with Conventions Nos 151 and 154.

595. The Committee recalls that in the public administration, bargaining subjects cover terms and conditions of employment (and, according to the preparatory work for Convention No. 154, living conditions) and relations between the parties. However, it emphasizes the importance in general, including in the public administration sector, of enriching the content of collective bargaining in many countries and ensuring that it is not solely confined to essentially addressing wage issues, which is still too often the case. In the Committee's view, it is in the interests of both workers and employers to negotiate together other aspects of industrial relations, including vocational training, promotion, dispute prevention and settlement machinery, measures to combat discrimination, harassment at work and the reconciliation of family and working life and, in the public administration, any joint measure by the parties enabling improvement of the functioning of public institutions and the application of the principles of public governance of democratic States.

596. The Committee emphasizes that under Convention No. 154, which covers all terms and conditions of employment, civil servants in the public administration should be able to negotiate their wages collectively (mere consultation of the unions concerned is admissible only under Convention No. 151, which allows member States to choose between collective bargaining and other methods of determining terms and conditions of employment of public employees). It points out that, as regards the special modalities allowed by Article 1, paragraph 3, of Convention No. 154 for the public service, member States may establish, through laws or regulations, those matters which are negotiable such as remuneration at the central level or at a less centralized or sectoral level, depending on the authority in whose remit they fall. It recalls that the special characteristics of the public service justify a certain amount of flexibility in collective bargaining with regard to negotiation of wages; given the complexity of the budgetary procedure, state authorities must take economic constraints into account and balance multiple interests, including those of trade unions, in the light of, and within the possibilities afforded by, the economic, social and other conditions prevailing at the time.

597. The Committee considers that legislative provisions which allow the competent budgetary authority to set upper and lower limits for wage negotiations or to establish an

overall “budgetary package”, within which the parties may negotiate monetary or standard-setting clauses, are compatible with the Convention, as are those which give the financial authorities the right to participate in collective bargaining alongside the direct employer, provided that they leave a significant role to collective bargaining. It is essential, however, that workers and their organizations are able to participate fully in designing this overall bargaining framework, which implies in particular that they must have access to all the financial, budgetary and other data necessary for this purpose, in full transparency. The Committee emphasizes, however, that this role of the financial and budgetary authorities must be carried out in good faith as part of a constructive dialogue in which the views of the unions are taken into account.

598. The Committee also draws attention to the fact that, in order for collective bargaining on public servants’ remuneration to be effective, inflation and growth forecasts of the government bodies responsible for preparing the state budget must be carried out through objective and transparent mechanisms that have the confidence of the general public and the trade unions.

599. The Committee emphasizes that, when public authorities and trade unions conclude collective agreements on pay increases in public administrations or other clauses with budgetary implications, it is essential that the legislative assembly ratify the outcome of collective bargaining. The Committee also stresses the importance of a culture of respect for collective agreements by legislative assemblies, including in cases in which the Government does not hold a parliamentary majority. It is also admissible in certain cases, and even very useful (in particular as part of the special modalities of collective bargaining in the public service) for parliamentary committees or their members to be formally or informally involved in the bargaining or consultation process in order to ensure that the legislative assembly respects the economic clauses of the collective agreements adopted.

600. Over the years, the Committee has had to examine the impact on the right to collective bargaining of successive economic crises affecting groups of countries on different continents. For over 30 years, its approach to these issues has been based on the principle that collective agreements in force must be respected and that limitations on the content of future collective agreements, particularly in relation to wages, imposed by the authorities, by virtue of economic stabilization or structural adjustment policies that have become necessary, are admissible on condition that they are subject to prior consultations with workers’ and employers’ organizations and meet the following conditions: (i) they are applied as an exceptional measure; (ii) they are limited to the extent necessary; (iii) they do not exceed a reasonable period; and (iv) they are accompanied by safeguards to protect effectively the standard of living of the workers concerned, in particular those who are likely to be the most affected. Both the Committee of Experts and the Committee on Freedom of Association, fully aware of the implications of their position, have pointed out that collective agreements in force must be respected and that economic stabilization measures should only take effect after expiry of the term of the collective agreements. Exceptions may only be made in cases of serious and insurmountable difficulty, for the preservation of jobs and the continuity of enterprises and institutions. Such exceptions should be examined through a process of social dialogue. This is justified both by the nature of the fundamental right to collective bargaining and by the need to ensure that this essential institution of democratic society does not lose the confidence of unions and their members, which could entail incalculable risks at times of crisis.

601. The Committee notes that the Committee on Freedom of Association has emphasized that adequate mechanisms for dealing with exceptional economic situations

can be developed within the framework of the public sector collective bargaining system. The Committee considers that, in regard to work-related issues and especially in the case of collective bargaining, mechanisms involving representatives of the State at the highest level and the most representative confederations of workers and employers should be established without delay in the event of serious crises, in order to address their economic and social impact in a united approach, paying special attention to the most vulnerable groups. Such mechanisms should have access to the means of dispute settlement provided for in Article 8 of Convention No. 151 when, in cases of force majeure, it is found that certain aspects of labour legislation or collective agreements need to be rapidly amended or renegotiated, whether provisionally or not. The need for such mechanisms is particularly acute in view of the severe impact of recovery measures, as a result of which trade unions and employers' organizations face difficulties and problems on such a scale that it is not possible to reach a global and coordinated response within the established dialogue framework.

602. Lastly, the Committee emphasizes that when national economies return to a normal situation, intensive tripartite dialogue should be undertaken in order to ensure that the exceptional measures adopted are not consolidated and to examine the necessity of maintaining the changes adopted during the crisis, taking account in particular of the Conventions on fundamental rights at work.

603. The Committee notes with interest a number of initiatives to promote collective bargaining in certain countries in accordance with Convention No. 154. It invites member States to take steps to carry out a periodical tripartite assessment of the functioning of the collective bargaining system in regard to the promotion of collective bargaining, in the light of the provisions of Convention No. 154 and Recommendation No. 163 (training of negotiators, information communicated to the parties, etc.).

604. **Dispute settlement.** The Committee wishes to point out that the ILO instruments advocate both dispute settlement procedures through negotiation between the parties (voluntary conciliation, mediation and arbitration) and official independent and impartial machinery such as conciliation, mediation and arbitration procedures at the request of both parties, established in such a manner as to ensure the confidence of the parties concerned. The Committee recalls in this regard that Article 5, paragraph 2(e), of Convention No. 154 provides that "bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining", and that Article 6 provides that: "The provisions of this Convention do not preclude the operation of industrial relations systems in which collective bargaining takes place within the framework of conciliation and/or arbitration machinery or institutions, in which machinery or institutions the parties to the collective bargaining process voluntarily participate." Again, Article 6 refers to conciliation and/or arbitration machinery or institutions, in which the parties to the collective bargaining process voluntarily participate. The Committee notes that Recommendation No. 92 allows conciliation procedures at the request of one of the parties, on the understanding that, in general and in line with the approach set out in Convention No. 154, procedures set in motion at the request of both parties are preferable.

605. The Committee points out that the State should make available to the parties to collective bargaining free and expeditious dispute settlement machinery which is independent and impartial and has the confidence of the parties.

606. As regards procedures for the settlement of disputes arising out of interpretation, whether they are established by agreement between the parties or through legislation, the Committee considers that they are compatible with Conventions Nos 151 and 154,

provided that they are independent and impartial – whether or not they are court procedures – and have the confidence of the parties, as is the case of independent judicial procedures, for example.

607. The Committee considers that legal systems that provide for conciliation and mediation by a ministerial body, in the public service or in other sectors, without a request from either party, once a specific period has expired in the bargaining process are not, in principle, in conformity with the principles laid down in Conventions Nos 151 and 154. Such systems imply administrative or judicial intervention that has not been requested by the parties, contrary to the principles of free and voluntary collective bargaining, which leaves the way open to potential interference or pressure on either party, depending on the political orientation of the Government, which can influence the policies of the labour administration. In some countries, this problem is aggravated by an excessively legalistic approach.

608. The Committee considers that systems which prescribe voluntary arbitration as the means of dispute settlement are in conformity with the Convention. This is not true of legislation allowing in general terms compulsory arbitration at the request of only one of the parties or by decision of the authorities, except in certain cases mentioned in this Survey.

609. In this regard, the Committee emphasizes that, in the public administration, where collective bargaining does not result in an agreement and the legislation does not recognize the right to strike for public servants, the latter should benefit from adequate protection to compensate for the restriction placed on their freedom of action with regard to disputes in services of the public administration. Such protection should include, for example, impartial conciliation and eventually arbitration procedures which have the confidence of the parties, in which workers and their organizations could be associated. The resulting arbitration awards should be binding on both parties and once issued should be implemented rapidly and completely.

610. Concerning the requirements of independence and impartiality such as to ensure the confidence of the parties to bargaining, referred to in Convention No. 151, the Committee emphasizes that the adequacy of each system and dispute settlement body under Article 8 of the Convention depends on the ability to ensure the confidence of the parties *in practice*. The Committee considers that systems under which the conciliation, mediation or arbitration bodies handling settlement of disputes (conflicts over interests) relating to collective bargaining in the public administration are administrative in nature and composition, are not in conformity with the requirements of the Convention with regard to the independence and impartiality of procedures and their ability to ensure the confidence of the parties.

611. The Committee notes that in some countries, the approach to collective disputes arising out of the collective bargaining process is governed by the principle of the obligation to maintain social peace, or industrial peace, according to which the parties to a collective agreement rule out direct action during the limited term of the collective agreement. In the past, the Committee has considered that such systems are in conformity with Conventions Nos 98, 151 and 154. In this regard, it recalls that Recommendation No. 92 provides that conciliation procedures with the consent of all the parties concerned should be encouraged and that the parties should abstain from strikes and lockouts while conciliation is in progress.

612. Lastly, the Committee would like to highlight the obvious links and the complementarity of Conventions Nos 151 and 154 and fundamental Conventions Nos 87 and 98, and the fact that, as the International Labour Conference stated in its 2012

resolution concerning the recurrent discussion on the fundamental principles and rights at work, they have particular significance as human rights. In this regard, the Committee highlights the inherent link between collective bargaining, human dignity, democracy and social peace. Collective bargaining further incorporates clear advantages as an instrument to achieve fair labour relations and genuinely humane conditions of work and as an instrument for the prevention and resolution of disputes. The Committee further observes that collective bargaining – in the framework of a frank and constructive dialogue – plays an essential role for social and economic stability, common prosperity and social justice, in times of economic growth as well as crisis. The Committee makes a pressing appeal for the ratification of Conventions Nos 151 and 154 which, for the aforementioned reasons, constitute jointly with Conventions Nos 87 and 98 crucial instruments for the governance of democratic societies regardless of their level of development, for a greater efficiency and effectiveness of the public service and for the purpose of overcoming discrimination in many countries between the private and public sectors as regards the recognition and promotion of collective bargaining. In addition, the Committee underlines the need for significant mobilization at national and international levels to this end, which deserves all necessary attention, even where the fundamental Conventions concerning freedom of association have not yet been ratified.

Appendix I

Conventions and Recommendations

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

Entry into force: 25 February 1981.

Adoption: Geneva, 64th ILC Session (27 June 1978).

Status: Up-to-date instrument (technical Convention).

PREAMBLE

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-fourth Session on 7 June 1978, and

Noting the terms of the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, and the Workers' Representatives Convention and Recommendation, 1971, and

Recalling that the Right to Organise and Collective Bargaining Convention, 1949, does not cover certain categories of public employees and that the Workers' Representatives Convention and Recommendation, 1971, apply to workers' representatives in the undertaking, and

Noting the considerable expansion of public-service activities in many countries and the need for sound labour relations between public authorities and public employees' organisations, and

Having regard to the great diversity of political, social and economic systems among member States and the differences in practice among them (e.g. as to the respective functions of central and local government, of federal, state and provincial authorities, and of state owned undertakings and various types of autonomous or semi-autonomous public bodies, as well as to the nature of employment relationships), and

Taking into account the particular problems arising as to the scope of, and definitions for the purpose of, any international instrument, owing to the differences in many countries between private and public employment, as well as the difficulties of interpretation which have arisen in respect of the application of relevant provisions of the Right to Organise and Collective Bargaining Convention, 1949, to public servants, and the observations of the supervisory bodies of the ILO on a number of occasions that some governments have applied these provisions in a manner which excludes large groups of public employees from coverage by that Convention, and

Having decided upon the adoption of certain proposals with regard to freedom of association and procedures for determining conditions of employment in the public service, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, adopts this twenty-seventh day of June of the year one thousand nine hundred and seventy-eight the following Convention, which may be cited as the **Labour Relations (Public Service) Convention, 1978**:

PART I. SCOPE AND DEFINITIONS

Article 1

1. This Convention applies to all persons employed by public authorities, to the extent that more favourable provisions in other international labour Conventions are not applicable to them.

2. The extent to which the guarantees provided for in this Convention shall apply to high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature, shall be determined by national laws or regulations.

3. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

Article 2

For the purpose of this Convention, the term **public employee** means any person covered by the Convention in accordance with Article 1 thereof.

Article 3

For the purpose of this Convention, the term **public employees' organisation** means any organisation, however composed, the purpose of which is to further and defend the interests of public employees.

PART II. PROTECTION OF THE RIGHT TO ORGANISE

Article 4

1. Public employees shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to –

- (a) make the employment of public employees subject to the condition that they shall not join or shall relinquish membership of a public employees' organisation;
- (b) cause the dismissal of or otherwise prejudice a public employee by reason of membership of a public employees' organisation or because of participation in the normal activities of such an organisation.

Article 5

1. Public employees' organisations shall enjoy complete independence from public authorities.

2. Public employees' organisations shall enjoy adequate protection against any acts of interference by a public authority in their establishment, functioning or administration.

3. In particular, acts which are designed to promote the establishment of public employees' organisations under the domination of a public authority, or to support public employees' organisations by financial or other means, with the object of placing such organisations under the control of a public authority, shall be deemed to constitute acts of interference within the meaning of this Article.

PART III. FACILITIES TO BE AFFORDED TO
PUBLIC EMPLOYEES' ORGANISATIONS

Article 6

1. Such facilities shall be afforded to the representatives of recognised public employees' organisations as may be appropriate in order to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work.
2. The granting of such facilities shall not impair the efficient operation of the administration or service concerned.
3. The nature and scope of these facilities shall be determined in accordance with the methods referred to in Article 7 of this Convention, or by other appropriate means.

PART IV. PROCEDURES FOR DETERMINING TERMS AND
CONDITIONS OF EMPLOYMENT

Article 7

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organisations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters.

PART V. SETTLEMENT OF DISPUTES

Article 8

The settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought, as may be appropriate to national conditions, through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved.

PART VI. CIVIL AND POLITICAL RIGHTS

Article 9

Public employees shall have, as other workers, the civil and political rights which are essential for the normal exercise of freedom of association, subject only to the obligations arising from their status and the nature of their functions.

PART VII. FINAL PROVISIONS

Article 10

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 11

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 12

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 13

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 14

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 15

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 16

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides –

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 12 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 17

The English and French versions of the text of this Convention are equally authoritative.

Labour Relations (Public Service) Recommendation, 1978 (No. 159)

Adoption: Geneva, 64th ILC Session (27 June 1978).

Status: Up-to-date instrument.

PREAMBLE

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-fourth Session on 7 June 1978, and

Having decided upon the adoption of certain proposals with regard to freedom of association and procedures for determining conditions of employment in the public service, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Labour Relations (Public Service) Convention, 1978,

adopts this twenty-seventh day of June of the year one thousand nine hundred and seventy-eight the following Recommendation, which may be cited as the **Labour Relations (Public Service) Recommendation, 1978**:

1. (1) In countries in which procedures for recognition of public employees' organisations apply with a view to determining the organisations to be granted, on a preferential or exclusive basis, the rights provided for under Parts III, IV or V of the Labour Relations (Public Service) Convention, 1978, such determination should be based on objective and pre-established criteria with regard to the organisations' representative character.

(2) The procedures referred to in subparagraph (1) of this Paragraph should be such as not to encourage the proliferation of organisations covering the same categories of employees.

2. (1) In the case of negotiation of terms and conditions of employment in accordance with Part IV of the Labour Relations (Public Service) Convention, 1978, the persons or bodies competent to negotiate on behalf of the public authority concerned and the procedure for giving effect to the agreed terms and conditions of employment should be determined by national laws or regulations or other appropriate means.

(2) Where methods other than negotiation are followed to allow representatives of public employees to participate in the determination of terms and conditions of employment, the procedure for such participation and for final determination of these matters should be determined by national laws or regulations or other appropriate means.

3. Where an agreement is concluded between a public authority and a public employees' organisation in pursuance of Paragraph 2, subparagraph (1), of this Recommendation, the period during which it is to operate and/or the procedure whereby it may be terminated, renewed or revised should normally be specified.

4. In determining the nature and scope of the facilities which should be afforded to representatives of public employees' organisations in accordance with Article 6, paragraph 3, of the Labour Relations (Public Service) Convention, 1978, regard should be had to the Workers' Representatives Recommendation, 1971.

Collective Bargaining Convention, 1981 (No. 154)

Entry into force: 11 August 1983.

Adoption: Geneva, 67th ILC Session (3 June 1981).

Status: Up-to-date instrument (technical Convention).

PREAMBLE

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-seventh Session on 3 June 1981, and

Reaffirming the provision of the Declaration of Philadelphia recognising “the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve ... the effective recognition of the right of collective bargaining”, and noting that this principle is “fully applicable to all people everywhere”, and

Having regard to the key importance of existing international standards contained in the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, the Collective Agreements Recommendation, 1951, the Voluntary Conciliation and Arbitration Recommendation, 1951, the Labour Relations (Public Service) Convention and Recommendation, 1978, and the Labour Administration Convention and Recommendation, 1978, and

Considering that it is desirable to make greater efforts to achieve the objectives of these standards and, particularly, the general principles set out in Article 4 of the Right to Organise and Collective Bargaining Convention, 1949, and in Paragraph 1 of the Collective Agreements Recommendation, 1951, and

Considering accordingly that these standards should be complemented by appropriate measures based on them and aimed at promoting free and voluntary collective bargaining, and

Having decided upon the adoption of certain proposals with regard to the promotion of collective bargaining, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, adopts this nineteenth day of June of the year one thousand nine hundred and eighty-one the following Convention, which may be cited as the **Collective Bargaining Convention, 1981**:

PART I. SCOPE AND DEFINITIONS

Article 1

1. This Convention applies to all branches of economic activity.
2. The extent to which the guarantees provided for in this Convention apply to the armed forces and the police may be determined by national laws or regulations or national practice.
3. As regards the public service, special modalities of application of this Convention may be fixed by national laws or regulations or national practice.

Article 2

For the purpose of this Convention the term **collective bargaining** extends to all negotiations which take place between an employer, a group of employers or one or more

employers' organisations, on the one hand, and one or more workers' organisations, on the other, for –

- (a) determining working conditions and terms of employment; and/or
- (b) regulating relations between employers and workers; and/or
- (c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations.

Article 3

1. Where national law or practice recognises the existence of workers' representatives as defined in Article 3, subparagraph (b), of the Workers' Representatives Convention, 1971, national law or practice may determine the extent to which the term *collective bargaining* shall also extend, for the purpose of this Convention, to negotiations with these representatives.

2. Where, in pursuance of paragraph 1 of this Article, the term *collective bargaining* also includes negotiations with the workers' representatives referred to in that paragraph, appropriate measures shall be taken, wherever necessary, to ensure that the existence of these representatives is not used to undermine the position of the workers' organisations concerned.

PART II. METHODS OF APPLICATION

Article 4

The provisions of this Convention shall, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or in such other manner as may be consistent with national practice, be given effect by national laws or regulations.

PART III. PROMOTION OF COLLECTIVE BARGAINING

Article 5

1. Measures adapted to national conditions shall be taken to promote collective bargaining.

2. The aims of the measures referred to in paragraph 1 of this Article shall be the following:

- (a) collective bargaining should be made possible for all employers and all groups of workers in the branches of activity covered by this Convention;
- (b) collective bargaining should be progressively extended to all matters covered by subparagraphs (a), (b) and (c) of Article 2 of this Convention;
- (c) the establishment of rules of procedure agreed between employers' and workers' organisations should be encouraged;
- (d) collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules;
- (e) bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining.

Article 6

The provisions of this Convention do not preclude the operation of industrial relations systems in which collective bargaining takes place within the framework of conciliation and/or arbitration machinery or institutions, in which machinery or institutions the parties to the collective bargaining process voluntarily participate.

Article 7

Measures taken by public authorities to encourage and promote the development of collective bargaining shall be the subject of prior consultation and, whenever possible, agreement between public authorities and employers' and workers' organisations.

Article 8

The measures taken with a view to promoting collective bargaining shall not be so conceived or applied as to hamper the freedom of collective bargaining.

PART IV. FINAL PROVISIONS

Article 9

This Convention does not revise any existing Convention or Recommendation.

Article 10

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 11

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 12

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 13

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 14

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 15

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 16

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides –

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 12 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 17

The English and French versions of the text of this Convention are equally authoritative.

Collective Bargaining Recommendation, 1981 (No. 163)

Adoption: Geneva, 67th ILC Session (19 June 1981).

Status: Up-to-date instrument.

PREAMBLE

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-seventh Session on 3 June 1981, and

Having decided upon the adoption of certain proposals with regard to the promotion of collective bargaining, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Collective Bargaining Convention, 1981,

adopts this nineteenth day of June of the year one thousand nine hundred and eighty-one the following Recommendation, which may be cited as the **Collective Bargaining Recommendation, 1981**:

I. METHODS OF APPLICATION

1. The provisions of this Recommendation may be applied by national laws or regulations, collective agreements, arbitration awards or in any other manner consistent with national practice.

II. MEANS OF PROMOTING COLLECTIVE BARGAINING

2. In so far as necessary, measures adapted to national conditions should be taken to facilitate the establishment and growth, on a voluntary basis, of free, independent and representative employers' and workers' organisations.

3. As appropriate and necessary, measures adapted to national conditions should be taken so that –

- (a) representative employers' and workers' organisations are recognised for the purposes of collective bargaining;
- (b) in countries in which the competent authorities apply procedures for recognition with a view to determining the organisations to be granted the right to bargain collectively, such determination is based on pre-established and objective criteria with regard to the organisations' representative character, established in consultation with representative employers' and workers' organisations.

4. (1) Measures adapted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking, the branch of activity, the industry, or the regional or national levels.

(2) In countries where collective bargaining takes place at several levels, the parties to negotiations should seek to ensure that there is co-ordination among these levels.

5. (1) Measures should be taken by the parties to collective bargaining so that their negotiators, at all levels, have the opportunity to obtain appropriate training.

(2) Public authorities may provide assistance to workers' and employers' organisations, at their request, for such training.

(3) The content and supervision of the programmes of such training should be determined by the appropriate workers' or employers' organisation concerned.

(4) Such training should be without prejudice to the right of workers' and employers' organisations to choose their own representatives for the purpose of collective bargaining.

6. Parties to collective bargaining should provide their respective negotiators with the necessary mandate to conduct and conclude negotiations, subject to any provisions for consultations within their respective organisations.

7. (1) Measures adapted to national conditions should be taken, if necessary, so that the parties have access to the information required for meaningful negotiations.

(2) For this purpose –

- (a) public and private employers should, at the request of workers' organisations, make available such information on the economic and social situation of the negotiating unit and the undertaking as a whole, as is necessary for meaningful negotiations; where the disclosure of some of this information could be prejudicial to the undertaking, its communication may be made conditional upon a commitment that it would be regarded as confidential to the extent required; the information to be made available may be agreed upon between the parties to collective bargaining;
- (b) the public authorities should make available such information as is necessary on the overall economic and social situation of the country and the branch of activity concerned, to the extent to which the disclosure of this information is not prejudicial to the national interest.

8. Measures adapted to national conditions should be taken, if necessary, so that the procedures for the settlement of labour disputes assist the parties to find a solution to the dispute themselves, whether the dispute is one which arose during the negotiation of agreements, one which arose in connection with the interpretation and application of agreements or one covered by the Examination of Grievances Recommendation, 1967.

III. FINAL PROVISION

9. This Recommendation does not revise any existing Recommendation.

Appendix II

Report form

Appl. 19
C.151, C.154, R.159, R.163
C.151. Labour Relations (Public Service) Convention, 1978
C.154. Collective Bargaining Convention, 1981
R.159. Labour Relations (Public Service) Recommendation, 1978
R.163. Collective Bargaining Recommendation, 1981

INTERNATIONAL LABOUR OFFICE

REPORTS ON

UNRATIFIED CONVENTIONS AND RECOMMENDATIONS

*(article 19 of the Constitution of the
International Labour Organisation)*

REPORT FORM FOR THE FOLLOWING INSTRUMENTS:

LABOUR RELATIONS (PUBLIC SERVICE) CONVENTION, 1978 (No. 151)
LABOUR RELATIONS (PUBLIC SERVICE) RECOMMENDATION, 1978 (No. 159)
COLLECTIVE BARGAINING CONVENTION, 1981 (No. 154) *
COLLECTIVE BARGAINING RECOMMENDATION, 1981 (No. 163) *

Geneva
2011

* The report concerns Convention No. 154 and Recommendation No. 163 only as far as they relate to collective bargaining in the public sector.

INTERNATIONAL LABOUR OFFICE

Article 19 of the Constitution of the International Labour Organisation relates to the adoption of Conventions and Recommendations by the Conference, as well as to the obligations resulting therefrom for the Members of the Organization. The relevant provisions of paragraphs 5, 6 and 7 of this article read as follows:

5. In the case of a Convention:

...

- (e) if the Member does not obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member except that it shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such Convention.

...

6. In the case of a Recommendation:

...

- (d) apart from bringing the Recommendation before the said competent authority or authorities, no further obligation shall rest upon the Members, except that they shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them.

7. In the case of a federal State, the following provisions shall apply:

- (a) in respect of Conventions and Recommendations which the federal Government regards as appropriate under its constitutional system for federal action, the obligations of the federal State shall be the same as those of Members which are not federal States;
- (b) in respect of Conventions and Recommendations which the federal Government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent states, provinces or cantons rather than for federal action, the federal Government shall:

...

- (iv) in respect of each such Convention which it has not ratified, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent states, provinces or cantons in regard to the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement, or otherwise;

- (v) in respect of each such Recommendation, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent states, provinces or cantons in regard to the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as have been found or may be found necessary in adopting or applying them.

...

In accordance with the above provisions, the Governing Body of the International Labour Office examined and approved the present report form. This has been drawn up in such a manner as to facilitate the supply of the required information on uniform lines.

REPORT

to be made no later than 28 February 2012, in accordance with article 19 of the Constitution of the International Labour Organisation by the Government of, on the position of national law and practice in regard to matters dealt with in the following instruments:

LABOUR RELATIONS (PUBLIC SERVICE) CONVENTION, 1978 (No. 151)**LABOUR RELATIONS (PUBLIC SERVICE) RECOMMENDATION, 1978 (No. 159)**

I. Please indicate whether and, if so, the manner in which effect is given to the Convention and to the Recommendation in your country in law and in practice:

- (a) Please indicate all categories of persons employed by the public authorities to whom the legislation, regulations, collective agreements or other measures which implement the provisions of the Convention and the Recommendation apply.
- (b) Please indicate to what extent the guarantees provided for in this Convention and the Recommendation apply to high-level employees whose functions are normally considered as policy-making or managerial or to employees whose duties are of a highly confidential nature, and to the armed forces and the police.
- (c) Please indicate in particular any provisions of national legislation, regulations, collective agreements or other measures that provide for the protection of public employees against acts of anti-union discrimination in respect of their employment, and any provisions that provide for protective mechanisms and sanctions in this regard.
- (d) Please describe to what extent and in what manner complete independence and adequate protection against acts of interference by a public authority in their establishment, functioning or administration is ensured to public employees' organizations. Please also indicate any protective mechanisms and sanctions set out in the legislation.
- (e) Please indicate the categories of public employees, which enjoy the right to participate in the determination of their terms and conditions of employment.
- (f) Please specify to what extent facilities are provided to representatives of recognized public employees' organizations with a view to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work.
- (g) Please indicate if, in your country, procedures for recognition of public employees' organizations apply with a view to determining the organizations to be granted the rights under the Convention and, if so, indicate on which criteria the determination of such organizations is based.
- (h) Please describe any procedures for the determination of terms and conditions of employment of public employees:
 - (i) Please indicate matters that are open to negotiation and matters that are excluded from negotiation.
 - (ii) Also please indicate if there are particular duties the parties are supposed to respect during the negotiations.
 - (iii) In case of absence of collective bargaining mechanisms please specify whether other methods exist which allow public employees to participate in determining terms and conditions of employment.

- (i) Please provide information on any measures in place to promote the development and use of mechanisms for negotiation between the public authorities and employees' organizations or other methods allowing public employees to participate in the determination of terms and conditions of employment. Please also provide statistical data about the number and the coverage of the collective agreements concluded in the public sector.
- (j) Please describe any mechanisms created for the settlement of disputes arising in connection with the determination of terms and conditions of employment of public employees (negotiation or other procedures such as mediation, conciliation or arbitration) and indicate any judicial decision that has been rendered in this regard.
- (k) Please indicate if organizations of workers which are not trade unions are allowed to participate in the negotiations and, in the affirmative, if these organizations of workers are allowed to do so even if there is a representative trade union.
- (l) Please indicate also whether there are any restrictions of civil and political rights of public employees that are essential to the normal exercise of freedom of association.
- (m) Are the rights of public employees covered by the same legislation as those of private sector workers, or are public employees covered by specific legislation? If so, please supply the text of this legislation.

II. (a) Please indicate whether any modifications have been made in the national legislation or practice with a view to giving effect to all or some of the provisions of the Convention or of the Recommendation.

- (b) Please state also whether it is intended to adopt measures to give further effect to the provisions of the Convention or of the Recommendation including ratification.
- (c) Please state any difficulties due to the Convention, to the national law or practice, or to any other reason, which may prevent or delay the ratification of the Convention. Please indicate any measures taken or envisaged to overcome these obstacles.
- (d) Please state, where appropriate, if the possible ratification of the Convention has been discussed on a tripartite basis, as provided by the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and, if so, when.

III. Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organisation.

IV. Please indicate whether you have received from organizations of employers or workers concerned any observations concerning the effect given, or to be given, to the instruments to which the present report relates. If so, please communicate a copy of the observations received together with any comments that you may consider useful.

V. In case your country is a federal State:

- (a) Please indicate whether the provisions of the Convention or of the Recommendation are regarded by the federal government as appropriate, under the constitutional system, for federal action or as appropriate, in whole or in part, for action by the constituent states, provinces or cantons, rather than for federal action.
- (b) Where federal action is appropriate, please give the information specified in points I, II, III and IV of this form.
- (c) Where action by the constituent units is regarded as appropriate, please supply general information corresponding to points I, II, III and IV of the form. Please indicate also any arrangements it has been possible to make within the federal State, with a view to promoting coordinated action to give effect to all or some of the provisions of the Convention and of the Recommendation, giving a general indication of any results achieved through such action.

POSSIBLE NEEDS FOR STANDARD-RELATED ACTION AND
FOR TECHNICAL COOPERATION

VI. What suggestions would your country wish to make concerning possible standard-related action to be taken by the ILO? (For example, new standards, revision, etc.)

VII. Has there been any request for policy support or technical cooperation support provided by the ILO to give effect to the instruments in question? If this is the case, what has been the effect of this support?

VIII. What are the future policy advisory support and technical cooperation needs of your country to give effect to the objectives of the instruments in question?

COLLECTIVE BARGAINING CONVENTION, 1981 (NO. 154)

COLLECTIVE BARGAINING RECOMMENDATION, 1981 (NO. 163)

In accordance with the decision taken by the Governing Body in November 2006, article 19 reports will be requested for Convention No. 154 and Recommendation No. 163 with regard to the public service only.

I. Please indicate whether and, if so, the manner in which effect is given to the Convention and to the Recommendation in your country in law and in practice with regard to employees of the public service.

- (a) Please describe any ways in which the application of the Convention and of the Recommendation reflects special modalities for employees of all or part of the public service; please indicate also the provisions of the legislation applicable to the armed forces and the police.
- (b) Please indicate to what extent the Convention and the Recommendation are applied to bargaining with workers' representatives, as defined in Article 3, subparagraph (b), of the Workers' Representatives Convention, 1971 (No. 135), and in what ways workers' representatives can participate in the determination of terms and conditions of employment.
- (c) Please describe in what ways voluntary collective bargaining is promoted in the public service in the broad sense of the term.
 - (i) Please specify the matters covered by collective bargaining.
 - (ii) Please indicate the level at which collective bargaining in the public service takes place and, if applicable, give information as to whether there are mechanisms providing for coordination between the different levels of collective bargaining.
 - (iii) Please indicate also if rules and procedures concerning collective bargaining in the public sector are agreed between workers' and employers' organizations.
 - (iv) Please indicate if, in your country, procedures for recognition of employers' and workers' organizations in the public service apply with a view to determining the organizations to be granted the right to collective bargaining and, if so, indicate on which criteria the determination of such organizations is based.
 - (v) Please describe any training facilities available to negotiators of parties to collective bargaining and indicate if public authorities provide assistance to workers' and employers' organizations in this regard.
 - (vi) Please indicate also to what extent the collective bargaining parties have access to information about the overall economic situation of the country and the branch of activity within the public sector concerned by the negotiations.
 - (vii) Please supply statistical information on the number and the coverage of the collective agreements concluded.
 - (viii) Please describe the bodies and procedures for the settlement of labour disputes in the public service, both as regards disputes in the negotiation of agreements and disputes concerning the interpretation and application of agreements. Please also give statistical data of recourse to these bodies and procedures.
- (d) Please indicate if, in your country, there is prior consultation between public authorities and employers' and workers' organizations in the public sector on measures to encourage and promote collective bargaining, and if these measures are the subject of agreements between the public authorities and the employers' and workers' organizations.

II. (a) Please indicate whether any modifications have been made in the national legislation or practice with a view to giving effect to all or some of the provisions of the Convention or of the Recommendation.

- (b) Please state also whether it is intended to adopt measures to give further effect to the provisions of the Convention or of the Recommendation including ratification.
- (c) Please describe any measure taken to facilitate the establishment and growth, on a voluntary basis, of free, independent and representative employers' and workers' organizations in the public sector.
- (d) Please state any difficulties due to the Convention to the national law or practice, or to any other reason, which may prevent or delay the ratification of the Convention. Please indicate any measures taken or envisaged to overcome these obstacles.
- (e) Please state, where appropriate, if the possible ratification of the Convention has been discussed on a tripartite basis, as provided by the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and, if so, when.

III. Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organisation.

IV. Please indicate whether you have received from organizations of employers or workers concerned any observations concerning the effect given, or to be given, to the instruments to which the present report relates. If so, please communicate a copy of the observations received together with any comments that you may consider useful.

V. In case your country is a federal State:

- (a) Please indicate whether the provisions of the Convention or of the Recommendation are regarded by the federal government as appropriate, under the constitutional system, for federal action or as appropriate, in whole or in part, for action by the constituent states, provinces or cantons, rather than for federal action.
- (b) Where federal action is appropriate, please give the information specified in points I, II, III and IV of this form.
- (c) Where action by the constituent units is regarded as appropriate, please supply general information corresponding to points I, II, III and IV of the form. Please indicate also any arrangements it has been possible to make within the federal State, with a view to promoting coordinated action to give effect to all or some of the provisions of the Convention and of the Recommendation, giving a general indication of any results achieved through such action.

POSSIBLE NEEDS FOR STANDARD-RELATED ACTION AND FOR TECHNICAL COOPERATION

VI. What suggestions would your country wish to make concerning possible standard-related action to be taken by the ILO? (For example, new standards, revision, etc.)

VII. Has there been any request for policy support or technical cooperation support provided by the ILO to give effect to the instruments in question? If this is the case, what has been the effect of this support?

VIII. What are the future policy advisory support and technical cooperation needs of your country to give effect to the objectives of the instruments in question?

Appendix III

Ratifications

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

Date of entry into force: 25 February 1981

48 ratifications

Albania	30 June 1999
Antigua and Barbuda	16 September 2002
Argentina	21 January 1987
Armenia	29 July 1994
Azerbaijan	11 March 1993
Belarus	8 September 1997
Belgium	21 May 1991
Belize	22 June 1999
Botswana	22 December 1997
Brazil	15 June 2010
Chad	7 January 1998
Chile	17 July 2000
Colombia	8 December 2000
Cuba	29 December 1980
Cyprus	6 July 1981
Denmark	5 June 1981
El Salvador	6 September 2006
Finland	25 February 1980
Gabon	1 October 2009
Georgia	10 October 2003
Ghana	27 May 1986
Greece	29 July 1996
Guinea	8 June 1982
Guyana	10 January 1983
Hungary	4 January 1994
Italy	28 February 1985

Latvia	27 January 1992
Luxembourg	21 March 2001
Mali	12 June 1995
Moldova, Republic of	4 April 2003
Netherlands	29 November 1988
Norway	19 March 1980
Peru	27 October 1980
Poland	26 July 1982
Portugal	9 January 1981
San Marino	19 April 1988
Sao Tome and Principe	4 May 2005
Seychelles	23 November 1999
Slovakia	22 February 2010
Slovenia	20 September 2010
Spain	18 September 1984
Suriname	29 September 1981
Sweden	11 June 1979
Switzerland	3 March 1981
Turkey	12 July 1993
United Kingdom	19 March 1980
Uruguay	19 June 1989
Zambia	19 August 1980

Collective Bargaining Convention, 1981 (No. 154)

Date of entry into force: 11 August 1983

43 ratifications

Albania	24 July 2002
Antigua and Barbuda	16 September 2002
Argentina	29 January 1993
Armenia	29 April 2005
Azerbaijan	12 August 1993
Belarus	8 September 1997
Belgium	29 March 1988
Belize	22 June 1999
Benin	10 January 2012
Brazil	10 July 1992
Colombia	8 December 2000
Cyprus	16 January 1989
Finland	9 February 1983
Gabon	6 December 1988
Greece	17 September 1996
Guatemala	29 October 1996
Hungary	4 January 1994
Kyrgyzstan	22 December 2003
Latvia	25 July 1994
Lithuania	26 September 1994
Mauritius	23 November 2011
Moldova, Republic of	14 February 1997
Morocco	3 April 2009
Netherlands	22 December 1993
Niger	5 June 1985
Norway	22 June 1982
Romania	15 December 1992
Russian Federation	6 September 2010
Saint Lucia	6 December 2000
San Marino	1 February 1995
Sao Tome and Principe	4 May 2005
Slovakia	17 September 2009
Slovenia	2 February 2006
Spain	11 September 1985
Suriname	5 June 1996
Sweden	11 August 1982

Switzerland	16 November 1983
Tanzania, United Republic of	14 August 1998
Uganda	27 March 1990
Ukraine	16 May 1994
Uruguay	19 June 1989
Uzbekistan	15 December 1997
Zambia	4 February 1986

Appendix IV

Countries that sent a report under article 19 of the Constitution of the ILO

Members	Convention No. 151	Convention No. 154	Recommendation No. 159	Recommendation No. 163
Afghanistan	----	----	----	----
Albania	<i>Ratified 30/06/1999</i>	<i>Ratified 30/06/1999</i>	----	----
Algeria	Received	Received	Received	Received
Angola	----	Received	----	Received
Antigua and Barbuda	<i>Ratified 16/09/2002</i>	<i>Ratified 16/09/2002</i>	----	Received
Argentina	<i>Ratified 21/01/1987</i>	<i>Ratified 21/01/1987</i>	----	----
Armenia	<i>Ratified 29/07/1994</i>	<i>Ratified 29/07/1994</i>	----	----
Australia	Received	Received	Received	Received
Austria	Received	Received	Received	Received
Azerbaijan	<i>Ratified 11/03/1993</i>	<i>Ratified 11/03/1993</i>	----	Received
Bahamas	----	----	----	----
Bahrain	Received	Received	Received	Received
Bangladesh	Received	Received	Received	Received
Barbados	----	----	----	----
Belarus	<i>Ratified 08/09/1997</i>	<i>Ratified 08/09/1997</i>	----	Received
Belgium	<i>Ratified 21/05/1991</i>	<i>Ratified 21/05/1991</i>	----	Received
Belize	<i>Ratified 22/06/1999</i>	<i>Ratified 22/06/1999</i>	----	----
Benin	Received		Received	Received
Bolivia, Plurinational State of	Received	Received	Received	Received
Bosnia and Herzegovina	Received	Received	Received	Received
Botswana	<i>Ratified 22/12/1997</i>	----	----	----
Brazil	<i>Ratified 15/06/2010</i>	<i>Ratified 15/06/2010</i>	----	Received
Brunei Darussalam	----	----	----	----
Bulgaria	Received	Received	Received	Received
Burkina Faso	----	----	----	----
Burundi	----	----	----	----
Cambodia	----	----	----	----
Cameroon	Received	Received	Received	Received
Canada	Received	Received	Received	Received
Cape Verde	Received	Received	Received	Received
Central African Republic	----	----	----	----
Chad	<i>Ratified 07/01/1998</i>	Received	----	Received
Chile	<i>Ratified 17/07/2000</i>	Received	----	Received
China	Received	Received	Received	Received

Members	Convention No. 151	Convention No. 154	Recommendation No. 159	Recommendation No. 163
Colombia	<i>Ratified 08/12/2000</i>	<i>Ratified 08/12/2000</i>	----	Received
Comoros	----	----	----	----
Congo	----	----	----	----
Costa Rica	Received	Received	Received	Received
Côte d'Ivoire	Received	Received	Received	Received
Croatia	Received	Received	Received	Received
Cuba	<i>Ratified 29/12/1980</i>	Received	----	Received
Cyprus	<i>Ratified 06/07/1981</i>	<i>Ratified 06/07/1981</i>	----	Received
Czech Republic	Received	Received	Received	Received
Democratic Republic of the Congo	----	----	----	----
Denmark	<i>Ratified 05/06/1981</i>	Received	----	Received
Djibouti	----	----	----	----
Dominica	----	----	----	----
Dominican Republic	----	----	----	----
Ecuador	Received	Received	Received	Received
Egypt	Received	Received	Received	Received
El Salvador	<i>Ratified 06/09/2006</i>	Received	----	Received
Equatorial Guinea	----	----	----	----
Eritrea	Received	Received	Received	Received
Estonia	Received	Received	Received	Received
Ethiopia	Received	Received	Received	Received
Fiji	----	----	----	----
Finland	<i>Ratified 25/02/1980</i>	<i>Ratified 25/02/1980</i>	----	Received
France	Received	Received	Received	Received
Gabon	<i>Ratified 01/10/2009</i>	<i>Ratified 01/10/2009</i>	----	----
Gambia	----	----	----	----
Georgia	<i>Ratified 10/10/2003</i>	----	----	----
Germany	Received	Received	Received	Received
Ghana	<i>Ratified 27/05/1986</i>	----	----	----
Greece	<i>Ratified 29/07/1996</i>	<i>Ratified 29/07/1996</i>	----	Received
Grenada	----	----	----	----
Guatemala	Received		Received	Received
Guinea	<i>Ratified 08/06/1982</i>	----	----	----
Guinea-Bissau	----	----	----	----
Guyana	<i>Ratified 10/01/1983</i>	----	----	----
Haiti	----	----	----	----

Countries that sent a report under article 19 of the Constitution of the ILO

Members	Convention No. 151	Convention No. 154	Recommendation No. 159	Recommendation No. 163
Honduras	Received	Received	Received	Received
Hungary	<i>Ratified 04/01/1994</i>	<i>Ratified 04/01/1994</i>	----	Received
Iceland	----	----	----	----
India	Received	Received	Received	Received
Indonesia	Received	Received	Received	Received
Iran, Islamic Republic of	----	----	----	----
Iraq	Received	Received	Received	Received
Ireland	----	----	----	----
Israel	Received	Received	Received	Received
Italy	<i>Ratified 28/02/1985</i>	Received	----	Received
Jamaica	----	----	----	----
Japan	Received	Received	Received	Received
Jordan	Received	Received	Received	Received
Kazakhstan	----	----	----	----
Kenya	Received	Received	Received	Received
Kiribati	----	----	----	----
Korea, Republic of	Received	Received	Received	Received
Kuwait	----	----	----	----
Kyrgyzstan	Received		Received	Received
Lao People's Democratic Republic	----	----	----	----
Latvia	<i>Ratified 27/01/1992</i>	<i>Ratified 27/01/1992</i>	----	Received
Lebanon	----	----	----	----
Lesotho	----	----	----	----
Liberia	----	----	----	----
Libya	----	----	----	----
Lithuania	Received		Received	Received
Luxembourg	<i>Ratified 21/03/2001</i>	Received	----	Received
Madagascar	Received	Received	Received	Received
Malawi	----	----	----	----
Malaysia	Received	Received	Received	Received
Maldives, Republic of	----	----	----	----
Mali	<i>Ratified 12/06/1995</i>	----	----	----
Malta	Received	Received	Received	Received
Marshall Islands	----	----	----	----
Mauritania	----	----	----	----
Mauritius	Received		Received	Received

Members	Convention No. 151	Convention No. 154	Recommendation No. 159	Recommendation No. 163
Mexico	Received	Received	Received	Received
Moldova, Republic of	<i>Ratified 04/04/2003</i>	<i>Ratified 04/04/2003</i>	----	----
Mongolia	Received	Received	Received	Received
Montenegro	Received	Received	Received	Received
Morocco	Received		Received	Received
Mozambique	Received	Received	Received	Received
Myanmar	Received	Received	Received	Received
Namibia	Received	Received	Received	Received
Nepal	----	----	----	----
Netherlands	<i>Ratified 29/11/1988</i>	<i>Ratified 29/11/1988</i>	----	----
New Zealand	Received	Received	Received	Received
Nicaragua	Received	Received	Received	Received
Niger	----		----	----
Nigeria	----	----	----	----
Norway	<i>Ratified 19/03/1980</i>	<i>Ratified 19/03/1980</i>	----	----
Oman	----	----	----	----
Pakistan	----	----	----	----
Palau	----	----	----	----
Panama	Received	Received	Received	Received
Papua New Guinea	----	----	----	----
Paraguay	Received	Received	Received	Received
Peru	<i>Ratified 27/10/1980</i>	Received	----	Received
Philippines	Received	Received	Received	Received
Poland	<i>Ratified 26/07/1982</i>	Received	----	Received
Portugal	<i>Ratified 09/01/1981</i>	Received	----	Received
Qatar	Received	Received	Received	Received
Romania	Received		Received	Received
Russian Federation	----		----	----
Rwanda	----	----	----	----
Saint Kitts and Nevis	----	----	----	----
Saint Lucia	----		----	----
Saint Vincent and the Grenadines	----	----	----	----
Samoa	----	----	----	----
San Marino	<i>Ratified 19/04/1988</i>	<i>Ratified 19/04/1988</i>	----	----
Sao Tome and Principe	<i>Ratified 04/05/2005</i>	<i>Ratified 04/05/2005</i>	----	----
Saudi Arabia	----	----	----	----

Countries that sent a report under article 19 of the Constitution of the ILO

Members	Convention No. 151	Convention No. 154	Recommendation No. 159	Recommendation No. 163
Senegal	Received	Received	Received	Received
Serbia	Received	Received	Received	Received
Seychelles	<i>Ratified 23/11/1999</i>	Received	----	Received
Sierra Leone	----	----	----	----
Singapore	Received	Received	Received	Received
Slovakia	<i>Ratified 22/02/2010</i>	<i>Ratified 22/02/2010</i>	----	----
Slovenia	<i>Ratified 20/09/2010</i>	<i>Ratified 20/09/2010</i>	----	Received
Solomon Islands	----	----	----	----
Somalia	----	----	----	----
South Africa	Received	Received	Received	Received
Spain	<i>Ratified 18/09/1984</i>	<i>Ratified 18/09/1984</i>	----	Received
Sri Lanka	----	----	----	----
Sudan	----	----	----	----
Suriname	<i>Ratified 29/09/1981</i>	<i>Ratified 29/09/1981</i>	----	Received
Swaziland	Received	Received	Received	Received
Sweden	<i>Ratified 11/06/1979</i>	<i>Ratified 11/06/1979</i>	----	Received
Switzerland	<i>Ratified 03/03/1981</i>	<i>Ratified 03/03/1981</i>	----	Received
Syrian Arab Republic	----	----	----	----
Tajikistan	----	----	----	----
Tanzania , United Republic of	----	----	----	----
Thailand	Received	Received	Received	Received
The former Yugoslav Republic of Macedonia	Received	Received	Received	Received
Timor-Leste	----	----	----	----
Togo	----	----	----	----
Trinidad and Tobago	----	----	----	----
Tunisia	Received	Received	Received	Received
Turkey	<i>Ratified 12/07/1993</i>	----	----	----
Turkmenistan	Received	Received	Received	Received
Tuvalu	----	----	----	----
Uganda	----	----	----	----
Ukraine	Received	----	Received	Received
United Arab Emirates	----	----	----	----
United Kingdom	<i>Ratified 19/03/1980</i>	Received	----	Received
United States	Received	Received	Received	Received
Uruguay	<i>Ratified 19/06/1989</i>	<i>Ratified 19/06/1989</i>	----	Received
Uzbekistan	Received	----	Received	Received

Members	Convention No. 151	Convention No. 154	Recommendation No. 159	Recommendation No. 163
Vanuatu	----	----	----	----
Venezuela, Bolivarian Republic of	Received	Received	Received	Received
Viet Nam	Received	Received	Received	Received
Yemen	----	----	----	----
Zambia	<i>Ratified 19/08/1980</i>	<i>Ratified 19/08/1980</i>	----	----
Zimbabwe	Received	Received	Received	Received

Appendix V

Organizations that made comments on the Conventions under review

List of observations made by employers' and workers' organizations

Workers' organizations

Argentina

- General Confederation of Labour (CGT)
- Trade Union of Civil Personnel of the Nation (UPCN)

Belgium

- Confederation of Christian Trade Unions (CSC)

Canada

- Canadian Labour Congress (CLC)

Central African Republic

- National Confederation of Workers of the Central African Republic (CNTC)

Colombia

- Single Confederation of Workers of Colombia (CUT)

Ecuador

- Ecuadorian Confederation of Free Trade Unions (CEOSL)
- Ecuadorian Medical Federation (FME)

Egypt

- Egyptian Trade Union Federation (ETUF)

Estonia

- Estonian Trade Union Confederation (EAKL)

France

- General Confederation of Labour - Force Ouvrière (CGT-FO)

Guyana

- Guyana Public Service Union (GPSU)

Honduras

- Single Confederation of Workers of Honduras (CUTH)

Italy

- Italian Confederation of Workers' Trade Unions (CISL)

Japan

- Japanese Trade Union Confederation (JTUC-RENGO)
- National Confederation of Trade Unions (ZENROREN)

Korea, Republic of

- Federation of Korean Trade Unions (FKTU)
- Korean Confederation of Trade Unions (KCTU)

Latvia

- Latvian Free Trade Union Federation (LBAS)

Mauritania

- Free Confederation of Mauritanian Workers (CLTM)

Mexico

- Federation of State Service Workers' Unions (FSTSE)

New Zealand

- New Zealand Council of Trade Unions (NZCTU)

Panama

- National Federation of Public Employees and Public Service Enterprise Workers (FENASEP)

Peru

- Federation of Customs and Taxation Workers (FENTAT)
- General Confederation of Workers of Peru (CGTP)
- National Federation of Administrative Workers in the Education Sector (FENTASE)
- National Federation of Drinking Water and Sanitation Workers (FENTAP)
- Single Confederation of Workers of Peru (CUT)
- United Federation of Social Security Health Workers - Essalud Peru (FED-CUT)

Poland

- Independent and Self-Governing Trade Union "Solidarnosc"

Portugal

- General Workers' Union (UGT)

Saint Vincent and the Grenadines

- Saint Vincent and the Grenadines Public Service Union

Senegal

- National Federation of Independent Trade Unions of Senegal (UNSAS)

Serbia

- Trade Union Confederation 'Nezavisnost'

Spain

- Trade Union Confederation of Workers' Commissions (CC.OO.)

Sweden

- Swedish Confederation for Professional Employees (TCO)
- Swedish Confederation of Professional Associations (SACO)
- Swedish Municipal Workers' Union
- Swedish Trade Union Confederation (LO)

Venezuela, Bolivarian Republic of

- National Coordination Committee - Venezuelan Chapter, Public Services International (PSI)

Employers' organizations

Costa Rica

- Costa Rican Federation of Chambers and Associations of Private Enterprise (UCCAEP)

Côte d'Ivoire

- General Confederation of Enterprises of Côte d'Ivoire (CGECI)

Mauritius

- Mauritius Employers' Federation (MEF)

Mexico

- Confederation of Industrial Chambers of the United States of Mexico (CONCAMIN)

Serbia

- Union of Employers of Serbia