



## **Reports on credentials**

### **Third report of the Credentials Committee**

#### **Composition of the Conference**

1. Since 8 June 2013, when the Credentials Committee adopted its first report (*Provisional Record* No. 4B), credentials have been received from one additional member State (Rwanda). Therefore, at present a total of 170 member States are represented at the International Labour Conference.
2. As of today there are 5,593 persons accredited to the Conference (as compared to 5,327 in 2012, 5,469 in 2011, and 5,138 in 2010), of whom 4,569 are registered (as compared to 4,395 in 2012, 4,464 in 2011, and 4,227 in 2010). The attached list contains more details on the number of delegates and advisers registered.
3. The Committee wishes to indicate that 158 ministers, vice-ministers, and deputy ministers have been accredited to the Conference.

#### **Monitoring**

4. The Committee was seized automatically with two cases, pursuant to article 26<sup>quater</sup> of the *Standing Orders of the International Labour Conference*, by virtue of decisions of the Conference taken at its 101st Session (2012).

#### ***Djibouti***

5. At its 101st Session (2012), the Conference decided, by virtue of article 26bis, paragraph 7, of the Conference Standing Orders, and upon the unanimous recommendation of the Credentials Committee, to renew the reinforced monitoring measures concerning Djibouti (*Provisional Record* No. 24, 2012) and it requested the Government to: (a) submit to the Director-General of the International Labour Office, by the end of the year 2012, a detailed report on the progress achieved in Djibouti as regards the establishment of criteria for the independent representation of workers in the country and the concrete actions undertaken towards a definitive resolution of the problem; and (b) submit for the following session of the Conference, at the same time that it submits its credentials for the delegation of Djibouti, a detailed report substantiated with relevant documentation on the procedure utilized to nominate the Workers' delegate and advisers, specifying the organizations consulted on the matter and according to which criteria, the numerical importance of the consulted organizations, the date and place of these consultations, and the names of the

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individuals nominated by the organizations during these consultations and positions they held within those organizations.

6. The Government did not submit the reports requested. Clarifications on the reason why the reports were not submitted were provided orally by Mr Hassan Houmed Ibrahim, Director of Labour and Government delegate at the Conference. He was accompanied by Ms Farah Assoweh Hana, Director-General of the National Social Security Fund and Government delegate, and by Mr Djama Mahamoud Ali, Counsellor at the Permanent Mission at Geneva and adviser at the Conference. The Government indicated that since it was unable to attend last year's Conference it was not aware that the Conference had called upon it to provide written reports.
7. *The Committee notes that the Government once again did not respect its obligation to provide the written reports requested. It observes that the explanation given for it – the non-attendance of the Government at the last session of the Conference – is contradicted by the list of registered delegates and advisers attached to the Committee's Second Report at that session (Provisional Record No. 4C, 2012) which shows that the Government of Djibouti was represented by two delegates and three advisers. The Committee deplores the Government's lack of cooperation, all the more so, as again this year, the nomination of the Workers' delegation to the Conference has been the subject of an objection (see paragraphs 39–47).*
8. *Taking into account the examination of the objection, the Committee considers that the situation justifies the renewal of the monitoring under analogous terms to those decided by the Conference at its last session (see paragraph 47).*

## **Myanmar**

9. At its 101st Session (2012), the Conference decided, by virtue of article 26bis, paragraph 7, of the Conference Standing Orders, and upon the unanimous recommendation of the Credentials Committee, to renew the monitoring concerning the nomination of the Workers' delegate of Myanmar (*Provisional Record* No. 24, 2012) thereby requesting the Government of Myanmar to submit for the following session of the Conference, at the same time it submits its credentials for the delegation of Myanmar, a detailed report on the further progress in Myanmar as regards the establishment of free and independent workers' organizations and on the procedure utilized to nominate the Workers' delegate and advisers in agreement with the most representative of these organizations.
10. In a written communication addressed to the Committee at its request, Mr Myo Aung, Director-General in the Department of Labour and Government delegate at the Conference, informed the Credentials Committee that to date a total of 602 organizations had been formed in conformity with the Labour Organization Law of Myanmar of 2011. The election of the Workers' delegate and two advisers took place on 29–30 April 2013 during the first Forum of the Labour Organization Leaders; it was attended by nearly 400 labour organizations. On the first day of elections it was agreed that only registered workers' organizations would be eligible to nominate candidates and that voting would be carried out by secret ballot. On the second day, 11 candidates were nominated by secret ballot among the organizations present; three candidates having decided not to accept their nomination, the remaining eight candidates made vision statements to those present. A second round of secret voting then took place and as a result Ms Than Than Htay of the Basic Agricultural Labour Organization of the Magway Region was elected Workers' delegate and Mr Than Swe of the Basic Agricultural Labour Organization of the Yangon Region and Mr Sai Khaing Myo Tun of the University Teachers Labour Organization of the Yangon Division were elected advisers. The Government points out that the election process was observed closely by various government ministries, representatives of political

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parties, the International Labour Office, the International Trade Union Confederation (ITUC) and other non-governmental organizations and labour activists, including Mr Maung Maung. He submitted that the process was conducted in a transparent and inclusive manner.

11. *The Committee notes with interest the information provided by the Government. It recalls that it had last year expressed the expectation that the number of workers' organizations in the country would continue to grow. In this regard, the Committee is impressed that their number increased from 15 to 582 within one year. Noting, however, that almost all of these are basic labour organizations constituted at the enterprise level, it hopes that in the near future, those organizations will be able to establish and join federations and confederations, which will form their own opinions and adopt their own policies through democratic procedures, so that the most representative organizations among them can be consulted by the Government for the purpose of nominating the Workers' delegate to future sessions of the Conference. The Committee trusts that the Government will facilitate such developments, availing itself of ILO technical cooperation as necessary.*
12. *The Committee commends the Government and the workers' organizations concerned for the procedure followed for the nomination of the Workers' delegation to this session of the Conference in the absence of national-level workers' organizations. The Committee is satisfied that this process has resulted in the designation of a Workers' delegation that is truly representative of the workers of the country.*
13. *The Committee recalls that the case of Myanmar has regularly been before the Committee for more than a decade. The case before it this year as a consequence of the monitoring decision by last year's Conference provides the Committee with the opportunity to bring to a conclusion a long process in which the Credentials Committee has worked in parallel with the ILO supervisory bodies in dealing with the different aspects of the situation in Myanmar. It notes in this regard that as the Committee is finally in a position to attest that the question of the representation of the workers of Myanmar at the International Labour Conference has been resolved, the Conference also has before it a proposed resolution concerning remaining measures on the subject of Myanmar adopted under article 33 of the ILO Constitution (Provisional Record No. 2-4, 2013), in connection with the question of observance by Myanmar of its obligations in respect of the Forced Labour Convention, 1930 (No. 29). The Committee observes that freedom of association is the fundamental principle which is essential to both the elimination of forced labour and worker representation at the Conference. The Committee has been stressing the link between freedom of association and the nomination of the Workers' delegate in the case of Myanmar since 1999, noting on several occasions that the only way a government could avoid facing repeated objections addressed to the Committee would be to allow workers to organize themselves without any interference from the government and elect their representatives to the Conference. The Committee notes with satisfaction the progress made in implementing freedom of association as part of the process of political transformation in the country, which has permitted the nomination of a truly representative Workers' delegation at this session of the Conference.*
14. *Confident that the Government will in the future continue to appoint the Workers' delegations to the Conference in agreement with the most representative workers' organizations in the country, as required by article 3, paragraph 5, of the ILO Constitution, it decides not to recommend to the Conference the renewal of the monitoring.*

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## Objections

15. The Committee has received 15 objections this year. These relate both to the credentials of delegates and their advisers who are accredited to the Conference as reflected in the *Provisional List of Delegations* published as a Supplement to the *Provisional Record* of 5 June 2013 and to the failure to deposit credentials of an Employers' or a Workers' delegate. The Committee has completed the examination of all objections, which are listed below in the French alphabetical order of the member States concerned.

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

16. The Committee received an objection presented by the International Trade Union Confederation (ITUC) concerning the nomination of the Workers' delegate of Barbados. The ITUC submitted that the nomination was made in breach of article 3 of the ILO Constitution. It recalled that Barbados had a labour force of 144,000, of which 28,000 were in the public service where potential representation was shared among some 13 unions, including the Barbados Workers Union (BWU). It contended that the BWU was the only union that potentially spoke for the remaining 116,000 in the workforce. The declared dues paying membership of the BWU was 25,000, which was more than twice the membership of all the other unions put together. In 1991, the BWU joined what later became known as the Congress of Trade Unions and Staff Associations of Barbados (CTUSAB). Each affiliate accepted to be under the authority of the CTUSAB. According to the ITUC, in 2010 a newly elected leadership team of the CTUSAB commenced an effort to supplant the BWU. The BWU advocated for dialogue and called for a joint meeting of the CTUSAB and the BWU to be chaired by the Ministry of Labour. The BWU clarified that it was already constitutionally structured as a Congress and that it would no longer remain part of the CTUSAB. The ITUC submitted that according to the *Provisional List of Delegations* issued on 5 June 2013 the Government had appointed the Workers' delegate from the ranks of the CTUSAB, thus disregarding the criteria of representativeness. The ITUC requested the Committee to call upon the Government to provide clarification on this matter and to fulfil its constitutional obligations.
17. In a written communication addressed to the Committee at its request, the Government stated that on 4 April 2013 it had agreed that the CTUSAB should be invited to nominate the Workers' delegate for the present session of the Conference, as had been formally requested by the CTUSAB on the basis that it was the umbrella organization for trade unions and staff associations. According to the Government, the CTUSAB represented 13 major trade unions and staff associations, including the BWU. The registered membership of the CTUSAB, as of April 2013, was 25,063; this number included 10,000 members of the BWU. The Government alleged that at the CTUSAB's Mid-term Delegates' Conference in 2011 and its Biennial Delegates' Conference in September 2012, the members deliberated over the issue of the workers' representative at the International Labour Conference. According to the Government, the BWU General Secretary and other delegates of the BWU were present at the latter meeting, at which members agreed to approach the Ministry of Labour and Social Security on this matter. In a letter dated 18 December 2012, sent by the CTUSAB to the BWU and copied to the Ministry, it was confirmed that the BWU had indicated at the Biennial Conference that it was ready to support the process that would lead to the Ministry acknowledging that the CTUSAB was the appropriate body to nominate the Workers' delegate. The Ministry concluded that the decision was made at an official delegates' conference comprised of all members, including the BWU; the CTUSAB was the most representative body of workers, and the decision was in accordance with the ILO Constitution which required that the Workers' delegate be nominated in agreement with the most representative national organization of workers. Consequently, the CTUSAB was invited to nominate the Workers' delegate. The

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Ministry received formal correspondence from the Executive Board of the CTUSAB that it had nominated its General Secretary as Workers' delegate and had invited the BWU and the National Union of Public Workers to each nominate one adviser. The Government noted that since the ILO Constitution does not provide a definition of "most representative", in Barbados the determination was made based on "that which is recognized by all the tripartite partners". The CTUSAB had been regarded as the workers' representative within the Social Partnership of Barbados and it was the signatory, on behalf of workers in Barbados, to all Protocols and Resolutions formulated by the Social Partnership. Pointing to Advisory Opinion No. 1 (1922) of the Permanent Court of International Justice which stated that "numbers are not the only test of the representative character of the organizations but they are an important factor", in the opinion of the Government numbers cannot be the only factor to determine representation. According to the Government, there was no evidence to support some of the statements made in the objection and, furthermore, it considered that the statements made by the ITUC itself in its objection supported the assertion that the ITUC recognized that the actions taken by CTUSAB and the resulting decision by the Government were legitimate. It emphasized that the BWU was a member of the CTUSAB at the time that the proposal for the nomination of the Workers' delegation was put forth and, therefore, that BWU was a party to the decision.

18. *The Committee notes that both the objecting organization and the Government fail to furnish an essential element to the Committee: the date of the BWU's withdrawal from the CTUSAB. According to online press, this date is 19 April 2013. The Government's reference to the CTUSAB's Mid-term Delegates' Conference in 2011, as well as to correspondence of 18 December 2012 from the CTUSAB to support that the BWU agreed to the nomination of the Workers' delegate to this session of the Conference, is therefore not convincing. Specifically, the Committee observes that the Government could not rely on purported agreement reached in 2011 or 2012 to remain valid following the BWU's withdrawal from the CTUSAB on 19 April 2013. A further indication that the BWU was no longer part of any agreement can be seen in that no BWU representative was included in the Workers' delegation, although according to the Government, the CTUSAB had advised that it had invited the BWU and the National Union of Public Workers to nominate one adviser each. It thus appears that the Workers' delegation was appointed without the agreement of the BWU.*
19. *The Committee, therefore, considers that the main question is whether the BWU can be considered a most representative organization under article 3, paragraph 5, of the ILO Constitution. While the Government correctly observes that there is no definition of the term "most representative organizations", the Permanent Court of International Justice (Advisory Opinion No. 1) clarified that "... other things being equal, the most numerous will be the most representative". The BWU claims a membership of 25,000. According to the Government the BWU has only 10,000 members, but following the BWU's withdrawal the CTUSAB would be left with only some 15,000 members. Moreover, while the Government states that numbers are not the only test, it does not identify which other criteria are to be applied. It has merely stated that there may be more than one most representative organization.*
20. *The Committee recalls that in the absence of an agreement between the organizations on the nomination of the Workers' delegation to the Conference, the Government must, pursuant to the terms of article 3, paragraph 5, of the ILO Constitution, aim to effect an agreement among them. In examining the credentials, the Committee notes that these are dated 17 May 2013. As this is approximately one month following the withdrawal of the BWU from the CTUSAB the Committee considers that the Government could not submit the credentials without examining the possibility that the BWU, as it is among the most*

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*representative organizations, if not the most representative, may have withdrawn its agreement with respect to the nomination of the Workers' delegate.*

21. *The Committee is thus not convinced that the Government has nominated the Workers' delegate in agreement with the most representative workers' organizations.*

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

22. The Committee received an objection concerning the nomination of the Workers' delegation of Cameroon presented by Mr Louis Sombes, National Chairperson of the *Confédération des syndicats autonomes du Cameroun* (CSAC). He called into question the representativeness of the *Confédération des travailleurs unis du Cameroun* (CTUC), from whose ranks the Workers' delegate was nominated, as well as the *Confédération camerounaise du travail* (CCT) whose Chairperson had been accredited as adviser. In support of his objection he provided a decision dated 6 December 2011 from the Ministry of Labour and Social Security, which reflected the classification of trade union confederations following elections of staff representatives in 2011. He also contended that there were no consultations held on the nomination of the Workers' delegate. Consequently he contested the credentials of the delegate and the adviser who came from the ranks of the CCT.
23. In a written communication addressed to the Committee at its request, the Minister of Labour and Social Security indicated that it is still impossible to take a decision on the representativeness of trade unions, lacking information to be provided by the social partners as required by the Labour Code. He noted that the Government had made efforts to constitute a fully tripartite and balanced delegation, with full financial support, and that the principle of consultation had been respected. Some confederations had experienced crises in leadership for several years now and the Minister stated that he had asked these organizations to submit a unified leadership. Since this did not happen, he suspended all relations with confederations having persistent disagreements concerning leadership, which included the CSAC. Consequently this trade union was not consulted on the nomination of the Workers' representatives to the present session of the Conference. According to the Government, Mr Sombes could not object to the nominations made by the CCT, which was the only trade union with a woman at its head, nor that of the CTUC, which the Minister had endorsed by nominating the Workers' delegate from its ranks.
24. Clarifications requested by the Committee were provided orally by Mr Francis Ngantcha, Minister-Counsellor in the Permanent Mission at Geneva, Mrs Scholastique Ngonu, Chief of the Standard Division and International Cooperation in the Ministry of Labour and Social Security (MINTSS) and Government delegate at the Conference and Mr Raymond Yapele, Director of Professional Relations in MINTSS, adviser and substitute delegate at the Conference. They were accompanied by Mrs Hélène Atangana Adzana, Chief of the Standards Unit at MINTSS and adviser at the Conference. The Government reiterated that the trade union movement in Cameroon was deeply divided and that the various confederations arose, for the most part, from these internal splits. As far as the CSAC was concerned, it had three factions today. The Government stated that consultations to nominate the representatives of the social partners to the Conference were held in the sidelines of a meeting of the National Labour Consultative Commission. It reiterated that it had undertaken to nominate a balanced delegation based solely on the representativeness of the confederations resulting from the social elections of 2011, and after having discarded from the consultations, for the reasons already exposed, the confederations having leadership problems, such as the *Confédération syndicale des Travailleurs du Cameroun* (CSTC) and the CSAC, the most representative organizations according to the classification of 2011. The Government stated that it had only confirmed the results of the

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consultations, emphasizing in addition that during the 101st Session of the Conference (2012), the CTUC and the CCT were part of the delegation and that the legitimacy of their representatives had not been contested by Mr Sombes. New professional elections are planned for sometime during 2013.

25. *The Committee notes that the objection concerns the representativeness of two confederations, the CTUC and the CCT, on the basis of the latest available data, those that figure on the decision of the Ministry of Labour and Social Security dated 6 December 2011, reflecting the classification of confederations following elections of staff representatives in 2011.*
26. *The Committee notes in this regard that the representativeness of other confederations is not questioned by the author of the objection, even though the figures are similar. It also notes that the trade union landscape has evolved since 2011, in the manner that, according to the information provided by the Government, the country has 12 union confederations.*
27. *Concerning the process of nominating the workers at the present session of the Conference, the Committee takes note of the Government's desire to avoid the pitfalls of dual leadership, by choosing not to invite to the consultations organizations it knows to have internal problems of leadership. It notes in particular that the leadership quarrels within the CSAC, already brought to its attention at the last session of the Conference, have not been resolved. The Committee considers that these internal divisions may jeopardize not only the relevance of the consultation process, including the capacity of these organizations to act in total independence vis-à-vis the public authorities, but also the very principle of representativeness resulting from professional elections to the extent that, as in this case, the effect was to remove from the process the two organizations which appeared the most representative according to the figures from 2011.*
28. *While noting the difficulties expressed by the Government, the Committee recalls that the nomination of the Workers' delegation to the Conference must be carried out in agreement with the most representative workers' organizations, on the basis of established, objective and verifiable criteria concerning the authenticity of the representativeness of the organizations. The Committee requests the Government to strengthen its efforts to encourage social dialogue and to clarify the situation of the trade union movement in the country, in order to guarantee that the Workers' delegation at future sessions of the Conference is nominated in consultation with the most representative organization recognized as such, in accordance with article 3, paragraph 5, of the Constitution of the ILO as well as in independence from the public authorities. It decides not to uphold the objection.*

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

29. The Committee received an objection presented by Mr Mougoue Oumarou, Chairperson of the *Confédération des syndicats indépendants du Cameroun* (CSIC), against the participation of Mr Ndzana Olongo as a representative of the CSIC in the Workers' delegation. Mr Mougoue Oumarou stated that Mr Ndzana Olongo, having become a member of a union affiliated to another confederation, had therefore excluded himself from the CSIC and that the CSIC Congress had taken note of this in March 2005. The author of the objection alleged that Mr Ndzana Olongo only represented himself and stated that the conflict between the latter and the CSIC remains the subject of judicial proceedings. He denounced the interference by the Minister of Labour and Social Security in the nominations of the Workers' delegation to the Conference, in breach of ILO Conventions on freedom of association.

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30. In a written communication addressed to the Committee at its request, the Minister of Labour and Social Security indicated that the representativeness criteria were reviewed during the session of the National Labour Advisory Commission in March 2013. He stated that in view of the establishment of tripartite delegations to the Conference the Ministry referred to leaders of confederations, which today numbered 12 and regrouped federations, trade unions and basic unions. Despite having suspended all collaboration with confederations with persistent leadership quarrels in their midst, the Minister had considered it necessary to integrate Mr Ndzana Olongo into the delegation, who is also Chairperson of the *Syndicat national indépendant de l’Energie électrique* (SNI-Energie), because he could take an active and constructive part in the work of the Conference given his mastery of the workings of the ILO and the subjects debated.
31. Clarifications requested by the Committee were provided orally by Mr Francis Ngantcha, Minister–Counsellor in the Permanent Mission at Geneva, Mrs Scholastique Ngono, Chief of the Standards Division and International Cooperation in the Ministry of Labour and Social Security (MINTSS) and Government delegate at the Conference and Mr Raymond Yapele, Director of Professional Relations in MINTSS, adviser and substitute delegate at the Conference. They were accompanied by Mrs Hélène Atangana Adzana, Chief of the Standards Unit at MINTSS and adviser at the Conference. In addition to the information provided on the division within the trade union movement and the procedure followed in the nomination of the Workers’ delegation (see paragraph 24), the Government stated that the CSIC was included in the consultations; the problem of dual leadership within the CSIC had been resolved in the national justice system.
32. *The Committee considers that the representativeness of the CSIC is not called into question, but the person representing it, in this instance Mr Ndzana Olongo, accredited as adviser and substitute delegate. The Committee notes that this is not the first time that it has before it an objection concerning the CSIC and there appears to be an internal conflict within the organization, which has been brought before the national judicial system, and therefore does not come within the Committee’s mandate. The Committee notes that there was some ambiguity in the Government’s answer as to what led it to include Mr Ndzana Olongo in the Workers’ delegation. The Committee hopes that next year the nomination of the Workers’ delegation will be made in full compliance with article 3, paragraph 5, of the ILO Constitution.*

### **Objection concerning the nomination of the Workers’ delegate of Costa Rica**

33. The Committee received an objection concerning the nomination of the Workers’ delegate of Costa Rica presented by several organizations, including: the *Unión Nacional de Empleados de la Caja y de la Seguridad Social* (UNDECA), the *Confederación Costarricense de Trabajadores Democráticos Rerum Novarum* (CCTD/RN), the *Confederación General de Trabajadores* (CGT), the *Asociación Nacional de Educadores* (ANDE), and the *Asociación de Profesores de Segunda Enseñanza* (APSE). Following a convocation (through an invitation in a widely circulated newspaper and the Internet) by several workers’ organizations including the objecting organizations cited above, an assembly was held on 29 April 2013. At the assembly, which the CCTD/RN did not attend although it later endorsed the outcome, the objecting organizations on the basis of the information provided by the various representatives of those organizations present estimated that they represented approximately 110,000 workers and proceeded to elect Mrs Martha E. Rodríguez González, a representative of the UNDECA, as Workers’ delegate to the Conference. On 6 May 2013 the outcome of this election was submitted to the Government. On 24 April 2013 the Government sent six confederations, listed as active in its register, a communication requesting them to submit a joint nomination for the purposes of nominating a Workers’ delegate to the Conference. The objecting



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organizations considered that this call by the Government, subsequent to its communication, amounted to interference as the Government had already received the workers' coalition's nomination. It also considered the Government's acts discriminatory as the non-confederated objecting organizations were excluded on the basis that they were not third level workers' organizations. Subsequently, the Government received a nomination based on an agreement by four of the six confederations. The authors of the objection considered that the disregard of their proposal contravened article 3 of the ILO Constitution and that the Government's nomination of the Workers' delegate, Mr Mario Rojas of the *Confederación de Trabajadores Rerum Novarum* (CTRN) should be rejected as the number of workers that he represented, 106,782 through the agreement of four confederations, was inferior to the 109,488 that the workers' coalition represented, as per the Minister of Labour's own figures. In this regard, the objecting organizations disputed the Government's methodology that excluded the ANDE and the APSE from the workers' coalition on the basis that they were not registered as trade unions, but rather registered as associations.

- 34.** In a written communication addressed to the Committee at its request, the Government indicated that for the purposes of nominating the Workers' delegate to the present session of the Conference it had taken into consideration the Credentials Committee's recommendations of the preceding year and with the technical assistance of the ILO it had sought to ensure that the nomination of the Workers' delegate was made in conformity with article 3, paragraph 5, of the ILO Constitution. Specifically, it solicited from the most representative workers' organizations in the country their nomination to the Conference. It received the name of Mr Mario Rojas from the CTRN, which had been the outcome of an agreement between four confederations (the CTRN, the *Central Movimiento de Trabajadores Costarricense* (CMTC), the *Central Social Juanito Mora Porras* (CSJMP) and the *Confederación Unitaria de Trabajadores* (CUT)), which represented 106,782 members as per the official registry. In addition, the Government examined the nomination of the workers' coalition and while an initial comparison revealed that they could be considered to represent a similar number (109,488 for the workers' coalition as compared to 106,782 of the four confederations), upon close examination of the workers' coalition's proposal the Government had concluded that the two workers' associations, the ANDE and the APSE, needed to be excluded as they were formed under different legal regimes and were not true workers' organizations. Consequently, the relative importance of the workers' coalition decreased from 109,488 to 32,266. In view of these figures, the Government considered that it had to appoint Mr Rojas from the CTRN as Workers' delegate. In addition, as requested by the four confederations it also accredited Mr Olman Chinchilla from the CMTC as Workers' adviser and substitute delegate.
- 35.** In an unsolicited communication addressed to the Committee, the Workers' delegate, Mr Rojas, emphasized that the representativeness of the four confederations, in particular that of the CTRN, was unquestionable and that the Credentials Committee's recommendation of the preceding year applied only if the most representative organizations failed to come to an agreement. In the present situation, as last year, there had been an agreement among the most representative organizations and therefore the coalition's nomination could not be endorsed. Therefore, the possibility of a nomination of a less representative organization existed only where the most representative organizations could not come to an agreement. In addition, he recalled that both the ANDE and the APSE were in the process of changing their legal status, but at present neither could be considered to be a trade union.
- 36.** Clarifications requested by the Committee were provided in writing by the Government, regarding the status and nature of the ANDE and the APSE. The Government noted that the ANDE's and the APSE's respective articles of association permitted individuals to freely join them and that the same articles did not restrict individuals from joining other

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organizations. In this regard, the Government recalled that Costa Rica's Constitution permitted the existence of associations and that individuals could adhere to them according to their respective rules, but did not restrict their right to join other organizations. To this end, the Government furnished extracts from the official register that listed trade unions (including those affiliated with the CTRN – from whom the Workers' delegate had been nominated) that in the Government's estimation could have members that were also members of the ANDE and the APSE. The Government denied that the ANDE and the APSE had trade union characteristics; for example, they neither negotiated nor signed collective bargaining agreements, nor did they participate in state organisms. Moreover, the Government noted that the ANDE was in the final stages of transforming itself into a trade union, but questioned whether its membership base would remain the same as many of its members were presumably also members of the *Sindicato de Educadores Costarricenses*. As for the APSE, the Government stated that it had recently initiated the process to become a trade union. To show that neither the ANDE nor the APSE could sign collective bargaining agreements the Government pointed to the fact that the most recent collective bargaining agreement in the sector was signed between the Government and the *Sindicato de Trabajadoras y Trabajadores de la Educación Costarricense* and the *Sindicato de Trabajadores de Comedores Escolares y Afines*.

37. Clarifications requested by the Committee were provided in writing by the objecting organizations, regarding the status and nature of the ANDE and the APSE. The objecting organizations submitted that while the ANDE and the APSE were constituted as associations their activities clearly demonstrated that they were genuine workers' organizations. In support, they submitted extracts of their respective articles of incorporation that indicated that individuals may freely join their organizations, that their members were not restricted from joining other organizations, and that their objectives included the defence of labour rights. They also submitted various newspaper articles indicating that they had each supported and led activities among their members (e.g. strikes with a view to increasing wages).
38. *The Committee notes that the Government, with the technical assistance of the ILO, has sought to base its decision with respect to the nomination of a Workers' delegate on a comparison of the representative character of a workers' coalition on the one hand, and on the other hand an agreement among four confederations, the representativeness of which is not in dispute. When making a comparison, the Committee notes that the difference in representativeness between the workers' coalition and the four confederations could appear to be marginal. However, the Committee notes that there are contested facts regarding the status and nature of the two organizations, the ANDE and the APSE, a question which is not within the scope of its mandate to resolve but which must be resolved at the national level. The Committee hopes that, in view of the efforts demonstrated by the Government since the recommendation of the Credentials Committee at the preceding session of the Conference, the Government will undertake additional steps to determine the status and nature of the associations in question, as well as addressing the possibility of overlapping membership, so as to provide a clear picture of the trade union situation in Costa Rica. In conclusion, the Committee considers that it does not have enough elements to find that the nomination of the Workers' delegate has not been made in conformity with article 3, paragraph 5, of the ILO Constitution. Therefore, it does not uphold the objection.*

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

39. The Committee received an objection concerning the nomination of the Workers' delegation of Djibouti presented by Mr Adan Mohamed Abdou, Secretary-General of the *Union djiboutienne du travail* (UDT), and Mr Kamil Diraneh Hared, Secretary-General of

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the *Union générale des travailleurs djiboutiens* (UGTD). The authors of the objection alleged that the Government had, once again, refused to take into account the list of representatives designated by their respective organizations for their participation in the present session of the Conference, preferring instead the “clone unions”. According to them the Government continued to usurp the name of the UGTD and the UDT, in breach of its commitments before the Committee. They requested the Committee to take an effective and definitive decision with respect to the delegation of Djibouti.

40. In a written communication addressed to the Committee at its request, the Government recalled that the UGTD had organized its ordinary congress in Djibouti in August 2010 in the presence of national and international observers. Concerning the nomination of the Workers’ representatives at the present session of the Conference, the Government stated that it had written to the UGTD and the UDT on 26 March 2013, asking them to designate their nominees. The UGTD nominated Mr Abdo Dikieh Dirieh, member of the National Assembly and Chairperson of the Commission on Social Affairs and Protection of the Environment and Mr Hassan Ali Doualeh, UGTD Secretary-General ad interim. The UDT nominated Mr Mohamed Youssouf and Mr Abourazak Hared Farah, respectively UDT Chairperson and Secretary-General. The Government stated that the UDT had not yet organized its congress, despite several reminders from the Government in this regard. According to the Government, the Chairperson of UDT refused to organize its congress without receiving prior opinions from the ILO and the International Trade Union Confederation (ITUC), to which it was affiliated, in order to avoid any future objections, as had been the case for the UGTD. Nevertheless, the Government had considered it useful to address an invitation to this confederation in order to resume partnership with it. The Government stated that it soon planned to draft a decree on holding social elections. According to it, the authors of the objection had no legitimate union mandate. The *intersyndicale* UDT–UGTD no longer existed.
41. Clarifications on the objection were provided orally by Mr Hassan Houmed Ibrahim, Director of Labour and Government delegate at the Conference. He was accompanied by Ms Farah Assoweh Hana, Director-General of the National Social Security Fund and Government delegate, and by Mr Djama Mahamoud Ali, Counsellor at the Permanent Mission at Geneva and adviser at the Conference. Largely reiterating information already provided in the Government’s written communication, he added that the UGTD was the only legitimate organization in the eyes of the Government, because it had held its congress in 2010, whereas the UDT had not organized any for the last 15 years. However he said he was not in a position to comment on the issue of representativeness. He insisted that the Government did not interfere in trade union internal affairs and reiterated that it was the responsibility of the UDT to resolve the problems it faced. According to the Government, considerable progress had been achieved since the direct contact mission in 2008. It would consider, however, to avail itself of ILO technical assistance in order to fulfil better its obligations vis-à-vis the Organization.
42. *The Committee deeply regrets that the Government did not submit the reports as requested by the Conference by virtue of article 26bis, paragraph 7, of the Conference Standing Orders and this for several years, which reflects a lack of respect for the procedures before the Committee and more generally, for its obligations as a Member of the International Labour Organization. It deplores the attitude of the Government, who clearly does not intend to address the problems that have repeatedly been brought before the Committee.*
43. *While regretting that the information brought to its attention does not contain any new element, the Committee is very concerned, like the Committee on Freedom of Association who expressed in the strongest terms that it expected to see the Government take*

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*immediate steps to improve the situation, by the confusion that continues to reign over the Djiboutian trade union movement (Provisional Record No. 4C, 2012, paragraph 33).*

- 44. The Committee particularly regrets that the objection merely repeats, year after year, the same allegations without clarifying the facts of the case. It wishes to recall that it is in the interest of the objecting organizations to present specific allegations, supported by relevant documentation in relation with the mandate of the Committee.*
- 45. The information provided by the Government does not remove doubts concerning the persistence of the phenomenon of “clonage” of the organizations, nor has it removed doubts surrounding the situation prevailing in the UDT. The fact that the UDT could not hold its congress, for reasons that remain obscure, does not call into question its legitimacy as a trade union. Once again the Committee urges the Government to take appropriate measures so that the UDT, as any other workers’ organization, can hold its congress, in complete independence from public authorities. In addition, the Committee is surprised that Mr Abdo Sikieh Dirieh is not nominated this year in his capacity as representative of the UGDT, but as member of the National Assembly and Chairperson of the Commission on Social Affairs and Protection of the Environment and that at one point the Government considered that he should be included in the Government delegation and not the Workers’ delegation.*
- 46. The Committee strongly urges the Government to implement without delay the measures that it has called for, in order to put an end to a situation that has lasted much too long. The Committee considers that it is essential that any assistance or technical cooperation activities in the country provided by the Office, in consultation with the international confederations concerned, take into due account the conclusions of the Committee on Freedom of Association (Cases Nos 2450 and 2753) and of the Credentials Committee, so that concrete solutions can be found in a framework that fully respects the capacity to act of the genuine workers’ organizations in Djibouti, in total independence from the Government, in accordance with the provisions of 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).*
- 47. In light of the above, the Committee considers that the situation justifies the renewal of the monitoring decided by the Conference at its last session, that is a reinforced monitoring. By virtue of articles 26quater and 26bis, paragraph 7, of the Conference Standing Orders, the Committee unanimously proposes that the Conference request the Government of Djibouti to:*

  - (a) submit to the Director-General of the International Labour Office, by the end of the year 2013, a detailed report on the progress achieved in Djibouti as regards the establishment of criteria for the independent representation of workers in the country and the concrete actions undertaken towards a definitive resolution of the problem; and*
  - (b) submit for the next session of the Conference, at the same time that it submits its credentials for the delegation of Djibouti, a detailed report substantiated with relevant documentation on the procedure utilized to nominate the Workers’ delegate and advisers, specifying the organizations consulted on the matter and according to which criteria, the numerical importance of the consulted organizations, the date and place of these consultations, and the names of the individuals nominated by the organizations during these consultations and positions they held within those organizations.*

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**Objection concerning the failure to deposit credentials of an Employers' and a Workers' delegate by the Government of the Solomon Islands**

48. The Committee received an objection presented by the International Trade Union Confederation (ITUC) concerning the failure to deposit credentials of an Employers' and a Workers' delegate by the Government of the Solomon Islands. The ITUC submitted that the Government had not fulfilled its obligation under article 3, paragraph 1, of the ILO Constitution. It requested the Committee to call upon the Government to explain why the delegation was incomplete and to recommend that its constitutional obligations be fulfilled.
49. *The Committee regrets that the Government has not responded to its request for information nor has it accredited a fully tripartite delegation. Such a lack of cooperation curtails the Committee's ability to discharge its mandate under article 5, paragraph 2(a), of the Conference Standing Orders. The Committee reminds member States of their obligation under article 3, paragraph 1, of the ILO Constitution, to nominate tripartite delegations to the Conference. By sending a delegation that is exclusively governmental the Government deprives the employers and workers of the country of their right of being represented in the highest policy-making body of the ILO and to participate in its work. Without the participation of Government, Employers' and Workers' representatives, the Conference cannot function properly or attain its objectives.*
50. *The Committee encourages the Government to send a fully tripartite delegation to the Conference next year.*

**Objection concerning the failure to deposit credentials of an Employers' and a Workers' delegate by the Government of Kyrgyzstan**

51. The Committee received an objection presented by the International Trade Union Confederation (ITUC) concerning the failure to deposit credentials of an Employers' and a Workers' delegate by the Government of Kyrgyzstan. The ITUC submitted that the Government had not fulfilled its obligation under article 3, paragraph 1, of the ILO Constitution. It requested the Committee to call upon the Government to explain why the delegation was incomplete and to recommend that its constitutional obligations be fulfilled.
52. In a written communication addressed to the Committee at its request, the Government stated that it had not failed to fulfil its constitutional obligations. It had invited the National Confederation of Employers of Kyrgyzstan and the Federation of Trade Unions of Kyrgyzstan to nominate their respective representatives but both replied that they were unable to send delegates due to financial constraints.
53. *The Committee notes that for over a decade Kyrgyzstan has not accredited an Employers' or a Workers' delegation to the Conference and that again this year the Government representatives both come from the Permanent Mission at Geneva. It emphasizes that whereas a government has the ability to assure its representation through a diplomatic mission, the same cannot be said for employers' or workers' organizations. By not sending a fully tripartite delegation to the Conference, the Government has breached article 3, paragraph 1, of the ILO Constitution. While noting the explanation of the Government, the Committee nevertheless expresses concern that the Government appears to ignore the provisions of article 13, paragraph 2(a), of the ILO Constitution, as it is not for the social partners to finance the participation of their delegates to the Conference but for the*

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*Government to do so. By sending a delegation that is exclusively governmental, the Government deprives the employers and workers of the country of their right of being represented in the highest policy-making body of the ILO and to participate in its work. Without the participation of Government, Employers' and Workers' representatives, the Conference cannot function properly or attain its objectives.*

54. *The Committee expects that next year the Government will send a fully tripartite delegation, whose travel and subsistence expenses it covers.*

### **Objections concerning the nomination of the Workers' delegation of Liberia**

55. The Committee received an objection concerning the nomination of the Workers' delegation of Liberia, signed by 16 secretaries and presidents of trade union affiliates of the Liberia Labour Congress (LLC). The Committee received a second objection presented by Mr Jerry R.B. Duplaye, Secretary General of the LLC, on the same subject. According to the objections, in a communication dated 13 May 2013 from the Ministry of Labour the national trade unions affiliated to the LLC were informed that since they had failed to come to an agreement on the nomination of the Workers' delegation, the Ministry was compelled to put all submission of delegates and advisers "on hold" as there was a serious confusion within the LLC. Furthermore, they were informed that their internal leadership conflict needed to be resolved in order to participate in the present session of the Conference. They alleged that subsequent to that communication the Acting Labour Minister handpicked Mr Baryou W. Wallace, Deputy Secretary General for Operations of the LLC as Workers' delegate, without the LLC's approval. According to the objections, this amounted to government interference in trade union affairs. They requested the Committee not to honour the credentials of the Workers' delegation.
56. In a written communication addressed to the Committee at its request, the Deputy Minister for Manpower and Planning in the Ministry of Labour replied that the Government had respected the ILO Constitution in the nomination of the Workers' delegation. He submitted that on 12 March 2013 the Ministry of Labour wrote to the LLC requesting it to coordinate the process that would lead to the nomination of the Workers' delegation. On 1 May the President-General of the LLC provided the Ministry with the name of Mr Wallace as Workers' delegate along with a list of advisers. However, on 9 May the Secretary General of the LLC provided the Ministry with his own name as Workers' delegate and different advisers' names. According to the Government, it called an emergency meeting of the LLC Executive Committee in an attempt to find an amicable resolution to the internal dispute but as no resolution was found the Ministry wrote to the President-General of the LLC on 13 May, informing her that given its observations on the internal confusion within the LLC as well as the latter's failure to agree on one official delegate and team of advisers, it was forced to put the nomination process "on hold". The President-General replied on 15 May 2013 that an emergency Executive Committee meeting had been held, at which a decision had been taken to reaffirm the nomination of 1 May; that was the nomination that was included on the credentials. The Government contended that no contradictory nominations were received after that communication. The Deputy Minister refuted the allegations that the Ministry handpicked the Workers' delegate and he alleged that the Secretary General of the LLC had failed to inform the Credentials Committee that he kept insisting on his own nomination as Workers' delegate.
57. *The Committee considers that the representativeness of the LLC is not questioned, but rather the person representing it. The Committee notes that what it has before it is an internal conflict within the LLC, which does not come under its mandate but is to be resolved by the LLC's governing bodies and, ultimately, by national courts.*

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58. *Concerning the process of nominating the Workers' delegation at the present session of the Conference, it appears to the Committee that the Government followed a regular consultation process, which took account of the existence of internal disputes within the LLC and included attempts to mediate between the two sides without, however, taking side. There is thus no indication that the nomination of the Workers' delegate, which was based on the last communication received from the LLC as the most representative workers' organization of the country, was not made in compliance with article 3, paragraph 5, of the ILO Constitution. The Committee therefore decides not to uphold the objections.*

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

59. The Committee received an objection concerning the nomination of the Workers' delegate presented by Mr Hammadoun Amion Guindo, Secretary General of the *Confédération syndicale des travailleurs du Mali* (CSTM). The author of the objection alleged that since 2000 the Government had unilaterally nominated the Workers' delegate from the ranks of the *Union nationale des travailleurs du Mali* (UNTM) to the detriment of the CSTM, whose representative was relegated to substitute delegate. The author of the objection denounced the Government's partiality and the absence of prior consultations which would allow for the two organizations to alternate.
60. In a communication addressed to the Committee at its request, the Government indicated that the question of representativeness of workers' organizations had been an acute problem for several years. It noted that the new Labour Code, adopted on 15 May 2013, instituted professional elections as the means for determining representativeness, but that difficulties remained as to the type of vote, the UNTM calling for a majority vote, whereas the CSTM called for proportional representation. This question is the subject matter of a draft law amending the Labour Code, presented by the Government, which opted for proportional representation; this would be submitted to the National Assembly at its next session. Considering that the two organizations would find it very difficult to find an agreement on a system of rotation, the Government thought that it had been wise to nominate, since 2000, and with no formal objection from CSTM, the representative of UNTM as the Workers' delegate, taking into account the seniority of the organizations. Insofar as this tacit arrangement was now questioned by one of the organizations, the Government committed to proceed with the required consultations in the future.
61. *The Committee first examined the receivability of the objection. It recalls that pursuant to article 26bis, paragraph 1(c), of the Conference Standing Orders, an objection is not receivable if the author is serving as an adviser to the delegate to whose nomination objection is taken. The Committee considers that the objection presented by Mr Guindo against the nomination of the Workers' delegate may be examined, as he had rejected, in writing, his nomination as advisor to the Workers' delegate and did not register at the Conference.*
62. *The Committee notes that neither the author of the objection nor the Government provides data demonstrating the representativeness of the trade unions. It notes, however, the progress related to the adoption of a new Labour Code, which foresees the use of elections to determine the representativeness of the trade union organizations, and hopes that these elections may be held as soon as possible.*
63. *The Committee notes that the Workers' delegation at the present session of the Conference is composed of representatives of the same organizations as those which had represented the workers at numerous sessions of the Conference without their credentials being contested, except for an irreceivable objection last year. It notes that the present objection does not provide sufficient facts for the Committee to finally decide on this case. Noting*

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*with interest the Government's commitment in the future to undertake the required consultations in the nomination of the Workers' delegation, the Committee requests the Government to take the necessary measures so that the nomination of the Workers' delegation at future sessions of the Conference is made in full compliance with article 3, paragraph 5, of the ILO Constitution.*

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

64. The Committee received an objection concerning the nomination of the Workers' delegation of Mauritania submitted by the *Confédération générale des travailleurs de Mauritanie* (CGTM). The objecting organization considered that the nomination had not been made in conformity with article 3, paragraph 5, of the ILO Constitution. It stated that the Government had still not proceeded with the determination of the most representative organizations based on the relevant provisions of the Labour Code, and in particular on article 265 which set out criteria on representativeness (number of members and the results of staff representative elections, membership dues, independence, experience and breadth of activities). Relying on article 3 of the ILO Constitution, it rejected the argument of the Government that since professional elections had not been held it had not been able to determine the most representative trade union and was thus obligated to obtain the agreement of all recognized trade unions. The CGTM considered that it was the most representative workers' organization, given its independence, number of union stewards, and its national presence. It alleged that the Workers' delegate came from an organization that had not held a congress in ten years and that there were advisers coming from three other organizations which had never held a congress. The objecting organization therefore requested that the Workers' delegation not be admitted.
65. In a written communication addressed to the Committee at its request, the Government considered the allegations of the CGTM unfounded. The Government declared that it had committed to organizing professional elections in 2013; funds for doing so have been included in the government budget. For the moment, none of the 20 recognized federations could claim to be the most representative so the Government contended that by a letter of 15 May 2013 it invited all confederations to a consultation meeting in order to nominate the Workers' delegation to the present session of the Conference; the CGTM was present at this meeting. The workers' representatives, including the CGTM, informed the Ministry by letters that they were unable to come to an agreement on the nomination of the Workers' delegate, the substitute and advisers. Therefore the Government applied the principle of rotation, which it had always done in the case of disagreement between the workers' representatives. The Government stated that the confederations were treated equitably, including how the annual subsidy was distributed.
66. *The Committee notes that for the third consecutive year an objection has been lodged concerning the nomination of the Workers' delegation. It regrets the absence of any significant evolution on the issue, particularly as the Government had indicated several times its commitment to take measures to evaluate the relative importance of the confederations. The Committee observes that for several years now the Workers' delegate comes from the ranks of the Union des travailleurs de Mauritanie (UTM) and that again this year the Workers' delegation does not include a member of the CGTM, in blatant contradiction with the system of rotation that the Government says it applies in the case of disagreement among the trade unions. However, the Committee notes that the Government has announced that elections will take place during 2013, as the funds for holding these have been included in the Government's budget. Recalling that the country has received, on various occasions, technical assistance of the ILO on these issues, the Committee expects that the information reported is truly acted upon and that Government commits to*



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*guaranteeing the application of objective and transparent criteria for determining the most representative organizations, in agreement with all parties concerned.*

67. *The Committee can only reiterate, once again, the necessity to clarify urgently the situation of trade union representation in the country and expects that the process of nominating the Workers' delegation at the next session of the Conference will be conducted in accordance with article 3, paragraph 5, of the ILO Constitution.*

**Objection concerning the nomination  
of a Workers' adviser of the Philippines**

68. The Committee received an objection presented by Mr Ernesto Herrera of the Trade Union Congress of the Philippines (TUCP) concerning the nomination of a Workers' adviser, Mr Gerard Seno and four individuals accredited as "other persons attending the Conference": Ms Esperanza Ocampo, Mr Arnel Dolendo, Mr Luis Manuel Corral, and Ms Eva Arcos. Mr Seno's title was stated on the credentials as TUCP Vice-President and General Secretary, Ms Ocampo as TUCP Vice-President and Treasurer and Mr Dolendo as TUCP Vice-President and Chief Legal Counsel; the other two were listed as TUCP Executive Board members. The author of the objection pointed out that a Bureau of Labor Relations (BLR) Resolution in the Intra-Union Dispute in TUCP issued on 28 May 2013 had declared null and void acts and procedures taken by both parties in the dispute as having breached the TUCP Constitution, and it reinstated the heads of the two parties, Mr Mendoza and Mr Herrera, to their former offices. Prior to the intra-union dispute Mr Herrera was General Secretary of TUCP so he considered that the nomination of Mr Seno, from the Mendoza group, to the Conference ran contrary to the BLR Resolution. The author of the objection submitted that prior to the controversy concerning the leadership struggle he and two other individuals were the genuinely elected officers serving as General Secretary, Treasurer and Legal Counsel and that the individuals indicated as holding these functions on the credentials were a misrepresentation; they were neither elected nor appointed officers of the TUCP. The International Trade Union Confederation (ITUC) and the ITUC-Asia and the Pacific Regional Executive Bureau had endorsed Mr Herrera's constitutional succession as TUCP President and this fact could not be supplanted by the Department of Labor and Employment (DOLE) or by any other agency of the Government. He requested the Committee to invalidate the credentials of Mr Seno and the four other individuals.
69. The Committee received an additional communication on 6 June 2013 from the Herrera group alleging that the Government was abetting the break-up of the TUCP.
70. The Committee received an unsolicited communication from the Mendoza group which contested the allegations made by the Herrera group. According to the Mendoza group, the Government was seeking to assist the resolution of the internal leadership dispute in the TUCP through impartial, fair and democratic means, respecting the independence of the TUCP. By adopting the 2013 BLR Resolution, it had, however, facilitated the participation of the Herrera group.
71. In a written communication addressed to the Committee at its request, the Undersecretary of the DOLE and Government delegate at the Conference replied that the nomination of the Workers' delegation had been made in accordance with the principles of the ILO Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The Government submitted that the TUCP was the largest trade union organization, the Federation of Free Workers (FFW) the third largest and after the FFW came the Alliance of Progressive Labor (APL). On 13 February 2013 the DOLE sent letters to the TUCP, the FFW, the APL and all Philippine affiliates of ITUC requesting each to submit their nominees for this session of the Conference so that a delegation of one Workers' delegate

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and three advisers could be constituted. The Government points out that the letter was sent to both the Mendoza and Herrera groups for the TUCP. All four responded, providing nominees. In a meeting held on 17 May, the groups were asked to identify their representation to the Conference from among their nominees for the post of delegate and advisers. According to the Government they consulted among themselves and agreed on a system of rotation and that this year Mr Daniel Edralin, the APL's nominee, should be the Workers' delegate. This decision was verbally communicated to the DOLE and on 20 May the Government submitted the credentials, designating the remaining three delegate nominees as advisers and substitute delegates. Concerning the allegation that the nominations ran contrary to the BLR Resolution, the Government contended that the Resolution was finalized only on 28 May 2013, after the credentials had been submitted. As a result of the Resolution, Conventions held separately by the Herrera and Mendoza groups were invalidated and Mr Herrera and Mr Mendoza were restored to the offices they held before the inter-union dispute had occurred and the elections of Mr Seno and the others occurring at the Mendoza group's Convention were invalidated. As far as the Government was concerned, it did not take sides in the internal conflict within the TUCP. Given the outcome of the BLR Resolution, the Government now corrected the credentials by deleting the titles of the persons whose credentials had been objected to and adding the name of their TUCP-affiliated trade union (e.g. "Mr Gerard Seno, ALU-TUCP"). It requested the Committee to consider the objection closed.

- 72.** *The Committee observes that in accordance with article 5, paragraph 2(a), of the Standing Orders of the Conference, the Credentials Committee has the mandate to examine objections relating to the credentials of delegates and their advisers, but not of other delegation members. Since Ms Esperanza Ocampo, Mr Arnel Dolendo, Mr Luis Manuel Corral and Ms Eva Arcos appear in the credentials as "other persons attending the Conference", the objection is not receivable in respect of their credentials. The Committee can, however, proceed with the examination of the objection relating to the credentials of Mr Seno, who is accredited as adviser and substitute delegate.*
- 73.** *The Committee notes that it has already last year examined an objection linked to the leadership dispute within TUCP between the Herrera group and the Mendoza group. Again, the Committee considers that the representativeness of the TUCP is not questioned, but rather one of the persons representing it, in this case Mr Seno. The Committee notes that what it has before it is an internal conflict within the TUCP, which does not come under its mandate and which is in process of being resolved nationally.*
- 74.** *The Committee further notes that at the time of the establishment of the credentials, which are dated 20 May 2013, the Government did not appear to have taken sides between the Mendoza group and the Herrera group as it nominated one workers' adviser from both sides and the workers' delegate from the ranks of another organization. The Committee has doubts, however, how the Government could later correct the credentials, purportedly as a consequence of the BLR Resolution issued on 28 May 2013, to the effect that Mr Seno was no longer Vice-President and General Secretary of the TUCP but a simple representative of ALU-TUCP, and at the same time refrain from withdrawing him from the delegation, although he no longer seemed to occupy a representative function for the TUCP.*
- 75.** *With these doubts, the Committee expects that the internal conflict within the TUCP will be definitively resolved in the near future.*

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## **Objection concerning the nomination of an Employers' adviser of Romania**

76. The Committee received an objection presented by Mr Ioan Cezar Corăci of UGIR 1903, concerning the nomination of Mr Marius Eugen Opran as Employers' adviser and appearing on the credentials as the President of UGIR 1903. He alleged that Mr Opran is not the President of UGIR 1903, nor is he a member of this organization as in 2011 he had lost his membership according to a decision of the members. He also recalled that at the previous session of the Conference the Government, faced with an identical situation, had recognized the mistake and requested that the name of Mr Opran be removed from the credentials. The author of the objection submitted that Mr Opran is therefore not entitled to participate at the Conference as a representative of UGIR 1903 and that the fact that the Government did not to correct this designation interferes with the right to nominate freely the Employers' representatives at the Conference, in violation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).
77. In a written communication addressed to the Committee at its request, the Government contended that the nomination of the Employers' delegation had been made according to normal procedure: the most representative employers' organizations at the national level were convened to a meeting organized by the Government, during which the participants were invited to communicate to the Government by 12 March 2013 their common agreement on the nomination of the Employers' delegation to the Conference; representatives of UGIR 1903, the *Patronat national roumain* (PNR) and the *Conseil national des petites et moyennes entreprises* (CNIPMMR) participated in the meeting. Signed minutes of that meeting were produced. Additional consultations among the employers' organizations, without the participation or involvement of the Government, were carried out on 7 March. The Government pointed out that minutes of that meeting, which named the designated persons, including Mr Opran, had been signed without any objections from the participants in that meeting. It is for that reason that Mr Opran was included in the delegation as adviser. The Government also pointed out that it had not received any written objections from the organizations designated to participate at the Conference. The Government submitted in addition that for some time now there had been issues between Mr Corăci and Mr Opran, with attacks and counterattacks regarding their legitimacy to represent UGIR 1903. The Government added that it did not interfere in internal quarrels within employers' organizations, which fall within the mandate of national judicial authorities.
78. *The Committee notes that it had been seized with this matter at the last session of the Conference. It recalls that the Government had considered the inclusion of Mr Opran as President of the UGIR 1903 to have been an error which it rectified by presenting, during the Conference, a communication removing the name of Mr Opran from the credentials submitted by Romania.*
79. *The Committee notes that this year the Government maintained Mr Opran in the Employers' delegation on the grounds that this nomination came from the consultations on the participation of the employers' representatives to the Conference and that no objection was raised against his nomination. While the consultations carried out seem to have lacked in coordination, the Committee considers that it is not the representativeness of UGIR 1903 which is called into question but the person who is qualified to represent it, in this instance Mr Opran, accredited as adviser. The Committee notes that the internal conflict within UGIR 1903 does not fall within the Committee's mandate but under the national judicial system. In these conditions, and in view of the information at its disposal, the Committee decides not to uphold the objection.*

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**Objection concerning the failure to deposit credentials of an Employers' and a Workers' delegate by the Government of Tuvalu**

80. The Committee received an objection presented by the International Trade Union Confederation (ITUC) concerning the failure to deposit credentials of an Employers' and a Workers' delegate by the Government of Tuvalu. The ITUC submitted that the Government had not fulfilled its obligation under article 3, paragraph 1, of the ILO Constitution. It requested the Committee to call upon the Government to explain why the delegation was incomplete and to recommend that its constitutional obligations be fulfilled.
81. *The Committee notes that although Tuvalu became a member State in 2008, this is the first Conference to which it has accredited a delegation, albeit exclusively governmental. Nevertheless, it regrets that the Government has not responded to its request for information nor has it accredited a fully tripartite delegation. The absence of a reply curtails the Committee's ability to discharge its mandate under article 5, paragraph 2(a), of the Conference Standing Orders. The Committee reminds member States of their obligation under article 3, paragraph 1, of the ILO Constitution, to nominate tripartite delegations to the Conference. By sending a delegation that is exclusively governmental the Government deprives the employers and workers of the country of their right of being represented in the highest policy-making body of the ILO and to participate in its work. Without the participation of Government, Employers' and Workers' representatives, the Conference cannot function properly or attain its objectives.*
82. *The Committee encourages the Government to send a fully tripartite delegation to the Conference next year.*

**Objection concerning the nomination of the Employers' delegation of the Bolivarian Republic of Venezuela**

83. The Committee received an objection presented by the Employers' group of the Conference concerning the nomination of the Employers' delegation of the Bolivarian Republic of Venezuela. The Employers' group submitted that the Government had once again ignored the Credential Committee's recommendations of preceding years in that it had included in the Employers' delegation seven individuals as advisers from organizations which could not be considered to be representative employers' organizations. Specifically, Mr Miguel Valderrama and Mr Alberto Sarmiento, both of the *Federación de Camaras y Asociaciones de Artesanos, Micros, Pequeñas y Medianas Industria y Empresas de Venezuela* (FEDEINDUSTRIA), Mr J. Agustín Campos of the *Confederación Nacional de Agricultores y Ganaderos de Venezuela* (CONFAGAN), Ms Fanny Suarez and Mr Alberto Cudemus of the *Consejo Bolivariano de Industriales, Empresarios y Microempresarios* (COBOIEM), and Ms Keyla de la Rosa and Mr Elmer Villamizar of *Empresarios por Venezuela* (EMPREVEN). This was considered contrary to criteria recognized by the ILO (free, independent organizations without government interference) and resulted in the exclusion of five individuals from the most representative employers' organization, *Federación de Cámaras y Asociaciones de Comercio y Producción de Venezuela* (FEDECAMARAS) who could not be included in the Employers' delegation as advisers. As a result, these individuals were accredited pursuant to article 2, paragraph 3(i), of the Standing Orders of the Conference, to occupy advisers posts if these fall vacant. The objection, however, did not extend to the nomination of Mr Alfredo Cabrera of CONFAGAN, as FEDECAMARAS in an effort at constructive dialogue with the other employers' organizations had agreed during a meeting with the Government on 7 May 2013 that an individual from the non-representative organizations

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could be included as an adviser. Nevertheless, the Government had named an additional 15 representatives of COBOIEM in the Employers' delegation as "other persons attending the Conference" which resulted in a disproportionate number of individuals (21) from non-representative organizations being included as compared to eight from FEDECAMARAS – of which only two were accredited in the capacity of advisers. FEDECAMARAS considered this to be a violation of its agreement with the Government and, as a result, contrary to article 3, paragraph 5, of the ILO Constitution. In addition, it pointed out that the Government paid for the travel and subsistence expenses of only two FEDECAMARAS representatives whereas it paid for all of the travel and subsistence expenses of the individuals that were affiliated with non-representative employers' organizations.

- 84.** In a written communication addressed to the Committee at its request, the Government considered that it had acted in accordance with the recommendations of the Credentials Committee of preceding years in that it had reinforced the consultative mechanism and had included all the most representative employers' organizations. On 10 May 2013, the Government invited representatives from COBOIEM, EMPREVEN, CONFAGAN, FEDEINDUSTRIA, and FEDECAMARAS with a view that they discuss and agree on the nomination of the Employers' delegation to the present session of the Conference. The minutes of this meeting indicated that FEDECAMARAS had proposed its own members as delegate and advisers to form the Employers' delegation. The Government pointed out that FEDECAMARAS also openly discussed at the meeting the possibility of including for the present session of the Conference one or two advisers from other organizations. The other organizations welcomed these steps, but hoped that FEDECAMARAS would not take any action to bar their effective participation as it had done at previous sessions of the Conference. On the basis of the discussions at this meeting, the Government proceeded to nominate the FEDECAMARAS representatives as Employers' delegate, substitute delegate, and adviser as well as representatives from other employers' organizations as advisers – without discrimination or exclusion. The Government rejected the monopolizing and discriminatory behaviour of FEDECAMARAS, as it considered that the other four organizations were also representative employers' organizations. While referring to Credentials Committee case law, according to which representatives from more than one representative organization could be included in a delegation, it conceded that it could not provide details regarding their respective representativeness as none had registered themselves pursuant to a recently adopted law. With respect to travel and subsistence expenses, the Government considered that it had fulfilled its obligations by covering travel and subsistence expenses of the Employers' delegate and of one adviser from each of the organizations. The Government denied interfering or failing to respect national laws and ILO Conventions, as well as the allegations that certain organizations had received preferential treatment.
- 85.** In an unsolicited communication addressed to the Committee an Employers' adviser, Mr Valderrama of FEDEINDUSTRIA, submitted that his organization was effectively blocked from participating at the Conference despite the fact that the employers that he represented were by the nature of his organization distinct from those of FEDECAMARAS. He also questioned the ability of the Employers' delegate, who had registered in each of the committees, to exercise her function effectively.
- 86.** *The Committee notes that, once again, it has before it an objection concerning the Employers' delegation of the Bolivarian Republic of Venezuela that is due to a recurring situation. The Committee recalls that in the absence of an agreement between organizations on the nomination of the Employers' delegation to the Conference, it is the Government's obligation to establish and implement objective and verifiable criteria on representativeness, through a consultation process that respects the genuine character, autonomy and independence of employers' organizations. It cannot limit itself to note that*

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*COBOIEM, EMPREVEN, CONFAGAN and FEDEINDUSTRIA are representative and to state that due to their non-registration it does not have membership data. In this regard, the Committee encourages the Government to facilitate, pursuant to the newly passed law, the registration of the employers' organizations in question so as to remove all doubts regarding their representative character. It expects that for the nomination of the Employers' delegation at the next session of the Conference, such criteria will be established and implemented.*

- 87.** *In the current circumstances, the Committee can only note, again, that the Employers' delegate has been consistently nominated by the Government from the ranks of FEDECAMAS and that the Government has failed to convince the Committee that any other organization in the country could be deemed as a most representative employers' organization in the sense of article 3, paragraph 5, of the ILO Constitution.*
- 88.** *As to the participation of advisers in the Conference and its committees, the Committee must again remind the Government that, as it follows from article 3 of the ILO Constitution and the Conference Standing Orders, the role of advisers is to accompany the delegates and to act on their behalf and under their instructions. Therefore, as the Credentials Committee expressed as early as 1946 (ILC, 28th Session, Record of Proceedings, Appendix I(7)) "the representative character of the advisers should be in harmony with that of the delegates for, unless the advisers possess the confidence of their delegate, the delegate and the advisers cannot function as a team for the purposes of the Conference". Noting that the Government can thus not impose advisers against the will of the most representative organizations, the Committee observes that the objection arises, once again, from the fact that the nomination lacks the agreement of the only organization for which the condition of most representative remains unchallenged. While the Committee notes in this connection the steps taken by FEDECAMARAS to endorse the nomination of a representative of CONFAGAN as Employers' adviser, the Committee is concerned that the Government has again imposed an important number of advisers and other participants from the other organizations. The Committee notes that the Employers' group did not propose the advisers so imposed for membership in committees of the Conference, which is its prerogative.*
- 89.** *In relation to the payment of the travelling and subsistence expenses of the members of the Employers' delegation, the Committee wishes to stress again that, in accordance with article 13, paragraph 2(a), of the Constitution, Members must pay the travelling and subsistence expenses of their full delegation; when the Government nevertheless decides to pay for only part of the delegation, the agreement with the most representative organizations on the nomination of delegates and advisers must address the question as to whose costs are borne by the Government. The Government could therefore not cover the expenses of one adviser from each organization without the agreement of FEDECAMARAS.*
- 90.** *The Committee regrets and deplors the long-standing nature of this case. In view of the above, it strongly expects that the Government will ensure that the nomination of the Employers' delegation, as well as the payment of their travel and subsistence expenses, will at future sessions of the Conference be in full compliance with article 3, paragraph 5, of the ILO Constitution.*

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## Complaints

91. The Committee also received and dealt with five complaints, which are listed below in the French alphabetical order of the member States concerned.

### ***Complaint concerning the partial payment of travel and subsistence expenses of the Workers' delegate by the Government of Afghanistan***

92. The Committee received a complaint presented by the Workers' delegate, Mr Maroof Qaderi, of the National Union of Afghanistan Workers and Employees (NUAWE) alleging only partial payment of travel and subsistence expenses by the Government of Afghanistan. He submitted that the Government had agreed to pay only for the Workers' delegate and only one week. The amount he was provided was approximately US\$917, which was not even sufficient for four days in Geneva. In addition, he alleged that Mr Jan Kako Niazi, who was accredited by the Government as Workers' adviser and substitute delegate, was in fact an Employer. He so informed the Government but this was ignored.
93. In a written communication addressed to the Committee at its request, the Government stated that it had made a partial payment of US\$917 to Mr Qaderi and it had asked him to submit his accommodation bill for reimbursement.
94. *The Committee has no reason to doubt that the Government will not honour its obligation to pay the travel and subsistence expenses of the Workers' delegate. However, it wishes to recall that the obligation under article 13, paragraph 2(a), of the Constitution of the ILO requires governments not only to bear the expenses necessary for a member State's tripartite delegation to be present in Geneva for the whole duration of the Conference, but to make sure that the necessary financial means are made available to the participants concerned sufficiently in advance, so that the participation of delegates who cannot afford to advance expenses is not jeopardized. Therefore, it urges the Government to act quickly in meeting its obligations.*
95. *As regards the allegations concerning the Workers' adviser and substitute delegate, those could have justified an objection under article 26bis of the Conference Standing Orders, but as the communication has been received more than 72 hours from 10 a.m. of the first day of the Conference, the objection would be time-barred.*

### ***Complaint concerning the non-payment of subsistence expenses of the Workers' delegate by the Government of Ecuador***

96. The Credentials Committee received a complaint presented by the Workers' delegate, Mr Jaime Arciniega, President of the *Confederación Sindical de Trabajadoras y Trabajadores del Ecuador* (CSE) alleging the non-payment of subsistence expenses by the Government of Ecuador. The Workers' delegate stated that while the Government had accredited him to the present session of the Conference, it had not (for reasons of administrative errors) proceeded, to date, to provide him with the economic resources to cover the expenses related to his presence in Geneva during the period of the Conference. The Workers' delegate solicited the assistance of the Committee and requested it to intercede on his behalf with a view to calling upon the Government to cover the expenses of his stay for the duration of the Conference and, thus, fulfil its obligations in accordance with article 13, paragraph 2(a), of the ILO Constitution.

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97. In a written communication addressed to the Committee at its request, the Government provided a communication from the CES dated 28 May 2013 indicating the name of the proposed Workers' delegate to the present session of the Conference. In this communication, the CES specified that the Workers' delegate would only be able to attend the Conference as of 8 June. The Government further provided a Ministerial decree dated 31 May that indicated that the participation of the Workers' delegate would be as of Monday, 10 June and that the attendant expenses of his participation would be covered. On 5 June, the Government proceeded to request the payment of the subsistence expenses for the Workers' delegate which the Ministry of Finance confirmed on 13 June had been transferred to the delegate's account.

98. *The Committee notes that the Government states that it has paid for the expenses of the Workers' delegate. However, the Committee recalls that the obligation under article 13, paragraph 2(a), of the ILO Constitution requires governments not only to bear the expenses necessary for a member State's tripartite delegation to attend the Conference but to make sure that the necessary financial means are made available to the participants concerned sufficiently in advance, so that the participation of delegates who cannot afford to advance expenses is not jeopardized.*

**Complaint concerning the non-payment of travel and subsistence expenses of the Workers' delegate and advisers by the Government of Spain**

99. The Committee received a complaint lodged by Mr Frades Pernas of the *Union General de Trabajadores* (UGT), Workers' adviser and substitute delegate, and Mrs Victoria Montero Montero of the *Confederacion Sindical de Comisiones Obreras* (CCOO), Workers' adviser. The authors of the complaint stated that, for the second consecutive year, the Government had maintained the reduction in funding of the travel and subsistence expenses to only three workers' representatives. Even if the country's economic situation was difficult, given its industrial importance, it was unacceptable that it was not in a position to cover the expenses of a sufficient number of advisers to follow all items on the Conference agenda. In addition, the Government had demanded that the four most representative unions in the country agree among themselves on how to allocate the funding of the three persons and that without such agreement none would be paid. However, the CCOO and the UGT had a national presence, with a rate of representativity of 39.1 per cent and 37.2 per cent respectively, whereas *Solidaridad de Trabajadores Vascos* (ELA-STV) and *Converxencia Intersindical Gallega* (CIG) had a regional presence, with a rate of representativity of 3 per cent and 1.6 per cent respectively. Therefore, the fact that the Government had reduced the expenses covered and at the same time had imposed on more representative unions to negotiate with less representative unions would cause unfair treatment and imbalance because it would penalize more important organizations. Lastly, referring to the *Revised Provisional List of Delegations*, the authors of the complaint alleged a manifest imbalance as compared to the Government delegation, whose delegates were accompanied by at least 11 advisers.

100. In a written communication addressed to the Committee at its request, the Government confirmed that it had informed the social partners this past May that due to the continuing economic crisis and contention over the Government's public spending, the travel and subsistence expenses of the delegates and their advisers had once again been significantly reduced. As occurred last year, the Government communicated that it would assume the expenses related to the delegate and two technical advisers and that additional workers' advisers, up to the maximum allowable of two per agenda item, could be nominated at their own expense. In reducing the total number of individuals in the Spanish delegation, the Government stated that it had applied criteria of proportionality and balance in an equitable manner as between the employers and workers. Regarding its own level of



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participation at the Conference, the Government explained that it had accredited only enough individuals from the capital to ensure that two advisers per agenda item were available to represent it through the duration of the Conference. In addition, it explained that only two other individuals from the Ministry of Employment and Social Security would be present during the final week of the Conference. As for personnel from the Permanent Mission, these individuals were also accredited as they maintain a direct relationship with the International Labour Office. The Government emphasized that it had at all times sought to obtain a written agreement from the concerned organizations with a view to establish criteria that would permit a distribution based on consensus. The Government considered that it had acted in a legal, equitable and respectful manner with a view to ensuring that travel and subsistence expenses would be provided to each delegate plus two advisers.

- 101.** The Government submitted additional information reflecting the dates of attendance of the Conference of the advisers from the Ministry of Employment and Social Security.
- 102.** *The Committee recalls its conclusions of last year when it was seized with a similar complaint brought by the same complainants and regrets that the Government has once again insisted on an agreement before assuming the travel and subsistence expenses – even of the Workers’ delegate. The Committee recalls that while the Government can seek an agreement on the distribution of the funds available to pay for the delegation’s travelling and subsistence expenses, it cannot refrain from meeting its minimal constitutional obligations to assume the travel and subsistence expenses of the Workers’ delegate. The Government’s decision to make the reimbursement of the expenses of the Workers’ delegate contingent on an agreement between the workers’ organizations concerned is, thus, not compatible with article 13, paragraph 2(a), of the ILO Constitution. The Committee expects that the Government will remedy the situation quickly in this regard and comply with its minimal constitutional obligations to cover the expenses of a complete tripartite delegation.*
- 103.** *In relation to the payment of expenses, the Committee wishes to recall that, in accordance with article 13, paragraph 2(a), of the ILO Constitution, Members must pay the travel and subsistence expenses of their full delegation; when the Government decides to pay for only part of the delegation, the distribution of the payments cannot ignore the relative representativeness of the organizations whose representatives compete for them. Where an agreement cannot be reached between all the organizations concerned, the most representative of them should be given priority.*
- 104.** *With respect to the claim of serious and manifest imbalance as between the number of Workers’ advisers whose expenses have been covered in the delegation and the number of advisers appointed for the Government delegates, the Committee notes that in the present case according to the Revised Provisional List of Delegations, the Government has accredited 11 Government advisers. In accordance with its past practice, the Committee not only considers the number of Government advisers accredited, but also takes into account the actual attendance and level of participation of the Government in the work of the Conference. In this connection, the Committee notes that at the time of the examination of this complaint, on 14 June 2013, according to the records of the Conference, all eleven Government advisers have registered at the Conference and seven of them with the different technical committees. However, the additional information provided by the Government confirms that there were normally not more than two advisers registered in committees attending the Conference at any given time. The Committee observes that even if the Government did not to pay the travel and subsistence expenses of any of the workers’ advisers, the resulting imbalance between government and workers advisers able to participate in the work of the Conference could not be considered serious and manifest.*

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105. *The Committee wishes nevertheless to recall that while there is no constitutional obligation for a Government to nominate advisers, it must be recognized that the Conference can only work properly if there are a sufficient number of advisers present in the three groups of the Conference. The Committee takes note of the explanation provided by the Government that the situation that has led to a reduction in the number of advisers accredited was a consequence of budgetary restrictions due to the current economic crisis. Nevertheless, in view of the importance of the ILO's work in the context of the crisis, the Committee expects that the Government will give sufficient budgetary priority to participation in the work of the Conference to allow for the payment of travel and subsistence expenses of a sufficient number of advisers, equitably distributed between the three parts of the delegation.*
106. *The Committee expects that the Government will act quickly and fulfil its obligation to cover the travel and subsistence expenses of the Workers' delegate and its commitment to pay this year two Workers' advisers and that for future sessions of the Conference it will fulfil its obligations under article 13, paragraph 2(a), of the ILO Constitution.*

**Complaint concerning the partial payment of the travel and subsistence expenses of the Workers' delegate by the Government of Pakistan**

107. The Committee received a complaint presented by the International Trade Union Confederation (ITUC) alleging only partial payment of travel and subsistence expenses of Mr Mohammed Zahoor Awan, Workers' delegate, by the Government of Pakistan. The delegation was constituted in May 2013 and Mr Awan was nominated Workers' delegate. The then caretaker Prime Minister approved the delegation under the condition that the delegation be limited to three members – one Government delegate, the Employers' delegate and the Workers' delegate – and that the duration of their stay in Geneva also be limited to ten days only. It was only in the first week of June that the expenses of the delegation were approved and that the Government committed to pay the travel and subsistence expenses of Mr Awan from 11 to 21 June 2013. According to the ITUC, due to the reduction of subsistence expenses Mr Awan would only be arriving in Geneva on 12 June, two days before the completion of the work in the technical committees, which resulted in the absence of the delegation of Pakistan at the start of the Conference and prevented Mr Awan from fully participating in the work of the Conference. The ITUC asked the Committee to call upon the Government to provide further clarifications on this matter and to fulfil its constitutional obligations.
108. In a written communication addressed to the Committee at its request, the Government explained that Pakistan had been in the process of a democratic transition and that the interim caretaker government in place could not make adequate preparations for participation in this session of the Conference. It was only when the newly elected Government was in place that it was able to finalize the Workers' and Employers' delegations. Due to logistical reasons Mr Awan was only able to secure a ten-day visa. Nevertheless, the Government asserted that it categorically conveyed that all travel and subsistence expenses would be borne by the Government. The Government requested the understanding of both the ITUC and the Committee in this matter and assured them that this situation would not arise again.
109. *The Committee notes that the Government acknowledged the information submitted by the complainant as to the travel arrangements of the Workers' delegate. The Committee recalls that payment of travel and subsistence expenses of non-governmental delegates for less than the entire length of the Conference is not compatible with article 13, paragraph 2(a), of the Constitution, which requires the Government to cover the travel and subsistence expenses of a tripartite delegation for the entire duration of the Conference. It*

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*expects that the Government will comply with this obligation in the future. Only if participation is ensured for the whole duration of the Conference, may the members of the tripartite delegation take an active part in the Conference and decide, in full independence of each other, when and how they may wish to exercise their speaking and voting rights. The Committee further notes that, where the Government is in charge of the travel arrangements for non-governmental delegations, this constitutional obligation entails that such arrangements must be made so as to allow for the full participation of the tripartite delegation in the Conference during its entire length.*

**Complaint concerning non-compliance with article 13, paragraph 2, of the Constitution with respect to the expenses of the Employers' delegation of Romania**

- 110.** The Committee received a complaint presented by the Employers' group at the Conference alleging a serious and manifest imbalance between the number of Employers' and Workers' advisers whose expenses have been covered by the Government of Romania, in breach of article 13, paragraph 2(a), of the ILO Constitution. The Employers' group contended that the Government had paid the travel and subsistence expenses for five Workers' advisers whereas it had only paid for these expenses for the Employers' delegate and not the Employers' substitute delegate or any of the seven advisers. The Government's failure to meet its constitutional obligation clearly hindered the ability of the Employers' of Romania to fully participate in the important work of the Conference and went against the resolution concerning the strengthening of tripartism in overall activities of the ILO, adopted by the Conference at its 56th Session (1971). The Employers' group asked the Committee to strongly urge the Government to pay the full travel and subsistence expenses of the Employers' substitute delegate and seven advisers, and, in the future, to comply with its constitutional obligations.
- 111.** In a written communication addressed to the Committee at its request, the Government considered that it had complied with the minimum obligations set out in the ILO Constitution. It contended that the social partners were informed that for financial reasons it could not cover all the expenses of the employers' and workers' representatives, but as in years past, it was not opposed to the presence of other persons in the delegation as long as the Government did not have to pay their expenses. Considering that the Employers' had the financial means to ensure their participation at the Conference, it preferred to cover the expenses of the Workers' advisers. The Government also stated that it also reduced the number of representatives in its own delegation, limiting the expenses covered to the delegate and five advisers. None of the Government advisers would participate for the entire duration of the Conference. In view of the situation brought to its attention this year, the Government stated that it was committed to changing its approach for future sessions of the Conference.
- 112.** *The Committee notes that it has already had occasion to examine facts of the same nature. It wishes to recall the principle that governments must pay the travel and subsistence expenses of the entire delegation, by virtue of article 13, paragraph 2(a), of the ILO Constitution. When this principle is not realized and the number of accredited advisers is greater than the number of those whose expenses are borne by the government, it is crucial to know who will benefit from the government's support. This question is not at the entire discretion of the Government. The payment of travel and subsistence expenses cannot be considered as a favour and the Government must be careful to ensure that the financial means available for the participation of a tripartite delegation to the Conference be distributed between the Government, the Employers' and the Workers' delegations at least in a proportion similar to that envisaged in the Constitution for the composition of delegations to the Conference.*

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- 113.** *The Committee notes that the Government recognized that it undertook to pay the travel and subsistence expenses of only the Employers' delegate, whereas it paid for the Workers' delegate and advisers. The Government thus considerably limited the possibility for the Employers to participate in the work of the various Committees and created an imbalance between the social partners (Provisional Record No. 22, 88th Session, 2000).*
- 114.** *In this respect, the Committee recalls that the ability for the social partners to actively participate in the work of the Conference depends to a large extent on the number of advisers that accompany the delegate to the Conference; to expect that those advisers attend the Conference at their own expense is incompatible with article 13, paragraph 2(a), of the ILO Constitution. While there is no constitutional obligation for a Government to nominate advisers, it must be recognized that the Conference can only work properly if there are a sufficient number of advisers present in the three groups of the Conference.*
- 115.** *While noting that the Government has agreed to reconsider its approach, the Committee expects it will give priority in its budget for participation in the work of the Conference by assuring the payment of travel and subsistence expenses for a sufficient number of advisers for each delegate.*

## **Other matters**

- 116.** As stated in the Committee's First report (*Provisional Record* No. 4B, paragraph 25), for the Committee to fulfil its mandate, all governments are required to indicate in their credentials the organizations to which each of the Employers' and Workers' delegates and advisers belong, as well as their functions within those organizations. The Committee therefore solicited this information from two member States which had not provided it, of which one replied with the missing information. It regrets that the other Member did not provide the information and hopes that at future sessions of the Conference such information will be provided by all member States in time for publication in the *Provisional List of Delegations*, which, in accordance with article 26bis, paragraph 1(a), of the Conference Standing Orders, serves as the basis for the submission of objections to the Committee.
- 117.** The Credentials Committee adopts this report unanimously. It submits it to the Conference in order that the Conference may take note of it and adopt the proposal contained in paragraph 47.

Geneva, 17 June 2013

(Signed) Mr Mothusi B.R. Palai  
Chairperson

Mr Edward E. Potter

Mr Yves Veyrier



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