

2 August 2023

Mr Gilbert HOUNGBO

Director General
International Labour Organisation
Route de Morillons
CH-1211 Geneva
Switzerland

Dear Director General,

Re: Letter dated 13 July 2023

I hereby acknowledge receipt of your letter dated 13 July 2023 regarding the communication of 12 July signed by Worker Vice-Chairperson of the Governing Body ('Workers' communication') which contains a formal request to refer the "*long-standing dispute over the interpretation of ... Convention 87 ... in relation to the right to strike*" urgently to the International Court of Justice for decision.

We take note that the Workers' communication in this context requests 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.

While we acknowledge the Workers' requests which they have announced their intention already during the March GB session, we oppose them for the following reasons:

First, according to Art. 3.1.1. of the Standing Orders of the Governing Body "*the agenda of each session shall be drawn up by a tripartite screening group composed of the Officers' of the Governing Body, the Chairperson of the Government group, the regional coordinators representing the governments, the secretaries of the Employers' and the Workers' groups, or their representative*". Furthermore, Art. 3.1.3 of the Standing Orders states that "*The provisional agenda may be updated for any urgent matter arising between sessions by the Officers of the Governing Body following consultations with the other members of the tripartite screening group referred to in paragraph 3.1.1.*" (emphasis added). As a matter of fact, the provisional agenda agreed by consensus at the last screening group meeting held on 4th May does not contain any item concerning Article 37 of the ILO Constitution, right to strike or Convention 87. The proposed INS 7 item regarding the "Work plan on the strengthening of the supervisory system" only deals with representations submitted under Article 24 and

reporting under Article 22 of the ILO Constitution. Based on the above articles in the Standing Orders of the Governing Body, before making a decision on the possible updating of the provisional agenda, the Officers must have adequate time and opportunity to properly consult with the other members of the tripartite screening group. Only once this condition has been met, an Officers' meeting for updating the provisional agenda may be scheduled.

Second, we note that during the discussion at the March 2023 Governing Body, the groups were very divided on the procedural framework on Art 37 proposed to be used to solve the "right to strike" issue. A vote called by the Chairperson on this procedural framework was called off in the last moment. As one government declared, *"it was not ready to vote on such a complex and technical issue that required extensive discussion and negotiation."* Consequently, the Governing Body decided *"to defer the consideration of item GB 347/INS/5 to a future session"*, without specifying a particular session. We noted from the Workers' communication, that the matter of a procedural framework on Article 37 is obviously no longer pursued and that now a referral of the matter to the ICJ is suggested without having established such a procedural framework. We would nevertheless point out that the complexity and the political brisance of the possible use of Article 37 in the case of the "right to strike" have not disappeared in the meantime. As also stressed by some governments in the March debate, we reiterate the need to find a solution within the framework of social dialogue, based on established rules and involving all the tripartite components of the organization as represented in the International Labour Conference. We continue to strongly believe that the issue of the "right to strike", which falls within the ILO's core competence, cannot simply be given out of hand and left to an external institution to decide. In our view, future deliberations by the Governing Body on this matter must therefore primarily incorporate ILO-internal options. Only such options, which inevitably involve compromises and for this reason may not be considered ideal by some, offer a prospect of broad acceptance and sustainability.

Accordingly, we kindly request the Director General to:

- (i) place an item on the agenda of the 350th Governing Body Session regarding proposals on further steps to ensure legal certainty on the interpretation of the "right to strike" in the context of the Freedom of Association and Protection of the Right to Organisation Convention 1948 (No. 87);
- (ii) request the Office to prepare a note that examines in detail all possible proposals to resolve the existing interpretation issue on the "right to strike" through social dialogue within the framework of established ILO procedures and rules;
- (iii) invite all tripartite constituents in the ILO member States to submit their comments in this regard prior to the 350th Governing Body Session; and
- (iv) transmit this letter with all constituent groups and Member States of the ILO for their consideration.

We appreciate your intervention on this important matter, and we look forward to receiving any updates on this regard.

Yours faithfully,

Renate Hornung-Draus

Chairperson of the Employers' Group and Vice-Chair of the Governing Body

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