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Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
Convention (nº 87) sur la liberté syndicale et la protection du droit syndical, 1948
Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87)

Written information provided by the Government

The Government has provided the following written information.

On 3 May 2024, a new Government took office on Sint Maarten. The Government was informed of the ongoing case and has committed itself to giving this matter its highest priority. International as well as local labour issues are highly regarded by the Government and will be addressed with the utmost urgency. In order to give the necessary attention to this subject matter, the new Ministers are in the process of a rigorous onboarding within which the ongoing labour dispute is featured, with the intent of ensuring that all parties are heard. It is important to underscore the Government's commitment to recognizing and supporting social dialogue as part and parcel of good governance.

Furthermore, it should be stated that the Government, upon the recommendation of the Committee, has contacted the ILO Regional Office in Trinidad with a request for technical assistance on this matter and has been in constant contact with said Office. The Government assures the Committee that the matters addressed in its recommendations will be duly dealt with in accordance with approved and accepted international standards.

The Government is therefore of the opinion that a third appearance before the Committee will be counterproductive at this time.

Actions undertaken by the Government since the 111th Session (2023) of the Conference include:

- the Government, in its quest to resolve the Committee's case, kept in contact with the ILO Regional Office;
- the ILO Regional Office concluded that the Soualiga Employer Association (SEA) is not recognized by the ILO as an employers' organization and therefore requested the assistance of the Government in facilitating the consultation with them;
- the Government complied with the request of the ILO Regional Office to facilitate a discussion with both the SEA and the Employers' Council of Sint Maarten (ECSM). These meetings were held separately and were facilitated by the Honourable Minister of Labour on 3 August 2023 and 11 September 2023;

- as a result of these discussions, the SEA amended their statutes/articles of incorporation in order to be in compliance with the Convention, and the amended articles were sent to the ILO Regional Office on 5 December 2023;
- the ILO Regional Office confirmed receipt of the amended statutes/articles of incorporation on 5 December 2023 and said that the documents would be shared with colleagues at headquarters in Geneva for review and advice on follow-up;
- the Government met with the ILO Regional Office in December 2023 to discuss the amended statutes/articles of incorporation. The ILO Regional Office took note of the changes and indicated that these were to be sent to headquarters in Geneva for an expert to review;
- on Wednesday, 31 January 2024, a follow-up meeting with the ILO Regional Office and an ILO expert from headquarters in Geneva regarding the statutes/articles of incorporation was held;
- the Government was informed that the amended statutes/articles of incorporation were sent to the Conference Committee and/or the Committee of Experts and that within ten days the Government would receive recommendations from the Committee of Experts on how best to proceed. The expert suggested that the Government meet with the social partners (ECSM) to get their feedback on the matter;
- the Director of the ILO Regional Office concluded that it is the Government's responsibility to appoint the members of the Social Economic Council (SER) Board. As such the Government has begun the process.

The Government requests the Conference Committee's indulgence and understanding with the hope for a positive consideration of its request. The Government will continue to strive for full compliance with international standards as stipulated in the respective ILO Conventions that are applicable to Sint Maarten.

Discussion by the Committee

Chairperson – I invite the representative of the Government of Sint Maarten, Kingdom of the Netherlands, the Minister of Public Health, Social Development and Labour, to take the floor.

Government representative – Upon becoming an autonomous country within the Kingdom of the Netherlands in 2010, Sint Maarten has made a commitment to adhere to all ILO Conventions made applicable to us, and to strive to bring its legislation in line with those Conventions. In this context Sint Maarten has undertaken the following actions:

- We have established a Tripartite Advisory Committee (TPC) to the Minister of Public Health, Social Development and Labour in 2011.
- We have prepared a gap analysis regarding the adherence to Conventions of the ILO. The intention is to eliminate the gaps by bringing the legislation up to par with the Conventions in 2013.
- Tripartite Consultation (International Labour Standards) Convention (No. 144), 1976, was made applicable to Sint Maarten in 2013.
- The Penal Code was amended and the articles prohibiting the right to strike were revoked in 2015.

- A Consensus Document regarding the amended articles in Book 7 title 10 of the Civil Code of Sint Maarten in conjunction with major labour reform, was signed with the social partners in 2019.

The above is clear evidence that the Government of Sint Maarten has embraced the concept of social dialogue from day one and continues to be committed to working towards the further enhancement of that concept.

Sint Maarten, in previous correspondence and reports has made all efforts to address all conclusions and recommendations made by your esteemed Committee. The Government notes, as indicated in the report of the Committee of Experts of May 2024, that the issue of adherence to article 3 of the Convention still needs further clarification and I will do so now.

The statements previously made by Government that the Soualiga Employers Association is a legally established organization, and that section 3 of the National Ordinance of the Social Economic Council of Sint Maarten allows for multiple employer organizations to be represented on the Social Economic Council are statements of fact as laid down in National Legislation and upheld by the Joint Court of Justice of Aruba, Curacao, Sint Maarten and Bonaire, Sint Eustatius and Saba.

These statements, however, do not speak to the discussion at hand regarding the manner in which the establishment of the Soualiga Employers Association took place.

The Government also notes that the Committee of Experts has stated to have noted with deep regret that the Government has sent Nomination letters dated 23 May 2023 to the Employers' Council Sint Maarten and the Soualiga Employers Association to ask them to jointly select three members for the term 2023–2026 of the Social Economic Council.

The Government acknowledges this fact, however notes that this action was undertaken prior to the session with your esteemed Committee, thus prior to having taken note of your conclusions of 12 June 2023. Based on the aforementioned conclusions the Government has re-evaluated its position and has therefore decided not to include the Soualiga Employers Association in the process of nominating members to the Social Economic Council. The necessary documentation to that effect has been submitted to His Excellency the Governor of Sint Maarten for final approval. The Government considers the action that led to the conclusion that the Government acted in contravention of Article 3 of the Convention 'an unfortunate mistake based on good intentions, nevertheless a mistake'. The Government however deems it necessary to state that it is the Government's duty and obligation to create an environment where all social partners have the equal opportunity to make their voices heard regarding matters affecting them, their members and their communities as a whole. It is equally important that no one organization, including the Government, dominates the narrative as this would conflict with the spirit of Social Dialogue.

With regard to rights of workers' organizations to organize their administration and activities, the Committee of Experts states to have noted with regret that the Government has not provided the information requested whether public employees who were prevented from striking by section 374(a), (b) and (c) of the old Penal Code are forbidden from striking under the most recent Penal Code of 2015. The Committee of Experts also states to have noted that the National Ordinance on Substantive Civil Service Law has been amended to allow the Courts to forbid strikes which threaten the public welfare or safety, and requests the Government to provide information on the circumstances in which strikes may be prohibited on the basis of that Ordinance.

The Government in its response, dated 18 November 2022, to the observations of the Committee of Experts regarding the right to strike addressed these concerns and will once more do so. Neither the new Penal Code, nor the Civil Code nor the Civil Service Law contain any articles that infringe on the right to strike of any workers in the private or public sector. This right is derived from the European Social Charter article 6.4 and from case law. Eleven paragraphs of the European Social Charter, namely, Articles 1, 5, 6 and 16 of the 1961 Charter and Article 1 of the 1988 Additional Protocol, remain applicable to Aruba, Curacao, Sint Maarten and the Caribbean Part (Bonaire, Sint Eustatius and Saba).

Article 6 reads as follows: In order to ensure the effective exercise of the right to collective bargaining, the Parties undertake to: (i) promote joint consultation between employees and employers; (ii) promote, where necessary and useful, the establishment of a procedure for voluntary bargaining between employers or employers' organizations and workers' organizations, with a view to determining remuneration and working conditions by means of collective agreements; (iii) promote the establishment and implementation of an effective mediation and voluntary arbitration procedure for the settlement of labour disputes; and (iv) acknowledge the right of workers and employers to take collective action in cases of conflicts of interest, including the right to strike, subject to obligations under previously concluded collective agreements.

Employees, public servants, including teachers, or their representative workers' organizations, have the right to collective action. These employees or their representative workers' organizations have the freedom to choose the means of action, such as strike.

The Government of Sint Maarten has no intentions or desire to restrict the rights of any person or organization. However, while safeguarding the rights of all individuals, the Government must also make sure that those rights do not infringe on the rights and freedoms of others, and protect law and order, and national security.

The Government also commits to convening a special tripartite consultation meeting with the social partners to evaluate these experiences and decide how best we can move forward while respecting each other's rights and obligations. The Government looks forward to convening this meeting before year's end.

On behalf of the Government of Sint Maarten, I thank your esteemed Committee for the opportunity for us to be able to convey to you our commitment to adhering to international standards and to recognize the tremendous contribution of the ILO to Social Justice worldwide.

Worker members – This will be the third consecutive time that our Committee has examined the application of Convention No. 87 by the Government of Sint Maarten.

We note that this case concerns the practice of the authorities in Sint Maarten which affects the right of organizations to elect their representatives in full freedom and, more specifically, the concerns raised that a Governmental agency in Sint Maarten has established the Soualiga Employer Association (the SEA), an umbrella organization, to represent employers within the tripartite Social Economic Council (SER), to the detriment of the Employers' Council of Sint Maarten (ECSM).

In its 2023 report to the Committee of Experts, the Government indicated that the SEA is a legally established organization, that section 3 of the National Ordinance of the Social Economic Council of Sint Maarten allows for multiple employer organizations to be

represented on the Council, and that nomination letters were sent to the ECSM and the SEA to ask them to jointly select three members for the 2023–2026 Council's term.

The Committee of Experts noted the persistence of undue interference in the right to freedom of association and requested once again the Government of Sint Maarten to take measures to ensure that the Employers' representatives to the Social Economic Council are only appointed by organizations which are freely established or chosen by employers.

We note that in view of the discussion in our Committee, the Government provided additional information in May 2024, indicating that technical assistance was being provided by the ILO. However, no specifics were supplied as to the framework and scope of the technical assistance, nor was any clarification provided regarding progress made towards the full implementation of the 2023 conclusions of this Committee.

The Worker members wish to reiterate the importance that should be attached to the right for organizations to elect their representatives in full freedom and to be free from any undue interference of the authorities in the exercise of this right, as provided by Article 3 of the Convention.

The provisions in the Convention exist to ensure the independence of the social partners. For the social partners, independence is an absolute concept. A workers' or employers' organization cannot be slightly independent. Any form of Government interference represents an attempt, whether successful or not, to control the behaviour of social partners and is unacceptable.

The Government must take steps to ensure that employers' and workers' organizations can independently and genuinely represent the economic and social interests of their members. We urge the Government to continue to avail itself of the ILO technical assistance with a view to giving full effect to the observations of the Committee of Experts and the previous conclusions of this Committee.

These developments should not detract from the persistent obstacles faced by workers' and trade unions of Sint Maarten in exercising their right to organise and to carry out activities. Reports from trade unions indicate that employers in Sint Maarten regularly engage in union busting practices and acts of antiunion discrimination. Employers also interfere in referendum processes for the recognition of collective bargaining units, by artificially lowering the size of the workforce to under the statutory threshold. Contract workers do not count towards the calculation of the size of the workforce for recognition purposes. Such workers are also particularly vulnerable to antiunion practices as they face non-renewal of their contract, or the threat thereof, if they attempt to establish or join a trade union. The national legal framework does not provide adequate protection to workers against acts of interference.

We urge the Government of Sint Maarten to take the necessary measures to ensure that workers and trade unions are adequately protected against acts of antiunion discrimination and acts of interference, in line with Article 3, paragraph 2 of the Convention.

Finally, the Worker members note that for the past seven years, the Committee of Experts has raised serious issues regarding the right of public employees to take collective action and that these issues remain pending to this day. More specifically, since the introduction of the revised Penal Code in 2015, it is unclear whether the provisions prescribing prison terms for public employees, including teachers, taking part in collective action remain in force.

We recall that no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organising or participating in collective action. Therefore, we call on the

Government to ensure, in law and in practice, that public employees can fully exercise their right to organize and organize their activities and to repeal any provisions in its legislation imposing penalties.

Employer members – I would like to thank the representative of the Government of the Netherlands – Sint Maarten for the explanation on the national situation and for the written information provided. This case is being heard by the Committee for the third consecutive year. We will, therefore, get right to the heart of the matter without repeating the entire history of this challenging case.

Until yesterday, we were faced with the unfortunate lack of total progress on the part of the previous Government to respect the principles of the Convention, despite our Committee's recommendations from 2022 and 2023. However, we were informed informally yesterday afternoon, that the new Government of Sint Maarten has taken the initiative to amend the composition of the employer representation on the country's Social Economic Council (SER).

We have heard similar oral explanations from the Government today. Unfortunately, in the absence of written and verified information, it is impossible for the Employers' group to take a definitive position on this development. It is unclear for example, whether this announcement is merely performative or whether it is in fact an important and meaningful step to resolve the issue of the free appointment of employers' representatives, though we certainly hope it is the latter.

What is at stake in this case? In short, in 2022 and 2023 the Committee requested the Government to refrain from any interference in the exercise by the social partners of their freedom of association in general, and to refrain from promoting organizations that were not freely established or chosen by the workers and the employers of Sint Maarten. The Committee also requested the Government to consult with the organizations of workers and employers in order to designate their respective representatives in the country's Social Economic Council and to provide information on the outcome of the legal appeal concerning the composition of that council.

As already explained both last year and the year before, the Government of Sint Maarten created the SER by national decree following the granting, in 2010, of its semi-autonomy status vis-à-vis the Kingdom of the Netherlands. The SER is intended to be a tripartite economic and social council.

In practice, through the Chamber of Commerce, the Government created the SEA association (Souliga Employers' Association), a so-called representative organization of employers. The Government explains that the SEA is an umbrella organization responsible for representing employers in a balanced way within the SER. This is disputed by the Employers' group, because neither the Chamber of Commerce nor the SEA reflects a freely chosen and freely organized representation of the employers of Sint Maarten.

Unfortunately, Sint Maarten has been without a functioning Social Economic Council for several years, preventing employers and employees from playing their vital role in the governing and legislative process. In particular, the SER-meetings were suspended by the previous Government. It has not been composed, renewed or convened for four years now. During this time, the social partners have not been consulted on social legislation or on the issues affecting their interests, including the preparation of the Government's reports to the ILO, as well as on laws regarding minimum wage, social security and taxation.

In 2023, national legislation pertaining to the SER was amended. Additional requirements were put in place that further restrict the freedom of employers and employees to elect their

representatives. A provision to create a member profile by national decree was added and a two-term limit for membership was introduced. These amendments allow the authorities to set up additional criteria for membership eligibility at any time. We note with deep regret that it appears that national legislation has in fact gone in the opposite direction from the recommendations of this Committee.

The ECSM met the previous Government on 3 August 2023, after last year's CAS discussion. On 15 March 2024, it met again with the Government about the division of SER seats as between SEA and the ECSM. At this meeting with the prime minister, SEA, and SER staff, the ECSM was informed about the change to the statutes of the SER. There was little room for discussion, however.

Yesterday, we were informed that the new Government, in place since early May 2024, no longer intends to nominate an employers' member of the SEA to the SER, but rather somebody from a third association. However, we note with concern that this third association appears to have close connections with the Government and thus that the Government still does not appear to have understood the principles of freedom of association provided for under Article 3 of the Convention.

Under Articles 2 and 3 of the Convention, workers and employers are free to form organizations of their own choosing, without prior authorization, and to join them and to elect their representatives in full autonomy. The Government should, under all circumstances, refrain from any interference in this regard. I quote article 3 in full: "1. Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. 2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof."

Freedom of association is a fundamental democratic principle, which applies in particular to representative organizations of employers and workers.

As explained in the 2012 General Survey, "Giving globalization a human face", public authorities must respect freedom of association absolutely. The prohibition of any public interference translates in particular into a prohibition on creating, in place of the social partners, a coercive organization or an organization benefiting from preferential treatment.

Last year and the year before, we quoted paragraphs 95 and 108 of this General Survey, which condemn in particular any favouritism, any unequal treatment between organizations and which recommend that the legal framework be limited to a global framework that leaves organizations maximum autonomy in their operation and management. Restrictions on this principle should have the sole purpose of safeguarding the interests of members and guaranteeing the democratic functioning of organizations.

In consideration of the context of this particular case, and as there is no clear criteria contained in national legislation, any action of the Government to unilaterally choose a representative organization should be considered interference in employers' rights to freely elect their representatives.

In conclusion, the Employer members regret that the dialogue between the Government and the autonomous organization of employers has not been able to lead to a satisfactory result, despite the conclusions of our Committee in 2022 and 2023. We, therefore, once again are calling on the Government to take the necessary measures, in consultation with the social partners, to ensure that workers' and employers' representatives on the SER are only

appointed by organizations freely established or chosen by workers and employers, as well as to engage in dialogue with the ECSM on issues that affect the interests of private sector employers. This would ensure full respect for the rights of employers and their organizations to form and join organizations of their own choosing, and to elect their representatives in total freedom, and to remedy any interference by public authorities in this regard.

Before concluding, I will make a brief remark concerning the Committee of Experts' comments regarding the exercise of the right to strike. The Employers recall their disagreement with the Committee of Experts' view concerning Convention No. 87 and the right to strike. They wish to emphasize that neither Convention No. 87 nor any other ILO Convention contain rules on the right to strike. This fact has also been highlighted by the Government group in their position statement of March 2015 according to which "The scope and conditions of this right are regulated at the national level." As a consequence, governments can legitimately determine their own approach to the right to strike. The Employers will therefore abstain from commenting on these points.

Worker member, Netherlands – I am the Workers' representative for Sint Maarten, and as the Workers' representative, I would like to highlight the significant issues we are facing, particularly regarding the Convention and the right to strike. These concerns are deeply affecting our workers, especially contract workers, who are often the most vulnerable to abuse and intimidation. I would repeat a lot of what the Worker members' spokesperson said with an elucidation here and there.

When it comes to freedom of association, employers in Sint Maarten are currently allowed to determine who can be represented by workers' organizations. This is particularly problematic for contract workers, who fear that their contracts will not be renewed if they assert their rights to elect representation. Teachers are affected as certain faith-based school boards do not allow representation at their schools. This situation is exacerbated by the government's role in referendums. It has also come to my attention that the word referendum is not clear, so I will clarify.

In order for a union to gain sole bargaining power for workers, there must be 50 per cent plus one of the workforce that would show interest by registering for the worker representative of their choice in order for a referendum to be organised by the government mediator. Should a 50 plus one not be achieved, then even those members that would have requested representation would not be allowed to be represented by the workers' representative as the score needed to obtain sole bargaining power was not achieved despite their being workers seeking representation.

The Government of Sint Maarten acknowledges and recognizes the Convention. However, as explained previously, during referendums, the employer is allowed to decide who can participate in the referendum, or the electing of a union to represent the workers of the company. This often results in employers opting for contract workers to be excluded from the referendum. Repercussions that a contract worker would usually experience are: the non-renewal of the contract, intimidation on the job, and these are among other disciplinary actions.

We, as representatives, knowing the outcome of a contract worker yielding towards representation of the union, we tend to go along with the decision or the option taken by the employer, just not to undermine the workers' rights. The current situation with the Employers' Council and the Government also has an impact on workers as the Social Economic Council is not able to implement its function, thus decisions are being made that can affect the workers negatively as the SER is non-functioning.

I will go over to the right to strike. While the removal of the articles of the old Penal Code that hindered the workers from striking is applauded, the situation regarding the right to strike is still very concerning. In order for workers not to feel intimidated, we, the workers' representatives, use the term "urgent meeting during work hours" even though the outcome is the same; workers down their tools or they strike. This is done as workers are intimidated by the word "strike" because of the consequences that will follow. Employers include clauses in contracts prohibiting strikes or any industrial action, leading to immediate dismissal if these clauses are breached. In the public sector, workers face penalties such as no pay, forced use of vacation time, or warnings if they engage in any form of industrial action. This high level of intimidation discourages workers from exercising their rights.

These issues were discussed with the government, and there is a commitment to address them in a tripartite session. However, the installation of the Social Economic Council, once again, which is crucial for these discussions, has not yet taken place due to ongoing debates with the Employers' Council and the Government.

Employer member, Germany – On behalf of the Employer Council Sint Maarten (ECSM), I would like to present the following statement. This is the third time in three years that the case Netherlands – Sint Maarten on the Convention is being handled by the Committee.

Employers consider all statements made in the previous sessions as repeated. The same applies to all the Committee of Experts' comments and recommendations. The Convention is a fundamental Convention. The right of freedom of association for employers and employees and their right to freely elect their representatives without interference by the authorities is fundamental.

We refer to the ILO Declaration of Philadelphia in its entirety and Part I(d) specifically. Sint Maarten's Constitution outlines legal regulations in article 81. Sint Maarten's Constitution recognizes freedom of association under its article 12. The Charter of the Kingdom refers to fundamental rights in article 43: "1) Each of the countries is responsible for the realization of fundamental human rights and freedoms, legal certainty and sound governance. 2) Guaranteeing these rights, freedoms, legal certainty and sound governance is a matter for the Kingdom."

It appears to the Employer representative organizations of Sint Maarten, that the fundamental right, the Convention, is not being respected in Sint Maarten. The national Government has continuously interfered with employer representation and has admitted such to the Committee previously.

The SEA, as the original statutes clearly show, was established by the chamber of commerce, a public law entity with mandatory membership on the request of the Prime Minister.

The first time the case was heard by the Committee, the Government made the following statement: "The Minister of General Affairs decided, based on section 2 of the Business Ordinance of Sint Maarten, to mandate the Sint Maarten Chamber of Commerce and Industry to establish a working group to structure an umbrella employer organization. The intention of the Minister of General Affairs was to ensure a balanced structure with respect to the representatives of the umbrella employer organization. The actions of the SHTA, inter alia, to establish the ECSM, have since been perceived as not respecting the democratic process of the Government as prescribed by national law.

These actions are also perceived as an objection to the intention of the Government to ensure that a broad-based representation of employers is established to ensure we adhere to the international normative framework in this regard.”

The written comments by the Government in preparation for the 2024 Committee read as follows: “The Government complied with the request of the ILO Regional Office to facilitate a discussion with both the SEA and ECSM. These meetings were held separately and were facilitated by the Honourable Minister of Labour on 3 August 2023 and 11 September 2023. As a result of these discussions, the SEA amended their statutes/articles of incorporation in order to be in compliance with the Convention and the amended articles were sent to the ILO Regional Office on 5 December 2023.”

It would appear that the results from various meetings were the Government interceding on SEA’s behalf and facilitating a change in statutes of the SEA. This change of statutes amounted to erasing all reference of the Government instruction to the Chamber of Commerce and Industry, a public law entity with mandatory membership, to establish the SEA. It is the Employers’ understanding that the authorities communicated with the ILO regarding changing SEA statutes, since the ILO does not recognize the SEA. This would again appear to be interference on the part of the authorities.

The often-repeated recommendation for dialogue was not followed up on by the authorities. In 2023 national legislation pertaining to the social economic council was changed. Additional requirements were put in place that restrict the freedom of employers and employees to elect their representatives. A provision to create a member “profile” by national decree was added. This would in fact allow for the authorities to set additional criteria for membership eligibility at any time, bypassing a parliamentary vote that doing so by law would require.

A two-term limit for members was also introduced in the national legislation. Employers feel this is a restriction on their right to freely elect their representatives. It should be the sole right of employers and workers to decide whether they nominate their representatives for more than two terms.

On the morning of 7 June 2024, the ECSM was informed that the Government no longer intends to nominate a member of the SEA to the SER. This nomination will not be done by the ECSM, but by a third organization. ECSM was established by four recognized employer organizations. Collectively ECSM represents approximately 420 employers and approximately 7,000 jobs, that is about 30 per cent of the national workforce.

Employers question on what basis this third organization is deemed representative for employers by the authorities. It was clearly not deemed representative by the authorities over the course of the last three years, and never mentioned in the Committee before. Indications are that this third organization was, much like the SEA, established through facilitation of the Chamber of Commerce and has the Chamber of Commerce as an Honorary member.

Where the representativity of employers’ and workers’ organizations participating in social dialogue at national level, such as in the Social Economic Council, is concerned, it would appear that in the absence of objective, pre-established and precise criteria to determine the representativity of any organization of employers established in legislation, the authorities continue to exercise a wide margin of discretion.

In consideration of the context of this particular case, since there is no clear criteria contained in national legislation, any action of the Government to unilaterally choose a

representative organization should be considered interference in employers' rights to freely elect their representatives.

It would appear that the authorities have not followed the Recommendations of the Committee of Experts where it pertains to bringing national legislation in line with the Convention. To the contrary, it appears that national legislation now contains more conflicts with the Convention. One of the results of the national authorities' actions is that for over a year, no appointments have been made to the Social-Economic Council of Sint Maarten.

A higher advisory council established by law, was made up of representatives of employers, workers and independent members to advise our national Government. An entity whose advice is mandatory when it comes to legislative changes in many areas such as minimum wages and social security. This is a de facto suspension of the highest level of social dialogue, unilaterally by the national authorities, without any legal basis. Not only does this appear to employers as a violation of fundamental rights, it also violates the principles of legal certainty and sound governance. While these points fall under the national Government to realize, they fall under the kingdom Government to ensure.

In conclusion, the ECSM hope that with the attention provided us here, the recommendations from the Committee and the Committee of Experts will provide clear guidance to both the national Government as well as the kingdom Government, to ensure both employers and workers have access to their rightful spaces, as prescribed by the Convention, by law, which is fundamental to the proper functioning of our constitutional democracy.

Observer, Public Service International (PSI) – We would like to echo the comments raised in her intervention by the Workers' representative of Sint Maarten and stress the importance of complying with the fundamental principles enshrined in the Convention, also in the practice.

We would also like to underline that many of these issues were previously raised by the Workers' representative during the discussion in 2023, and we hope that they are duly acknowledged in the conclusions of this case.

In this regard, it was mentioned that in Sint Maarten, the ability of workers to freely organize and be represented by Workers' organizations is compromised, and that Employers seem to have the ability to determine who can be represented by these organizations. This situation is especially problematic for contract workers who live in constant fear that asserting their rights will result in their contracts being terminated. This fear, in addition, creates a culture of silence and compliance, where workers are unable to advocate for better conditions or challenge unfair treatment without risking their livelihood.

Moreover, Employers seem to have the ability to decide who can participate in referendums on union representation. This often leads to contract workers, again, being excluded to avoid conflict, effectively undermining their rights and perpetuating a cycle of neglect. Incidentally, the threshold for these referendums, 50 per cent plus 1 of workers – seem to be excessive, as per previous observations by the Committee of Experts.

Teachers, particularly those in certain faith-based schools, face significant barriers as some school boards do not allow representation at their institutions. This exclusion is not just a violation of their rights but also a step back in ensuring a fair and equitable working environment for all educators.

While we acknowledge and applaud the removal of articles in the old Penal Code that prevented workers from taking industrial action, the situation in practice remains problematic.

It was mentioned that employers frequently include clauses in contracts that prohibit any form of industrial action and that breaching these clauses often leads to immediate dismissal, effectively silencing workers and stripping them of their right to protest unfair conditions. Also, in the public sector, workers who engage in any form of industrial action face penalties. This level of intimidation, as we all know, is a powerful deterrent, discouraging workers from exercising their legitimate rights to collective action and protest.

We heard that these issues have been brought to the attention of the Government, and there is a commitment to address them through tripartite discussions, which we celebrate. However, the establishment of the Social Economic Council, which is essential for facilitating these discussions, has been delayed due to the ongoing discussions between Employers' Council of Sint Maarten and the Government. This delay is unacceptable and further compounds the challenges faced by workers.

Therefore, to conclude, we hope that the Government gives due consideration to the Employers' group concerns in this case and restores the capacity of the Social Economic Council to address and resolve important issues raised by the Workers' delegate.

Chairperson – I give the floor to the representative of the Government of Sint Maarten for her concluding remarks.

Government representative – We have taken note of the comments made by the social partners especially those of the Worker representatives of Sint Maarten and others. We will weigh those comments when finalizing our path forward.

We have already committed ourselves to convene a session with our social partners being employers' and workers' representatives on the Tripartite Committee to discuss the implications of ILO Conventions Nos 87 and 144.

I am convinced that once we conclude that exercise, we would be in a better position to resolve the challenges encountered.

It would be remiss of me not to mention that although it is constantly mentioned here about the SEA and the Chamber of Commerce input in the SER, at this time, those two organizations are not included in our SER. I have also taken note of the ECSM's standpoint as was brought forward by their representative, in indication that the Government has close ties with the third Employer organization, this, I can emphatically say, is not so. The Prime Minister has met with the ECSM representatives and up to two days ago felt as if we were on the right page. It is very important for our small community to have the SER, the tripartite organization in place. Not having it in place hampers a lot of our decision-making on the island. As such, we emphasize that we are doing everything possible to put the SER in place. Our new Government was sworn in on the 3 May 2024, a little bit more than a month ago, and we have since tried to put the SER in place.

Employer members – We thank the various speakers, including notably, Madam Minister Jansen Webster, representing the Government of Netherlands Sint Maarten.

On the substance, we insist on the fact that the Convention is a fundamental convention and that as such, it requires special attention from the ILO, from Governments and from social partners. Our position with regards to Netherlands Sint Maarten is clear: we do not compromise on the freedom of association of employers. The Employer members therefore urge the Government to take immediate and effective measures to ensure that, both in law and in continued practice, freedom of association for employers is fully guaranteed in its territory.

We ask the Government to take the following measures:

- (1) Define objective criteria of representativeness of social partners organizations, in order to avoid arbitrary political decisions.
- (2) Start an effective dialogue with the Employers' organizations on the composition of the Social Economic Council (SER), in full respect of the Convention.
- (3) To take the necessary measures, in consultation with the social partners, to ensure that workers' and employers' representatives on the SER are appointed by organizations that are completely autonomous and freely established by workers and employers.
- (4) Fully respond to the Committee of Experts' comments that have remained pending since 2017. We emphasize relevance of regular reports and the importance of their quality, in order to be able to assess the effective progress in law and practice in the application of the Convention.

To follow up, in a constructive manner, on the conclusions of our Commission, we urge the Government to request technical assistance from the ILO, with a view of bringing the national situation into conformity with the Convention. We really hope to see a positive approach by the Government to ensure that this national case does not need to appear for a fourth time before our Committee.

Worker members – Thank you to the Minister from Sint Maarten for her helpful and constructive remarks. We also thank all the speakers who took the floor. We welcome the information provided by the Government indicating that the Soualiga Employers' Association has been excluded from the composition of the Social Economic Council, which gives us hope that this matter will finally be resolved. We trust that the Government will follow up its positive statements with actions carried out in consultations with the social partners and with the continued assistance of ILO technical assistance. We look forward to hearing further evidence of the Government's commitment through the ILO, which we hope will also be confirmed by our Worker colleagues in Sint Maarten. We emphasize that the authorities have an obligation to promote and ensure the effective application of the Convention, including the rights of organizations to elect their representatives and to establish higher-level organizations in full freedom as prescribed by the provisions of the Convention. Furthermore, we urge the Government of Sint Maarten to take the necessary measures to ensure that workers and trade unions are adequately protected against acts of anti-union discrimination and acts of interference in line with Article 3(2) of the Convention. Regarding the right of public employees to take collective action, we call on the Government to ensure in law and in practice that public employees can fully exercise this right and to repeal any provisions in its legislation imposing penalties.

Conclusions of the Committee

The Committee took note of the oral and written information provided by the Government and the discussion that followed.

Taking the discussions into account, the Committee requested the Government to:

- **define in meaningful and effective consultation with respective social partners, criteria of representativeness of employers' and workers' organizations that are clear, pre-determined and objective;**

- **engage in meaningful and effective dialogue with workers' and employers' organizations on all matters affecting their interests or of their members, in full compliance with the Convention, including on the composition of the socio-economic council (SER); and**
- **take the necessary measures to ensure that workers' and employers' representatives on the SER are only appointed by fully autonomous organizations freely established or chosen by workers and employers and convene the SER without delay.**

The Committee requested the Government to provide information on the above measures including all outstanding information requested by the Committee of Experts by 1 September 2024.

Government representative – The Government has taken note of the comments made by the various parties who gave their opinion during this hearing and thanks them for their input.

I believe that the Government of Sint Maarten has addressed the most important points brought forward by both Employer and Worker representatives. The Government has withdrawn its request to the SEA to nominate representatives to be appointed as member and substitute member respectively. The Government has requested technical assistance from the ILO as was concluded by your Committee. The Government commits to organize a session with the Tripartite Committee on Labour to discuss the way forward in compliance with Conventions Nos 87 and 144.

As was stated in the presentation on Monday, it is the Government's duty and obligation to create an environment where all social partners have equal opportunity to make their voices heard regarding matters affecting them, their members, and their communities as a whole. It is equally important that no one organization, including the Government, dominates the narrative as this would be in conflict with the spirit of social dialogue.

Sint Maarten will put action to the words spoken at this hearing and I am confident that the Government and the social partners will resolve these matters in the spirit of social dialogue.

In ending, allow me on behalf of the Government of Sint Maarten to thank you, the members of your Committee and all who have, in one way or the other, gave their input during this hearing. A special thank you to the delegation members of the Netherlands, Aruba and Curaçao for their support and advice.