INTERNATIONAL LABOUR OFFICE

Governing Body

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Institutional Section INS

FIFTEENTH ITEM ON THE AGENDA

Report of the Director-General

Seventh Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by the United Arab Emirates of the Forced Labour Convention, 1930 (No. 29), made under article 24 of the ILO Constitution by the International Trade Union Confederation (ITUC)

Introduction

- 1. In a communication dated 21 August 2014, the International Trade Union Confederation (ITUC), made a representation pursuant to article 24 of the Constitution of the International Labour Organization, alleging non-observance by the United Arab Emirates of the Forced Labour Convention, 1930 (No. 29), ratified in 1982 and currently in force in the United Arab Emirates (UAE).
- **2.** The following provisions of the ILO Constitution relate to representations:

Article 24

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

Article 25

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

- **3.** In accordance with article 1 of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution, as revised by the Governing Body at its 291st Session (November 2004), the Director-General acknowledged receipt of the representation, informed the Government of the UAE and brought it before the Officers of the Governing Body.
- **4.** At its 322nd Session (November 2014), the Governing Body decided that the representation was receivable and appointed a committee for its examination composed of Mr Dajani (Government member, Jordan), Mr Alrayes (Employer member, Bahrain) and Ms Pandey (Worker member, Nepal).
- **5.** The Government of the UAE submitted its written observations in communications dated 28 July and 15 October 2015.
- **6.** The Committee held its first meeting on 17 March 2015.
- **7.** The Committee met on 4, 6, 9 and 10 November 2015 and 16 and 18 March 2016 to examine the case and adopt its report.

Examination of the representation

A. Allegations made by the complainant organization

- **8.** In its communications of 21 August 2014 and 23 February 2015, the complainant organization alleges the non-observance by the UAE of the Labour Convention, 1930 (No. 29), and Recommendation No. 203 through policies and practices that facilitate the exaction of forced labour by employers.
- **9.** The complainant organization asserts that the Government of the UAE fails to maintain a legal framework which is adequate to protect the rights of migrant workers consistent with Convention No. 29 on forced labour and also fails to implement existing laws that would prevent the exaction of forced labour from migrant workers. As a result, forced labour is a serious problem throughout the UAE and in all economic sectors. It is the result of a combination of deception about the nature of the work, wages and working conditions, induced indebtedness by the charging of fees and salary deductions, the confiscation of passports and a sponsorship system that not only prevents workers from transferring from abusive employers, but also subjects workers to the threat of deportation if they object to their working conditions. According to the ITUC, forced labour in the UAE mainly results from a combination of factors in the employment process which may lead to abuses by employers. These factors include high recruitment fees, the problem of contract substitution, passport confiscation by employers, the sponsorship system which ties the worker to one employer, as well as the lack of an effective law enforcement system and the difficulty to access justice.
- 10. Recruitment fees. The complainant organization indicates that migrant workers need a work permit before entering the UAE. They must first contact a licensed recruitment agency. Construction companies can only contract with licensed recruitment agencies, and any necessary fees must be charged to the construction companies. The complainant organization has provided numerous recent examples in which migrant workers allegedly paid exorbitant recruitment fees for employment on construction sites. The complainant organization alleges that although the national legislation prohibits labour recruiters from charging recruitment fees to workers and intermediaries, in reality workers continue to pay exorbitant recruitment

fees and are often induced into indebtedness. In this regard, the complainant organization indicates that there was a sharp increase in 2013 in the percentage of workers paying recruitment fees (up from 73 per cent to 86 per cent) and relocation fees (up from 79 per cent to 92 per cent). Accordingly, the Government has failed to sanction recruitment agencies for breaches of the law. Moreover, none of the workers who pay such fees have been reimbursed by their employers.

- 11. Contract substitution/misrepresentation. Additionally, the complainant organization alleges that, although the UAE legislation grants migrant workers the same rights as national workers, most of the migrant workers are misled or deceived. The complainant organization has provided examples in which workers were alleged to have suffered contracts substitution. Upon arrival in the country, they may be obliged to sign new contracts with significantly lower wages, additional charges, and different working conditions. For example, the complainant organization indicates that upon arrival in the UAE, domestic workers must sign the new standard contract for domestic workers in place since June 2014 in order to secure a residence visa. This new standard contract, which replaces the contract previously signed by the workers, is less favourable. Moreover, contracts are often written in Arabic or English, which most workers are unable to understand. Most workers take out large loans and accept indebtedness for months or sometimes years because the labour supply agency makes false representations as to what their salary will be in the UAE. Additionally, workers are often paid irregularly and infrequently in violation of UAE law. Such situations make it difficult for migrant workers to honour financial obligations to recruiters and lenders. The complainant organization asserts that the Government of the UAE has not taken any measures to monitor the deception of migrant workers and penalize such practices.
- 12. Confiscation of passports. The complainant organization submits that although the practice of confiscating workers' passports is prohibited under UAE legislation, the majority of migrant workers have their passports withheld by employers upon arrival. Such widespread practice limits their freedom of movement, particularly in cases of exploitation. Employers can easily threaten workers with sanction, such as turning them over to the authorities, should they attempt to complain or flee. Further, as employers can be held liable under UAE law when workers change employers illegally, employers have an incentive to confiscate passports to maintain control of their workers and avoid liability for absconded workers. In addition, employers confiscate passports as a means of control and to protect their "investment" in certain workers, which can include work permit and residency visa fees, bank guarantees, recruitment agency fees, transportation, housing, and medical care.
- 13. Sponsorship system. With reference to the sponsorship system (known as kafala), the complainant organization points out that UAE laws require migrant workers to obtain a work permit before entering the country and, upon arrival, their employment is regulated by a sponsorship system that grants employers wide-reaching control over foreign workers and may prevent workers from leaving or denouncing abusive working conditions. Specifically, under the sponsorship law, employers who employ foreign labourers must apply to the Work Permit Department of the Ministry of Labour and Social Affairs for work permits for each employee. At the same time, companies apply for employment visas from the Immigration and Residency Department of the Ministry of Interior, which allows workers to enter the UAE for a period of 30 days. The worker is then only legally eligible to work for the employer designated in their passport unless the Government provides otherwise. A worker's presence in the country is entirely dependent upon his or her relationship to the employer. Furthermore, if a foreigner who received a work permit to enter the UAE remains unemployed for more than three months, his or her work permit can be cancelled.
- **14.** The complainant organization further submits that Ministerial Decision No. 1186 of 2010, on Rules and Conditions of Granting a New work Permit to an Employee after Termination

of the Work Relationship in order to move from one establishment to another, made some amendments to the sponsorship system, allowing a worker to transfer employers after two years from the initial employment without a "No Objection Certificate" (NOC). Previously, workers were unable to change employment without the consent of the previous employer and were required to have prior approval from the Minister of Labour and Social Affairs. The Ministerial Decision No. 1186 mentions different situations within which a worker may seek to change her/his employer without the permission of the latter, such as the non-payment of wages for 60 days. However, the complainant organization asserts that migrant workers still need a NOC to change employment and that the Ministry of Labour may impose a one-year travel ban on a worker who attempts to change employment without the employer's permission.

- 15. Ineffective labour inspection and limited access to justice. In addition, the complainant organization asserts that the UAE fails to effectively implement existing laws that would prevent the exploitation of migrant workers. The Government does not enforce the prohibition of withholding of workers' passports, which is a widespread problem. The Government has not reported any investigation or prosecution of any potential forced labour offenses. Although the Ministry of Labour continued to distribute a guidebook outlining standard operating procedures for law enforcement officials to identify victims of both sex and labour trafficking, authorities failed to identify potential cases of forced labour and instead classified them as labour violations. Furthermore, the complainant organization refers to allegations of retaliation by employers, including dismissal and deportation, when workers object to their working conditions or seek redress. It also appears that the Government did not encourage forced labour victims to participate in investigations or prosecutions, and that the Government lacks appropriate shelters, counselling, or immigration relief for victims of forced labour practices.
- **16.** Migrant domestic workers. The complainant organization points out that migrant domestic workers are subject to practices of contract substitution. They are duped into believing they have an enforceable contract with higher pay and better conditions than turns out to be the reality. The contracts they sign with agencies back home are substituted with the UAE standard contract offering less pay and few rights and protections. Furthermore, they are excluded from Ministry of Labour regulations that apply to other migrant labour sectors, including those that require the imposition of fines on employers who make the workers they contract pay recruitment fees. The complainant organization further states that while other migrant workers can legally leave an abusive employer without paying a sponsorship transfer fee, migrant domestic workers must obtain the cooperation even of an abusive employer if they wish to leave that employment without paying a sponsorship fee. Those who wish to change employers may not transfer to another employer before the end of their contractual period (generally two years) without their current employer's permission. Migrant domestic workers have two options to change employers. The first consists of completing their contract term and giving their employer one month's notice that they will not renew; getting their sponsor to cancel their work permit and residency visa at the General Directorate for Residency and Foreign Affairs; and then procuring a new sponsor within 30 days. The second option requires them to secure their sponsor's approval to transfer the sponsorship before the end of their contract by means of a NOC signed by the sponsor, and to pay a sponsorship transfer fee to the immigration department. A domestic worker who leaves her/his sponsor before the end of her/his contract can be reported to the authorities as having absconded. Absconding is an administrative offence that can result in fines, deportation, and a one-year entry ban. Domestic workers who suffer abuses lack assistance. They can seek redress through the courts but they face significant barriers: the financial costs of retraining lawyers to represent them and in going to court; language problems, the costs of interpretation and translation of documents; and lengthy legal proceedings. Moreover, migrant domestic workers are excluded from the protection of the labour law, and the Memoranda of Understanding (MoUs) that sending countries have negotiated with the UAE

Ministry of Labour do not apply to domestic workers. Finally, the complainant organization indicates that a draft law on domestic workers has been pending since 2012, when the Government stated that the cabinet had approved a bill on domestic workers and that it would be promulgated once the Interior Ministry had completed implementing regulations.

- 17. In its supplementary communication dated 23 February 2015, the complainant organization also provides a number of detailed examples of allegations of forced labour of migrant workers employed in the construction industry and as domestic workers, all of which serve to provide evidence of a systemic failure of the Government to enforce the existing laws of the UAE.
- 18. In its conclusions, the ITUC asserts that the Government of the UAE is in serious breach of ILO Convention No. 29. It emphasizes the need to abolish the sponsorship system and to take measures to ensure that migrant workers have the right to freely associate in law and practice, as the absence of freedom of association contributes to their exploitation in situations of forced labour. The ITUC stresses that the Government of the UAE should take measures to adequately enforce the legislation against perpetrators of forced labour. It should also support rigorous, transparent and independent monitoring and implementation of penalties for non-compliance of contractors.
- 19. With regard to domestic workers, there is a need to ensure that migrant domestic workers are provided with labour law protection equal to that of other workers and in line with the ILO Decent Work for the Domestic Workers Convention, 2011 (No. 189). Moreover, the ITUC stresses that there is a need to create a domestic work inspection task force to monitor working conditions and legal compliance for this sector, including inspecting places of work where domestic workers have alleged violations and expedite dispute–resolution for domestic worker complaints.

B. The Government's response

- **20.** In its written communications dated 28 July and 5 October 2015, the Government describes various initiatives that were taken to promote migrant workers' rights. In this regard, the Government states that since 2006 it has concluded a number of bilateral MoUs with the governments of migrant sending countries. Such MoUs list a certain number of requirements related to the workers' employment contracts, such as the obligations to provide clear information about the contract prior to the departure of the worker. The Government adds that in April 2015, the Ministry of Labour signed a two-year technical assistance agreement with the ILO with respect to the improvement of the labour inspection system, as well as the development of an efficient dispute mechanism between workers and employers. The Government also refers to the Abu Dhabi Dialogue (ADD) a regional consultative process group which is composed of various countries of origin and countries of destination aimed at providing coordinated measures to avoid the abusive recruitment of migrant workers and to ensure the protection of their rights. More specifically, the Government enumerates legal measures taken with respect to the issues of recruitment fees, contract substitution, prohibition of the withholding of passports, the sponsorship system, labour inspection, access to justice and enforcement.
- **21.** The Government indicates that the legislative framework is fully aligned with Convention No. 29 in prohibiting forced labour. The Government provides detailed information on the specific issues mentioned in the representation as follows.

(i) Recruitment fees

22. In relation to the complainant organization's allegations concerning the payment of high recruitment fees by migrant workers, the Government refers to the Labour Code (section 18) and to Ministerial Decree No. 52 of 1989, which prohibit recruitment agencies from charging recruitment fees to workers and requires employers to reimburse their employees for any fees they might have contracted. The Government further indicates that in the case of violation of these provisions by a recruitment agency, its licence will be withdrawn, and the agency will be fined with 5,000 Emirati dirhams (AED) per worker (US\$1,300) (Ministerial Decree No. 1283 of 2010 and Cabinet Decision No. 40/2014). The Government also indicates that clause 8 of the Standard Employment Contract contained in Ministerial Decree No. 764 of 2015 on Labour-approved Standard Employment Contracts, specifically mentions that all recruitment fees are borne exclusively by the employer, and in case of breach of this provision, a worker may claim from the employer the amount of any recruitment fees he/she has been made to pay.

(ii) Contract substitution/misrepresentation

23. The Government states that it has enacted a Standard Employment Contract contained in Ministerial Decree No. 764 of 2015 in order to ensure the transparency of the contracting process and to eliminate the risk of contract substitution. The Standard Employment Contract shall be made available in multiple languages and be summarized for the worker in a clearly written and brief document. It sets out workers' rights, including their right to receive punctually their salary, to enjoy mandated rest days and holidays, to receive end of service indemnity, and the possibility to file complaints with the Ministry of Labour, as well as the prohibition on the employer's withholding of the worker's passport. The Government further indicates that Decree No. 764 not only establishes a system in which the risk of contract substitution is virtually eliminated, it also, in conjunction with Ministerial Decree No. 765 of 2015 on Rules and Conditions for the Termination of Employment Relations (Ministerial Decree No. 765 of 2015) and Ministerial Decree No. 766 of 2015 on Rules and Conditions for Granting a New Work Permit to a Worker whose Labour Relation with an Employer has Ended (Ministerial Decree No. 766 of 2015), establishes a clear legal basis on which the violation of a worker's rights shall permit a worker to terminate his employment relation and seek employment with another employer.

(iii) Prohibition of the withholding of passports

24. With regard to the confiscation of passports, the Government refers to the Ministry of Interior Circular No. 267 of 2002, which expressly prohibits the practice of employers withholding the passports of its foreign employees, unless it is carried out by the judicial authorities in accordance with the relevant provisions of the law. The Government adds that courts have consistently ruled that "freedom of travel and movement of all persons is expressly protected in the Constitution and cannot be infringed upon except in unusual circumstances that require placing restrictions on such freedoms. A person is entitled to maintain possession of her/his passport since withholding a passport, including by creditors or employers, restricts the protected freedom of travel and movement of its own". Notwithstanding these protections contained in national legislation and court decisions, the Government emphasizes that it continuously assesses the effectiveness of applicable measures and is prepared to consider further strengthening them to ensure that such practices do not occur.

(iv) The sponsorship system

- 25. With regard to the allegations of unbalanced labour relations because of the sponsorship system (known as *kafala*) that places migrant workers at risk of abuse, the Government points out that UAE employers sponsor workers for the purpose of obtaining residency permits. Kafala is an admission policy that allows non-nationals to enter and reside in the UAE for the purpose of gainful employment at a UAE business. The Government further indicates that the legislation allows only for temporary residency and does not require an exit visa. It also declares that while the UAE employer is the "sponsor" of the foreign national for the purpose of securing entry and lawful residency, this sponsorship does not define or alter the terms of a relationship between employer and worker as captured in the employment contract and governed by the Labour Code. In particular, the worker's obligations to the employer, and those of the employer to the worker, are determined by their contractual agreement. The Government emphasizes that, in order to avoid confusion between sponsorship, as a tool of immigration control, and the rights and obligations of employer and worker in the context of the employment relation, it has undertaken a series of legislative measures.
- **26.** Accordingly, the first such measure consists of Ministerial Decree No. 1186 of 2010 on the Rules for Granting a New Work Permit to Worker after the End of an Employment Relation, which makes workers eligible to seek and accept new employment after they have completed their two years in the employment of their original employer. Moreover, the worker can seek and accept employment with an alternative employer at any time and without the consent of the original employer if: (1) the employer is in breach of the contract, as in, but not limited to the case of non-payment of wages for more than 60 days; (2) the worker is not responsible for ending the employment relation; (3) the employment contract was terminated by the employer; (4) the Ministry of labour had referred a case involving the worker to the labour courts; and (5) by a special decision by the Minister of Labour.
- 27. The Government further indicates that Ministry of Labour-registered contracts are either limited (fixed-term) or unlimited (open-ended, not time bound). Unlimited, open-ended, contracts are for the most part held by middle and high-skilled workers, whereas low-skilled, low-wage workers in such sectors as construction and services are typically employed pursuant to limited, fixed-term contracts. In this regard, the Government refers to Ministerial Decree No. 765 of 2015, which stipulates the conditions under which limited (fixed) term contracts of no more than two years may be terminated: (1) at the expiration of the term of the limited contract; (2) by mutual consent of the two parties during the course of the contract term; (3) by either party provided the terminating party complies with the following conditions: (a) that the terminating party gives written notice agreed by both parties, but not be less than one month and not to exceed three months; (b) that the worker continues to honour her/his contractual obligations during the notice period; (c) that the terminating party pays the other party the agreed early termination indemnity, not to exceed the equivalent of three months' salary; (4) if the terminating party does not comply with the legal steps described above, he/she bears any legal consequences of early termination; and (5) the employer may terminate the contract of a worker if the latter commits any of the violations that are described in section 120 of the Labour Law.
- 28. The Government further indicates that an employment relationship is considered to have de facto ended in the event that: (1) the employer breaches any legal or contractual obligation owed to the worker; (2) the employer's business is closed; and (3) a labour complaint is filed against the employer and a final ruling in favour of the worker is obtained, and, in any such cases, the employment relationship shall be deemed to have ended.
- **29.** The Government also points out that Ministerial Decree No. 766 of 2015 specifies the conditions under which, upon the termination or end of a worker's employment relation with

an employer, the worker shall be granted permission by the Ministry to seek and accept employment with a new employer and obtain a new work permit. The following conditions include: (1) the expiration, and non-renewal, of her/his previous employment contract; (2) mutual consent to terminate the contract, provided the worker has completed a period of no less than six months with the employer (the latter provision is waived for workers that qualify for skill levels 1, 2, and 3, as per the Ministry's classification); (3) if the employer initiates the termination of the employment relation, without reason of non-compliance on the part of the worker, provided the worker has completed a period of no less than six months with the employer (the latter provision is waived for workers that qualify for skill levels 1, 2, and 3, as per the Ministry's classification); and (4) unilateral decision by either employer or employee to terminate the employment relationship at any time, irrespective of the time the worker was in the current employer's employment during the renewal period provided: (a) that the terminating party gives written notice to the other party of not less than one month and not exceeding three months; (b) that the worker continues to report for work and honours her/his contractual obligations during the notice period; (c) that the terminating party pay the other party the agreed early termination indemnity, and not exceed the equivalent of three months' salary.

30. Finally, Ministerial Decree No. 766 of 2015 provides that a worker may be granted a new work permit in other specific cases: (1) the current employer fails to meet legal or contractual obligations owed to the worker, including but not limited to failure to pay wages for a period longer than 60 days; (2) a complaint is filed by the worker against a business entity that has not provided for the worker to perform work due to its shutting down; and (3) a labour complaint is referred by the Ministry to the labour court, provided a final ruling in favour of the worker is issued.

(v) Labour inspection, access to justice and enforcement

- **31.** With regard to the law enforcement mechanisms, the Government stresses that since 2009, a Department of Worker Orientation, comprising 27 full-time inspectors, was set up to devise and implement post-arrival and periodical worker orientation programmes, operate a call centre that handles complaints in 11 languages, and produce a know-your-rights publication in a total of seven languages. The inspection division of the Ministry of Labour is comprised of 359 full-time inspectors. Within the inspection division of the Ministry of Labour, inspectors are trained, along with inspectors of two newly created specialized units mandated to combat human trafficking and monitor private recruitment agencies. The Government also refers to Cabinet Decision No. 40 of 2014, which sets monetary fines on employers for a range of acts, including charging a worker for any recruitment fees, the unlawful withholding of any part of the worker's salary, and the failure to pay the worker through the wage protection system (WPS). The WPS was launched in 2009 requiring that workers' salaries be directly deposited in their duly held individual accounts. By the end of June 2015, more than 285,000 companies, representing 85.9 per cent of the Ministry of Labourregistered employers had subscribed to the WPS; they employed 99.7 per cent of all Ministry of Labour-registered workers.
- **32.** The Government further points out that the breach of any provision of the Standard Employment Contract by an employer will entitle the worker to file a complaint with the Ministry of Labour. In case the Ministry, through its arbitration mechanism, is unable to resolve a dispute within two weeks of its reception, then the dispute is referred to a specialized labour court.
- **33.** The Government also provides some statistics indicating that the total number of labour violations referred to the courts was 575 cases in 2012, declining to 471 in 2013 and 234 during the first three quarters of 2014. Of these, the number of cases related to non-payment

of wages amounted to 188, 90 and 75 respectively, while cases involving failure to offer actual employment to workers with contracts or to register the employment contract after deployment in the UAE amount to 44, 194 and 69, respectively, and cases of employers hiring undocumented workers added to 81, 141 and 164, respectively. Employers that were found in breach of workers' rights were fined. For example, between 2011 and 2013, the courts awarded claimants (workers) in the Ministry of Labour-referred cases a total of nearly AED64 million (US\$17.3 million), while in 2014 alone, the Ministry of Labour intervention resulted in the recovery and award to workers of a total of AED11 million in unpaid wages (unlawful withholdings, overtime work). During the period from January 2010 to April 2015, the Ministry of Labour liquidated bank guarantees from employers. These are issued by employers pursuant to section 131 of the Labour Law to secure the payment by them of potential liabilities to workers found to be overdue wages and repatriation costs. Finally, the Government refers to Ministerial Decree No. 797 of 2014, which provides that the granting of work permits to an establishment registered at the Ministry of Labour, whether individual establishments or companies, which fails to execute a final court decision, shall be suspended and the suspension shall not be lifted unless after completion of execution and payment of the amounts decided in the judgment.

Conclusions of the Committee

- 34. The Committee notes that the representation raises two main issues with regard to compliance with Convention No. 29. The first concerns the situation of migrant workers in the country being subject to forced labour, as defined in the Convention. The second concerns the responsibility of the State to fulfil its obligations, pursuant to the Convention, to suppress the use of forced labour in all its forms and to ensure that the exaction of forced labour is punishable as a penal offence. More specifically, the complainant organization refers to a combination of factors in the employment process which may lead to a violation of the Convention. These factors include the lack of an adequate national legal framework resulting in the payment of high recruitment fees, the problem of contract substitution, passport confiscation by employers, the sponsorship system which ties the worker to one employer, as well as the lack of an effective law enforcement system and the difficulty to access justice.
- 35. The Committee observes that the issues raised in the representation relate to the application of Articles 1(1), 2(1) and 25 of the Convention. In order to assess the complainant organization's allegations and the Government's reply, the Committee will examine the national legal framework regulating the working conditions of migrant workers, as well as the manner in which this framework is applied in practice.

A. National legal framework

36. The Committee notes that the complainant organization alleges a lack of an adequate legal framework that prevents migrant workers from falling into situations or practices amounting to forced labour as described above. However, the Government maintains that it has developed a national legal system which provides for the necessary safeguards to protect the rights of migrant workers from the exaction of forced labour, including the Constitution and a number of subsidiary laws which prohibit practices that may lead to forced labour. The Committee will proceed to examine the specific issues raised by the ITUC.

Recruitment fees

37. However, notwithstanding the legislation cited above, the Committee notes that the complainant organization has provided numerous recent examples in which migrant workers

are alleged to have paid exorbitant recruitment fees for employment on construction sites. The Committee expresses the need for tighter control by the Government in this regard.

- 38. The Committee notes that the complainant organization alleges that the payment of recruitment fees by migrant workers induces them into indebtedness, and that in practice, the Government has failed to sanction recruitment agencies which do not respect the law. The Committee observes from the Government's reply that under section 18 of the Labour Law, licensed recruitment agencies are prohibited from soliciting or accepting any recruitment fees from workers. Employers must bear any costs related to the recruitment process (Ministerial Decree No. 52 of 1989). The Committee further notes that Ministerial Decree No. 1283 of 2010 and Cabinet Decision No. 40 of 2014 also strengthen such a prohibition by providing that any recruitment agency that is found in violation of this prohibition may have its licence revoked and will be fined AED5,000 per worker (US\$1,300). While observing that, under the abovementioned legislation, recruitment agencies which violate the prohibition of imposing recruitment fees on workers are subject to monetary fines, the Committee notes that the Government does not provide any information on the penalties applied for violations of these prohibitions.
- 39. The Committee also notes that the Government enacted in 2015 a Standard Employment Contract contained in Minister of Labour Decree No. 764 of 2015, which entered into force on 1st January 2016 and which deals with a similar prohibition regarding registration fees. The Committee further observes that under clause 8 of the Standard Employment Contract, the two parties acknowledge that all expenses related to enabling the second party to work for the first party, including travel to the UAE and broker agency fees, if any, shall be borne by the first party, without any contribution by the second party. The Committee considers that the payment of recruitment fees by migrant workers is a serious and widespread problem and hopes that the abovementioned legislation constitutes an important step towards the protection of workers. The Committee expresses the firm hope that all the necessary measures will be taken for its effective implementation. The Committee further requests the Government to provide detailed information about implementation steps and their impact.

Contract substitution/misrepresentation

40. The Committee observes that according to the complainant organization, migrant workers may be confronted with the situation of contract substitution. The Committee also notes the Government's indication that to eliminate the risk of contract substitution, it has enacted Decree No. 764 of 2015 on Labour-approved Standard Employment Contracts, which entered into force on 1 January 2016. The Committee observes that Decree No. 764 provides for among others, the employer's obligation to use a Standard Employment Contract and ensure its registration with the Ministry of Labour. The Committee takes due note that the Standard Employment Contract clearly mentions the employer's and worker's obligations and rights. For example, the worker is, entitled to have at least one day of rest every week and annual leave; women are also entitled to maternity leave with full remuneration for a period of 45 days. The Committee further notes that according to the Government's statement SEC shall be made available in multiple languages. The Committee notes the examples provided by the complainant organization that demonstrate how workers have suffered contracts substitution, including domestic workers for whom a new standard contract has been in place since June 2014. Such workers report having been promised higher wages prior to departure and were forced to sign the UAE standard contract upon arrival, which stated wages lower than originally promised; it is only this latter contract which is considered by immigration officials. While recognizing that Ministerial Decree No. 764 of 2015 constitutes an important step in eliminating the risk of contract substitution, the Committee requests the Government to report on the effective implementation of its provisions. In particular, the Committee urges the Government to ensure that workers can

access a justice mechanism in the UAE that can resolve complaints as to compliance with the standard contract efficiently and sanction offenders appropriately.

Passport confiscation

41. The Committee notes that according to the allegations of the complainant organization, migrant workers are confronted with the practice of passport confiscation by the employer. The Committee observes the Government's statement that the Ministry of Interior's Circular No. 267 of 2002 clearly prohibits such practices and that there is a possibility to go to the courts with regard to this issue. The Committee also notes that the new standard employment contract contains a provision that states that the worker is entitled to maintain possession of her/his identity document. In this respect, while noting that the Government does not provide information on any specific penalties that have been imposed in this regard, and that the Government has indicated its willingness to take further measures to ensure that passport confiscation does not occur, the Committee recalls that the practice of passport retention is a serious problem that may increase migrant workers' vulnerability to abuse, by leaving workers undocumented, reducing their freedom of movement and preventing them from leaving an employment relationship. Accordingly, the Committee requests the Government to continue strengthening its efforts to ensure that the legislation is regularly monitored, to investigate such abuses, to sanction employers who are in breach of the legislation, and to strengthen the law to provide for criminal sanctions in case of serious or repeated violations. It also requests the Government to provide information on the number of complaints regarding the issue of passport confiscation, on court decisions handed down on the issue of passport confiscation, as well as the number of penalties that have been imposed in practice.

Sponsorship system

- **42.** The Committee notes that the complainant organization describes the difficulty for migrant workers to put an end to their employment relationship, due to a sponsorship system that grants employers wide-reaching control over foreign workers. The Committee notes the Government's indication that it has undertaken a series of legislative measures to allow migrant workers to transfer easily to a new job without the consent of the previous employer. As a first measure, the Committee observes that under Ministerial Decree No. 1186 of 2010 on Rules for Granting a New Work Permit to Worker after the End of an Employment Relation, the employment relation may be terminated on the basis of mutual consent, or when the employee has completed at least two years of continuous service with her/his previous employer (section 2). Moreover, the Committee notes that section 3 of Ministerial Decree No. 1186 of 2010 provides for certain exceptions to the abovementioned conditions, allowing the employee to change his employer without the latter's consent. The exceptions include the following situations: (1) when the employer has violated any of the contractual obligations (as in, but not limited to, the non-payment of wages for a period exceeding 60 days); and (2) where a court rules in favour of the employee in a case referred to it by the Ministry of Labour.
- **43.** In addition, within the framework of introducing more flexibility for transferring sponsorship from one employer to another, the Committee notes with *interest* that the Government has enacted a new set of laws in 2015: (a) Ministerial Decree No. 765 of 2015 on Rules and Conditions for the Termination of Employment Relations, (replacing the abovementioned Ministerial Decree No. 1186 of 2010), (b) Ministerial Decree No. 766 of 2015 on Rules and Conditions for Granting a New Work Permit to a Worker Whose Labour Relations with an Employer has Ended; (c) Minister of Labour Decree No. 764 of 2015 on Ministry of Labour-approved Standard Employment Contracts. The Committee observes that these Decrees entered into force on 1 January 2016.

- **44.** The Committee notes that according to section 1 of Ministerial Decree No. 765 of 2015, an employment contract can be terminated in any of the following circumstances: (1) at the expiration of the term of the limited contract; (2) by mutual consent of the two parties during the course of the contract term; (3) by either party provided the terminating party complies with the following conditions: (a) that the terminating party gives written notice agreed by both parties, but not be less than one month and not to exceed three months; (b) that the worker continues to honour her/his contractual obligations during the notice period; (c) that the terminating party pays the other party the agreed early termination indemnity, not to exceed the equivalent of three months' salary; (4) if the terminating party does not comply with the legal steps described above, he/she bears any legal consequences of early termination; and (5) the employer may terminate the contract of a worker if the latter commits any of the violations that are described in section 120 of the Labour Law.
- **45.** The Committee further notes that under section 2 of Decree No. 765 of 2015, the employment relation is considered to have de facto ended if: (1) the employer has failed to meet the contractual or legal obligations to the worker (as in, but not limited to, the non-payment of wages for a period exceeding 60 days); (2) the employer has failed to secure employment of the worker as a result of the shutting down of the employer's business, and the worker has filed a court complaint; and (3) a labour complaint is referred to the court by the Ministry and a final ruling is obtained in favour of the worker.
- **46.** While observing that a worker can seek and accept employment with a new employer at any time, without respecting the notice period and without the consent of the employer in the abovementioned cases, the Committee notes that under section (1)(4)(c) of Decree No. 765, the terminating party has to pay the other party the agreed early termination indemnity, not to exceed the equivalent of three months' salary. *The Committee invites the Government to provide information on this matter.*
- 47. Although the Government provides statistical information on labour violations cases and the sanctions imposed for such violations, the Committee observes an absence of information in the Government's reply with regard to the actual number of sponsorship transfers that have been approved by the Ministry of Labour. The Committee recognizes that the newly adopted legislation constitutes a positive step towards ensuring a better protection of migrant workers and trusts that it will be effectively applied. Finally, the Committee would encourage the Government to provide information on the number of approvals of sponsorship transfers prior to, and following the entry into force of the recently adopted Ministerial Decrees of 2015 in January 2016.
- 48. The Committee notes that the failure to pay wages due can constitute an element of forced labour. The complainant organization has cited alleged cases concerning the non-payment of wages of workers employed in the construction industry and as domestic workers, some for several months. The Committee urges the Government to ensure that all wages which are due are paid on time and in full, and that the employers face appropriate sanctions for the non-payment of wages, and to provide information on the concrete measures taken in this regard.
- **49.** While noting the allegations of abuse reported by migrant domestic workers in the UAE, including through criminal prosecutions and deportations, the Committee notes that with regard to the situation of migrant domestic workers, the Government does not provide any information, although the complainant organization raised this issue in its supplementary report. The Committee observes that, Decrees Nos 765, 766, 764 make reference to Labour Law No. 8 of 1990 on Labour Relations, section 3(c) of which excludes domestic workers from its scope. The Committee observes that domestic workers therefore do not seem to benefit from the protections contained in the new legislation of 2015. **The Committee considers it essential and urgent that appropriate legislation covering all aspects of the**

work of this category of workers be adopted. Consequently, the Committee urges the Government to provide information on concrete measures taken in this regard.

B. Law enforcement and access to justice

50. The Committee recalls that the effective implementation of the prohibition of forced labour requires that the penalties imposed by law are adequate in line with the violations and strictly enforced. To this end, it is important that the labour inspectorate body adequately fulfil its functions and is capable of identifying and protecting potential victims of forced labour, and that effective penal sanctions are imposed in this regard.

(i) Labour inspection and effective penalties

- 51. The Committee notes the complainant organization's allegations that the legislation has not been applied effectively. The Committee takes due note of the Government's indications that it has strengthened the capacity of the labour inspection division by establishing a Department of Worker Orientation, comprising 27 full-time inspectors, to devise and implement post-arrival and periodical worker programmes, operate a call centre that handles complaints in eleven languages, and produce know-your-rights publications in a total of seven languages. Moreover, the inspection division of the Ministry of Labour is comprised of 359 full-time inspectors. Within the inspection division of the Ministry of Labour, inspectors are trained, along with inspectors of two newly created specialized units mandated to combat human trafficking and monitor private recruitment agencies.
- 52. With regard to sanctions imposed for violation of the legislation, the Committee notes that Government refers to Cabinet Decision No. 40 of 2014 which sets monetary fines on employers for that breach of law, including charging a worker for recruitment fees, the unlawful withholding of salary, the failure to pay the worker through the wage protection system, among others. The Cabinet Decision also sets a monthly fine for failure by an employer to duly register an individual labour contract with the Ministry of Labour within 60 days of the date of the worker's entry into the UAE, in addition to a substantial penalty for failure to facilitate access by the worker to employment within 60 days of entry. The monthly fine also applies to failure to renew a work permit within 60 days of its date of expiration. In this regard, the Committee takes note of the statistical information provided by the Government on the numbers of labour violations referred to the courts in 2012, (575 cases), 2013 (471 cases) and 2014 (234 cases). The Committee observes that these cases related to issues of non-payment of wages, failure to offer workers with contracts or to register the employment contract, as well as cases of employers hiring undocumented workers.
- 53. The Committee further notes the Government's indication that during the labour inspection capacity development programme (2011–13), a series of workshops were jointly organized with the ILO and the United Nations Office on Drugs and Crime (UNODC) targeting labour inspectors from the Ministry of Labour and the Ministry of Interior. Finally, the Committee observes that a Technical Cooperation Agreement was signed between the UAE and the ILO in April 2015 with the aim of improving the capacity of labour inspection. The Committee underlines the important role of labour inspection in enforcing the labour rights of migrant workers and hopes that the Government will continue to take measures to strengthen the capacity of the labour inspectorate. The Committee wishes to encourage the Government to continue to reinforce the monitoring mechanisms of the working conditions of migrant workers, with a view to ensuring that penalties are effectively applied for any violations detected. Finally, the Committee encourages the Government to continue to take measures to raise awareness of migrant workers, including migrant domestic workers, with regard to their rights.

(ii) Access to justice and protection of victims

54. The Committee notes that, in reply to the allegations concerning difficulties to access justice and to seek protection by migrant workers, particularly migrant domestic workers, the Government indicates that the breach of any provision of the Standard Employment Contract by an employer will entitle a migrant worker to lodge a complaint against his employer through the Ministry of Labour. In case the Ministry, through its arbitration mechanism, is unable to resolve the dispute within two weeks of its reception, then the dispute is referred to a specialized labour court. The migrant worker is also exempted from court fees and is granted permission for temporary employment for the duration of the court's proceedings. The Committee further notes the statistics provided by the Government on the violations detected and sanctions imposed for such violations. However, the Committee observes that, although complaint mechanisms have been established for migrant workers, the Government has not provided information on measures taken or envisaged to protect potential victims of forced labour practices. In this regard, the Committee emphasizes that it is essential to provide material and financial support to migrant workers who are victims of abusive situations, so as to prevent them from falling back into vulnerable situations. The Committee would also recall that the situation of vulnerability of migrant workers requires proactive measures to assist them in asserting their rights without fear of retaliation, including by facilitating their empowerment, such as the right to join organizations of their own choosing. While noting that victims of forced labour have access to justice, the Committee considers that any act of retaliation for accessing justice mechanisms must be swiftly sanctioned and workers provided a full and effective remedy. Moreover, the Committee encourages the Government to take effective measures to provide legal and material support to such workers, including the provision of shelters, and medical or psychological care throughout any complaints procedures, and to provide information on the action taken by the Government in this regard.

Regional cooperation

55. The Committee takes note of the initiative taken by the Government of the UAE with regard to the Abu Dhabi Dialogue (ADD) regional consultative process. It commends the Government for working with the ILO Regional Office for the Arab States and enlisting the support of the ADD "troika" (Kuwait, the Philippines and the UAE) for a scheme of regional cooperation on promoting transparent and fair recruitment practices in the Asia-GCC corridor.

The Committee's recommendations

- 56. In light of the conclusions set out in paragraphs 34–55 above concerning the issues raised in the representation, the Committee acknowledges the cooperation of the Government in providing information about recent measures it has taken and recommends that the Governing Body:
 - (a) approve the present report;
 - (b) welcome the recent measures taken by the Government as a significant step towards the protection of migrant workers and encourage the Government to continue to take proactive action in this regard;

- (c) request the Government, in order to ensure that migrant workers enjoy the protection provided for in the Convention, to take into account the action requested in paragraphs 37, 39, 40, 41, 46, 47, 48, 49, 53 and 54;
- (d) invite the Government to communicate information in its report submitted by virtue of article 22 of the ILO Constitution on the measures taken to give effect to the recommendations of this Committee;
- (e) invite the Government to continue to avail itself to any technical assistance of the International Labour Office on this matter;
- (f) make this report publicly available and close the procedure initiated by the representation.

Geneva, 21 March 2016

(Signed) S. Dajani Chairperson

O. Alrayes

B. Pandey

Point for decision: Paragraph 56