

To:

Mr Gilbert Houngbo, Director-General
International Labour Office
Route des Morillons, 4
CH – 1211 Geneva, Switzerland

**Re: Referral of an interpretation dispute to the International Court of Justice
under article 37(1) of the ILO Constitution**

Dear Director General,

As already announced during the 347th Session (March 2023) of Governing Body Session, we are writing with respect to the long-standing dispute over the interpretation of International Labour Organisation (ILO) Convention 87 (Freedom of Association and Protection of the Right to Organise Convention), one of its fundamental Conventions, in relation to the right to strike.

In conformity with the International Labour Organisation's constitutional theory and practice, and in the interest of obtaining legal certainty and preserving the integrity and credibility of the Organization's supervisory system, we hereby submit a formal request to refer the matter urgently to the International Court of Justice (ICJ) for decision.

Despite multiple efforts of the tripartite constituents over the last many years to resolve this issue through social dialogue, no negotiated outcome proved possible and there is no reason to believe that further social dialogue will or can break this impasse.

We firmly believe that the ICJ as the principal judicial organ of the United Nations is best placed and equipped to provide the ILO and its constituents the much-needed authoritative guidance and legal certainty to robustly fulfil its mandate of social justice. Consistent with well-established constitutional practice, we are committed to accepting the binding nature of the ICJ's advisory opinion to provide for the final settlement of this dispute.

One hundred years after the landmark advisory opinion No.1 of the Permanent Court of International Justice on the nomination of the Workers' delegate at the third session of the Conference, and some ninety years after the advisory opinion on the interpretation of the Night Work (Women) Convention, the Organization should not hesitate to place once again its trust and confidence in the World Court.

In view of the above considerations, we recommend that the following questions be put to the ICJ for an advisory opinion:

1. Is the right to strike of workers and their organizations protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)?

2. Was the Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the ILO competent to:

(a) determine that the right to strike derives from the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and

(b) in examining the application of that Convention, specify certain elements concerning the scope of the right to strike, its limits and the conditions for its legitimate exercise?

Accordingly, we would request the Office to take all necessary steps to:

- (i) place an item on the agenda of the 349th Governing Body Session, for discussion and decision, regarding the request to the ICJ for an advisory opinion on the above questions, based on article 37 (1) of the ILO Constitution;
- (ii) prepare a comprehensive Office report to facilitate an informed decision by the Governing Body in that session;
- (iii) bring this communication as well as the Office report as soon as possible to the attention of all constituent groups and Member States of the ILO for any comments they may wish to transmit ahead of the 349th Governing Body Session.

Fully aware that the Governing Body is empowered to request an advisory opinion to the ICJ and mindful of the significance to have recourse to article 37 of the Constitution, we strongly believe that the Governing Body should now take swift action and decide on the referral at its next session in November 2023.

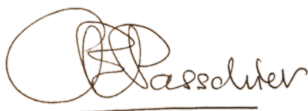
In anticipation of the Governing Body discussion and decision, we would also request that the matter should be referred to the ICJ for an urgent procedure, to the extent possible, and that international workers' and employers' organizations should be allowed to participate fully and autonomously in the proceedings in recognition of the ILO's unique tripartite structure.

Finally, to avoid any doubt as to the position of the Workers' Group on this matter, we confirm our strong conviction, supported by the long standing practice of the supervisory bodies of the ILO, that the right to strike is an intrinsic and indispensable corollary of freedom of association and the right to organise and therefore is protected under ILO Convention 87 and the Constitution of the ILO. This implies that the supervision of the application of the right to strike and the conditions of its exercise are in our view rightly within the mandate of the CEACR.

Thank you for confirming at your earliest convenience that this communication will be submitted to the Governing Body for its consideration and also that the Office will make all necessary arrangements in time for facilitating the Governing Body discussion, including by making available relevant background information.

Amstelveen, Netherlands, 12 July 2023

On behalf of the Workers' Group in the ILO



Kind regards,

Catelene Passchier

Chairperson Workers' Group and Vice-Chairperson Governing Body of the ILO

T: +31 (0) 6 128 69 830

E: catelene.passchier@fnv.nl



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