

Committee on the Application of Standards**Commission de l'application des normes****Comisión de Aplicación de Normas**

CAN/PV

General discussion closure

04.06.24

112th Session, Geneva, 2024

112^e session, Genève, 2024112.^a reunión, Ginebra, 2024

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Fourth sitting, 4 June 2024, 5.15 p.m. (cont.)**Quatrième séance, 4 juin 2024, 17 h 15 (suite)****Cuarta sesión, 4 de junio de 2024, 17.15 horas (cont.)**

Chairperson: Mr Różycki

Président: M. Różycki

Presidente: Sr. Różycki

Discussion générale – Clôture**General discussion – Closure****Discusión general - Clausura**

Chairperson – May I kindly ask you to take your seats. Thank you for your patience. We now move on to the last item of our agenda of the day, with the replies by Judge Thomas-Felix on behalf of the Chair of the Committee of Experts, the Representative of the Secretary-General, and the final remarks by the Vice-Chairpersons of the Committee on the general discussion. I would like to invite Judge Thomas-Felix to take the floor.

Member of the Committee of Experts (Judge THOMAS-FELIX, on behalf of the Chairperson of the Committee of Experts) – Distinguished Chairperson and Vice-Chairpersons, delegates of the 112th Conference. First of all, I would like to again thank you for the invitation extended to the Committee of Experts to enable its Chairperson, or someone in that capacity, to attend this meeting. I am honoured to represent the Committee of Experts on this occasion, and I assure you that I will report to my peers on the discussions and views expressed in this forum. The annual visit of the Workers' and Employers' Chairpersons to the Committee of Experts' meeting, and your invitation to participate in the works of this Committee, undoubtedly strengthens the links and underlines the complementarity of the two Committees in their supervisory work. The exchange on normative issues, that we had in 2023 with governments, were also very informative and I have heard the interest expressed by some governments to repeat this meeting.

I have taken note of the comments expressed during the discussions and in particular those relating to:

1. the criteria and characteristics for distinguishing between observations and direct requests;
2. the possibility of providing more detailed information on the footnotes inviting governments to communicate information to the Conference;
3. the opportunity to take into account the needs of the constituents in the supervisory work.

I have also taken notes of the comments on issues related to the right to strike and the [Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#).

I am pleased to recall that you will find in paragraph 101 of the General Report the Committee of Experts' explanation on the differences between observations and direct requests. I have taken note of your concerns in this regard, which I will pass to my colleagues.

I also recall that the criteria established by the Committee of Experts for the inclusion of footnotes can be found in paragraphs 108 and 109 of the General Report. In 2023, the Committee of Experts detailed the specific reasons justifying the insertion of a double footnote in the selected cases.

I especially note and welcome the statements that recalled and emphasized the importance of democracy for freedom of association. The Committee of Experts shares the concerns raised about the regrettable increase of authoritarian regimes and the impact this has had on the autonomy and independence of employers' and workers' organisations. Several comments in the Committee of Experts' report pick up on this theme and urge governments to cease criminalising the activities of these organizations, interfering and obstructing their functioning or impeding their rights to formulate their programmes of action. The Committee of Experts' report continues to raise the alarm bells on all such threats in this regard when they concern employers' organizations and workers' organizations, in the full exercise of its mandate. We have, on innumerable occasions in our nearly 100 years of existence as a Committee, stressed that freedom of association lies at the heart of democracy and that adherence to the rule of law is a prerequisite for social dialogue, collective bargaining and tripartite cooperation, which ultimately lends to social justice.

A few speakers referred to the Committee of Experts' increasing collaboration with the United Nations (UN) and made comments that I will share with my peers. The Committee of Experts' exchange with the Chairs of the eight UN Human Rights Treaty Bodies and the two special rapporteurs is based on mutual respect for our respective mandates and a common resolve to join forces to encourage respect for human rights, including international labour standards, at a moment when the world is moving seriously offtrack in the implementation of the Sustainable Development Goals (SDGs), including SDG 8, as noted by the speakers this morning.

With regard to taking into account the needs of constituents, I am pleased to recall that the Committee of Experts has consistently indicated, in its Report, the independence of employers and workers organizations providing comments related to the application of ratified Conventions or linked to the elaboration of the General Surveys. Such observations provide the Committee of Experts with up-to-date information from social partners and are essential to enable it to assess the application of Conventions in national law and practice. I encourage the social partners to continue and even reinforce this most useful practice for the supervisory system. More specifically with regard to sustainable enterprises, it is important to recall that in paragraph 54 of its report, the Committee of Experts indicated that the mandate given to it, notably to undertake an impartial and technical analysis of how ratified Conventions are applied in law and practice by Member States, is an important contribution to the enabling environment in which sustainable development and sustainable enterprises can flourish and the responsible business practices sustainable enterprises are adopting.

I have taken note of what has been said regarding the modernization of the reporting system and we will follow closely any developments in this area. It is important for governments to be able to send the most accurate information possible and any methods which help in this respect is to be welcomed and will be welcomed.

With respect to the General Survey, I would like to express my sincere gratitude for the rich exchange of opinions here today which has allowed me to hear first-hand your comments on this General Survey prepared by the Committee of Experts. This discussion shows the importance of effective and coordinated labour administration systems to respond to the challenges in the world of work and hence underscores the relevance of the instruments examined. Distinguished delegates, you can rest assured that I will share your views on this Survey with the other members of the Committee of Experts. The subcommittee on working methods meets annually during our session and will certainly address all the issues which have

been carefully highlighted. The forthcoming visit of the Vice-Chairpersons to the Committee and the exchange with the governments will allow us to have a fruitful dialogue in this regard. Once again, I thank you for the invitation and I am confident that the dialogue of the two committees will continue in the future.

Chairperson – Thank you very much Judge Thomas-Felix for all these elements. And I would like to sincerely thank you for taking part in the work of our Committee, and for your contribution. And now I would like to invite the representative of the Secretary-General, Ms Corinne Vargha to take the floor.

Représentante du Secrétaire général – Dans la réponse que je ferai, je ne souhaite revenir que sur deux questions qui ont été abordées lors des débats et qui concernent plus particulièrement le Bureau.

D'une part, l'assistance technique que met à votre disposition le Bureau, et ensuite la modernisation des méthodes actuelles de présentation et de soumission des rapports au titre de l'article 22.

S'agissant de l'assistance technique fournie par le Bureau, je voudrais tout d'abord vous remercier infiniment pour la confiance et les marques de confiance que vous avez répétées tout au long de vos discussions, et vos marques d'appréciation de l'assistance technique qui est mise en œuvre et fournie par le Bureau en matière normative. Nous sommes très attachés à assurer que nos services répondent aux besoins que vous avez, soit au moment où vous considérez les ratifications, soit lorsque vous êtes confrontés à des difficultés de mise en œuvre. Nous sommes très attachés à assurer que nos services répondent à vos besoins dans les meilleurs temps possibles. Et je souhaite en profiter pour assurer pleinement le groupe des employeurs sur le fait que l'accompagnement que nous apportons aux gouvernements lorsqu'ils considèrent les ratifications prend pleinement en compte l'ensemble des orientations

fournies précédemment par les organes de contrôle sur la convention en question. Et les études d'ensemble, celles dont vous avez discuté aujourd'hui, sont une des sources d'information et d'orientation majeures que nous utilisons quand nous accompagnons les pays dans la considération de la ratification d'un instrument donné.

Alors le fait qu'il puisse y avoir des difficultés qui surviennent suite à la ratification d'une convention ne doit pas être compris comme pouvant relever ou être dû à un manque de sérieux dans l'analyse préalable des conditions de ratification. Et si vous me permettez une petite analogie, je voudrais utiliser l'analogie des bilans d'examen de santé. Vous faites un bilan d'examen de santé un jour et vous êtes en parfaite santé, malheureusement, cela ne vous prémunit pas d'éventuellement tomber malade demain ou après-demain. Cela ne veut pas dire que le bilan d'examen de santé était mauvais, mais simplement voilà, il y a des aléas dans la vie qui font que vous êtes un jour en bonne santé et le lendemain moins. Et puis je pense que vous l'avez indiqué dans vos propos vous-même, que le monde du travail est en constante transformation et que, effectivement, du coup cela change le contexte dans lequel les conventions sont mises en œuvre et viennent poser de nouveaux défis aux gouvernements dans leur mise en œuvre. Nous avons, juste pour votre information globale, un certain nombre de réunions planifiées en parallèle des sessions plénières au cours desquelles nous discutons de façon très précise des nouveaux défis auxquels sont confrontés les gouvernements dans la mise en œuvre des conventions, et ce sont des moments très précieux d'échange. Et, effectivement, ces défis existent.

Ensuite, je voudrais revenir sur la demande formulée par le groupe des travailleurs sur l'utilité des informations que nous fournissons quant au suivi que nous apportons aux conclusions que vous adoptez chaque année, en particulier lorsque la Commission appelle les gouvernements à bénéficier de l'assistance technique du Bureau, et nous avons pris bonne note que vous souhaitiez que l'on réfléchisse sur une façon nouvelle, ou en tout cas différente,

de mettre à disposition cette information. Je pense que nous sommes tout à fait ouverts à engager cette réflexion ensemble et à vous fournir cette information de façon à ce qu'elle vous serve le plus utilement possible.

Et enfin, juste s'agissant maintenant de la modernisation des obligations de faire rapport, je vous rappelle ce que je vous indiquais dans mon propos liminaire, que nous souhaitons développer les propositions en pleine consultation avec chacun des trois groupes et que nous vous avons envoyé une invitation pour des consultations le 24 juin. Alors j'invite en particulier les gouvernements parce que l'on va organiser ces consultations de façon hybride afin de permettre à l'ensemble des fonctionnaires qui, dans les capitales, remplissent ces rapports, de pouvoir participer aux débats et partager avec nous les contraintes, les perspectives ou vos attentes par rapport à cette modernisation de la façon de faire rapport.

Donc voilà, Monsieur le Président, les quelques remarques que je souhaitais apporter à l'issue de votre débat.

Chairperson –I would like to invite Mr Marc Leemans, the Worker Vice-Chairperson to make his concluding remarks on the general discussion.

Membres travailleurs – Je tiens notamment à remercier Madame la juge Thomas-Felix pour son intervention et je remercie également la représentante du Secrétaire général pour les explications qu'elle a apportées au nom du Bureau, mais je souhaiterais quand même revenir sur quelques éléments évoqués ce matin.

Concernant la distinction entre demandes directes et observations de la commission d'experts, nous n'allons pas répéter en détail ce que nous disons depuis plusieurs années.

À l'instar des critères de sélection des cas individuels traités par notre commission, la distinction entre demandes directes et observations n'est pas une science exacte, ce n'est pas de la mathématique.

Les explications que la commission d'experts a déjà données à ce sujet, comme Madame la juge vient de le rappeler – cela se trouve dans le rapport –, ces explications sont suffisantes et il convient de respecter leur autonomie quant au choix du moyen le plus approprié pour dialoguer avec les gouvernements. Ce choix appartient à la commission d'experts.

Au demeurant, je note que les principaux destinataires des observations et demandes directes, notamment les gouvernements, n'ont jamais exprimé la moindre préoccupation à ce propos.

Ceci démontre clairement que ces gouvernements ne s'inscrivent pas dans un débat théorique, mais sont davantage axés sur la manière la plus optimale pour remplir leurs obligations, ce qui témoigne de leur bonne volonté.

Nous avons également noté les remarques sur le fait que l'ampleur du rapport de la commission d'experts témoignerait d'une forme de ratification hasardeuse ou hâtive de la part des gouvernements.

Mais ce raisonnement, selon nous, repose sur une prémisse discutable – fortement discutable.

L'expérience nous indique plutôt que la conformité aux normes dépend davantage des priorités politiques des gouvernements en place à un moment. Le bulletin médical peut être très bien, et, le lendemain, il y a quelque chose qui change.

Comme le dit la fameuse expression: «Rien n'est éternel, pas même les diamants».

Il suffit de voir la liste des cas que nous examinerons cette année pour voir que le respect des normes dépend en grande partie des choix politiques posés par les gouvernements responsables à ce moment-là.

Il y a toujours des améliorations potentielles et les organes de contrôle sont là pour accompagner les gouvernements dans cet exercice. Cet accompagnement peut prendre la forme d'une assistance technique qui permet de valoriser l'expertise du Bureau ainsi que de répondre aux besoins spécifiques des pays concernés, puisqu'il y a différentes situations distinctes.

Cette assistance bénéficie parfois également aux partenaires sociaux sur place et permet d'accroître leurs capacités – employeurs et travailleurs – et elle ne reflète pas une mauvaise préparation de la ratification, mais davantage les évolutions que connaissent les différents pays.

Nous devons éviter de poser des diagnostics à des maux qui n'existent pas. Cela nous évitera de prescrire des remèdes qui aggraveraient les vrais problèmes.

Je vais à présent brièvement revenir sur le lien entre contrôle des normes et chaînes d'approvisionnement.

Nous ne contestons pas que la mise en œuvre des normes doit s'observer par rapport au territoire du pays qui a ratifié la convention, mais néanmoins, cela doit être tempéré en rappelant qu'à plusieurs reprises des juridictions nationales ont reconnu la responsabilité des entreprises en dehors de leur territoire national s'agissant du respect des droits humains.

On ne peut pas non plus ignorer les débats et initiatives quant au devoir de vigilance des entreprises.

Il serait assez étrange que l'OIT reste en retrait de ces évolutions alors que son système de contrôle l'habilite à jouer un rôle de premier plan.

Nous avons longuement développé ce matin concernant la notion d'entreprise durable. Lorsque la commission d'experts dit que certaines réformes peuvent impacter négativement

les droits des travailleurs, ils ne font que décrire la triste réalité rencontrée dans plusieurs pays. On constate toujours qu'au nom du développement de l'activité économique, des politiques de dérégulation irrespectueuses des normes internationales du travail sont menées.

Personne ici ne discute du rôle que peuvent jouer les entreprises dans la promotion du travail décent mais l'importance de ce rôle ne peut pas conduire à placer sur un pied d'égalité un moyen et une finalité.

Nous rappellerons autant que nécessaire que les droits des travailleurs sont des droits humains et restent l'objectif ultime de notre Organisation.

Pour clore mon propos, j'émets le souhait que ces divergences au sein de la commission seront dépassées à l'avenir et qu'elle pourra réfléchir sereinement avec la commission d'experts sur la manière d'optimiser l'impact du système de contrôle sur le terrain.

Il serait peut-être utile que nous listions une série de thématiques qui font consensus et qui orienteront les futurs échanges entre nos commissions.

Chairperson – Last but not least I would kindly invite Mr Kaizer Moyane, the Employer Vice-Chairperson, to make his final remarks on the general discussion.

Employer members – Let me start off by thanking the Governments and the Worker members for the very rich and sometimes interesting contributions to the general discussion, and to the discussion of the General Survey on labour administration.

The Employer members also appreciate the participation of Ms Thomas-Felix as a representative of the Committee of Experts. We strongly believe that ongoing dialogue between the Committee of Experts and the Committee is important, for the ILO constituents to better understand standards-related requirements, but above all to facilitate the Committee of Experts' understanding of the realities and the needs of the users of the supervisory system.

For the effectiveness of ILO standards supervision, it is of utmost importance that there is as much convergence as possible between the Committee and the Committee of Experts to provide clear and practical guidance to tripartite constituents in ILO Member States. Past experience has demonstrated that where the Committee and the Committee of Experts speak with one voice, more positive responses are obtained from governments and social partners on the ground, leading to faster, better and more sustainable compliance with ILO standards both in law and in practice. Unity on the essentials seems all the more important in the face of the uncertain world that we are increasingly confronted with as evidenced by the global challenges.

Different from what the Worker members seem to think, the Employer members believe that the general discussion in the Committee provides the right forum to provide tripartite feedback to the Committee of Experts and to make our joint work more relevant.

Chair, the Employer members wish to respond to some remarks made earlier today during the general discussion and yesterday during the opening session.

First, the Employer members do not deny that respect for labour rights is one of the concurring conditions for the creation of an enabling environment for sustainable enterprises. Yet, what we stress is that workers' protection, as a concurrent condition, should be balanced against the needs of sustainable enterprises and not be considered as the only criterion in carrying out standards supervision. After all it is recognized in the ILO Centenary Declaration that the requirements of an enabling environment for sustainable enterprises must be taken into account when considering the protection needs of workers. While this balance between the two perspectives is clearly visible in the discussion and outcomes of the standards supervision in the Committee, unfortunately we still do not see it in the comments of the Committee of Experts, which focus exclusively on the protection needs of workers. In fact it

may seem to bolster the repeated certainty from the Worker members that sustainable enterprises are merely a means to an end which is seen as the protection of Workers, which is unfortunate. The Committee of Experts emphasize its neutrality and impartiality but this is often not how ILO constituents perceive it. This should give the Committee of Experts pause for thought.

Secondly, the Employer members have noted that the Committee of Experts, in this year's General Survey, provided its opinions on various topics that have little to do with the standards on labour administration. These include topics that are controversial, such as supply chains, or what will be addressed in ILO standard setting such as digital labour platforms. The Employer members wish to point out that such statements by the Committee of Experts can interfere with the tripartite opinion-forming process, notably when standard-setting is ongoing. For future occasions, the Employer members would prefer that the Committee of Experts limit its analysis to the specific instruments and issues at stake and avoid issuing observations and opinions on standards and topics not under examination.

Thirdly, the Employer members strongly believe that any major questions regarding the scope and meaning of the provisions of ILO Conventions or related gaps should be examined and resolved through tripartite social dialogue, in particular, through standard-setting. If such major questions arise in its supervisory work, the Committee of Experts should point them out to the Governing Body. The Committee of Experts does not have the role we believe of a substitute legislature for the ILO, which can itself identify regulatory gaps and fill them with international labour rules that it defines itself.

Finally, let me be clear Chairperson that Employer members do not intend to give instructions to the Committee of Experts or "encroach on its independence". The Employer members do recognize that the Committee of Experts exercises an essential function in the

ILO regularly standards supervisory system and it is for this very reason that they see it as their duty to provide constructive feedback to the Committee of Experts. It is in this spirit, Chairperson, that the Employer members asked the Committee of Experts to abstain from providing certain interpretations. Contrary to what the Worker members seem to think, an authoritative opinion on how to interpret an ILO Convention clearly has an impact on the Committee of Experts supervisory work.

All in all Chairperson, the Employer members agreed with the Committee of Experts on many points but also respectfully expressed disagreement on some of its views and findings. In doing so, we have sought to contribute to a more factual and results-oriented debate. We thank others who have also provided their feedback.

Chair, the Employer members looks forward to ongoing exchanges between the Committee and the Committee of Experts to continue building convergences on matters of application of International Labour Standards. We count on the Office to facilitate the dialogue and the building of convergences. To conclude, the Employer members would like to reaffirm their full commitment to continue improving the international labour standards supervisory system including regular standards supervision to ensure that they remain credible, relevant and balanced.

Chairperson –We have concluded our last point on the agenda. Before closing the sitting I would like to give you some information about tomorrow's agenda. As per the Committee's practice, the Secretariat will reserve space in the front row for the Government representatives concerned during the discussion of their case including for the special sitting on Belarus.

The same modalities will apply during the adoption of conclusion on individual cases. In accordance with Part X of document D.1 all delegates have an obligation to the Conference to abide by the parliamentary language and by the generally accepted procedure. Statements

should be relevant to the subject under discussion and should avoid references to outrageous matters. It is my responsibility as Chair of this Committee to ensure that the rules of decorum are respected. Concerning time management and the reduced speaking time to allow the Officers to make such a decision in a good time delegates are requested to register on the list of speakers at least 24 hours before the examination of each item on the Committee's agenda. I draw your attention to the fact that during the tripartite consultation in March 2024 it was recalled that no delegate would be able to register on the list of speakers once the discussion of an individual case has begun. Furthermore, in accordance with the practice of the Committee, observers can only be placed on the list of speakers after approval by the Officers of the Committee. As indicated in the provisional working schedule and in document D.1 work of the Committee, cases included in the final list have been automatically registered and evenly distributed by the Office on the basis of the criteria indicated in document D.1. As I announced at the opening of this morning's sitting, the new provisional working schedule, revised document D.0, with the indication of the examination dates for each of the 24 individual cases is available on the Committee's web page. After the special sitting on Belarus, the cases to be discussed tomorrow will be: Uganda, Minimum Age Convention, 1973 (No. 138), Paraguay, Labour Inspection Convention, 1947 (No. 81), and Türkiye, Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

See you all tomorrow morning at 10 a.m. sharp and have a good evening.

The sitting closed at 5.50 p.m.

La séance est levée à 17 h 50.

Se levantó la sesión a las 17.50 horas.