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Governing Body

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Report of the Director-General

Fourth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Colombia of Conventions Nos 3, 12, 17, 18, 24, 25 and 144

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▶ I. Introduction

1. By a communication received by the International Labour Office on 13 April 2021, the General Confederation of Labour (CGT), the Confederation of Workers of Colombia (CTC) and the Single Confederation of Trade Unions (CUT) made a representation under article 24 of the ILO Constitution alleging non-observance by the Government of Colombia of the Maternity Protection Convention, 1919 (No. 3), the Workmen's Compensation (Agriculture) Convention, 1921 (No. 12), the Workmen's Compensation (Accidents) Convention, 1925 (No. 17), the Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18), the Sickness Insurance (Industry) Convention, 1927 (No. 24), and the Sickness Insurance (Agriculture) Convention, 1927 (No. 25), all of which were ratified by Colombia on 20 June 1933, and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which was ratified by Colombia on 9 November 1999. The said Conventions remain in force in the country.

2. The following provisions of the ILO Constitution relate to the representation procedure:

Article 24
Representations of non-observance of Conventions

> 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
Publication of representation

> 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, the Director-General acknowledged receipt of the representation, informed the Government of Colombia and brought the representation before the Officers of the Governing Body.

4. At its 342nd Session (June 2021), the Governing Body decided that the representation was receivable and set up a tripartite committee to examine it. The tripartite committee is composed of Mr Maximiliano Gilabert (Government member, Chile), Mr Guido Ricci (Employer member, Guatemala) and Mr Antonio Lisboa (Worker member, Brazil).

5. The Government of Colombia sent its observations on the representation in three communications, which were received by the Office on 10 June 2021, 16 September 2021 and 18 April 2022.

6. On 31 May 2023, the Government expressed its willingness to engage in a voluntary conciliation process. By a communication dated 10 October 2023, the complainant organizations indicated their agreement to initiating this process with a view to reaching a prompt and effective solution. As part of the voluntary conciliation process, the parties met on

20 October and 20 November 2023, with the participation and assistance of ILO officials. On 20 November 2023, the parties signed an agreement.

7. The Committee met on 29 April and 6 May 2024 to examine the representation and adopt the report.

▶ II. Examination of the representation

A. The complainants' allegations

8. The complainants allege that the National Development Plan 2018–2022, issued through Act No. 1955 of 25 May 2019, [1] reformed aspects of provisions concerning social security, pensions and work by implementing employment arrangements that impact negatively on income and impede access to the social protection system, while openly contravening international labour standards ratified by Colombia in relation to social security and decent work. More specifically, they indicate that article 193 of Act No. 1955, regulated by Decree No. 1174 of 27 August 2020, [2] establishes the Social Protection Floor for persons earning less than the statutory minimum monthly wage (hereafter "minimum wage").

9. With respect to the Social Protection Floor, the complainants consider that:

(a) it allows and encourages the hiring of workers at wages below the statutory minimum monthly wage, creating precarious forms of hiring based on a misrepresentation of the social protection floor contemplated in ILO Social Protection Floors Recommendation, 2012 (No. 202);

(b) it aims to move away from a contributory healthcare scheme to a system subsidized by the working class, in which medical unfitness (sickness benefits) and maternity and paternity leave, among others, are no longer granted and in which economically active people are adversely affected by being transferred into schemes created for vulnerable individuals without any kind of income;

(c) it aims to shift from an expectation of acquiring an entitlement to an old-age, invalidity or survivor's pension through monthly contributions, and instead to obtaining, as part of a pension savings system through the Periodic Cash Benefits, a precarious amount every two months that in no circumstances would match or even come close to the minimum wage;

(d) it changes the comprehensive coverage of occupational risks, becoming instead "inclusive insurance", which is not the same as a social protection system with coverage of occupational contingencies and granting of employment injury benefits;

(e) it fails to comply with Article 3(c) of Convention No. 3 concerning the obligation to pay maternity benefits to all women workers, as it does not contemplate the payment of cash benefits in connection with maternity and instead makes women workers earning less than the minimum wage subject to the healthcare system in the subsidized scheme, which also does not provide for such benefits.

[1] https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=93970.

[2] https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=140490.

10. With respect specifically to protection in the event of occupational accidents or diseases, the complainants indicate that prior to the entry into force of the Social Protection Floor, workers had the option of joining the General Social Security System (contributory healthcare scheme, pension scheme, occupational risk scheme) regardless of earnings, even if they were below the statutory minimum wage. Each working individual was thus protected, according to his or her wage, against occupational risks, for example: (i) coverage of temporary incapacity paid at 100 per cent of the daily wage; (ii) compensation for permanent partial disability; (iii) invalidity pension; (iv) survivor's pension; (v) coverage of certain readjustment, rehabilitation and recovery expenses; and (vi) promotion of care and risk prevention. According to the complainants, those earning less than the minimum wage lost all of these entitlements as of 1 February 2021 when they joined the Inclusive Insurance Scheme introduced by the Social Protection Floor, which does not cover these benefits.

11. In the complainants' view, the foregoing constitutes a step backwards for labour rights that violates Article 3(c) of Convention No. 3; Article 1 of Convention No. 12; Articles 5, 7 and 10 of Convention No. 17; Article 1 of Convention No. 18; Articles 1 and 2 of Convention No. 24; and Articles 1 and 2 of Convention No. 25.

12. Lastly, the complainants allege that Decree No. 1174/2020 was issued without their having been invited to participate in the necessary social dialogue and effective consultation processes. They therefore state that the legislative process circumventing social dialogue is clearly inadmissible, and contravenes the provisions of Convention No. 144.

B. The Government's reply

13. In its reply dated 10 June 2021, the Government states generally that:

(a) in Colombia, 60 per cent of people are engaged in informal work, and 45 per cent earn less than the minimum wage and do not have any form of social protection, as their low income does not allow for contributions to the Social Security System;

(b) as a first step towards formalization, the Social Protection Floor provided for in the National Development Plan 2018–2022 consists of subsidized healthcare coverage, a complementary social services programme of Periodic Cash Benefits, and access to inclusive insurance for occupational risks for persons earning less than the minimum wage;

(c) the Social Protection Floor does not modify the current forms of hiring or the guarantees established by the Substantive Labour Code or by the existing Social Security System, nor does it contravene international social security standards;

(d) the mechanism expands social protection coverage through basic minimum entitlements for those who have no alternatives within the Social Security System because they earn less than the minimum wage.

14. In response to the specific allegations of the complainants, the Government states that:

(a) the Social Protection Floor does not create a new type of contract nor does it encourage hiring at below the minimum wage as there are no economic incentives to do so, because the employer must pay 15 per cent of the wage amount, which in practical terms is equivalent to the employer's obligation when hiring at above the minimum wage;

(b) the Social Protection Floor does not involve moving from a contributory healthcare system to a subsidized system, given that the potential beneficiaries of the Social Protection Floor have never had access to the contributory healthcare system, as their low income meant that they could not contribute to the General Social Security System;

(c) the Social Protection Floor does not adversely affect economically active people by transferring them into schemes created for vulnerable population groups without any form of income, as it is based on a subsidized healthcare scheme that has been in force since 1994, it is the universal scheme of the country and it affects 56 per cent of the population, which demonstrates that it is not necessarily intended for people without income but also includes low-income working people. Anyone earning less than the minimum wage must by law join the subsidized scheme – which is not stipulated by the Social Protection Floor, which merely establishes additional protection for those who are in the scheme;

(d) the Social Protection Floor does not involve moving to a pension savings system through Periodic Cash Benefits, as it is a mechanism targeted at those who have historically had no social protection – people who have no expectations of a pension under the current legal system. Periodic Cash Benefits are a constitutional measure, [3] characterized by the Constitutional Court as a special type of semi-contributory pension, [4] aimed at supporting people who for various social and economic reasons do not participate in the contributory system. Ultimately, a worker does not necessarily have to remain in the Social Protection Floor, which will depend on the type of contract that he or she is under throughout his or her working life; it is possible for periods of contributing to both the General Pension System and Periodic Cash Benefits to be added together for the purposes of obtaining an old-age pension;

(e) the Social Protection Floor also does not entail a change in the comprehensive coverage against occupational risks, as it covers people who previously had no such coverage and who now are affiliated to an Inclusive Insurance Scheme, with greater coverage than the current microinsurance schemes for Periodic Cash Benefits. Furthermore, the premiums of the Inclusive Insurance Scheme are financed by a 15 per cent share paid by the employer or independent worker, and coverage of the following is provided to protect against occupational risks: (i) death from any cause; (ii) funeral expenses; (iii) serious illness (total of 50 per cent of the sum insured for death); (iv) dismemberment (loss of organs and/or limbs); and (v) compensation for incapacity to work.

15. In relation to the allegation that the Social Protection Floor implies a misinterpretation of ILO Recommendation No. 202, the Government indicates that the Social Protection Floor: (i) provides minimum guarantees for men and women workers; (ii) ensures a higher level of social security, respecting the principle of progressive realization as it pursues greater coverage; and (iii) is consistent with the provisions of the Constitution of Colombia and relevant international Conventions and Recommendations.

16. The Government emphasizes that the Social Protection Floor cannot be compared with the general social security system, as the General Pension System is based on mandatory contributions by both the employer and the worker (a contributory and remunerative system).

[3] See article 48 of the Constitution of Colombia, as amended by Act No. 01 of 2005: “For the payment of pensions, only those factors for which each person has made contributions shall be taken into account. No pension shall be below the current statutory monthly minimum wage. Nevertheless, the law may determine cases in which periodic cash benefits below the minimum wage may be granted to persons of limited means who do not meet the eligibility requirements for entitlement to a pension.”

[4] See paragraph 64 of Judgment C-110 of 2019 of the Constitutional Court of Colombia.

The Social Protection Floor, however, does not have a worker contribution component; the employer finances the full amount of contributions, which must be paid into the individual account of the Periodic Cash Benefits and the Inclusive Social Security Scheme, and not the General Social Security System.

17. With respect to the alleged deficits in participation and consultation concerning the issuance of Decree No. 1174/2020, the Government notes that, as a development of an Act of the National Development Plan, Decree No. 1174 was published twice for observations from all civil society and the input received was considered, including that of the trade union organizations.

18. As to the allegations concerning maternity leave, the Government indicates that Colombia's acquired obligation under Convention No. 3 has already been regulated domestically through the contributory healthcare system, which provides maternity pay to affiliated women workers in lieu of remuneration. [5] It also indicates that women workers earning less than the minimum wage do not contribute financially to this mechanism as they are linked to the Subsidized Healthcare Scheme, which is responsible for providing the necessary and in-kind benefits, and that they are also covered by the food subsidy pursuant to article 166 of Act No. 100 of 1993. However, the Government also indicates that it is seeking alternative regulatory means to ensure that the Social Protection Floor covers maternity leave benefits.

19. In its communication of 16 September 2021, the Government provides information on two cases heard by the Constitutional Court of Colombia on public challenges to the constitutionality of the Social Protection Floor:

(a) In Judgment C-276-21, the Constitutional Court reviewed the form of adoption of the mechanism and found it to be unenforceable (unconstitutional) as it violated the principle of unity of subject matter, having been developed within the National Development Plan 2018–2022 Act instead of in a stand-alone ordinary law. However, the Constitutional Court postponed the effect of the judgment until 20 June 2023 and urged the Government to submit a draft ordinary law to adopt the mechanism within that period.

(b) In Judgment C-277-21, the Court reviewed the substance of the mechanism and declared article 193 of the National Development Plan to be partially enforceable, emphasizing that the Social Protection Floor is not a discriminatory instrument but, on the contrary, is a progressive mechanism that benefits a group of individuals transitioning from the informal to the formal economy, and that, because of the special circumstances of their connection based on part-time work and remuneration below the minimum wage, they are beneficiaries of distinct measures that ensure minimum standards of social welfare and are constitutionally justified.

20. By a communication dated 18 April 2022, the Government reiterates the content of the aforementioned judgments of the Constitutional Court, indicating that the Social Protection Floor remains in force and that all that was required was for it to undergo the ordinary legislative procedure called for in Case No. C-276-21. It adds that the Social Protection Floor is fully in line with the content of the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).

21. In the same communication, it indicates that, as part of the negotiation of the statutory monthly minimum wage for 2022, the National Government, employers' organizations and trade unions signed an agreement to "establish a tripartite subcommittee to develop a

[5] By means of articles 157 and 207 of Act No. 100 of 1993.

methodology to implement ILO standards, in particular Recommendation No. 202 of 2012 in line with the jurisprudence of the higher courts, in relation to the Social Protection Floor (Decree No. 1174/2020)". The Government appended a copy of the minutes of the meetings of the Tripartite Subcommittee on the Social Protection Floor, which is part of the Standing Committee on Wage and Labour Policies, which were held on 4, 11, 18 and 25 February 2022.

22. Lastly, the Government provides information on two meetings held as part of the voluntary conciliation process. At the first, on 20 October 2023, ILO officials participated and provided assistance, explaining the overall process and nature of voluntary conciliation in the context of representations under articles 24 and 25 of the ILO Constitution. The same participants attended the second meeting, on 20 November 2023, which culminated in the signing of an agreement between the parties.

23. By a communication dated 14 December 2023, the Government sent a signed copy of the minutes of the last meeting, in which the parties agreed that:

(a) the Government would publish a decree explicitly repealing Decree No. 1174 of 2020, on the joint understanding that it is not in force pursuant to Judgment C-276-21 of the Constitutional Court, and that the decree explicitly repealing the earlier decree must make reference to the agreement reached, the aforementioned judgment and ILO Conventions Nos 3, 12, 17, 24, 25 and 144;

(b) the Government would promote and support normative initiatives to enable those who work part-time or on a lower income for another (natural or legal) person to be affiliated on a mandatory basis to the comprehensive social security system as dependent workers;

(c) the Government would promote initiatives to guarantee decent work and social justice through a redesign of the social protection system to ensure universal social protection against risks related to health, unemployment and old age;

(d) the Government would adopt measures, with ILO assistance, to ensure that informal workers are entitled to social security, including sick pay resulting from an occupational or other accident or disease, and maternity or paternity pay;

(e) both parties would adopt a road map envisaging outreach measures and awareness-raising campaigns to make progress in social protection for workers;

(f) both parties would meet at least once every two months throughout 2024 to follow up on the agreement.

24. The parties agreed that the representation that was the subject of the conciliation process could be closed once the repealing decree referred to in the first point above had been published, and accordingly undertook to implement the terms of the agreement in good faith.

▶ III. The Committee's conclusions

25. The conclusions are based on the Committee's examination of the complainants' allegations, the replies sent by the Government of Colombia and the information provided by the parties during the voluntary conciliation process.

Conventions Nos 3, 12, 17, 18, 24 and 25

26. The Committee observes that the complainants allege that the Social Protection Floor, established by Act No. 1955/2019 and developed by Decree No. 1174/2020, which is aimed at working individuals earning less than the minimum wage, violates the obligations assumed by Colombia as a result of its ratification of Convention No. 3, Convention No. 12, Convention No. 17, Convention No. 18, Convention No. 24, and Convention No. 25.

27. The Committee notes that the complainants allege that:

(a) the Inclusive Insurance covering occupational risks that is part of the Social Protection Floor does not provide the same type of health insurance or the same compensation for occupational accidents and diseases, in terms of coverage and level of benefits, as those provided by the General Social Security and Occupational Risks System, in violation of the aforementioned Conventions;

(b) the Social Protection Floor does not envisage maternity pay for working women earning less than the minimum wage because they are unable to pay into the Contributory Healthcare Scheme and instead fall under the Subsidized Healthcare Scheme, which does not provide for the payment of cash benefits, in violation of Article 3(c) of Convention No. 3.

28. The Committee observes that the Government indicates that the Social Protection Floor is aimed at working individuals who earn less than the minimum wage and who therefore cannot contribute to the General Social Security System, which is why they are not covered by contributory benefits.

29. In relation to coverage for occupational risks, the Committee notes that, according to the Government, the Subsidized Healthcare Scheme is non-contributory whereas for the Inclusive Insurance the employer is responsible for paying the entire contribution to the Occupational Risk Fund. That Fund pays the Inclusive Insurance premium, which provides benefits relating to the following occupational risks: (i) death; (ii) funeral expenses; (iii) serious illness; (iv) dismemberment; and (v) compensation for unfitness to work.

30. Concerning maternity benefits, the Committee notes that according to the information provided by the Government, the obligation acquired by Colombia under Convention No. 3 is fulfilled by the contributory healthcare system, which pays monetary benefits to workers affiliated to the system, in lieu of remuneration. The Government adds that workers earning less than the minimum wage and not contributing financially to this scheme are linked to the Subsidized Healthcare Scheme, which is responsible for providing the necessary welfare coverage, including the in-kind food subsidy pursuant to article 166 of Act No. 100/1993. The Committee notes that the Government is seeking alternatives to provide cash benefits for maternity to the aforementioned workers as part of the Social Protection Floor.

31. The Committee notes that the Constitutional Court of Colombia ruled on two cases challenging the constitutionality of the Social Protection Floor that are particularly relevant to the examination of this representation (Judgments C-276-21 and C-277-21).

32. The Committee observes that, as to the substance, Judgment C-277-21 declared that the Social Protection Floor is not a discriminatory instrument, but is a progressive mechanism that benefits a group of vulnerable persons. As to the form, Judgment C-276-21 declared article 193 of Act No. 1955 of 2019 to be unconstitutional on the grounds that it violated the principle of unity of subject matter. The effect of that judgment was postponed until 20 June 2023, and the

Court ruled that the Government must submit a draft ordinary law to adopt the Social Protection Floor within that period.

33. Lastly, the Committee notes with interest that the parties conducted a voluntary conciliation process on the allegations that are the subject of the present representation, with technical assistance from the ILO, and that the process culminated in the signing of an agreement. ***Observing that the agreement reflects a series of obligations concerning the future redesign of the social protection system by means of any government initiatives, normative changes or measures that are the subject of tripartite consultations, the Committee duly notes the information and trusts that the parties will expressly comply with the terms of the agreement.***

34. In general terms and in conclusion, the Committee further notes that, pursuant to Judgment C-276-21 of the Constitutional Court, article 193 of Act No. 1955 of 2019 establishing the Social Protection Floor has not been in force since 21 June 2023, nor by extension has Decree No. 1174 of 2020 that developed it, as acknowledged by both parties in the agreement they reached. ***As its main objective has become moot, the Committee therefore considers that the present representation should be closed.***

Convention No. 144

35. Concerning the allegations that the complainants were not invited to participate in the dialogue forums that were necessary for the issuance of the Social Protection Floor, the Committee notes that the Government indicated that:

(a) Act No. 1955 of 2019 was widely debated in Congress, where the various sectors, including trade unions, are represented;

(b) Decree No. 1174 of 2020 was published for observations from all civil society on two occasions and the input received, including from the trade union organizations, was taken into consideration;

(c) in the context of the negotiation of the minimum wage for 2022, the National Government, employers' organizations and trade union organizations reached an agreement to establish a tripartite subcommittee of the Standing Committee on Wage and Labour Policies to develop a methodology for implementing international labour standards, particularly Recommendation No. 202. The subcommittee comprises three employers' representatives, three government representatives, three workers' representatives and two representatives of retirees, and the complainant organizations participate. The Committee observes that the minutes of the meetings reflect a tripartite agreement to request technical support from the ILO and that the ILO was invited to the meetings.

36. The Committee observes that the complainants were able to share their opinions at various levels, both in the debates on the adoption of article 193 of Act No. 1955/2019 in Congress and in public consultations on the content of Decree No. 1174/2020, as well as in the meetings of the tripartite subcommittee of the Standing Committee on Wage and Labour Policies.

37. Lastly, the Committee recalls that under Article 5 of Convention No. 144, effective consultations must be guaranteed on: (i) government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference; (ii) the proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations; (iii) the re-examination at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate; (iv) questions arising out of reports to be made under article 22 of the ILO Constitution; (v) proposals for the denunciation of ratified Conventions. Under these circumstances, ***the Committee will not pursue its examination of the present allegations***.

IV. The Committee's recommendations

38. **In light of the conclusions set out in paragraphs 25 to 37 of the document in relation to the issues raised in the representation, the Committee recommends that the Governing Body:**

(a) approve the present report and in particular the conclusions in paragraphs 33, 34 and 37;

(b) request the Government to provide the Committee of Experts on the Application of Conventions and Recommendations with information on the subjects raised in the report and the Committee's conclusions;

(c) publish the present report and close the procedure initiated by the representation.

Geneva, 6 May 2024

(Signed) Mr Maximiliano Gilabert
(Government member)

Mr Guido Ricci
(Employer member)

Mr Antonio Lisboa
(Worker member)