

Committee on the Application of Standards

CAN/PV General discussion

Commission de l'application des normes

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Second sitting, 30 May 2022, 3.07 p.m.**Deuxième séance, 30 mai 2022, 15 h 07****Segunda sesión, 30 de mayo de 2022, 15.07 horas**

Chairperson: Ms Topet

Président: M. Topet

Presidente: Sr. Topet

General discussion**Discussion générale****Discusión general**

El Presidente - Buenas tardes, vamos a dar comienzo a la sesión de la tarde. Es un placer volver a compartir una sesión de la Comisión.

El orden del día de esta tarde es la discusión general sobre el Informe General de la Comisión de Expertos en Aplicación de Convenios y Recomendaciones y el segundo punto es la discusión sobre el Estudio General de la Comisión de Expertos, titulado en esta ocasión

Garantizar un trabajo decente para el personal de enfermería y los trabajadores domésticos, actores claves en la economía del cuidado de personas.

Antes de iniciar las labores, quisiera informarles, que alguno de los documentos que contienen la información escrita enviada por los Gobiernos incluidos en la lista de casos individuales, ya están disponibles en la página web de nuestra comisión. Algunos de ellos están solo disponibles en el idioma recibido, pero la Oficina está traduciendo esta información. Las otras versiones lingüísticas se publicarán en la página web de la Comisión a medida que estén disponibles y la información de su publicación.

También quiero anunciar que el documento D.O. (Rev. 1), con el calendario para el examen de los casos individuales y el documento sobre los casos de incumplimientos graves de envío de memorias documento CAN/D/SF están ahora disponibles en la página de la Comisión.

Antes de ceder la palabra a los dos Vicepresidentes para que pronuncien sus discursos de apertura de la discusión general, recuerdo a los delegados que quieran tomar la palabra que se deben inscribir en la lista de oradores correspondiente a cada uno de estos temas. También quisiera recordar que la Comisión decidió al aprobar el documento D.1, sobre sus métodos de trabajo, limitar los tiempos de intervención durante la discusión general de la siguiente manera:

- 15 minutos para los portavoces del Grupo de los Empleadores y el Grupo de los Trabajadores,
- 5 minutos para las declaraciones de los miembros gubernamentales y,
- 3 minutos para los otros miembros.

Me gustaría recordar en particular a los delegados en participación remota que deseen hacer una declaración y que no hayan podido inscribirse en la lista de oradores, que hagan el

pedido a través del chatbox de la plataforma virtual. Deben enviar un mensaje al administrador de la plataforma que les responderá en privado. A los delegados en participación remota también les invito a asegurarse que su micrófono permanezca apagado cuando no están hablando, también les recuerdo que el chatbox solo puede utilizarse para plantear una cuestión de orden o ejercer un derecho de réplica o excepcionalmente para pedir la palabra cuando el orador no haya podido inscribirse en la lista de oradores. En ningún caso debe utilizarse el chatbox para plantear cuestiones de fondo.

A los delegados presentes en la sala A o en la sala E que deseen hacer una declaración y que no hayan podido inscribirse en la lista de oradores les pido que se pongan en contacto con un miembro de la Secretaría o con la mesa de asistencia fuera de esta sala.

Por ultimo los oradores no deben de olvidar enviar una copia electrónica de sus declaraciones a la dirección: standarsinterpret@ilo.org.

Doy ahora la palabra a la Sra. Sonia Regenbogen, portavoz del Grupo de los Empleadores, para que pronuncie su discurso de apertura de la discusión general. Sra. Regenbogen, tiene la palabra.

Employer members – On behalf of the Employers' group, I want to begin by welcoming Ms Graciela Dixon Caton, the Chairperson of the Committee of Experts to our session. We value her presence and the opportunity to continue to engage in dialogue with the Chairperson of the Committee of Experts and, by extension, the entire Committee of Experts.

While the Committee has managed to operate virtually during the pandemic last year and this year, it is now time to gradually re-establish the regular in-person discussions. Unfortunately, this year it is not possible to lift all Covid restrictions and have a completely in-person Conference. In particular, the Committee meeting time is shortened and the time limits for speakers will continue to be in place. As we have discussed in our introductory comments

earlier, as a result, the work programme has had to be adapted, with a slight reduction of the number of cases to be discussed, proportionate to the shortening of working hours. We trust that, as of next year, the Committee will be, hopefully, fully back to normal operations.

I would like now to turn to some points that the Employers' group considers important for the work of the Committee.

First, the Employers note that this year's report of the Committee of Experts, was almost 900 pages and is one of the most comprehensive in recent years, containing 525 observations. In addition, the Experts made 1,031 direct requests which are not contained in the report itself. It appears from this that there is significant non-compliance with ratified Conventions. In the Employers' group's view, this gives rise to questions regarding Member States' approach to ratification of ILO Conventions and their application.

First, do Member States make thorough pre-ratification assessments of compliance and changes necessary to ensure compliance? Have the national social partners, including representative and independent employers' organizations, been adequately consulted in this decision-making, and have their views and needs been taken into account in the planning of ratification and implementation? If so, has the Member State followed the outcomes of pre-ratification assessments and developed action plans to ensure correct implementation prior to ratification? Have Member States also made sure they have the necessary capacity to comply with reporting obligations?

In the Employers' group's view, ratification should occur once the correct application can be assured, ideally in a way that accommodates the needs of the tripartite constituents in a country, including, from our perspective, the needs of the employers and sustainable enterprises. The high number of Experts' comments suggests to our group that this is not often

the case, that ratifications appear to be premature or made without proper pre-ratification assessments or that the outcome of pre-ratifications are not properly considered.

It seems important that the Office, in its promotional activities on ILO Conventions, advises constituents to take a careful and deliberate approach to ratification. In our view, ratification cannot be rushed. It should occur at the end of a process ensuring compliance, not at the beginning. It is important to remember that ratification is a treaty under international law that carries compliance obligations.

The Employers are of the view that if ratification was addressed in a consistent and compliance-oriented manner, application of ratified Conventions could be much improved. As a result, the supervisory system would be less burdened and could focus on more serious cases.

Second, we would recall once more that the ILO Centenary Declaration states that “International labour standards also need to respond to the changing patterns of the world of work, protect workers and take into account the needs of sustainable enterprises, and be subject to authoritative and effective supervision.”

We believe that if international labour standards are to be responsive to the world of work in this way, the ILO standards supervisory system has a major role to play in – and contribute to this. The changing patterns of the world of work, the protection needs of workers and the needs of sustainable enterprises of employers must be guiding principles in ILO standards supervision. In particular the needs of sustainable enterprises, in our view, seem to be often neglected and should be given more attention and visibility in the assessments of the Committee of Experts. This could improve the balance of the observations rendered and thus the acceptance of the findings and recommendations of standards supervision.

Third, the Employers' group must come back to the issue of the distinction between direct requests and observations in the Committee of Experts' report. We observe once again that the explanations provided by the Committee of Experts in paragraph 89 of its report is helpful. Nevertheless, we remain concerned that the Committee of Experts makes numerous substantial assessments of compliance in the form of bilateral direct requests. By doing so, given that direct requests are not discussed in the Conference Committee and lack transparency, the Committee of Experts excludes a major part of their standards supervisory work from tripartite scrutiny in this Committee. We, therefore, once again request that the Committee of Experts make any comments that contain assessments of compliance, whether based on a first or a later government report, and that are not mere requests for information or clarification, in the form of observations. Alternatively, we would propose that the Committee of Experts discontinue issuing direct requests and only issue observations. The report could be made available online only, due to its length. Mere requests for clarification or additional information could be obtained by the Office via email from the governments concerned, without the need for the Committee of Experts to be involved and without the need to make a formal direct request. In our view, this would make the difference between preparing the information for standards supervision on the one hand, and the supervisory system, on the other, more transparent. In this way the Conference Committee could be fully involved in all aspects of standards supervision, which is currently limited due to the exclusion of direct requests.

Fourth, we would like to request that the Committee of Experts provide clear explanations for each double footnoted case in the report as to why it has been proposed in this way. We believe giving additional context would be helpful to continue to increase the transparency in the identification of these cases.

I would like to now turn to some comments that the Committee of Experts has made in observations regarding the promotion of collective bargaining under Article 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

This note concerns the question – who has a right of collective bargaining? According to Article 4, this is employers or employers' organisations and workers' organisations. Organisations of other persons such as independent contractors or self-employed are not workers' organisations and therefore not entitled to collective bargaining. It is therefore important that clear criteria and procedures are in place that allow the determination of who is a worker and who is a self-employed person or an independent contractor to be done at national level. In the absence of rules in this regard, in Article 4, the competence for establishing such criteria and procedures lies exclusively with member states. On the level of collective bargaining, Article 4, does not specify or prioritise a particular level, in other words collective bargaining at every level is equally protected by Article 4 of the Convention, including at national level, sectoral level or company level. Therefore, while governments have an obligation to promote collective bargaining, the choice of the level of bargaining is up to the social partners. On the question as to whether Article 4 provides for a hierarchy of norms, in which collective agreements cannot depart from applicable legislation, and individual labour contracts cannot depart from applicable collective agreements, we note that Article 4 does not address this issue at all. Therefore, as long as governments comply with their obligation to promote collective bargaining, in our view it is at their discretion to establish a hierarchy of norms or to modify it respectively. Another question that has come up, in a number of cases in the Committee of Experts' observations, is whether there is a legal obligation for employers to negotiate under Article 4. The Committee of Experts seem to answer this question in the affirmative as long as there is no obligation to conclude a collective agreement. The Employer members do not agree with this given that Article 4 clearly refers to voluntary negotiation.

Finally, in certain circumstances, the Committee of Experts has considered compulsory arbitration on the initiative of a workers' organisation to be in line with the obligations in Article 4. The Employer members respectively cannot see the justification for this view given that Article 4 is based on the voluntary nature of collective bargaining at the very heart of the obligations under this Convention. Therefore, the Employer members respectfully request the Committee of Experts and the Office that supports the work of the Committee of Experts to consider carefully the wording of Article 4 of Convention No. 98 and the flexibility afforded by this provision in order to allow governments and social partners in member states to find ways of implementation that are in line with their national circumstances and needs. We consider this all the more important in light of the changing world of work. With respect to the question of the Committee of Experts' assessment on the right to strike, in the context of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), we note that in their last report, out of the 52 observations on this Convention, 41 dealt in one way or another with the issue of the right to strike. Out of these 41 observations, a number dealt exclusively, or almost exclusively, with the question of the right to strike such as in the cases of Belize, Congo and Germany amongst others. Out of the 38 direct requests, 33 deal in one way or another with the right to strike. Therefore, the Employer members believe it is important to note and recall that the Government group of the Governing Body expressed the view that the conditions and practices of the right to strike are to be defined at national level. The Employer members recognize that strike action is a real issue in the world of work and that countries have established specific legislative processes and practices to deal with this issue. Therefore, we have concerns regarding detailed assessments on the issue of the right to strike, which is neither contained in the text of Convention No. 87, nor in the legislative history of the Convention. Of course, this is not the moment to revive the full employers' position on this issue but rather it is to offer a way forward and to recommend that in the Employers' group

view we remind ourselves that the solution is in our own hands. The Conference Committee, after very turbulent times, has managed to find a way forward on the right to strike issue that enables it to deliver its supervisory work. It is now for the Committee of Experts, and of course the Office supporting the Committee of Experts, to make their contribution to this solution by adapting their assessments to help to continue to build consensus on this issue. Past experience has demonstrated that where the Conference Committee and the Committee of Experts reach converging views and recommendations or at the very least complimentary views and recommendations, more positive responses are obtained from governments and social partners on the ground at national level leading to faster, better and more sustainable compliance with ILO standards both in law and practice. We must strive to move forward in this direction with solutions based on social dialogue, perhaps more now than ever. In conclusion, the Employer members would like to reaffirm their commitment to ILO standards supervisory process as a key and important governance tool in international labour and social policy. In order for standards and standards supervision to have real and lasting impact, both need to be constantly adapted to changing situations and needs. In this spirit we look forward to cooperating with government and worker representatives at this session of the Conference Committee.

Membres travailleurs – Je tiens tout d’abord à remercier la présidente de la commission d’experts, ainsi que le président du Comité de la liberté syndicale pour leur présence aujourd’hui, même à distance. Je crois que le contact a été très fructueux.

Concernant la commission d’experts, ce moment est supposé être une opportunité d’avoir un dialogue sur un pied d’égalité avec notre commission. Le rapport général contient un certain nombre d’informations pertinentes et intéressantes sur lesquelles je voudrais bien élaborer un peu.

Le groupe des travailleurs a noté avec beaucoup d'intérêt l'initiative que la commission d'experts entend prendre pour intensifier ses rapports avec les organes des Nations Unies concernant les droits humains. Cette démarche est cohérente avec la tendance actuelle visant à avoir davantage de synergie au sein du système des Nations Unies. Elle illustre le dynamisme et le sens de l'initiative de la commission d'experts dans l'exploration de sujets de commun intérêt avec les autres organes des Nations Unies dédiés au respect des droits humains. Cela s'inscrit également dans le contexte de l'appel du Secrétaire général des Nations Unies pour une action en la matière. L'expertise et l'autorité de la commission lui permettent de s'engager dans ce dialogue, d'autant plus que les normes de l'OIT et son expérience ont largement contribué au développement des droits humains et l'ont même souvent initié.

Le groupe des travailleurs accueille la décision prise par le Conseil d'administration de prolonger la durée de la session de la commission d'experts permettant de tenir compte de la charge de travail croissante qui pèse sur elle.

Nous nous réjouissons également de constater que la commission d'experts a eu une attention particulière quant à l'impact de la pandémie sur les droits des travailleurs et a fait plusieurs observations à ce propos.

Ce moment d'échange entre les deux commissions est aussi une occasion pour montrer la diversité qui caractérise la Commission de l'application des normes eu égard à son caractère tripartite et lever les éventuelles ambiguïtés.

Le groupe des travailleurs n'insistera jamais assez sur l'importance de préserver et de renforcer l'indépendance de la commission d'experts. Je tiens à souligner que, dans le cadre du dialogue que les vice-présidents ont avec les experts, aucun ne peut s'arroger le monopole de parler au nom de la Commission de l'application des normes. Seuls les points qui font l'objet d'un consensus entre les mandants peuvent être exprimés comme tels.

Par ailleurs, et comme nous l'avons déjà indiqué par le passé, ces moments d'échange ne sont pas des tribunes pour exprimer des revendications ou dicter la conduite à suivre. À ce titre, le groupe des travailleurs a pris connaissance avec beaucoup d'étonnement de la liste de demandes que le groupe des employeurs a adressée à la commission d'experts. Sans même rentrer dans le détail de ces demandes, elles nous paraissent inappropriées, voire incompréhensibles, tant sur la forme que sur le fond. En effet, de quelle autorité bénéficierait la commission d'experts si elle devait accéder à ces demandes? Qui prendrait encore au sérieux un organe qui serait placé sous l'influence d'un groupe duquel il reçoit instructions et orientations? Éclairées sous cet angle, il paraît évident que ces demandes faites aux experts ne sont pas recevables.

Au demeurant, les attaques incessantes qui tentent de mettre les experts sous pression ne contribuent en rien au renforcement des organes de contrôle.

Plus fondamentalement, le groupe des travailleurs refuse toute tentative visant à établir une quelconque hiérarchie entre la commission d'experts et notre Commission de l'application des normes, qui sont des organes indépendants l'un de l'autre. Les mots ont un sens: on ne peut pas à la fois invoquer l'indépendance de la commission d'experts et plaider pour des propositions qui la nient.

Par conséquent, si tout le monde s'accorde pour s'engager à respecter l'indépendance des experts, alors il faut être cohérent et s'abstenir d'y porter atteinte au nom d'une prétendue quête de transparence.

Il convient de respecter le mandat des différents organes. La commission d'experts a pour mission d'apprécier le respect des normes en droit et en pratique, en déterminant la portée juridique, le contenu et la signification des instruments examinés.

Nous devons d'ailleurs saluer la position adoptée par le Conseil d'administration de l'OIT en mars, qui souligne que le règlement des questions d'interprétation, sur pied de l'article 37, est fondamental dans le cadre de la supervision des normes internationales du travail. Il s'agit d'une étape importante dans le cadre du renforcement de l'autorité des instruments de l'OIT.

Certains semblent vouloir nous faire emprunter le chemin inverse, en demandant à la commission d'experts de tenir compte des points de vue unilatéraux exprimés au sein de notre Commission de l'application des normes. Or les experts n'ont pas vocation à tenir compte des arrangements et accords pris entre les partenaires sociaux dans le cadre du fonctionnement de la Commission de l'application des normes.

C'est notamment le cas concernant l'accord sur le droit de grève, qui permet à notre commission de fonctionner mais qui n'engage en rien la commission d'experts. Et en effet, dans la Commission de l'application des normes, le groupe des employeurs et le groupe des travailleurs sont d'accord qu'ils sont en désaccord sur le droit de grève. Il est nécessaire d'avoir une réflexion et une évaluation du dialogue entre notre commission et la commission d'experts, afin d'en vérifier l'intérêt, la pertinence et à quelles conditions il devrait être dorénavant mené. C'est seulement dans ce cadre qu'on pourrait parler d'un dialogue respectueux et fructueux.

Membre gouvernementale, France (M^{me} SALOMON-VALLENS) – J'ai l'honneur de m'exprimer au nom de l'Union Européenne et de ses États membres. L'Albanie, pays candidat, et la Norvège, pays de l'Association européenne de libre-échange (AELE), membre de l'espace économique européen, ainsi que la Géorgie se rallient à cette déclaration.

Permettez-moi de souhaiter la bienvenue et d'adresser nos meilleurs vœux au président de la commission, aux vice-présidents et au rapporteur.

Nous nous félicitons de la discussion au sein de la Commission d'application des normes, et apprécions le fait que nous ayons presque retrouvé notre calendrier normal. Nous sommes fermement convaincus de l'importance fondamentale des normes internationales du travail, de leur ratification et de la supervision efficace faisant autorité pour leur application.

Nous soutenons pleinement le postulat du comité selon lequel cette base est essentielle pour une reprise centrée sur l'humain d'après-crise du COVID-19, qui soit inclusive, durable, équitable et résiliente comme le souligne l'Appel mondial à l'action. Elle joue un rôle central dans la prévention d'une nouvelle régression socio-économique et dans l'établissement d'une base plus stable pour les efforts de redressement.

Nous apprécions vivement l'analyse et l'expertise de la commission d'experts présentées dans le rapport général qui constituent une base solide pour le travail de notre comité.

Nous rappelons notre ferme attachement à l'indépendance, à l'objectivité et à l'impartialité de la commission d'experts. Tous les États membres de l'Union européenne ont ratifié l'ensemble des conventions fondamentales de l'OIT parce que nous croyons sincèrement que la ratification, l'application et le respect de toutes les conventions fondamentales de l'OIT contribuent non seulement à la protection et à la promotion des droits de l'homme, y compris des droits du travail, mais aussi aux objectifs plus larges de la construction de la stabilité sociale et économique, ainsi que de sociétés inclusives équitables dans le monde entier.

Cet engagement est réaffirmé dans les accords bilatéraux et régionaux de l'Union européenne, en matière de commerce et d'investissement, et dans les régimes

commerciaux préférentiels unilatéraux, ainsi que par notre soutien continu à l'assistance technique de l'OIT.

Le renforcement du soutien aux normes internationales du travail, par le biais d'une coopération étendue à l'ensemble du système multilatéral, avec le soutien de la famille des Nations Unies, est également essentiel pour garantir que ces normes continuent à guider et à faire partie des politiques de relance, tout en contribuant à la réalisation des objectifs de développement durable.

La pandémie de COVID-19 a eu un impact généralisé sur de nombreux secteurs économiques et de graves conséquences négatives sur le travail décent dans le monde entier.

Nous nous faisons l'écho de l'inquiétude du comité, quant à la situation des groupes en situation de vulnérabilité, comme le souligne le rapport, qui subissent le plus fortement la pandémie, en particulier les femmes et les jeunes.

Nous soulignons également l'importance d'inclure la santé et la sécurité du travail dans le cadre des principes et droits fondamentaux au travail de l'OIT.

Nous partageons les préoccupations exprimées au sujet de la situation du personnel soignant, des travailleurs domestiques et des marins, en particulier. La pandémie a exacerbé les conditions de travail difficiles du personnel infirmier et du personnel de soins, y compris les travailleurs domestiques, ce qui a conduit beaucoup d'entre eux à quitter le secteur. Les conventions de l'OIT – la convention (n° 149) sur le personnel infirmier, 1977, et la convention (n° 189) sur les travailleuses et travailleurs domestiques, 2011 – ainsi que leurs recommandations respectives, visent à améliorer sensiblement la situation de ces

travailleurs de première ligne, une fois qu'elles auront été ratifiées et mises en œuvre par tous les États membres.

Tous ces États membres, qu'ils aient ou non ratifié les conventions fondamentales, sont tenus de respecter, promouvoir et réaliser les principes et droits fondamentaux au travail, pour tous les travailleurs, conformément à la Déclaration de l'OIT de 1998.

La prochaine stratégie européenne en matière de soins devrait concerner à la fois les soignants et les soignés, de la garde d'enfants aux soins de longue durée.

Nous souhaitons également rappeler que les gens de mer sont des travailleurs clés qui jouent un rôle essentiel pour assurer la continuité des chaînes d'approvisionnement mondial, tout en travaillant dans des conditions de plus en plus difficiles, encore exacerbées par la pandémie et l'évolution des circonstances géopolitiques.

La mise en œuvre intégrale de la convention du travail maritime, MLC 2006, telle qu'amendée, n'a jamais été aussi importante, et si, au moins, un amendement essentiel n'a pu faire l'objet d'un consensus, nous sommes heureux qu'un certain nombre d'améliorations importantes aient pu être convenues lors de la récente réunion de la commission tripartite spéciale.

L'Union européenne et ses États membres sont convaincus qu'un système de surveillance performant, le tripartisme et le dialogue social sont essentiels pour garantir la crédibilité des travaux de l'Organisation dans son ensemble. Nous continuerons à le soutenir pleinement, car nous restons convaincus qu'il est l'un des exemples les plus précieux d'un ordre multilatéral fondé sur des règles et qui selon nous est attaqué.

Comme indiqué dans la résolution du Conseil d'administration de mars, l'agression de la Fédération de Russie contre l'Ukraine non seulement viole grossièrement le droit international et les principes de la Charte des Nations Unies, mais est également incompatible avec les buts et objectifs de cette organisation et les principes régissant l'adhésion à l'OIT.

L'Union européenne et ses États membres condamnent fermement ces actions militaires illégales, y compris leur impact dévastateur sur le monde du travail en Ukraine, ainsi que leurs ramifications plus larges à travers le monde.

Nous réaffirmons notre soutien indéfectible au retour à l'ordre mondial fondé sur des règles, avec l'ONU, y compris l'OIT, en son sein. Nous nous réjouissons d'un engagement constructif par ailleurs avec les mandants tripartites au cours du débat dans cette commission.

Miembro empleadora, Argentina (Sra. GIMÉNEZ): Muchas gracias Sr. Presidente.

En primer lugar, quiero aprovechar esta oportunidad para sumarme a las felicitaciones por su designación para realizar esta importante función para los trabajos de esta comisión.

(Continúa en inglés)

I would like to propose some improvements on the format of the Committee of Experts' report as in our view there is room for improvement in the presentation, length, and clarity of the comments of the Committee of Experts. For example, following the format of the NORMLEX case profiles the Committee of Experts could present the information by country and not by Convention to allow an overall picture of progress or challenges in application by a Member State.

Perhaps the report could also be presented in the form of a database which allows to compile information according to criteria for example by country or group of countries.

Also, the NORMLEX database could be extended to allow a search of comments by Convention so has to have all comments ever made for all countries on a particular Convention.

We note that consolidated comments are prepared by the Committee of Experts in areas such as Occupational Safety and Health, Social Security, Conditions of Work and Labour Inspection. Would not it be convenient to extend this practice to other subject areas?

We would like to reiterate our request so that Government reports and submissions of the social partners could be made accessible online.

Finally, we note from paragraph 9 and 21 that the Committee of Experts intended to make increased use of hyperlinks to facilitate references to previous comments, General Surveys and General Observations as a way to enhance the dialogue with Member States with more clear, concise and actionable recommendations. We noted that this has only been done in Part One of the Committee of Experts' report and only to a small extent. We trust that the use of hyperlinks will be extended in the next report including Part Two containing the observations.

Worker member, United Kingdom (Mr RUSSELL) –The Committee of Experts rightly points out that the fundamental labour rights should be respected in a crisis and notes that furthermore their full realization contributes to solving the problems posed by these crises. As in many countries, in the United Kingdom of Great Britain and Northern Ireland the inequalities and injustices both exposed and exacerbated by the pandemic are the very same issues that trade unions address through national campaigning and through

bargaining and representation in the workplace. For example, in the UK during the pandemic, black and minority ethnic workers saw higher increases in unemployment than white workers. Women workers found themselves taking on a disproportionate burden of any additional childcare. We know that unionized workplaces in the United Kingdom through collective bargaining pay more attention to ending discrimination with more equal opportunities policies in place. We know they have better sick pay, crucial elements in keeping workers safe and better work-life balance meaning all workers can play their part in caring for relatives. We know unionized workplaces pay better at a time of growing inequality but, despite these obvious solutions to serious problems, we do not have the supporting structure necessary to bring these benefits to the wider workforce. Without such supporting structures, at the heart of which is social dialogue and tripartism based on genuine respect for freedom of association and collective bargaining, the human centred recovery will be an illusion for many workers. In the United Kingdom, earlier this year, a well know ferry company fired 786 directly employed workers. It did this without even informing the union of its plan and in some cases gave workers only 15 minutes to leave a ship that was not only their workplace but also their accommodation. The unions in the Ferry company had an agreement in place which the company violated in multiple ways but there is no legal protection offered to help workers in these situations and only the industrial power of the union can hope to keep the employer to their side of the agreement in such cases. In this light, it is worth emphasizing the centrality of human rights and international labour standards, including the comments of the supervisory bodies of the ILO, as providing necessary safeguards in the recovery from the pandemic considering both the Global Call to Action of the ILO and the UN Secretary Generals' Call to Action for human rights. In the case of the ferry company, British law does consider that the company's lack of notice and consultation amounted to unfair dismissal. Consequently, the company's management

were able to calculate that the likely cost of ignoring these protections was a price worth paying to slash staffing costs. And by sacking the workers with such fleeting notice, the company not only rendered the protection offered by the collective agreement meaningless, it also set a dangerous precedent. This highlights urgently the obligation of the government to encourage and promote the full development and utilization of collective bargaining as a means of regulating terms and conditions of employment, which is key to a human centred recovery. The Office must provide technical assistance to member states for this purpose. It should always, after all, be harder to do the wrong thing than the right thing.

Employer member, South Africa (Mr MOYANE) – Thank you Chair and greetings to you all. I would like to briefly amplify the statements made earlier by the Employer spokesperson, Ms Regenbogen as they pertain specifically to Convention No. 98.

As she mentioned, while the ongoing pandemic has created significant challenges for the application of labour standards, it must not become an excuse for not complying with ILO fundamental Conventions. Certainly, it seems this thought is not shared by everyone. At the heart of Convention No. 98 is the right to bargain freely and voluntarily; free from compulsory arbitration and government interference. Equally important is the right of the social partners to determine the level of collective bargaining. As the Employer spokesperson pointed out, Article 4 of Convention No. 98 does not specify or prioritize a particular level for collective bargaining. Bargaining at every level is equally protected by Article 4, including at the national level, sectoral level or the enterprise level. While governments have an obligation to promote collective bargaining, the choice of the corporate level for bargaining is up to the social partners and should not be subject to

government approval or intervention. However, this is not always the case when it comes to observing Convention No. 98.

While bargaining for national industry or occupational collective documents covering all workers and employers in that industry or occupation is within the scope of Convention No. 98, making them compulsory or restricting how the level may be determined is not. Similarly, a meeting with only one party to initiate bargaining for pay agreements and to decide whether the document is to be an industry based or occupationally based as well as deciding the level, scope and coverage falls well outside any accepted interpretation. Exactly the same can be said of rules that prohibit the ability of the parties to opt out of bargaining and require an agreement to be reached either voluntarily or through compulsory arbitration. Indeed, countries that enforce systems of compulsory arbitration which, in the absence of agreement ultimately fix the terms of their agreement, cannot be said to be compliant with the principle of free and voluntary negotiation. The failure to ratify a settlement that results in the terms of pay being fixed by an arbitration body with no right of appeal is similarly non-compliant. Equally challenging is a situation of a government that chooses to oversee the bargaining process, ensure compliance and then turn settlements into legislation. While all these actions individually or collectively are not unknown, they cannot and must not go unchallenged by this house lest the failure to do so should weaken the fabric of the Standards Supervisory System served by this Committee.

In conclusion, we believe implicitly in the ILO Standards supervisory system and therefore do not want to see it being abused anywhere. We would respectfully request that the Committee of Experts and the Office, not only fully respect the principles enshrined in Article 4 of the Convention, but also take prompt and effective action to address clear instances of departure from this.

Worker member, Netherlands (Mr POSTMA) We welcome the attention given by the Committee of Experts in the General Report to the role of international labour standards and its effective and authoritative supervision as being foundational to the realization of the ILO's Global Call to Action for a human-centred recovery from the COVID-19 pandemic.

Even though in some parts of the world the corona pandemic seems almost something of the past, in many other parts the COVID crisis is still an everyday reality with a very negative impact on the world of work including the widening of pre-existing inequalities.

In addition to the impact of the COVID crisis, including its economic aftershocks, the situation has now been aggravated by the Russian invasion of Ukraine. The prices of food and energy are rapidly rising with a strong effect on the cost of living. Again, the most vulnerable groups receive the hardest blows. Together with the economic crisis, we also observe the shrinking civic space, the phenomenon also highlighted by the reports of the Committee of Experts. Even though in terms of national figures in my country, the Netherlands, we seem to have recovered well from the pandemic, the present crisis is casting a dark shadow. Also, certain groups of self-employed workers who were already suffering due to the COVID crisis are still struggling to get back on track and despite the Equal Treatment Act and assurances given by the Dutch National Competition Authority, guaranteeing self-employed workers to collectively agree on tariffs and other conditions, in practice there are still not enough guarantees to be authorized to participate in free and voluntary collective bargaining as stated in the Committee of Experts General Report as well as in the ILO flagship report *Social Dialogue Report 2022*.

It is deeply concerning that we still have examples in our country of employers who violently chase out representatives of trade unions from their premises, especially in those companies that employ a lot of migrant workers, thereby denying them their legal right to collective bargaining.

We want to emphasize here again the importance and the central role of collective bargaining for all workers in the recovery measures and the response to the present crisis. It is the role of the Government in this critical time to protect, respect and fulfil the right to collective bargaining by encouraging and promoting its full development.

Employer member, United States (Ms RIGG HERZOG) –I would like to briefly amplify on the statements made earlier by the Employer spokesperson, Ms Regenbogen, on three specific points: first, we wish to underscore how important it is for the Conference Committee, Committee of Experts, and the Office, to fully understand the actual needs of tripartite constituents in their national contexts, and to be able to provide the tripartite constituents with practical and effective guidance for the balanced implementation of ILO standards; second, past experience has demonstrated that when the Conference Committee and the Committee of Experts reach converging views and recommendations, more positive responses are secured from governments and social partners at the national level, which in turn, leads to faster, better and more sustainable compliance with ILO standards, both in law and in practice; third, the ILO Centenary Declaration states that “international labour standards also need to respond to the changing patterns of the world of work, protect workers, and take into account, the needs of sustainable enterprises, and be subject to authoritative and effective supervision”. We believe that if the international labour standards are to be responsive to the world of work in the way the tripartite constituents stated in the Centenary Declaration, then the ILO standards supervisory

system has a major role to play and contribute to the shared vision. In other words, the changing patterns of the world of work, the protection needs of workers and the needs of sustainable enterprises must be guiding principles in ILO standards supervision.

With this in mind, we believe the needs of sustainable enterprises should be given more attention and visibility in the assessments of the Committee of Experts. This could improve the balance and thus the acceptance, of the findings and recommendations of ILO standards supervision.

Worker member, Zimbabwe (Ms TARUVINGA) – I am going to speak about the role of international labour standards in recovery measures post COVID-19. As we are all aware, the world is just recovering from the effects of the COVID-19 pandemic. The pandemic has exposed great shortcomings of the existing legal and policy frameworks and has increased inequality and poverty among the populations.

The pandemic has also stalled or reversed some of the progress made towards the Sustainable Development Goals and in particular SDG 8, which is about full, productive and freely chosen employment and decent work for all. Scores of people have had their workplaces closed and some businesses that closed did not open again. This increased the number of people already in the labour market who are worse off and look for their survival. Most of the countries in my region, Africa, do not have social protection and in those countries that have, the social protection is very weak therefore measures or other forms of income security needs to be adhered and looked at.

We also note some of the piecemeal legislations made overnight on the pretense of combating the pandemic, but with underlying agendas. Some governments made policies

and imposed them without meaningful consultations with the representatives of workers or civil society organizations or those that were affected.

We also note the death of freedom of association and civil liberties during the restriction periods and the use of disproportionate force in enforcing the restrictions. We also saw the suppression of collective bargaining. I want to emphasize the role of freedom of association, respect for civil liberties and collective bargaining in ensuring a human-centred recovery from the pandemic. It is only when nations respect the right of freedom of association, collective bargaining and tripartite consultations that we can move together as a collective entity. This will enhance participation in policy formulation and ownership of outcomes leading to maximum compliance without resorting to disproportionate enforcement.

I call upon the Government to strengthen their role in setting mechanisms for voluntary negotiations and its self-respect in collective bargaining and freedom of association, particularly looking at teachers, nurses and other public sector workers.

When there is respect from the government, businesses comply as the government is leading by example. I also call upon the ILO to increase its assistance and support to governments that are in need to set up the appropriate legal framework and institutional support mechanisms for promoting collective bargaining and freedom of association. In this respect, the ILO flagship report on social dialogue and collective bargaining in the context of pandemics sets out good examples to ensure respect of collective bargaining in practice, including for workers in the informal economy. In particular in my region, informal economies are a major issue and collective bargaining can play a significant role in the transition to formality.

Membres employeurs – Les employeurs belges soutiennent les différents mécanismes de supervision de l'OIT. Nous y participons d'ailleurs activement. Nous soutenons les principes du tripartisme et du dialogue social qui, seuls, sont de nature à améliorer le respect des normes sociales fondamentales partout dans le monde et à trouver des équilibres entre les trois piliers: économique, social et environnemental.

Notre défi principal au niveau mondial est de protéger les 4 milliards de travailleurs qui restent encore en marge d'une protection sociale élémentaire. À cet égard, les employeurs belges sont très préoccupés par la proportion élevée de commentaires de la commission d'experts restés sans réponse. Comme les autres mandants de l'OIT, le groupe des employeurs attache une valeur primordiale au dialogue entre les gouvernements et les organes de contrôle de l'OIT. Lorsqu'un gouvernement ne donne aucune suite aux demandes de la commission d'experts, il se décrédibilise et porte gravement atteinte à l'OIT dans son ensemble. Nous espérons que ces défauts d'informations écrites seront rapidement comblés, en particulier lors de l'examen des 22 pays par notre commission.

Au niveau national, les défis sont également très nombreux et on aurait tort de se focaliser sur le court terme et sur les travailleurs déjà inclus dans le marché du travail. Dans les pays vieillissants comme la Belgique, il est impératif que chaque nouvelle mesure permette d'augmenter le taux d'emplois.

Face au défi de la relance post-COVID, les employeurs belges soutiennent le «cadre de suivi» par lequel le BIT évaluera les stratégies de relance, sans oublier que seules des entreprises productives et durables seront en mesure d'améliorer l'emploi et l'inclusion sociale. Il faudra tenir compte des contextes nationaux très différents, les uns ayant été confrontés à d'importantes pertes d'emplois pendant la pandémie, les autres ayant pu sauvegarder les emplois, mais étant confrontés à une dette publique considérable, et

désormais à des coûts salariaux explosés en lien avec l'accélération de l'inflation, à des pénuries de matières premières, à des coûts énergétiques démultipliés et surtout à des pénuries de main-d'œuvre, dont les causes sont multiples.

Ces évolutions inquiétantes handicapent la relance économique. Les partenaires sociaux peuvent accomplir beaucoup de choses ensemble, cependant, lorsque le gouvernement les consulte sur des nouvelles mesures ou des nouveaux systèmes, un calendrier et un ordre du jour réalistes seraient les bienvenus. Réitérant notre requête déjà formulée l'année dernière, nous demandons aux gouvernements nationaux de ne pas noyer les partenaires sociaux dans un océan de nouvelles mesures en faisant peser sur eux la pression du temps et de la complexité car le dialogue social demande un minimum de temps et de nombreuses capacités pour étudier, consulter, négocier et développer des solutions équilibrées. Nous demandons à la commission d'experts de contrôler en pratique le respect de la concertation sociale, afin que celle-ci soit, non pas formelle, mais réelle et effective.

Miembro trabajador, Colombia (Sr. MORANTES) - Un llamado a la promoción de la negociación colectiva y al cumplimiento de los acuerdos colectivos.

Así como lo afirman los expertos en su informe, la crisis ha dejado en evidencia la debilidad de los marcos normativos existentes. Muchos fueron laxos y permisivos con el despido y la desmejora de las condiciones laborales de miles de trabajadores durante la pandemia.

En Colombia, la crisis generó la pérdida de cerca de 2 millones de empleos y aunque algunos se han recuperado, lo han hecho bajo formas de contratación precarias.

La desigualdad y la pobreza han llegado a márgenes alarmantes. Según cifras del Banco Mundial entre 75 a 95 millones de personas más podrían vivir en la pobreza; en Colombia ha llegado a un estimado de 42,5 por ciento, quienes deben subsistir con menos de 3 dólares al día.

Ante esta situación el «Llamamiento mundial a la acción para una recuperación centrada en las personas», resulta de máxima importancia. Todos los Estados Miembros de la OIT deberían reforzar el respeto y cumplimiento de las normas internacionales del trabajo y promover su ratificación, pero más aún su aplicación y cumplimiento.

La OIT ha invitado a que no se suspendan las obligaciones contraídas en virtud de las normas internacionales del trabajo ratificadas y, por el contrario, ha exhortado a todos los Estados Miembros a convocar diálogos con vistas a elaborar estrategias nacionales que se fundamenten en el respeto de los derechos.

Nos debe preocupar que países como Colombia tengan los niveles más bajos de negociación colectiva. En Colombia la sindicalización es menor de 4 por ciento y la cobertura negocial del sector privado aún menor, cerca al 1,75 por ciento de la población ocupada; un país donde los mismos marcos normativos han debilitado la negociación colectiva, pues permiten la firma de acuerdos entre empleadores y trabajadores no sindicalizados a pesar de que la Comisión de Expertos y el Comité de Libertad Sindical han instado al Estado colombiano desde hace muchos años a que modifique dicha normatividad, pues estas prácticas tienden a debilitar la negociación colectiva y a la misma organización sindical. Los efectos antisindicales de los pactos colectivos pasan por otorgar mayores beneficios a los trabajadores no sindicalizados.

Al respecto, la vigilancia efectuada por el Ministerio de Trabajo a la ilegalidad de los pactos colectivos es ineficaz.

Se observan también demoras en los nombramientos de los tribunales de arbitramento y una fuerte tendencia de resolver el pliego de los sindicatos con base en los pactos colectivos preexistentes.

En el informe se muestra el impacto positivo cuando la negociación colectiva se lleva a cabo con varios empleadores, lo cual posibilita una cobertura regulatoria inclusiva. Sin embargo, en Colombia esta metodología ha sido evadida por la falta de regulación, impidiendo por ejemplo desde 2019 la negociación colectiva para los jugadores del fútbol colombiano.

Deben preocuparnos las negociaciones colectivas inertes donde se firman acuerdos que posteriormente se van a incumplir como ha pasado con más del 50 por ciento de los acuerdos suscritos entre las entidades del sector público colombiano y los centrales sindicales. Por ejemplo, se ha incumplido el compromiso firmado en agosto de 2021 de promover la ratificación de cuatro convenios de la OIT.

En consecuencia, hacemos un llamado al respeto de la libertad sindical, porque todas las personas tienen derecho a una vida digna con condiciones de trabajo decente, y así como lo ha resaltado el informe de los expertos, los trabajadores consideramos importante resaltar el llamado para fortalecer tanto el diálogo social como la negociación colectiva.

Miembro trabajador, Panamá (Sr. ANDRADE) – Buenas tardes a todos los presentes, definitivamente los convenios colectivos son importantes para los trabajadores y en realidad esta pandemia ha traído como consecuencia no solamente la violación del Convenio sobre la protección de los cargadores de muelle contra los accidentes, 1929

(núm. 28) de la OIT, sino también del Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87); es necesario recordar cómo en los últimos años los problemas sociales, económicos y políticos se han venido agudizando como consecuencia de las medidas que se han venido aplicando a rajatabla en el mundo como parte de la globalización neoliberal.

Los países pobres han debido invertir importantes recursos de sus escuálidos presupuestos para enfrentar la crisis sanitaria, mientras que las grandes compañías farmacéuticas obtienen inmensas ganancias y un puñado de ultramillonarios han visto crecer sus colosales fortunas. A la par de esta situación crece el desempleo, la pobreza y la miseria y, como si fuera poco, se anuncia escasez de alimentos, hambruna y una mayor crisis migratoria como consecuencia de la guerra de la superpotencia en Ucrania.

Un nuevo orden mundial pugna por surgir en un duro y difícil parto, ¿cómo será esa criatura? Nosotros abogamos por un mundo más justo con mayor equidad, multilateralismo y solidaridad entre los pueblos, donde se respete el derecho internacional, donde el diálogo y la negociación sean la tónica para la solución de los conflictos, que cesen los intervencionismos, las guerras y reine la paz con justicia social. Confiamos que esta Conferencia adopte una posición en ese sentido.

La crítica situación que enfrenta la economía mundial, que mantiene en la desesperación y en la desesperanza a millones de seres humanos, ha querido ser aprovechada en algunos países por grupos empresariales en contubernio con los Gobiernos para hacer retroceder derechos y conquistas sagradas de los trabajadores en la que se incluye el convenio de la OIT.

En Panamá, esto se manifiesta a través de despidos masivos disfrazados de mutuo acuerdo como ocurre en empresas como el Grupo Rey, el Canal de Panamá y Goldmile, entre otras, y con reducciones de las jornadas laborales para disminuir salarios, e intensificando la explotación. En otros casos la extensión de las jornadas laborales diarias niega la conquista fundamental de las ocho horas laborales lograda gracias al sacrificio de los mártires de Chicago en 1936.

También hay violación del fuero de maternidad, aumento del trabajo infantil, deserción escolar, creciente desempleo, que afecta especialmente a mujeres y jóvenes, ridículos salarios, pensiones y jubilaciones y negación del salario mínimo en un contexto de alza desenfrenada de precio del combustible, y sus consecuencias en costos de los alimentos, medicamentos, transportes y servicios.

Persiste la negación del derecho a la sindicalización para los trabajadores bancarios, zona libre de Colón y otros. Establecimiento de enclaves económicos con múltiples concesiones y subsidios fiscales que se comportan casi como colonias, donde difícilmente rigen las leyes laborales nacionales como en la mina a cielo abierto de First Quantum Minerals, Minera Donoso Colón, Banapiñas de Puerto Armuelles, Chiriqui, zona franca en distintas áreas del país. También se viola el Código del Trabajo al intentar reconocer el pago de recargo los días domingos en el sector turismo; programas supuestamente para generar empleo, entre otras.

Worker member (Mr SUBASINGHE) – I wish to speak to the section of the general report on maritime labour and COVID-19. First, I would like to extend a thanks to of the ITF to the many colleagues of the ILO who have worked assiduously to protect seafarers during the pandemic. Today the adverse impacts of the pandemic are still bring felt by the worlds 1.4 million seafarers. As of this month, 16 per cent of them are yet to be vaccinated. In terms

of the crew change crisis, a conservative estimate would have at least 5,000 seafarers currently working beyond their contracts, as the Committee of Experts has noted such situation can give rise to forced labour. As we speak, 20 per cent of the world's 9,000 active container ships are sitting in traffic jams outside of congested ports. Now with Russia's aggression in Ukraine, Ukrainian and Russian seafarers are also bearing the brunt of this conflict. As the Committee of Experts noted with deep regret, ratifying states continue to violate provisions of the MLC, including the denial of access to medical care ashore. States also continue to evoke force measure as a reason to extend crew contracts beyond the MLC maximum period of 11 months. Again, the Committee of Experts makes it absolutely clear that force measure may no longer be invoked. I would also emphasize that the state duty to protect workers from forced labour is a non-derogable right under international law. Therefore, we implore states to fully comply with the MLC as we enter a new phase in the pandemic. We also call on states to adopt a meaningful trips waiver for COVID-19 vaccines and treatments at the upcoming WTO negotiations. While the role of governments is clear, all supply chain actors have a role to play in protecting seafarers' rights. The multi-UN agency COVID-19 related maritime human rights due diligence tool kit is a part of the solution. We need the business community to step-up their engagement on this issue. Finally, on a separate matter, the ITF as a signatory to the only collective agreement negotiated at the global level has to reiterate its full respect for the Committee of Experts and its pronouncements with regard to the right to collective bargaining. All workers, irrespective of employment status, have their bargaining rights protected under Convention No. 98. We also reiterate that national legislation that proscribes collective negotiations at upper levels creates no compliance issues with Article 4 of the Convention. Further, we maintain that the non-diminution of favourable conditions of workers

established under collective agreements is a sacrosanct principle, as is the employer duty to bargain in good faith.

El Presidente - Esta comisión concluirá la discusión general mañana, por la mañana, con las respuestas de la Presidenta de la Comisión de Expertos y de la Representante del Secretario General, así como con la observaciones finales de los Vicepresidentes.

La séance est levée à 16 h 22.

Se levantó la sesión a las 16.22 horas.

The sitting closed at 4.22 p.m.