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Malaysia (ratification: 1961)

Convention (n° 98) sur le droit d'organisation et de négociation collective, 1949

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Convenio sobre el derecho de sindicación y de negociación colectiva, 1949 (núm. 98)

Written information provided by the Government

The Government has provided the following written information as well as copies of the Industrial Relations Act 1967 (Act 177) (updated text), Consultation sessions on section 12A of Act 177, the Trade Unions (Amendment) Act 2024, the Industrial Relations (Amendment) Regulations 2024, the Trade Unions (Amendment) Regulations 2024, the Appointment of date of coming into operation of the Industrial Relations (Amendment) Act 2020 and the Trade Unions (Amendment) Act 2024, and statistics on collective agreements.

Legislative reform

Malaysia reaffirms its strong collaboration with the ILO through the Memorandum of Understanding on the Decent Work Country Programme signed in 2019. This partnership has supported Malaysia in advancing legislative reforms in line with international labour standards. Domestically, the National Labour Advisory Council serves as a key tripartite platform to discuss and strengthen such reforms. The amendments to the Industrial Relations (Amendment) Act 2020 and the Trade Unions (Amendment) Act 2024 reflect major reforms to Malaysia's industrial relations legislation. The first phase of the Industrial Relations (Amendment) Act 2020, effective 1 January 2021, strengthened access to justice by providing for automatic referrals of dismissal cases and enhancing the powers of the Industrial Court. The second phase, which took effect on 15 September 2024, introduced more complex reforms, particularly on trade union recognition and sole bargaining rights, which reflect the need to regulate situations where multiple unions may represent the same class of worker. The significant amendments to Act 177 included section 9 (claim for recognition), section 11 (trade unions accorded recognition), sections 12A and 12B (new section – sole bargaining rights), section 13 (collective bargaining), section 26 (reference of trade disputes to the court), section 62 (power to make regulations relating to the process of determining the sole bargaining rights) and the First Schedule (essential services). This gradual approach enables employers, trade unions and employees to adapt progressively to relevant legal changes. Complementary amendments to the Trade Unions Act 1959 (Act 262), effective 15 September 2024, removed long-standing sectoral restrictions on union formation. Trade unions and federations of trade unions are no longer required to be set up in a specific establishment or subject to the principle of similarity in industry, trade or occupation. This change allows for broader representation and a more diverse membership. The amendment to the Act also allows for the existence of more than one trade union representing the same group of workers

in a single workplace. This amendment gives workers the freedom to choose which union they wish to join. Also important was the repeal of the competency checks, which were previously used as a stalling tactic by employers to delay or challenge union recognition. This amendment shifts towards facilitating more efficient and fair union recognition procedures. These reforms under Act 177 and Act 262 form a coherent framework to further improve Malaysia's industrial relations system. The amendment significantly aligns Malaysia's legal framework and legislative instruments with the Convention. It represents a strategic shift towards a more enabling commitment to freedom of association, a democratic system for trade unions and effective collective bargaining. This alignment between Act 177 and Act 262 and the subsidiary regulations demonstrates a commitment to a cohesive and integrated industrial relations system in Malaysia. Please find below the amendments to the Industrial Relations Act 1967 (Act 177) and its regulations, as well as the Trade Unions Act 1959 (Act 262) and its regulations, which came into effect on 15 September 2024.

Article 1 of the Convention: Adequate protection against anti-union discrimination

Although sections 8 and 59 of the Industrial Relations Act 1967 (Act 177) remain unchanged, we would like to highlight the key steps taken by the Government to ensure that anti-union discrimination complaints are properly handled and workers have access to effective remedies.

(1) Prohibition of anti-union discrimination (section 8)

Section 8 of the Industrial Relations Act 1967 expressly prohibits any act of interference, intimidation or discrimination by employers or their representatives against workers for participating in lawful trade union activities. This includes:

- dismissal or threats of dismissal;
- alteration of employment conditions to the worker's detriment;
- denial of promotion or employment based on union affiliation.

To illustrate enforcement, the Department of Industrial Relations Malaysia (DIRM) recorded the following complaints under section 8:

- complaints received in 2023: 16 cases;
- complaints received in 2024: 9 cases;
- complaints received between January and April 2025: 0 cases.

All 25 cases filed under section 8 of Act 177 in 2023 and 2024 have been resolved (21 at the DIRM level through conciliation and voluntary withdrawal, while 4 were referred to the Industrial Court). Most cases were resolved through conciliation by the Director General for Industrial Relations (DGIR), showing the effectiveness of administrative processes in handling union-related complaints. All section 8 cases were either settled or referred for adjudication, ensuring that workers' rights were addressed. This reflects the Government's commitment to protecting trade union rights and the efficiency of Malaysia's industrial relations system.

(2) Right to representation and referral to the Industrial Court (section 20)

In 2021, section 20 was amended to remove the Minister's discretion in referring unfair dismissal cases to the Industrial Court. This authority now lies with the DGIR. Under the new process, workers can file complaints directly with the DGIR, who will attempt conciliation. If no settlement is reached, the DGIR must refer the case to the Industrial Court, ensuring that all

workers have access to a fair hearing. This reform promotes transparency, consistency and stronger protection for workers, especially those dismissed for union involvement.

(3) Criminal enforcement mechanism (section 59)

Section 59, which prohibits retaliation against workers for trade union activities, remains in effect. As it is a criminal offence, there is no conciliation process. Instead, the DIRM investigates complaints and, if necessary, initiates criminal proceedings.

(4) Government measures to ensure access and effective redress

Although sections 8 and 59 remain unchanged, the Government has put in place administrative measures to ensure that all anti-union discrimination complaints are promptly handled by the DGIR, victims have access to redress through conciliation or judicial referral and section 59 cases are properly investigated and prosecuted when offences are found.

In summary, while sections 8 and 59 remain unchanged, the amended section 20 significantly strengthens legal protections for workers against dismissal, including for union activities. This, along with active enforcement and complaint-handling mechanisms, highlights Malaysia's commitment to upholding international labour standards and protecting workers' rights to freedom of association without discrimination or reprisal.

Duration of recognition proceedings

The amendment to the Industrial Relations Act 1967 (Act 177), effective from 15 September 2024, introduced key reforms to simplify and speed up the trade union recognition process. The main changes are:

- (a) The responsibility for determining the eligibility and representational scope of trade unions has shifted from the Director General of Trade Unions (DGTU) to the DGIR. Previously, decisions by the DGTU could be appealed to the Minister, with the Minister's decision being subject to judicial review. This multi-tiered process has been eliminated, making the recognition process more efficient and quicker.
- (b) The authority to decide on the capacity of trade union members (that is, managerial, executive, confidential or security status), and issuance of the recognition declaration, has been shifted from the Minister to the DGIR, removing a discretionary layer and streamlining decision-making.

These changes have significantly reduced the duration of the recognition process from six to nine months or more to a maximum of four months in most cases. The reforms also address the legal gap that allowed employers to challenge decisions by the DGTU or DGIR during the recognition process. Under the new framework:

- There is no longer a separate decision on competency subject to early legal review.
- Employers can only contest the DGIR's decision after the recognition process is complete.

This has strengthened the integrity of the recognition process and has minimized procedural delays arising from premature judicial interventions.

The DIRM closely monitors and addresses any allegations of employer interference during the trade union recognition process under sections 4, 5, 7 and 8 of Act 177, especially during the secret ballot.

When a complaint of employer interference is raised during recognition:

- The DIRM will promptly assess the complaint. If found to be without merit, the recognition process will proceed without delay. No complaints have yet caused a delay in the process.
- If the issue can be resolved during the process, the DIRM will continue the proceedings without postponement to avoid unnecessary delays.
- If the issue is unrelated to the recognition process but involves violations under sections 4, 5, 7 or 8, the parties are advised to file a separate complaint with the DIRM. These matters will be handled independently and will not disrupt the recognition process.

This approach has been affirmed by the Federal Court in the case of *Valeo Malaysia Sdn Bhd v. Director General for Industrial Relations, Department of Industrial Relations Malaysia & Anor*, which affirmed the principles laid down by the High Court as follows:

- (a) The right to be heard before the DGIR to accord recognition is not specifically provided for in section 9 of Act 177.
- (b) The court will not be warranted in supplementing the legislation, that is Act 177, even if the legislative provision of section 9 thereof is not as full and complete as the court might think appropriate.
- (c) If the legislature has by its legislation decided what opportunity should be afforded, the court is bound by the legislation as much as the citizen and has no warrant to vary the legislative scheme of Act 177.
- (d) Not all common law principles relating to natural justice are applicable. The rules and ambit of natural justice vary according to the circumstances and context.
- (e) It is well established that when a statute has conferred on anybody the power to make decisions affecting individuals, the court will not only require the procedure prescribed by the statute to be followed, but will readily allow so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.
- (f) The court should not fly in the face of a clearly evinced parliamentary intention to exclude the operation of the *audi alteram partem* rule.
- (g) It is not for the court to amend the statute by engrafting upon it some other provision that it might think more consonant with a complete opportunity for an aggrieved person to present his or her views and to support them by evidentiary material.

Exclusive bargaining rights: Minority unions

The Government acknowledges the ILO Conference Committee's 2022 recommendation to adopt measures, in consultation with social partners, to ensure that in situations where no union is declared as the exclusive bargaining agent, all unions within the bargaining unit are allowed to negotiate, jointly or separately, on behalf of their respective members. In response, the Government wishes to highlight that the matter has been addressed through the Industrial Relations (Amendment) Act 2020 (Act A1615), which introduced section 12A into the Industrial Relations Act 1967 (Act 177) to govern sole bargaining rights.

The introduction of section 12A provides a structured mechanism whereby:

- In cases where multiple trade unions represent the same class of worker at a particular workplace, the unions may agree among themselves on which union will have sole bargaining rights.
- If there is no agreement, the DGIR may determine the matter, including through a secret ballot to identify the union with the highest level of support. This provision was introduced after thorough consultations with employer and employee representatives, before being tabled and approved in Parliament as attached in annex. The Government's approach aims to:
 - avoid fragmented bargaining involving multiple unions representing the same category of worker at a single workplace;
 - ensure clarity and efficiency in the collective bargaining process;
 - resolve the issue of representation proactively, thereby preventing scenarios where no union is declared the exclusive bargaining agent. In line with this framework, the Government does not provide for all unions within the unit to negotiate jointly or separately on behalf of their individual members once the process under section 12A has been invoked and a union has been determined to hold sole bargaining rights. This is to ensure orderly and coherent industrial relations, prevent conflicting demands and promote effective and unified representation.

Migrant workers

Malaysia affirms that section 28(1)(a) of the Trade Unions Act 1959, which requires the authorization of the Minister of Human Resources prior to the registration of union office bearers, plays a crucial role in safeguarding national security and upholding the integrity of the industrial relations system. As of 2024, more than 28,000 foreign workers are registered as union members. To further support inclusive representation, a blanket ministerial exemption, effective from 15 January 2025, was granted to a trade union that submitted a formal application to register their office bearers under section 28(2) of the Act. This exemption enables non-citizen union officers to serve without requiring individual approval, demonstrating Malaysia's balanced and progressive approach to trade union governance.

Scope of collective bargaining

The Government informs the Committee that section 13(3) of the Industrial Relations Act 1967 (Act 177) was amended to support broader reforms aimed at aligning national legislation with international labour standards and strengthening collective bargaining in Malaysia. The revised section 13(3) now states that a trade union of workers may not include in its collective agreement proposals any matter relating to:

- (a) the promotion of workers by the employer from a lower to a higher grade or category;
- (b) the transfer of workers within the organization, provided there is no detriment to the terms of employment;
- (c) the appointment by the employer of any person to fill a vacancy;
- (d) the termination of a worker's services due to redundancy or reorganization, or the criteria for such termination;
- (e) the dismissal and reinstatement of a worker;

(f) the assignment or allocation of duties consistent with the terms of employment.

It is important to note that the amended provision introduces a new clause allowing trade unions to discuss general matters related to the restricted topics with employers, even if these are not part of formal collective agreement proposals. This aims to promote more open dialogue while respecting employers' decision-making authority. The Government acknowledges the Committee's long-standing recommendation to review and limit broad restrictions on collective bargaining. The recent amendment marks important progress by:

- clarifying that unions may engage in discussions on general issues related to restricted matters;
- narrowing the scope of prohibition to only formal proposals in collective agreements;
- encouraging broader consultation and transparency in employment-related decision-making. This balanced approach supports workers' rights while maintaining operational flexibility and reflects Malaysia's commitment to strengthening its industrial relations in line with the Convention. Subsequently, although the Industrial Court does not maintain specific statistical records on this matter, it is observed that approximately 98 per cent of collective agreements accorded cognizance by the Industrial Court have encompassed the above-mentioned subject matters.

Restriction on collective bargaining of public servants not engaged in the administration of the State

The Government is fully committed and has taken the necessary measures to enable collective bargaining for public servants not involved in state administration. Recent negotiations through the National Joint Council (NJC) led to the successful implementation of the Public Service Remuneration System in 2024, as detailed in Service Circular No. 1/2024. With 99.9 per cent of public sector employees accepting the new package, this highlights the success of the NJC's bargaining process. The Government affirms that the NJC remains the effective collective bargaining mechanism, grounded in a legitimate framework and democratic representation, with a key role in shaping policy outcomes.

Collective bargaining in practice

The Industrial Court gave cognizance to 274 collective agreements in 2023 and 240 in 2024. Sector-specific statistics for both years are provided in the annex.

Direct request

The Government has taken steps to explore the extension of Part VI of the Industrial Relations Act 1967 (Act 177), which provides for representations on unfair dismissal, to public servants employed under statutory bodies, in accordance with section 52(3) of the Act. Consequently, consultations were conducted from 23 to 25 August 2021 with a number of statutory authorities and regulatory agencies to assess the feasibility and implications of such an extension. These engagements involved key stakeholders from across the public sector. The consultations revealed that all statutory bodies already maintain internal mechanisms and disciplinary procedures for handling dismissal-related matters, established under their respective enabling Acts. These frameworks, in many cases, mirror the protections afforded under Part VI of the Industrial Relations Act and serve as parallel systems for resolving employment disputes. In light of these findings, the matter was referred to the Attorney General's Chambers (AGC) for legal review. The AGC advised that enforcing section 52(3) in its

current form would lead to overlapping legal protections, as these statutory bodies are governed by specific legislation that already provides for an independent authority or body empowered to hear and determine industrial disputes. These internal mechanisms operate in parallel to the Industrial Court, and extending Part VI without legislative reconciliation could result in jurisdictional conflicts and enforcement inconsistencies. Accordingly, the Government acknowledges the need for further policy alignment and legislative harmonization to ensure clarity, consistency and effective protection across all public sector frameworks. The matter remains under active review. Such findings also have been communicated to the employees' associations, that is, the Malaysian Trades Union Congress and the Congress of Union of Employees in the Public and Civil Services, during a series of engagements between 2022 and 2024.

Discussion by the Committee

Président – Nous allons commencer l'examen du cas Malaisie sur l'application de la convention n° 98 sur le droit d'organisation et de négociation collective.

J'ai maintenant l'honneur de donner la parole à l'honorable représentant du gouvernement de la Malaisie, Monsieur le sous-secrétaire de la division internationale du ministère des Ressources humaines, pour sa déclaration liminaire.

Government representative – I stand before this esteemed Committee with utmost respect and gratitude for the opportunity to reaffirm Malaysia's commitment to the Convention. Malaysia has submitted comprehensive documentation, including the updated Industrial Relations Act (IRA), the Trade Unions (Amendment) Act 2024, and accompanying regulations. These documents reflect major steps in aligning our national laws with international labour standards.

Malaysia's legislative journey is guided by strong collaboration with the ILO through our Decent Work Country Programme established in 2019.

The National Labour Advisory Council, a tripartite body, has played a vital role in ensuring social dialogue throughout this reform process. The amendments to the IRA via the Industrial Relations Amendment Act 2020 reflect major reforms to Malaysia's industrial relations legislation.

Key reforms were introduced in two phases:

- The first phase of the Industrial Relations Amendment Act 2020, effective 1 January 2021, improved access to justice, most notably, by enabling automatic referrals of dismissal cases and enhancing the powers of the Industrial Court.
- The second phase, which came into force on 15 September 2024, brought further improvements especially around union recognition and sole bargaining rights, a necessary evolution to address overlapping union representation, collective bargaining process and reference of trade disputes to the court under section 26(2) of IRA.

These reforms were complemented by amendments to the Trade Unions Act (TUA), which eliminated long-standing restrictions. Today, trade unions or federations of trade unions in Malaysia may be formed beyond sectoral boundaries, enabling more inclusive and representative union structures. Workers can now choose among multiple unions in the same workplace, enhancing their freedom of association.

Significantly, Malaysia repealed the competency check mechanism, a long-standing, opaque requirement that had been systematically misused to delay trade union recognition,

marking a significant step forward for workers' rights. Now, a fairer, faster process ensures that workers' rights are not unjustly withheld. This represents a strategic shift towards a more enabling commitment to freedom of association, a democratic system of trade unions and effective collective bargaining. This alignment between the IRA and the TUA and the subsidiary regulations, demonstrates a commitment to a cohesive and integrated industrial relations system in Malaysia.

Although Malaysia has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87), the legislative reforms made are a powerful demonstration that we are embracing the spirit and objectives of the Convention.

Under section 8 of the IRA, anti-union discrimination, be it dismissal, demotion, or denial of promotion, is strictly prohibited. The conferment of discretion upon the Director-General of Industrial Relations (DGIR) to directly refer cases to the Industrial Court without the need for the Minister's prior discretion, marks a significant and progressive development in the industrial relations' framework. As a result, it streamlines procedures, promotes transparency, and allows for more timely resolutions, which enhances workers' confidence in the fairness and impartiality of the system.

To illustrate enforcement, the Department of Industrial Relations Malaysia (DIRM) recorded the following complaints under section 8 of the IRA:

- complaints received in 2023: 16 cases;
- complaints received in 2024: 9 cases;
- complaints received between January and April 2025: 0 cases.

All 25 cases filed under section 8 of the IRA in 2023 and 2024 have been resolved: 21 at the DIRM level through conciliation and voluntary withdrawal, while 4 were referred to the Industrial Court. The majority of cases were successfully resolved through conciliation by the DGIR, demonstrating the efficiency of administrative processes in managing union-related complaints. Furthermore, all section 8 cases were either settled or referred for adjudication, ensuring the protection of workers' rights. This reflects the Government's commitment to protecting trade union rights and the efficiency of Malaysia's industrial relations system.

The amendment to section 20 of the IRA empowers the DGIR to directly refer dismissal cases to the Industrial Court, eliminating the need for ministerial discretion. Notably, the amendment has fastened the settlement of the cases based on the statistics as follows:

In 2023:

- Total cases resolved: 4,294 cases.
- Settlement through conciliation: 2,802 cases.
- Cases reported or referred to the Industrial Court: 1,492 cases.

In 2024:

- Total cases resolved: 4,394 cases.
- Settlement through conciliation: 2,945 cases.
- Cases reported/referred to the Industrial Court: 1,449 cases.

In 2025:

- Total cases resolved: 1,894 cases.

- Settlement through conciliation: 1,223 cases.
- Cases reported/referred to Industrial Court: 671 cases.

From the statistics, the DIRM has addressed every case regarding reinstatement without exception.

This change streamlines the process, ensuring faster, more efficient resolutions. It strengthens the dispute resolution framework, promoting transparency, impartiality, and timely justice for all parties involved.

Section 59 of the IRA, which criminalizes violations of trade union protections, remains fully enforced. The process includes a thorough investigation, where evidence is gathered and analysed by relevant authorities. Once the investigation is complete, and if sufficient evidence is found to support the allegations, the matter is formally brought before the court. This ensures that unionized workers' rights are effectively protected at every stage, strengthening the legal process for enforcing those rights.

The Government has put in place administrative measures to ensure that all anti-union discrimination complaints are promptly handled by the DGIR, victims have access to redress through conciliation or judicial referral, and section 59 cases are properly investigated and prosecuted when offences are found.

One of the most impactful reforms lies in the duration and fairness of the union recognition process. Overcoming its former length and susceptibility to premature legal challenges, the recognition application process now concludes in under five months. Discretionary powers of appeal to the Minister on competency issues have been removed. The DGIR now makes binding decisions on union recognition by the employer and member eligibility.

Since the amendment took effect, the recognition process has demonstrated significant responsiveness. From 15 September 2024 to 31 December 2024, a total of 10 recognition applications were received, and all 10 were settled within this period. Subsequently, from 1 January 2025 to 30 April 2025, a further 19 applications were received. Out of these, 7 have been settled, while 12 are currently ongoing. This shows that, within the first 5 months following the amendment (15 September 2024 to 15 February 2025), a total of 17 recognition cases were settled, demonstrating a positive trend in expediting the recognition process under the amended regulations.

Furthermore, the DIRM closely monitors allegations of employer interference during the trade union recognition process under sections 4, 5, 7, and 8 of the IRA, especially during the secret ballot.

When a complaint is raised:

- The DIRM will quickly assess the issue. If the complaint is unfounded, the recognition process will continue without delay.
- If the issue can be resolved during the process, the proceedings will proceed without postponement.
- If the complaint is unrelated to recognition but involves violations under the relevant sections, the parties will be advised to file a separate complaint, which will not impact the recognition process.

This is supported by Malaysian Federal Court, in the case of *Valeo Malaysia Sdn Bhd v. Director-General for Industrial Relations, Department of Industrial Relations Malaysia & Anor* that affirmed the principles laid down by the High Court as follows:

- (a) The right to be heard before the DGIR to accord recognition is not specifically provided for in section 9 of the IRA.
- (b) The court will not be warranted in supplementing the legislation, that is the IRA, even if the legislative provision of section 9 thereof is not as full and complete as the court might think appropriate.
- (c) If the legislature has by its legislation decided what opportunity should be afforded, the court is bound by the legislation as much as the citizen and has no warrant to vary the legislative scheme of the IRA.
- (d) Not all common law principles relating to natural justice are applicable. The rules and ambit of natural justice vary according to the circumstances and context.
- (e) It is well established that when a statute has conferred on anybody the power to make decisions affecting individuals, the court will not only require the procedure prescribed by the statute to be followed, but will readily allow so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.
- (f) The court should not fly in the face of a clearly evinced Parliamentary intention to exclude the operation of the *audi alteram partem* rule.
- (g) It is not for the court to amend the statute by engrafting upon it some other provision that it might think more consonant with a complete opportunity for an aggrieved person to present views and to support them by evidentiary material.

This decision affirmed that legislative procedure rather than judicial interpretation should govern the recognition process. This ruling ensures legal certainty and reinforces our statutory intent.

In response to the Committee's 2022 recommendations, Malaysia introduced section 12A of the IRA to address sole bargaining rights. When multiple unions represent the same category of workers, the DGIR, through a secret ballot, if needed, identifies the union with the majority mandate.

In line with this framework, the Government does not provide for all unions within the unit to negotiate jointly or separately on behalf of their individual members. Once the process under section 12A of IRA has been invoked, and a union has been determined to hold sole bargaining rights, such a union may initiate bargaining with the employer. This is to ensure orderly and coherent industrial relations, prevent conflicting demands and promote effective and unified representation.

While unions not selected as sole bargaining agents cannot negotiate separately, they remain free to advocate for their members. This structure, built on tripartite consultation, balances representation and industrial coherence.

Malaysia is proud to report that over 28,000 foreign workers are currently members of trade unions across the country, underscoring the nation's commitment to fair and inclusive labour practices. In January 2025, the Government introduced a significant policy change by granting a blanket ministerial exemption to a specific union, allowing non-citizens to serve as union officers within that union without requiring individual case-by-case approval. This

exemption was granted following a formal application by the union and was approved by the Minister.

While the exemption applies to one union only, it represents an important step toward more inclusive trade union governance. The reform enables migrant workers in that union to take on leadership roles, recognizing their essential contributions to Malaysia's workforce and affirming their right to representation within union structures. This development highlights Malaysia's ongoing efforts to strengthen labour rights and promote equitable participation in trade union leadership.

While the exemption granted by the Minister does not eliminate the overall requirement for case-by-case approval, it marks a positive and progressive step by the Government. By approving a blanket exemption for one union, the Government has demonstrated its willingness to support more inclusive union leadership and facilitate greater participation of migrant workers in trade union governance. This move acknowledges the vital contributions of migrant workers to Malaysia's workforce and reinforces their right to representation within union structures.

Although non-citizens generally still require ministerial approval to hold union office, the exemption granted in this case illustrates that there are no absolute barriers to migrant workers serving in leadership roles, especially where unions actively seek inclusive representation. This contributes to the growing inclusivity and diversity of union leadership across the country.

With respect to the participation of migrant workers in effectively exercising their collective bargaining rights, it is important to note that the IRA does not impose any restrictions in this regard. In practice, there have been instances before this where collective agreements and awards have been successfully concluded involving trade union representing migrant workers.

It is also worth highlighting that the terms of a collective agreement, once concluded, apply uniformly to all workers within the relevant scope of employment, not only to union members. This ensures that the benefits of collective bargaining extend to all employees, including migrant workers, thereby reinforcing inclusive and equitable labour practices.

Amendments to section 13(3) of the IRA clarify that while certain managerial prerogatives remain excluded from formal collective agreements, trade unions may engage employers in discussions on these matters. This provision promotes constructive dialogue, enhances transparency, and reflects the Committee's recommendation to limit overly-broad restrictions.

The amendment marks meaningful progress by:

- enabling unions to raise general concerns on restricted topics;
- narrowing the prohibition to formal proposals only;
- fostering broader consultation in employment matters.

While the provision does not compel employers to reach agreement on such issues, it encourages openness to dialogue in good faith. In situations where an employer declines to engage, maintaining records of such efforts may support continued advocacy and transparency in industrial relations.

Notably, around 98 per cent of collective agreements recognized by the Industrial Court have included such matters, underscoring their practical importance. In 2023, the Court accorded cognizance to 274 collective agreements, and 240 in 2024.

In conclusion, Malaysia's comprehensive reforms in law, policy and practice mark a strategic and progressive shift towards a modern, fair and inclusive industrial relations system.

These reforms, ranging from streamlined union recognition and stronger enforcement against anti-union discrimination, to inclusive union leadership and more balanced collective bargaining, demonstrate Malaysia's firm alignment with the principles of the Convention.

Our labour law reform continues to evolve with purpose and clarity, reflecting our unwavering commitment to fairness, inclusivity and the protection of workers' rights.

Central to this transformation is our close and constructive collaboration with tripartite partners, governments, employers and workers as well as steadfast support from the ILO.

Malaysia sincerely thanks the Committee for its continued engagement and guidance and we reaffirm our dedication to deepening this partnership and upholding the highest standards of labour rights and social justice.

Employer members – Malaysia ratified the Convention in 1961, and has been under close scrutiny by the ILO supervisory bodies for several decades. Malaysia's compliance with the Convention has come before the Committee multiple times (namely, 1992, 1994, 1999, 2016, 2022), and over this period, the Committee of Experts has issued numerous observations (23, in fact, since 1989) urging Malaysia to align its laws and practices with the Convention.

In recent years, Malaysia has undertaken significant legislative reforms that mark substantial progress toward compliance with the Convention. Since 2016, the Government, with support from ILO technical assistance, has implemented major amendments to the IRA and the TUA. These changes were designed in consultation with social partners and are aimed at strengthening freedom of association and collective bargaining rights, in line with international standards. Changes included improved access to justice by removing the Minister's discretion over referrals of dismissal cases to the Industrial Court and related measures, and reforms to trade union recognition and bargaining rights.

At the same time, complementary amendments to the TUA came into force in September 2024, removing long-standing restrictions on union formation that had constrained workers to organizing only within specific trades or industries. Likewise, the repeal of the so-called "competency check" (a procedure formerly used to challenge a union's suitability for recognition) has closed a loophole that employers could use to stall union recognition. These reforms have been welcomed by the ILO's supervisory bodies as aligning Malaysia's legal framework more closely with the Convention.

Malaysia has also strengthened enforcement and dispute resolution mechanisms. For instance, prohibiting anti-union discrimination and making retaliation against union activities a criminal offence liable to prosecution.

Statistical evidence indicates improving enforcement outcomes. The DIRM recorded 16 complaints of anti-union discrimination in 2023 and 9 in 2024, with all 25 cases resolved either through conciliation or by referral to the Industrial Court.

However, despite the significant progress, several continuing challenges remain to be overcome before Malaysia can be considered in full conformity with the Convention. In its latest observation, the Committee of Experts highlighted a number of areas where further improvements could be achieved. These include:

- Anti-union discrimination. Workers do not appear to have an independent right to take an anti-union discrimination claim directly to court. The Employer members echo the Committee of Experts' concern that they once again urge Malaysia to ensure that victims of

anti-union discrimination have the right to lodge complaints directly before an impartial tribunal and that remedies (such as reinstatement and compensation) and sanctions are sufficiently dissuasive. The lack of detailed public information on section 8 complaints has been noted with regret by the Committee of Experts. This data gap needs to be closed so that progress can be measured and any bottlenecks identified.

- Trade union recognition procedures – While the IRA reforms have streamlined recognition on paper, practical impediments in the recognition process persist. The Committee of Experts observed that no clear statutory definitions of these categories exist, and while the DGIR can now make the initial determination, employers still have the right to appeal this decision. The challenge going forward is to implement the new four-month recognition timeline in practice, including at the appeals stage, by removing any unnecessary procedural hurdles. Additionally, the ILO has pointed out that protection against acts of interference during the recognition process should be strengthened and the Employer members echo that thought.
- Exclusive bargaining rights and minority unions: A new feature of Malaysia's industrial relations system is the "sole bargaining agent" framework (section 12A of the IRA), established in 2024. This mechanism was created to deal with situations where multiple unions exist at a workplace, by designating one union as the exclusive bargaining representative of all workers in the unit. This approach prioritizes unified representation, but it has given rise to a challenge regarding the rights of minority unions. Specifically, this Committee, in 2022, recommended that if no union achieves exclusive bargaining status (for example, if a recognition ballot fails or turnout is too low), all unions in the unit should be allowed to negotiate – jointly or separately – at least for their own members. Current Malaysian law does not provide for such a scenario: if a union does not secure the required majority or highest vote, the result simply seems to be that no collective bargaining can occur at all. This needs to be rectified.
- Restrictions on trade union officers (migrant workers): Another outstanding issue, as we have heard from the Government, is the restriction on non-citizens holding office in a union, even if they are union members. The Committee of Experts has reiterated that migrant workers should be able to fully participate in union activities, including running for union office, and it regrets that its long-standing request to remove this blanket restriction has not yet been met in law, despite limited exceptions being granted.

In conclusion, the Employer members commend the Government for the progress it has made in modernizing its industrial relations regime and enhancing compliance with the Convention while at the same time recognizing that some gaps need to be addressed. The Employer members also support Malaysia in continuing to avail itself of technical assistance from the ILO. In particular, ILO assistance on streamlining recognition and defining managerial exclusions, developing best practices for handling multiple unions, by focusing on clarity, efficiency, and dialogue – ensuring that procedures are clear, processes move swiftly, and all stakeholders have a voice in solutions – Malaysia can resolve the remaining challenges in a manner that sustains both workers' rights and productive, harmonious workplaces.

Finally, we underline the importance of ongoing social dialogue and engagement with the ILO as Malaysia implements these recommendations. The National Labour Advisory Council should continue to be used as the forum to discuss any proposed legal or policy changes, thereby securing buy-in from both employers and workers.

Worker members – From the outset, the Worker members express deep concern over the Government's refusal to deposit credentials for the Workers delegation at this Conference.

The Government justified this by alleging an “absence of legitimate leadership” in the Malaysian Trades Union Congress. We recall the Government’s obligation under article 3(1) and (5) of the ILO Constitution to nominate a fully tripartite delegation, ensuring that workers’ delegates are chosen in agreement with the most representative workers’ organizations.

This is the second time in four years that our Committee examines Malaysia’s application of the Convention. Following up on the conclusions adopted in 2022, the Committee of Experts has identified serious concerns regarding Malaysia’s compliance.

The Worker members are particularly troubled by the persistent failure to address anti-union discrimination. Remedies remain slow and ineffective. Section 8 of the IRA still grants the DGIR discretionary power to decide whether anti-union discrimination cases proceed to the Industrial Court, effectively denying workers direct access to justice. Despite explicit requests from the Committee of Experts, the Government has not provided data on the number, duration, or outcomes of such cases. Meanwhile, as you will hear from my colleagues in the room, unions and members are routinely denied effective remedies against anti-union discrimination.

Effective protection requires swift, effective procedures and remedies ensuring reinstatement, adequate compensation, as well as sufficiently dissuasive sanctions. We urge the Government of Malaysia to repeal section 8 of the IRA and enact provisions allowing workers who are victims of anti-union discrimination to lodge complaints directly in court. Furthermore, the burden of proof should shift to employers once a *prima facie* case is established.

Despite long-awaited legal amendments which now establish the principles of plurality of trade unions and freedom of choice for workers employed in different sectors, significant barriers to trade union recognition for collective bargaining persist. Employers continue to interfere in secret ballots, and the Director-General retains broad discretion in handling recognition complaints. Trade unions have long decried the lengthy recognition process, which can take up to nine months, compounded by the possibility of appeals that further delay outcomes. The new formula introduced in the IRA for calculating votes needed for recognition still requires broad worker support in a bargaining unit, which is difficult to achieve in many sectors.

We urge the Government to establish effective administrative and judicial procedures for trade union recognition in collective bargaining. It must also take measures to prevent and address employer interference, including through accessible, efficient, and expedited complaint mechanisms. Echoing the Committee of Experts, we call on the Government to amend the legislation so that, where no union is declared an exclusive bargaining agent, all unions in the unit can negotiate jointly or separately on behalf of their members.

Interference by authorities extends to unions’ right to elect their representatives. Despite repeated calls, section 28(1)(a) of the TUA still bars non-citizens from being elected to trade union executive bodies unless the Minister of Human Resources deems it necessary to represent persons outside Malaysia. This restriction must be immediately repealed.

Regarding collective bargaining, the Worker members deplore the lack of progress since our last review. According to the Committee of Experts, collective bargaining coverage remains extremely low – 0.4 per cent in 2018, the latest available data. This dismal figure reflects the excessive legal restrictions in Malaysia.

In the public sector, civil servants not engaged in the administration of the State remain excluded from collective bargaining under the IRA. Bodies such as the National Joint

Council (NJC) serve merely consultative roles rather than functioning as true bargaining platforms. The IRA also imposes undue restrictions through compulsory arbitration on disputes involving certain government services and statutory authorities, some of which include workers beyond public servants in the administration of the State. Furthermore, businesses linked to defence and security are classified as essential services, contrary to Convention provisions.

In the private sector, collective bargaining's scope remains severely limited. Section 13 of the IRA restricts the scope of collective bargaining and excludes promotions, transfers, appointments to vacancies, redundancy terminations, dismissal and reinstatement, and the assignment or allocation of work.

The Worker members firmly recall that under the Convention, governments must actively promote and encourage the full development and utilization of machinery for voluntary negotiation mechanisms between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

The broad restrictions in both private and public sectors violate the Convention and must be lifted without delay.

We call on the Government to align its legislation with the Convention and ensure in practice that the rights to organize and bargain collectively are fully respected and realized throughout the country.

Employer member, Malaysia – The Malaysian Employers Federation (MEF), acknowledges the Committee of Expert's observations on Malaysia's legislative reforms, especially concerning section 8 of the IRA. The MEF commends the Government's continued alignment with international labour standards and would like to offer clarifications and concerns on the subject.

The DGIR's discretion in referring anti-union cases is not arbitrary. It prevents system abuse, manages caseloads, follows internal standard operating procedures (SOPs), and remains reviewable by the courts.

On the proposal for direct court access by workers, the MEF urges caution. While this may appear to enhance worker protection, it risks overwhelming the courts with unvetted cases, potentially delaying justice for all parties: "Justice delayed is justice denied". Malaysia's current system, via the Industrial Relations Department's conciliation process, has proven effective. More than 85 per cent of reported cases at the Industrial Relations Department were resolved amicably, indicating the system's strength in delivering practical outcomes.

Delays often stem from parties' actions, not systemic issues. Remedies like reinstatement and compensation are already fairly applied.

The proposal to reverse the burden of proof must include safeguards to avoid unfair consequences for employers, especially small and medium sized enterprises (SMEs).

The MEF supports freedom of association but stresses that reforms must balance worker protection with procedural fairness and practical implementation.

Trade union recognition: The MEF welcomes the reform to the IRA, and the TUA, effective as of 15 September 2024. This reform promotes union pluralism aligned with global standards. The removal of sectoral restrictions and the introduction of impartial secret ballots enhance union freedom, transparency and trust. The MEF refutes allegations of employer interference.

Malaysia has strong legal protections under sections 4 to 8, including criminal penalties. Any claims must be evidence-based. The secret ballot system ensures a fair and confidential platform for union elections.

While supporting union pluralism, the MEF warns against over-fragmentation, especially for SMEs. Multiple unions in one workplace can lead to rivalry and inefficiency. Recognition processes must balance workers' rights and employers' needs. Constructive engagement is vital for a sustainable industrial climate. Delays in union recognition reflect necessary legal steps like classification and ballot logistics, not inefficiency. Accuracy matters due to the long-term impact on employers.

The DGIR ensures neutrality and due process. Judicial review protects all parties and should be viewed as a safeguard. Reclassifications of executive and confidential staff are based on business needs. Exclusion from union participation avoids conflicts of interest as provided for in section 9(1) of the IRA. The 2024 reform, that is to say, faster ballots and enhanced authority of the DGIR are already improving the process.

Union recognition timeline, the MEF stressed that the timeline must be seen through the lens of due process and the complexity of legal assessments, such as workers' eligibility and union representativeness. Judicial review and the DGIR oversight ensure neutrality and fairness.

The MEF strongly objects to the term "pseudo promotions". Promotions are legitimate human resources tools and should not be presumed to be anti-union tactics without evidence. Reform like abolishing competency checks and enhancing the powers of the DGIR are improving the timelines.

Union recognition and bargaining: The MEF welcomes recognition of recent reforms but disagrees with the view that Malaysia's 50 per cent plus 1 majority threshold is too high. This threshold ensures democratic legitimacy and industrial stability. Reducing it could lead to fragmented bargaining and inconsistent representations. Parallel bargaining by minority unions would burden employers, especially SMEs and risk conflicting demands.

The MEF supports the use of ballots to determine a sole bargaining agent under section 12(A) of the IRA ensuring coherent and fair negotiations. Liberalized union formation must be balanced by unified bargaining. The MEF urged voluntary inter-union cooperation, not statutory mandates.

Scope of collective bargaining under section 13(3) of the IRA: The MEF acknowledges the Committee of Expert's concern on section 13(3) of the IRA, but emphasizes that this provision is a necessary safeguard.

It excludes key management functions like promotion, transfer, redundancies and dismissals from mandatory bargaining to preserve operational efficiency and legal certainty especially for SMEs. Importantly, section 13(3) of the IRA is not a blanket provision. Parties may voluntarily negotiate these matters, and unions may raise them under section 18 of the IRA. No formal complaints suggest misuse and this aligns with international standards recognizing managerial functions. Rather than revising section 13(3) of the IRA, the MEF proposes maintaining it as a default, supported by clearer guidelines and data collection. Any reform must involve three-partite consultation.

The MEF highlights the Government's proactive efforts in the form of streamlined union registration, sectoral union support, gig workers protection and initiatives like the MADANI worker card benefiting more than 1 million union members up to 30 per cent discount on

product and services, demonstrating Malaysia's strong commitment to workers empowerment and alignment with ILO standards.

Compulsory arbitration under the IRA: Compulsory arbitration under section 26(2) of the IRA and point 10 of the First Schedule of the IRA, is used sparingly in critical sectors like defence and healthcare ensuring national stability. It applies only with state consent and does not affect ordinary businesses. It balances workers' rights with public interest. Defence-linked sectors, for example, military, logistics are appropriately classified as essential based on the national risk.

Voluntary bargaining remains the norm; this exception upholds the principles of the Convention. The MEF supports the keeping of this safeguard conducting tripartite reviews and sharing data with the ILO to ensure transparency and responsible application.

Collective bargaining rights for public servants: The MEF appreciates the Committee of Expert's focus on public servants. The Government's dual role as both employer and policymaker requires a differentiated framework. While public sector collective bargaining may not mirror the private sector, the National Joint Council (NJC) functions as an effective negotiation platform, with binding outcomes such as 13 per cent wage adjustment and improved benefits. In addition, many statutory bodies and government-linked companies (GLCs) engage in formal collective bargaining.

Collective bargaining coverage and practice in Malaysia: The MEF welcomes the Committee's attention to collective bargaining, but stresses that Malaysia reported 0.4 per cent coverage must be viewed in context. Malaysia's economy is largely SME driven, with more than 650,000 microenterprises having fewer than five employees. In such cases, direct informal arrangements often suit both parties better.

The Malaysian bargaining framework is enterprise-level and voluntary, unlike countries with sector-wide models, so global comparison can be misleading. Nonetheless, in Malaysia, more than 300 collective agreements are signed annually in key sectors like manufacturing, transport and finance covering employment terms and registered with the Industrial Court.

The 2024 reforms have strengthened this system to improve procedures and voting mechanism. Barriers to wider bargaining are not legal but structural like low union density, workers preference and union fragmentation.

The MEF supports collective bargaining that reflects Malaysian economics and cultural realities, not one-size-fits-all models. Malaysia has embarked on substantial reforms, many of which are still in an early stages. The MEF respectfully urges the ILO to allow adequate time for these measures to mature and to be evaluated. The MEF remains committed to upholding the Convention and advancing decent work through a fair, inclusive and sustainable ecosystem for all stakeholders.

Government member, Poland – I have the honour to speak on behalf of the **European Union (EU)** and its **Member States**. The candidate countries **North Macedonia, Montenegro, Albania, Ukraine, Republic of Moldova and Bosnia and Herzegovina** and the European Free Trade Association (EFTA) country **Norway**, member of the European Economic Area, align themselves with this statement.

The EU and its Member States are committed to the respect, protection, and fulfilment of human rights, including labour rights. We promote universal ratification and effective implementation of fundamental ILO Conventions and support the ILO in developing and promoting international labour standards and supervising their application.

The EU and Malaysia signed, in 2022, a Bilateral Partnership and Cooperation Agreement which further strengthens the bilateral cooperation and encompasses a wide range of areas, including human rights and sectoral cooperation on labour and employment.

We welcome the Government's recent legislative reform through amendments to the IRA, the Industrial Relations Regulations, the TUA and the Trade Union Regulations.

We note the observations made by the ITUC related to the remedies for anti-union discrimination and lengthy procedures. We recall that effective protection against acts of anti-union discrimination requires rapid and effective procedure and remedies through reinstatement and adequate compensation, as well as sufficiently dissuasive sanctions. We also recall that workers who are victims of anti-union discrimination should have the right to directly lodge a complaint before the courts.

Regarding the criteria and procedure for recognition of trade unions for the purposes of collective bargaining, we note the "satisfaction" expressed by the Committee of Experts regarding the entry into force of several legislative amendments. However, we recall that the recognition processes should provide safeguards to prevent acts of employer interferences, and we ask the Government to take the necessary measures to prevent or repress such acts. We also echo the Committee of Experts' request to further review the legal framework for the recognition of trade unions with a view to simplifying and expediting the administrative and judicial procedures.

We join the Committee of Experts' request to the Government to take measures – in consultation with the social partners – to ensure that, in situations where no union is declared the exclusive bargaining agent, all unions in the unit are able to negotiate, jointly or separately, at least on behalf of their own members.

In addition, we call on the Government to ensure that foreign workers do not face instances of discrimination, including in relation to trade unions' membership.

We note the Committee of Experts' observations that the elements considered during their analysis may not demonstrate the existence of complete bargaining machinery. Moreover, we share the Committee of Experts' concerns about the very low coverage of collective bargaining, with a rate of 0.4 per cent in 2018.

We call on the Government to take the necessary actions to remove any remaining legal and practical obstacles to collective bargaining addressed in the Committee of Experts' comments, including on the scope of collective bargaining, compulsory arbitration, and restrictions applied to public servants not engaged in the administration of the State. We ask the Government to take concrete measures to promote the full development and utilization of collective bargaining.

We acknowledge the Government's written submission in response to the observations made by the Committee of Experts.

The EU and its Member States encourage the Government to avail itself of the technical assistance of the ILO. We remain committed to constructive engagement with Malaysia and encourage the Government to further strengthen its cooperation with the ILO, social partners, and the international community.

Government member, Brunei Darussalam – I have the honour to deliver this statement on behalf of the **Association of Southeast Asian Nations (ASEAN)**. At the outset, ASEAN would like to express its appreciation to the ILO for its continued engagement and collaboration with regional organizations and its' members, including with our Member States.

We reaffirm our collective commitment to advancing the Decent Work Agenda and promoting fair, inclusive, and rights-based labour practices in the region, in accordance with international labour standards and ASEAN's own shared goals and principles.

In this regard, ASEAN takes note of the efforts made by the Government of Malaysia to strengthen its industrial relations framework through legislative reforms, developed in close cooperation with the ILO under the Decent Work Country Programme. These reforms, implemented in phases since 2019, reflect ongoing efforts to improve transparency, efficiency, and inclusiveness in Malaysia's labour governance, while taking into account national circumstances.

ASEAN acknowledges Malaysia's steps to enhance union recognition, strengthen legal safeguards for trade union activities, and address anti-union discrimination. Reforms such as the streamlining of the union recognition process and measures to ensure clearer procedures in cases of trade disputes are indicative of Malaysia's intention to promote greater access to industrial justice. These measures, while still evolving, contribute to a more rules-based approach to industrial relations.

We also take note of efforts to foster greater inclusivity, including provisions that facilitate the participation of migrant workers in trade unions and collective bargaining.

It is also important to highlight that these developments take place within the broader regional context. As a community, ASEAN remains committed to supporting its Member States in their respective journeys toward strengthening compliance with international labour standards.

We recognize that each Member State must navigate its own path, shaped by national realities, legal traditions, and institutional capacities. In doing so, we continue to uphold the ASEAN principles of mutual respect, non-interference, and regional solidarity.

ASEAN believes that constructive cooperation, both within our region and with partners such as the ILO, will remain essential in fostering resilient, just, and forward-looking labour systems. Our shared vision is to promote decent work for all and to advance social protection, social dialogue, and sustainable growth across ASEAN.

In conclusion, ASEAN reaffirms its support for Malaysia's ongoing efforts to strengthen its labour governance in alignment with international labour standards. We respectfully encourage the ILO to continue its constructive partnership with Malaysia, not only in supporting compliance with international norms, but also in advancing the development of sound, inclusive labour policies that promote sustainable national growth. A continued and balanced collaboration between Malaysia and the ILO will contribute not only to national progress but also to the creation of a more coherent, resilient, and harmonious labour environment across the ASEAN region.

Government member, Islamic Republic of Iran – The Islamic Republic of Iran supports Malaysia's remarkable achievements in advancing workers' rights and strengthening industrial relations. We commend our Malaysian partners for their visionary leadership in implementing comprehensive labour reforms that serve as a beacon of progress for the region and beyond.

Malaysia's collaboration with the ILO since 2019 through the Decent Work Country Programme demonstrates commitment to international best practices. The two-phase reform of the IRA reflects careful planning and genuine dedication to workers' welfare. We particularly applaud Malaysia's decisive action in removing restrictive sectoral limits through amendments

to the TUA. This bold step towards greater freedom of association aligns with fundamental principles of worker empowerment that resonates deeply with our own values.

The Islamic Republic of Iran recognizes Malaysia's strengthened protection against anti-union discrimination as a cornerstone of just labour relations. The clear prohibition of all forms of discrimination under section 8 of the IRA, coupled with the Director-General's enhanced authority to refer cases directly to the Industrial Court, ensures swift and impartial justice for workers.

Malaysia's streamlined union recognition process, completed within five months, exemplifies administrative excellence and respect for workers' organizing rights. The removal of ministerial appeal powers and the Director-General's binding authority over union recognition creates a transparent, predictable framework.

The Islamic Republic of Iran particularly celebrates Malaysia's inclusive approach to migrant workers in union representation. With over 28,000 foreign workers as union members and the 2025 Policy exempting non-citizens from individual approval requirements for union leadership, Malaysia demonstrates that worker solidarity transcends national boundaries.

Malaysia's expansion of collective bargaining scope to include discussions on managerial prerogatives, while maintaining appropriate boundaries, shows sophisticated understanding of modern industrial relations.

In conclusion, the Islamic Republic of Iran views Malaysia's comprehensive labour reforms as a testament to what can be achieved through political will, international cooperation, and genuine commitment to workers' welfare. These reforms represent not merely legislative changes, but a fundamental shift towards a more democratic, transparent, and rights-based industrial relations system.

Employer member, Cambodia – The Cambodian Federation of Employers and Business Associations (CAMFEBA) wishes to express its strong support for the comprehensive and balanced statement delivered by the Malaysian Employers Federation (MEF) in response to the Committee of Experts' observations on the Convention.

As fellow representatives of employers in ASEAN, CAMFEBA commends MEF's principled stand in defending the integrity of Malaysia's industrial relations framework, while acknowledging the need for continuous alignment with international labour standards.

CAMFEBA particularly supports the MEF's clarification that the role of the DGIR in Malaysia is not arbitrary, but structured and subject to judicial review. This mechanism, based on conciliation, is not a weakness but a strength. It allows for the early and amicable resolution of disputes, protecting both workers' and employers' interests. Cambodia and many other jurisdictions particularly in ASEAN adopt similar principles in their labour dispute resolution system, emphasizing the importance of institutional filters to maintain industrial harmony and avoid court congestion.

On the matter of union recognition, CAMFEBA supports the MEF's call for a fair and transparent process that respects workers' choices while avoiding fragmentation of unions, especially for SMEs. In Cambodia, we too have witnessed how overlapping union representation led to counterproductive rivalry rather than constructive engagement. CAMFEBA agrees that union pluralism must not come at the cost of enterprise-level stability.

The MEF's caution regarding the reversal of the burden of proof and calls for stronger sanctions is also well-founded. Any reforms in this area must maintain balance and avoid

inadvertently creating procedural unfairness, particularly for small enterprises lacking resources.

CAMFEBA also endorses the MEF's position on collective bargaining coverage. Malaysia, like Cambodia, has a predominantly SME-based economy. It is critical that international assessments recognize the diversity of national industrial contexts and avoid one size fits all comparisons.

Finally, CAMFEBA commends the MEF for its evidence based, constructive, and forward-looking engagement with the Committee. CAMFEBA echoes the MEF's call for reforms to be guided by practical realities, social dialogue, and tripartite consultation, principles that are core to the ILO's mission.

Worker member, United Kingdom of Great Britain and Northern Ireland – We are used to conflicts between decent laws and poor practice. Malaysia is unusual in that a positive legal framework based on the Trade Unions Act 1959 is undermined not just by poor practice but by an entirely separate legal framework, the IRA. The result is confusion, complication, and great difficulty for Malaysian workers to exercise their right to join a union.

While the 1959 Act allows for simple recognition processes, this dual system creates unnecessary barriers for trade unions. In one case, the Electrical Industry Workers Union filed for recognition with an electrical company in August 2024. A full nine months later, the Government responded that 1,200 of the workers involved were confidential workers, not eligible for union rights. Denying basic union rights to electrical workers could form the basis of a Conference complaint all by itself.

Delays and arbitrary reclassifications of worker eligibility are a form of bureaucratic smothering of the collective bargaining process. The IRA sets the Director-General of Industrial Relations no time frame, meaning unions can be left in limbo indefinitely with no legal path to restitution for delays. The system urgently needs some urgency.

The Government also applies troubling methodologies to recognition votes. In one example, the National Union of Drink and Food Industry Workers (NUDFIW) finally secured a ballot. Out of 99 workers who were entitled to vote, the votes were, for the union, 49, three spoiled, three for the employer, and 44 which were not cast. The union therefore gained 89 per cent support for recognition from votes cast, a clear win.

But the Government ruled that the 44 uncast votes were votes for the employer, meaning that the union's recognition attempt failed by one vote. This is clear evidence of a system set up to discourage union recognition and with it to stifle collective bargaining.

Government complicity makes it all the easier for employers in defiance of the Convention to interfere with union processes. Unions report that workers have been prevented from voting in secret ballots by being given special tasks that kept them busy or by outright threats.

Employer agents are then able to lurk around during the ballot while unions are kept away. Indeed, unions are held at arm's length throughout the whole process. The National Union of Drink and Food Industry Workers reports huge difficulty in getting access to workplaces, as does the Electronics Industry Employees Union, forcing them to go from town to town and village to village to meet workers away from the workplace, itself reinforcing the idea that the union is frowned upon.

Workers should not have to feel as if they engaged in something shady and illicit just to exercise their rights. The Government is not meeting its obligations to properly promote collective bargaining with a simple process, either through underhand manipulation, blatant

threats with the explicit support of the state via provisions for challenging successful recognition votes, both Government and employers are impeding union rights.

The Government must decide which set of laws it wishes to give precedence to. Alas, its shameful failure to accredit workers to its Delegation this year suggests it is far from showing the right inclinations, but I hope this case will persuade it of the need to act firmly in favour of compliance with its obligations.

Interpretation from Arabic: **Government member, Saudi Arabia** – My delegation notes the clarifications provided by Malaysia. We thank Malaysia for their constructive cooperation with ILO mechanisms. They have cooperated in a number of ways, including by presenting oral information that is comprehensive and written information that was submitted at the right time. This has enriched our discussion here in this Committee. We welcome the structural and institutional reforms under way in Malaysia in recent years. We also note recent amendments that entered into force in December 2024 to strengthen relevant legal and institutional frameworks within the country and to enhance the transparency of procedures. All of this is in line with obligations under the relevant international instruments. We commend this positive step and we would encourage Malaysia to continue implementing reforms efficiently in order to enhance awareness among all partners and to create a working environment based on institutional equity, fairness and transparency. We recognize all that is done by Malaysia at the international level and its ongoing cooperation with the ILO and its constituents.

Employer member, Philippines – The Employers Confederation of the Philippines (ECOP) aligns itself with the Malaysian Employers Federation (MEF) in addressing the Committee of Experts' observations on Malaysia's application of the Convention. ECOP commends the Malaysian Government and the MEF for the substantial, forward-looking legislative reforms to the IRA and the TUA. These reforms demonstrate a sincere commitment to workers' rights, while recognizing the operational realities of a diverse SME-driven economy.

ECOP echoes MEF's position that mechanisms such as conciliation, secret ballots for union recognition, and current majority thresholds enhance democratic legitimacy, prevent misuse, and foster industrial harmony. These measures align with the principles of the Convention and must be appreciated in the context of Malaysia's administrative and legal landscape.

ECOP shares MEF's concerns regarding proposals like reversing the burden of proof and unrestricted and direct court access. While worker protection is vital, safeguards for procedural fairness and business sustainability, especially for SMEs, which make up 98 per cent of Malaysia's enterprises, are equally important.

On collective bargaining, ECOP supports the protection of core managerial functions such as promotions and dismissals. These do not preclude voluntary negotiation but maintain clarity in employer responsibilities.

Finally, compulsory arbitration in essential sectors, including defence and healthcare, is a legitimate sovereign measure to ensure national stability. The success of Malaysia's National Joint Council in delivering gains for public servants reflects that flexibility and protection can coexist.

In conclusion, ECOP recognizes Malaysia's significant progress and urges the Committee to allow time for these reforms to take full effect. ECOP is confident that MEF will continue to play a constructive role in the tripartite process to promote decent work and inclusive growth.

Worker member, South Africa I speak on behalf of the workers of South Africa, standing shoulder to shoulder with our sisters and brothers in Malaysia. They face a calculated assault

on their rights, rights that are guaranteed under the Convention, yet violated with impunity. Picketing is not a crime. It is a fundamental tool of collective bargaining yet Malaysian workers, especially those in the National Union of Bank Employees (NUBE) are being punished for exercising their right.

What do they face? They face harassment and intimidation. They face threats of prosecution. They face state orchestrated efforts to silence and break their unions. In February of this year, 10 NUBE members were dragged into long, intimidating investigations forced to travel distance simply for picketing after hours. Employers are working hand-in-hand with the authorities handing over confidential union information to the employers' unions to target and isolate workers. Even union leaders are under siege.

While Malaysia claims to respect the right to strike, in reality, legal obstacles render this right meaningless. This is not negligence. It is a deliberate and systematic campaign to crush workers' rights and to undermine the Convention. We therefore demand that the Government of Malaysia end the harassment and intimidation now, to align its laws and practices fully with the Convention, to guarantee the right to picket and to strike in practice, not just on paper.

Workers' rights are universal and they are non-negotiable. Therefore, as workers of South Africa, we stand with our Malaysian comrades.

Government member, Fiji – International labour standards set out minimum requirements. This is to help governments bring their law and practice into line with the Conventions. The benefit is that it provides protection to workers. It assists our businesses, improves productivity and it sets out the right platform for our national development.

As members of this Organization we, the Governments, have to play our part. We should ensure that when we ratify a Convention, that our laws and practice are in line with the Convention.

The Malaysian Government has been reminded by the ILO supervisory mechanism that there are severe gaps between what is in the current law and practice and what is set out in the Convention, which they have ratified.

When a government fails to do so, we consider that the government has not only failed with their workers and businesses, it has also failed to uphold and respect the objectives of this Organization.

As a Government Minister, I know it is not that easy to have both social partners agree easily on matters. Giving up is not the answer. I can say from my experience that with continuous practice, tripartite discussions, and help from the ILO, it is possible to overcome difficulties.

A constructive industrial relations environment helps all, workers, employers, and the Government. It contributes to national development efforts.

I join others to plead to the Malaysian Government to engage with the social partners and, in discussion with them, help bring the law and practice into line with the Convention as recommended by the Committee of Experts.

Miembro trabajador, Perú - Es importante recordar que los Estados están obligados a cumplir estrictamente con el Convenio, es decir, a respetar a las organizaciones sindicales, sin ningún tipo de intervención, coerción y, mucho menos, discriminación. Malasia debe hacer lo mismo, más aún si ratificó este Convenio en el año 1961. La realidad contrasta con lo que hemos escuchado aquí por parte del Gobierno.

En Perú, hemos tomado conocimiento de acciones sistemáticas presuntamente llevadas a cabo por funcionarios gubernamentales y empleadores para socavar las actividades sindicales y los derechos de los trabajadores en Malasia, violando flagrantemente el principio de protección de los sindicatos y los trabajadores contra la discriminación.

En los conflictos remitidos al Ministerio para conciliación, no se consulta ni se involucra al sindicato, y las decisiones se toman en su nombre, lo que resulta en un acuerdo inferior, inaceptable para el sindicato y sus afiliados.

El Gobierno ha tramitado denuncias penales presentadas por empleadores contra afiliados y líderes sindicales por participar en protestas pacíficas, criminalizando así las actividades sindicales legítimas. El Ministerio aceptó el pedido de los empleadores para remitir al Tribunal Laboral casos sobre convenios colectivos que nunca se negociaron con sindicatos, lo cual viola los principios de negociación colectiva y los derechos fundamentales del sindicato.

Cabe destacar que el artículo 8 de la IRA, es la principal disposición que brinda protección contra actos de discriminación antisindical. El artículo 8 se complementa con los artículos 39 y 59 de la misma legislación. Las disposiciones de los artículos 39 y 59 son de carácter penal. A pesar de estas leyes, los afiliados sindicales se enfrentan a una discriminación continua. En 2024 y 2025, el NUBE presentó 42 denuncias en virtud del artículo 39 y siete denuncias en virtud del artículo 59. Estas denuncias se refieren a intimidación por participación en actividades sindicales, negación de permisos sindicales, amonestaciones, descuentos salariales, suspensiones y despidos que afectaron a 130 afiliados.

El Gobierno envió estadísticas a la Comisión de Expertos para los años 2023 al 2025 sobre quejas presentadas en virtud del artículo 8. Sin embargo, no proporcionó información anterior a 2023. En 2019, el NUBE presentó tres quejas en virtud de los artículos 39 y 59, y hasta la fecha, el Gobierno no ha tomado medidas contra los empleadores ni informado al sindicato.

Finalmente, lo mismo ocurre con el despido de trabajadores. El artículo 20 de la IRA tiene por objeto brindar reparación a los trabajadores afectados. Estas reparaciones son limitadas debido a la lentitud del Gobierno. Solicitamos al Gobierno que revele el número de reincorporaciones realizadas en virtud del artículo 20 para evaluar su eficacia.

Government member, Bangladesh – Bangladesh notes with appreciation the efforts made by Malaysia in submitting the report. We take note with appreciation of the genuine intention of the Government for its engagement and collaboration with the ILO including through the Decent Work Country Programme to reform its industrial relations framework.

We recognize the initiation of automatic referrals of dismissal cases and the strengthening of the Industrial Court's powers, improving access to justice. We also acknowledge enhanced union recognition, introducing sole bargaining rights, and the improvement of the process for resolving trade disputes.

To widen the scope of collective bargaining, amendments to section 13(3) of the IRA were carried out. It allows unions to discuss managerial prerogatives with employers, though formal proposals on these are limited. This also encourages good-faith dialogue and transparency without obliging employers to agree. The Industrial Court has recognized such discussions in the vast majority of collective agreements, reflecting their practical importance in Malaysia's industrial relations. We appreciate the introduction of section 12A of the IRA to clarify sole bargaining rights among multiple unions representing the same worker category.

Bangladesh takes good note of the streamlining of union recognition process which can now be completed within five months. The removal of ministerial appeal powers on

competency issues gives the Director-General for Industrial Relations binding authority over union recognition and member eligibility.

Bangladesh encourages the Office to capitalize the Government's forthcoming approach to deepen its engagement to address all the outstanding issues.

Worker member, Japan I stand here to speak out on the continuing challenges faced by Malaysian unions in carrying out collective bargaining. In particular, I would like to highlight a lack of protection against sexual harassment of Malaysian workers.

The example I will highlight shows that women workers in Malaysia, in this age and time still face real dangers of sexual harassment. As a woman and President of the largest global trade union, it saddens me to see that we still have to campaign for the protection of women.

A union member employed at a bank was sexually harassed by an executive of the bank. The sexual harassment started on 7 May 2021 where lewd messages were sent to her by the executive and the matter has still not been resolved.

The matter involved a woman worker and her direct supervisor in Malaysia's leading local bank which is a Government subsidiary. The matter was reported in 2021, and no action was taken by the bank despite many reminders by the worker. Instead of resolving the matter, the Branch Manager coerced her to sign an agreement to close the matter.

After three years, the worker sought assistance from the Union and there onwards the Union took up the case. Grievances were filed and were submitted to the Ministry. No action was taken by the Ministry. The action by the bank forced her to be terminated which was also brought to the Ministry's attention, but no action was taken, and the matter is still in the Court.

The sexual predator has been charged in the Criminal Court of Malaysia while the matter is still pending in the Industrial Court. He remains employed by the bank while the female worker has been terminated.

The bank's inaction regarding the sexual harassment resulted in NUBE commencing industrial actions for more than six months. The Government referred the Employers' complaint against the Union to stop the picketing, which is the union's fundamental right.

By law, no picketing is allowed after the matter is referred to the Court. This is a violation of the Convention.

In the meantime, the bank sought a cease-and-desist order from the Industrial Court against the union to cease industrial actions, which itself is an infringement of trade union rights.

The Ministry did not carry out any investigation or conciliation but only referred her termination complaint to the Court after more than three months and disqualified two of her intimidation complaints.

I would like to ask the Government, what measures they have provided to dissuade such actions in law and through collective bargaining at workplaces. What kind of punishment is given for such actions of harassment condoned by the Employers and the Government? Without strong punishments, such problems will continue.

What other dissuading matters have been taken at the workplace in Malaysia to avoid sexual harassment issues? Employers must be reminded that this is the duty of the employer to provide a safe and healthy working environment for workers. This is a right of workers.

Interpretation from Chinese: **Government member, China** – My thanks to the Government of Malaysia for the information presented. We have studied carefully the report from the Committee of Experts and all written information submitted by the Government of Malaysia to this Committee.

Malaysia has shown a steadfast commitment to respect international labour standards and has always stood ready to honour its obligations under various Conventions. A number of legislative amendments were adopted recently in order to change the legislation governing the recognition of trade unions and also to remove certain sectoral restrictions on the establishment of trade unions and to enhance legal recourse and appeal when required. These amendments also serve to further strengthen the rights of workers. We believe that these amendments should be recognized and encouraged by our Committee.

China commends all of the sustained efforts undertaken by Malaysia as part of its ongoing legislative reform. All of this work is done through consultations and in close cooperation with the ILO. We know that the National Consultative Committee is vital to all of this work and it provides a platform to ensure that national standards are in line with international standards.

We fully support the ILO Secretariat and its mechanisms in order to allow it to provide the technical assistance required.

Worker member, Singapore– I would like to intervene on behalf of the Malaysian Trade Union Congress (MTUC) regarding the scope of bargaining and relate it to what the Committee of Experts observed in its report regarding the law and practice in Malaysia.

As highlighted by the Committee of Experts, the Malaysian Government claims that all restrictions on the scope of bargaining and in particular the restrictions contained in section 13(3) have been lifted. As you know, the restrictions relate to promotion, transfer, appointment, termination, dismissal and allocation of tasks.

The Government claims that the workers and employers are free to raise issues of a “general nature”. In other words, the Government argues that while the restrictions are still there, the law also provides for unions and employers to discuss whatever they agree to negotiate. This is a fallacy. The restrictions still apply according to the MTUC. No union can negotiate on a promotion, transfer, appointment, termination, dismissal, and allocation of tasks. Denying them this right to negotiate is unfair.

In essence, the Government has never lifted the restrictions. Job security, protection from unfair dismissal, right to negotiate on transfer, right to discuss job descriptions are the most important issues for any worker. If there are provisions to lift the restrictions, why can’t the union negotiate? Moreover, employers need to exercise their discretion in good faith. Unions must have the right to hold employers accountable when they fail to do so and also have an avenue to appeal against such actions by employers.

For example, in the Case No. 4/2-482/24 between the bank employers and the union, the employers’ lawyers have raised absolute discretion under section 13(3) and denied the union any right to even raise discussions in relation to a disciplinary process which includes dismissal.

Yet in another case, the union and employer agreed to a collective bargaining fee. This is to deter free riders. The Industrial Court refused to recognize it saying that it was outside the scope of collective bargaining.

The Convention guarantees that workers and employers can negotiate any matter that relates to them. The refusal by the Government to talk about such issues like dismissal and

recognizing collective bargaining fees as a genuine issue is a complete violation of the Convention.

The Malaysian Government should take cognisance of the current situation and immediately review the law with clarity, to create an atmosphere of constructive industrial relations that promotes harmony, leads to national development.

Worker member, France – In 2024, Malaysia amended its Trade Unions Act to remove union membership conditions. But to date, the Government has not approved the NUBE constitutional amendments in line with the reforms sent in December 2024. This delay, without a prescribed timeline, constitutes interference under Article 2(1) of the Convention. The country's IRA further hinders union rights.

In June 2024, NUBE filed 34 complaints against companies in the banking sector for not complying with the collective agreement such as mandatory social dialogues and occupational health and safety training. Yet, these cases will not be heard until July 2025 with decisions expected in 2025 or 2026. Justice delayed is justice denied.

In 2021, a major bank, which is a government subsidiary, filed a trade dispute to silence NUBE from campaigning against unfair labour practices. The bank misuses the Industrial Court to seek injunctive relief outside the court's jurisdiction and to restrict the union and drain its resources.

In November 2024, NUBE submitted an application to represent workers at a large local bank but the Government delayed its decision until August 2025. In the meantime, the Government registered an in-house union for the same group of workers. Recognition was quickly granted to this in-house union raising concerns about the fairness of the process.

Another case of customer service workers at a multinational bank where NUBE filed a recognition case in June 2024 remains pending. It is not clear whether the delay in NUBE's recognition was deliberate and part of a broader effort to undermine its representation.

The Government and employer's action deprived workers of their right to freely choose their representation. These events indicate possible collusion between the Government and the employer to create a union that would not threaten their interests.

The Government's claims that recognition timelines have been reduced to four months is not true. It is clear from both cases that the duration is much longer and lacks transparency.

These examples highlight a systematic pattern of state-sanctioned interference in trade union activities. Malaysia's failure to uphold its obligations under the Convention must be addressed. Trade union rights are human rights and denying them undermines the foundation of decent work and social justice.

Worker member, Fiji – ILO is a tripartite organization. House for workers, employers and governments. All having equal rights and responsibilities. We discuss, negotiate and agree upon ways and means to provide decent working conditions for workers, promote good business and contribute to national development efforts. Accordingly, labour laws based on ILO Conventions play a pivotal role. Member governments have an obligation to abide by the Constitution and the objectives of ILO

Malaysia has failed in this regard, as pointed out by the Committee of Experts. A middle-income country like Malaysia has failed in many ways to respect the ILO objectives. It miserably failed to bring the law and practice into line with the Convention. Instead, they have been attacking the unions.

Leaders of the bank union, NUBE, were summoned by the police and were accused of participating in picketing. The head of industrial relations from the bank complained to the police that she did not like the placards displayed in the picket. This is nothing but sheer harassment and intimidation. Trade unions cannot be denied the right to carry out legitimate trade union right of picketing.

The Ministry has overbearing powers. It uses it to control unions. As pointed out earlier NUBE submitted an amended constitution to the registrar of trade unions. It has now been over six months and the Ministry has yet to approve it. Another harassment, unions must submit notices of change of union officers within two weeks of the election with full minutes and the attendance list signed by several officers of the union. If delayed, the Ministry punishes the union by refusing to register it. This high-handed attitude of the Registrar of trade unions goes against helping to develop constructive industrial relations. This is nothing short of interference in legitimate trade union work.

The Government is allowing employers to have contempt for proceedings against officers of unions participating in picketing and other union activities. These are rights guaranteed under trade union and civil laws. This is nothing but prosecution of trade union leaders and members.

Employers, emboldened by apparent political backing, have drastically shifted their approach towards collective bargaining, abandoning legal frameworks and good industrial relations practices in favour of aggressive and unlawful tactics.

These actions are strongly condemned. Blatant misuse of government power to suppress legitimate trade union, the employers' complicity in this campaign of intimidation and the aggression must stop immediately.

Finally, shocked to see that the Government has denied the right of the representatives of the MTUC, the largest workers representative in Malaysia, to be here as delegate. The Malaysian Government knows that this tripartite house requires the Government to bring a complete delegation to the Conference. By denying the right of workers, the Government not only has failed but is in complete violation of the Convention. Denying the right of Workers' delegates is denying their right to freedom of association.

As the President of the Asia-Pacific Regional Office of the International Trade Union Confederation (ITUC), I call on the Malaysian Government to do the right thing.

Worker member, Brazil – We express our deep concern over the serious and systematic violations of the Convention by the Government of Malaysia. This is not about isolated breaches. What we are witnessing is a deliberate pattern of collusion between the Government and certain employers to undermine trade unions, suppress workers' rights, and dismantle collective bargaining frameworks.

Let me highlight four particularly alarming issues:

1. Union exclusion from dispute resolution – The Ministry of Human Resources often engages directly with employers behind closed doors, excluding unions and imposing settlements that fall far short of what is just and acceptable.
2. Interference in collective bargaining – We have seen agreements referred to the Industrial Court without any negotiation with unions. In one case, the Ministry claimed a deadlock, when no meeting had even occurred. This is a blatant violation of workers' rights.

3. Legal harassment of union leaders – The misuse of defamation lawsuits, injunctions, and other legal tools to intimidate and silence union representatives is deeply troubling and must be condemned.
4. Retaliation against victims of harassment – In one shocking case, a woman who filed a complaint of sexual harassment was dismissed, while the perpetrator remained protected. The union's attempt to support her was suppressed by the authorities.

This situation is not just about the Convention, it is about the erosion of democratic space for workers to organize, speak out, and defend their rights.

We urge this Committee to recommend that the Government of Malaysia:

- Cease interference in trade union affairs.
- Guarantee genuine collective bargaining processes.
- Reinstate workers and union leaders dismissed for their activities.
- Investigate all cases of retaliation and collusion.
- Fully comply with the Convention in both law and practice.

Finally, we appeal to governments in this Committee: do not remain silent. To stay silent is to stand with oppression. Workers in Malaysia deserve justice, dignity, and our collective solidarity.

Observer, Building and Woodworkers' International (BWI) – IndustriALL and the Swiss workers align themselves with this statement. Indeed, Malaysia has amended key labour laws. However, persistent implementation gaps are still found in law and practice, undermining workers' rights to organize and bargain collectively, in breach of the Convention, and particularly Article 1(2)(b).

This Article obliges governments to protect workers from dismissal or prejudice due to union membership or lawful trade union activities. However:

1. A BWI Indonesian migrant worker and union member, was illegally dismissed, wrongfully convicted, caned, and imprisoned for 11 months despite having a valid work permit and having a pending case appeal.
2. In a wood processing company, four migrant organizers of the Sabah Timber Industry Employees Union (STIEU) were illegally dismissed shortly after filing for union recognition. The other local and migrant members were blacklisted, intimidated, denied overtime, and an in-house union was promoted to undermine STIEU.
3. In an automotive company case, five leaders of the National Union of Transport Equipment and Allied Industry Workers leaders were dismissed for attending an after office hours union briefing. No redress has been granted.
4. The Electrical Industry Workers' Union faced threats and intimidation from two multinational corporations. Similarly, migrant workers were denied to secret ballot and were warned of deportation.

These cases expose the Government's failure to enforce its pertinent laws, particularly sections 4, 5, 7, 8, 20, and 59 of the IRA, violating its obligations under the Convention. We respectfully urge this Committee to recommend:

1. Strict enforcement of anti-discrimination provisions with statutory timelines and penalties;
2. Reform the recognition and secret ballot process under section 9, ensuring workplace access to unions, and non-interference voting, including a bystander clause to prevent employer interference;
3. Equal protection for migrant workers, including guaranteed work permits during pending disputes;
4. A moratorium on dismissal for six months before and after a secret ballot;
5. Enactment of whistle-blower protection to protect worker-witness from retaliation.

Malaysia's commitment to the Convention must be realized through enforcement and structural reform. Without this, workers, especially migrant workers, will remain vulnerable for exercising their fundamental rights.

Observer, International Trade Union Confederation (ITUC) – The entire Malaysian Industrial Relations is vested in the hands of the Government. Ministerial powers are used to trample on trade unions' bargaining rights. This is evident from the Minister's adamant refusal to deposit the MTUC as a workers' representative to this Conference while the Government is here with 40 representatives and 8 employers representatives. This is a blatant breach of the ILO Constitution and Conventions Nos 87 and 98.

In 2023, the Government got the Industrial Court to dictate the removal from a collective agreement of a 10 per cent bargaining fee that was to be paid by non-members or free riders who benefited from the union's efforts. This fee was negotiated by NUBE with the employer's union, the Malayan Commercial Banks' Association (MCBA), in the 19th collective agreement. The court threatened non-compliance of the collective agreement if the bargaining fee was not removed, which would nullify the entire collective agreement. The question is, why use cognizance to interfere in collective bargaining when it should be a simple registration? This is a violation of Article 4 of the Convention.

In 2023, the MCBA and NUBE signed a Festival Aid Agreement where 17 banks agreed to pay workers a Festival Aid equivalent to one month's salary every year, beginning in 2023. The banks and NUBE also agreed that both parties may review the payment for the following year.

In 2024 the banks had afterthoughts and refused to pay the Aid but NUBE stood firm on the agreement. When a trade dispute ensued the Director-General of industrialization called for conciliation. While a third conciliation meeting was pending the Minister met the bank to strike an inferior deal.

When NUBE lodged police reports against the Minister for abuse of power, the Minister rushed the matter to Court. The Court glaringly acted in favour of the Minister, denied NUBE's application to subpoena the Minister and nullified the 2023 agreement. The Minister supports banks that refused to commence negotiation for the 20th collective agreement on the expiry of the 19th collective agreement by referring the matter to Court while NUBE was urging negotiations.

In Court, the banks are retracting from all progressive articles bargained in the 19th collective agreement. The Court bends backwards to help the banks by denying NUBE's application for documents to prove its claim for the 20th collective agreement. The Government refuses to raise awareness about ILO Conventions among the courts, even when the court is under the Minister's direct purview.

I am confident this House can see the obvious breach of the Convention and the repugnant government–employer interference on trade union independence and the expansion of union funds to challenge unfair court and ministerial decisions.

Government representative – First and foremost, Malaysia would like to thank to all members for taking the floor concerning the application of the Convention. Malaysia would like to stress to the Committee that article 3.5 of the ILO Constitution gives the Government power to accredit its national delegation to attend the 113th Conference. However, as the Committee is undoubtedly aware, the MTUC is currently embroiled in a serious internal dispute concerning legitimacy of its leadership and the administration of office bearers for the 2022–25 term. This dispute has directly affected the MTUC’s capacity to represent workers, particularly in light of the Court of Appeals decision for the Joint Special Committee to be established to carry out elections of new office bearers which had yet to be done.

Following objections from other affiliate union members also, it could not be said that the Joint Special Committee represents the MTUC. This matter has been newly referred to the Credentials Committee for its consideration and as such it would be more appropriate for it to be addressed within that specific forum. In addition, the Government humbly requests from the Committee to encourage workers’ unions in Malaysia to work together and end any animosity and personal agendas between them in order for the Government to carry out its powers as enshrined under article 3.5 of the ILO Constitution.

The Government cannot be said to be the barrier within the worker union members when the internal issues of the appointment of office bearers of the MTUC have yet to be settled since 2022, having further been acknowledged by the order of the court.

The Government, having power to nominate and accredit its national delegation to attend the Conference, would be highly pleased in issuing the required credentials to the eligible most represented workers’ and employers’ organizations.

It is high time that the different factions within the MTUC settle their differences and carry out fair elections to appoint new office bearers for the term 2025–27 to avoid such an occurrence happening again next year.

The Government would also like to put on record that currently in Malaysia we have 775 trade unions registered with 1,041,554 members. Yet, the only one that we hear from time and time again is NUBE.

Malaysia also wishes to emphasize that all concerns and measures raised by NUBE have been thoroughly examined and appropriate actions have been taken accordingly.

Malaysia acknowledges the importance of ensuring effective protection against anti-union discrimination and remains committed to upholding the principles enshrined in our Conventions, particularly Convention No. 98. At the same time Malaysia adopts a traditional framework that prioritizes conciliation as the primary means of resolving disputes including those involving anti-union discrimination. This approach reflects a deliberate policy choice grounded in the preservation of industrial harmony and the fostering of cooperative labour relations.

The current system allows complaints of anti-union discrimination to be brought before the Department of Industrial Relations Malaysia where the Director-General of Industrial Relations (DGIR) facilitates conciliation between the parties. This is not a procedural barrier but rather a mechanism designed to resolve disputes efficiently and amicably.

Importantly, statistical evidence shows that effectiveness of this model is of more than 85 per cent of industrial disputes. Even disputes involving allegations of unfair labour practices or discrimination are successfully resolved at the conciliation stage.

This high success rate highlights the system's ability to deliver timely and mutually agreeable solutions without resorting to protracted litigation. When conciliation fails, the DGIR may refer the matter to the Industrial Court. The process also includes judicial review safeguards ensuring that the DGIR's discretion is not exercised arbitrarily. These mechanisms, together, provide a balanced approach which facilitates early resolution.

Worker members – As we close this discussion, the Worker members reiterate their deep concerns regarding the continued non-compliance by the Government of Malaysia with the Convention.

We are dismayed by the Government's refusal to deposit the credentials of the Workers' delegates, an action that undermines the principle of tripartism at the heart of this Organization. This is not merely a procedural issue. It is a direct challenge to the rights of workers to be represented by their own freely chosen organizations.

Despite this Committee's conclusions in 2022 and the clear guidance of the Committee of Experts, we have seen no meaningful progress on critical issues. Anti-union discrimination remains pervasive and inadequately addressed. Trade union recognition continues to face procedural delays and employer interference. Legal restrictions on both the scope of bargaining and the right to bargain persist in both the public and private sectors and foreign nationals are still denied the right to fully participate in trade union leadership. These are not abstract issues. They impact real workers every day, denying them dignity, a voice and protection at work.

We call on the Government to take immediate and concrete action to remove all legal and administrative obstacles to trade union recognition, ensure prompt effective remedies for anti-union discrimination, repeal or amend, in full consultation with the social partners, restrictive provisions in the IRA and the TUA, in particular sections 8 and 13 of the IRA and the section 28.1A of the TUA. And finally, guarantee full and unrestricted collective bargaining rights for all workers including public sector employees and those in so-called essential services.

The Worker members strongly encourage the Government to engage in genuine dialogue with the social partners to bring its legislations and practice into full conformity with the Convention.

The values of this Organization rests on the commitment of its members to uphold the rights of workers to organize and bargain collectively.

We urge the Government to approach the outstanding issues with the seriousness, diligence and urgency they clearly require and we call on the Government to accept a high-level tripartite mission.

Employer members –I would like to thank, as others have done, all of the speakers that have made their contributions today. They have informed all of our thinking and they will certainly help to produce some considered recommendations.

As mentioned in my opening remarks, Malaysia has made measurable progress over the last few years towards compliance with the Convention. However, despite the significant process, there are several continuing challenges that remain to be overcome before Malaysia can be considered to be in full conformity with the Convention.

Today's discussion has highlighted a number of areas where further improvements are needed and the Employer members make the following recommendations accordingly.

With respect to anti-union discrimination, the Employer members urge Malaysia to ensure that victims of anti-union discrimination have the right to lodge complaints directly before an impartial tribunal, that remedies such as reinstatement and compensation and sanctions are sufficiently dissuasive and that data on how complaints are handled and resolved are made publicly available.

With respect to the trade union recognition procedure, the Employer members ask the Government to ensure that implementation of a decision of the DGIR to grant recognition to a union is not subject to unduly restrictive practices and in particular, the Government should implement the new four-month recognition timeline in practice, including at the appeal stage, by removing any unnecessary procedural hurdles and to strengthen protection against acts of interference during the recognition process.

With respect to exclusive bargaining rights in minority unions, the Employer members call upon the Government of Malaysia to amend the provisions of the IRA relating to bargaining rights to ensure that, if no union achieves exclusive bargaining status, for example, if a recognition ballot fails or turnout is too low, that all unions in the unit are allowed to negotiate jointly or separately at least for their own members in line with the conclusions of this Committee in 2022.

Lastly, with respect to the restrictions on trade union offices of migrant workers, the Employer members ask the Government to remove the remaining restrictions on non-citizens, allowing them to be able to fully participate in union activities including running for and holding union office.

In conclusion, the Employer members commend the Government of Malaysia for the progress made in modernizing its Industrial Relations regime and enhancing compliance with the Convention while at the same time urging it to close the gaps I have just identified. The Employer members' also support Malaysia in continuing to avail itself of ILO technical assistance.

We underline the importance of ongoing social dialogue and engagement with the ILO as Malaysia implements these recommendations. The National Labour Advisory Council should continue to be used as the forum to discuss any proposed legal or policy changes, thereby securing buy-in from both employers and workers.

Conclusions of the Committee

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

The Committee noted with concern that gaps remained in the protection against anti-union discrimination, lengthy recognition procedures and the need to promote the full development and utilization of collective bargaining.

Taking the discussion into account, the Committee urged the Government, in consultation with the social partners, to take effective and time-bound measures to:

- **remove all the remaining legal and practical obstacles to collective bargaining and to promote its development;**

- ensure effective protection against acts of anti-union discrimination with dissuasive sanctions, and that victims of anti-union discrimination have the right to access justice and remedy;
- review recognition procedures for collective bargaining, with reasonable and adequate safeguards to prevent interference, simplifying and expediting the administrative and judicial processes; and
- enable collective bargaining machinery for public servants who are not engaged in the administration of the State.

The Committee requested the Government to accept a technical advisory mission of the ILO before the next session of the Conference.

The Committee also requested the Government to report any progress to the Committee of Experts on the measures taken to implement the above recommendations in line with the Convention by 1 September 2025.

Government representative – The Government extends its sincere appreciation to the Committee for its constructive engagement and the thoughtful observations regarding the application of the Convention, which Malaysia ratified in 1961.

We take due note of the concerns raised by the Committee, which serve as valuable input for our ongoing efforts.

While we recognize the importance of strengthening the framework supporting freedom of association and collective bargaining, we wish to note that these observations will be kept in view within the broader context of Malaysia's ongoing labour law reform initiatives.

Malaysia also takes due note of the Committee's full recommendations and affirms that the implementation of these reforms will be carried out in accordance with national circumstances and legal process.

The Government takes note of the Committee's offer of a technical advisory mission and, in the spirit of constructive engagement, proposes instead to receive technical assistance from the ILO. This assistance may be effectively channelled through the existing Decent Work Country Programme (DWCP), particularly via the Labor Law Industrial Relation Reform (LLIR) Project, which provides an established platform for structured technical cooperation and engagement with social partners. The Government remains committed to aligning domestic practices with the Convention in collaboration with the ILO.

Malaysia remains committed in aligning its labour policies with international standards where appropriate, and we appreciate the Committee's continued engagement and support in this regard.