

## Committee on the Application of Standards

**Date:** 20 May 2021

*Governments appearing on the preliminary list of individual cases have the opportunity, if they so wish, to supply on a purely voluntary basis, written information before 20 May 2021.*

### ▶ Information on the application of ratified Conventions supplied by governments on the preliminary list of individual cases

#### Netherlands – Sint Maarten

#### Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

**(Ratification: 1951)**

The Government has provided the following written information, as well as copies of the letters dated 21 April and 28 April 2020 addressed to the Social Economic Council.

Dear Ms Vargha,

The Government of Sint Maarten has taken note of the concerns by the ILO that Sint Maarten has not met its yearly reporting obligations and that the yearly reports have not yet been received. I would like to apologize for this severe oversight and herein confirm that the reports have been recently submitted, in accordance with Article 22 of the Constitution of the ILO. The following sections are included in the report: C088 - Employment Service Convention, 1948, C094 - Labour Clauses (Public Contracts) Convention 1949 and (No.94), C122 - Employment Policy Convention, 1964.

The Government of Sint Maarten has also taken note of the observation of the Sint Maarten Hospitality and Trade Association (hereafter: SHTA) received on September 30, 2020, which alleged that the Sint Maarten Chamber of Commerce Industries (hereafter: COCI), a governmental agency, has established the SEA, an umbrella organization to represent employers, including at the Social Economic Council (hereafter SER). "The SHTA alleges that through the COCI and the SEA, the Government is attempting to establish an employer representative organization, that is more in line with the Government's position and does not reflect actual diligent representation and that this appears to be an attempt to marginalize the existing employer representative groups."

As an official response to these very serious allegations, the following:

Sint Maarten acknowledges -its obligations to all treaties it is party too, as a constituent country within the Kingdom, and therefore strives to nurture the realization of international standards and in this case, the right of freedom of association and protection of the right to organize.

As Minister of Public Health, Social Development, and Labor, it is my duty to not only uphold the law, but to ensure that existing laws or practices do not undermine the principles of good governance or the interest of the people of Sint Maarten. As it relates to the statement of the SHTA, and the role of the SER, I have dialogued with the Minister of General Affairs, who is charged with the responsibility of the SER.

The SER is an independent advisory organization of Sint Maarten, obligated by the Constitution of Sint Maarten. Through its constitutional role, the SER contributes specifically to participatory and consensus-oriented governance. Representatives from employees and employers organizations and independent experts discuss/debate proposed draft legislation and conduct social research into the effects of decisions of Government.

Unanimous positive advice or adaptation on draft laws is a strong proponent of civil society, Furthermore, the Council is to provide a forum where representatives from employees and employers discuss issues important to both.

The Minister of General Affairs informed me that the matter of “an unbalanced representation of employers organizations” was broached in November 2019. On April 21, 2020, the SER was informed of the decision to revise the composition of the board of the SER as it relates to the employers’ organizations. (attached letter April 21, 2020)

To ensure that the SER functioned with a balanced representation of the employers’ organizations, the mandate was given to the Sint Maarten Chamber of Commerce Industries (hereafter COCI) as a business register, to execute the establishment of an umbrella employers’ organization.

Based on article 2 Business Ordinance of Sint Maarten, the COCI recognized as the structured body, was mandated to facilitate the organization of an employer organization to create one locally established’ umbrella employer organization from which the various employer organizations will obtain membership.

The COCI in an official response dated April 28, 2020, informed the Prime Minister of their intention to install an Advisory Committee to the Chamber’s Board of Directors to further execute the mandate given to establish the umbrella organization, following their Rules of Order (see correspondence attached). On September 4, 2020, the Advisory Committee finalized the establishment of the requested umbrella organization namely, the Soualiga Employers Association (hereafter: SEA), the Articles of Incorporation and Bylaws were received on September 11, 2020.

Whilst the COCI was executing their mandated instruction, the SHTA established the Sint Maarten Employers Council (hereafter ECSM), as an umbrella Employers’ association incorporated under the laws of Sint Maarten by the !LO recognized independent employers’ associations, the St Maarten Hospitality and Trade Association, the St. Maarten Marine Trades Association, the St Maarten Timeshare Association and the Indian Merchant Association.

Given the crucial role that SER plays within the governmental organization as a whole, it is imperative to note that the complaint lodged against Sint Maarten has the attention of the Government as a whole. Also noteworthy is that both the SEA and the ECSM are currently represented on the SER Board 2020-2023. The intention of Government was clear, namely to resolve the unbalanced representation in the SER, not to establish an employers' organization in line with the Government's vision.

With this letter the Government of Sint Maarten would like to note that the abovementioned is not being taken lightly. The Government of Sint Maarten is striving to create collaboration between all parties involved and have adequate representation of all employers' associations. As a point of departure, the Government has initiated this restructuring as a means of inclusivity, and will continue to reach out to the SHTA in hopes of resolving any disagreements.

Lastly, Sint Maarten hereby confirms its participation in the 109th Session of the ILC. The names of the relevant participants were submitted and written confirmation was received on Monday, May 17, 2021. During the Committee session, Sint Maarten is of course able to further elaborate and clarify any new further or pending questions regarding the content of this letter. If you require any more information or documentation at this moment, please do not hesitate to contact us.

I trust to have informed you sufficiently.

Respectfully yours,

(signed)

Omar Ottley  
Minister of Public Health, Social Development and Labor