

Agenda to be placed on the 349th Session of the Governing Body

I. Introduction

The government of the State of Eritrea presents its compliments to the International Labour Office, and forwards its comment in relation to the request made by the Workers' group concerning the referral to the International Court of Justice of a question on the scope and content of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No.87).

We thoroughly noted that the entire context of the report lies upon the following two issues:

- (1) Is the right to strike of workers and their organizations protected under the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)?
- (2) Was the Committee of Experts on the Application of Conventions and Recommendations (CEACR) competent to:
 - (a) determine that the right to strike derives from the Freedom of Association and Protection of the Right to Organize 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?

II. Available comments

Taking into account the above questions, hence we wish to express our support for the request made by the Worker Vice-Chairperson of the Governing Body on behalf of the Workers' group of the ILO that an item be placed, as a matter of urgency, on the agenda of the 349th Session of the Governing Body.

With regard the intended facilitation for the discussion and decision-making of the Governing Body, we believe that the prepared report is comprehensive and contained all

necessary elements to be considered for a referral to the Court, including questions to be put to the ICJ.

Furthermore, our main concern focused on the various attempts made by the tripartite constituents to resolve the prolonged discussion through social dialogue, in which no any consensus-based outcome has been achieved yet on the subject. Without legal certainty, thus this discussion would continue to have a detrimental effect over ILO's supervisory system. As per the dispute on the legal interpretation has persisted over the past 70 years, there isn't any option, other than ILO should have recourse to the International Court of Justice.

III. Summary positions

To put under control the prolonged debate and come across into a final resolution on this subject, we would like to forward the following five points for the Governing Body:

- (1) In relation to the uninterrupted discussions of this matter in which opposite positions have been expressed, and with a view to providing the international community with greater certainty on the scope of Convention No.87, the Government of Eritrea has upheld that it is advisable to refer the matter to the International Court of Justice for final decision pursuant to article 37, paragraph 1 of ILO's Constitution.
- (2) Concerning the discussion focused on the need for a special procedure to be followed at the International Court of Justice, we maintain that it's unnecessary to mention a special request from Member States and group of Employers or Workers other than the tripartite representatives of the governing body. This is because, they are designated to such purpose and act without any prior formalities, and subject only to their approval in accordance with the required majority.
- (3) Without prejudice to all of the foregoing scenarios that have been discussed, we have always maintained that the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No.87), doesn't contain any concepts about right to strike and lock-down in line with Articles 3 and 10 of the referred international instrument.
- (4) As the preparatory work for the adoption of the convention No.87 affirms, ILO's constituents didn't provide rules concerning strike action to exist at international level.

In the absence of a right to strike within the text of the Convention, we haven't perceived any justification that the Committee of Experts widely applying its interpretation on a right to strike.

- (5) Last but not least, the Government of Eritrea would like to recommend, until appropriate resolution is made by ILO's constituents on this controversial issue, the Committee of Experts should suspend its request of amendments of laws for ratifying Member States on strike action.