

## Committee on the Application of Standards

CAN/PV.7/Indonesia-C.98

## Commission de l'application des normes

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## Comisión de Aplicación de Normas

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### Indonesia (ratification: 1957)

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

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

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 a copy of Law No. 6/2023.

#### Update on the Job Creation Law

The Job Creation Law (Law No. 11/2020 and the amendment) does not amend the regulations on collective bargaining agreements (CBAs). The rules on CBAs remain under Law No. 13/2003 on Manpower and Law No. 2/2004 on Settlement of Industrial Relations Disputes.

Regarding CBAs for workers of small and medium-sized enterprises (MSEs), the Job Creation Law clearly stipulates that wages and workers' rights at the termination of employment (compensation and other financial rights) must be based upon agreement between workers and employers. This is because the financial capacity of SMEs is not as high as that of large companies.

With respect to the revision of the Job Creation Law (following the decision of Constitutional Court No. 91/PUU-XVIII/2020), the Government states that:

- Procedural and substantial revision of the Law has been conducted by the Government and Parliament through amendment of Law No. 12/2021 on the Creation of Law, to also include an "omnibus law" model and meaningful public participation.
- Concluding Law No. 6/2023 on the Enactment of Law No. 2/2022 on Job Creation is to replace Law No. 11/2020.
- The revision of the Job Creation Law has been through public socialization and engagement with various stakeholders (unions, employers, universities, and other public sectors). The Government also paid attention to proposals and suggestions from independent research institutions, notably on critical issues raised by the public.

#### Article 1 of the Convention. Adequate protection against acts of anti-union discrimination

The Government reiterates that national law incorporates procedures to settle anti-union discrimination or violation of workers' rights to organize: Law No. 21/2000 on Workers' Unions and Law No. 2/2004 on Settlement of Industrial Relations Disputes. The Government

encourages all workers and unions to utilize national procedures as stipulated by the law, if they believe that their rights have been violated.

## **Article 2. Adequate protection against acts of interference**

The Government reiterates its previous comment that article 122 of the Manpower Act is not intended to allow interference by employers or government officials when workers are voting. As yet, the Government has not received complaints relating to the presence of employers and/or government officials during a vote. Article 122 is also an expression of Indonesia's sovereignty to regulate its domestic matters. There is no compelling reason to amend it.

## **Article 4. Promotion of collective bargaining**

Based on Law No. 2/2004, the settlement of industrial relations disputes through an arbitration and industrial relations court can only take place after the parties in dispute have exhausted all measures of negotiation. Precisely as suggested by the Committee, the arbitration and industrial relations court serves as a final measure when negotiations between the parties fail.

The Government remains convinced that articles 5, 14, and 24 of Law No. 2/2004 are consistent with Article 4 of the Convention, as well as the principles of compulsory arbitration (as a last resort when repeated negotiations end in a deadlock). There is no compelling reason to amend the articles.

## **Recognition of organizations for the purposes of collective bargaining**

The number of CBAs concluded at the end of 2021 was 17,495 agreements; at the end of 2022 it was 18,144 agreements.

## **Collective bargaining at the sectoral level**

The Government as of now is still focusing on the creation of CBAs at the enterprise level to prevent disputes in the future, in line with Law No. 13/2003 on Manpower, and Ministerial Decree NO. 28/2014 on the Rules to Conclude and Validate Enterprise Regulations and the Conclusion and Registration of CBAs.

## **Export processing zones**

Workers' rights to conclude CBAs in export processing zones (EPZs) remain guaranteed. To date, there has been 687 CBAs concluded in EPZs.

## **Discussion by the Committee**

**Chairperson** – The third case on our agenda today is Indonesia, on the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

**Government representative** – On behalf of the Government of Indonesia, I take this opportunity to respond to the notes of the Committee of Experts on the application of the Convention in Indonesia which is associated with the implementation of the Job Creation Law and regulations and the application of collective bargaining. We have submitted our written response and would use this opportunity to further clarify the concerns.

First, on the impact on the Job Creation Law to the implementation of the Convention and the request to update information regarding the change of the Law. The primary objective of

the Law is to foster job creation and enhance employment opportunities while at the same time ensuring better protection for workers. This objective is achieved through initiatives and enhancing the national investment climate to attract both domestic and foreign investors, empowering cooperatives, micro, small and medium-sized enterprises as well as strengthening the national industry and trade sector. Thereby stimulating economic growth in Indonesia.

The Law has yielded a positive impact for Indonesia, particularly the economic and investment sectors as well as employment sector. Therefore, it deserves the support of the international community as one practical way for Indonesia to recover and lay the foundation for a stronger and sustainable economy. The Job Creation Law and its amendment which stipulated on Law No. 6/2023 on the Stipulation of Government Regulation Regarding Job Creation to become Law do not change any provision regarding the rights to organize for workers, which is regulated by the Law No. 13/2003 on Employment. The Law recognizes labour unions and employer's organizations as important instruments for industrial relations. Following the enactment of the Law, the number of trade unions, federations, confederations, and members of trade unions in Indonesia has increased tremendously. There are estimated over 10,000 unions before the enactment of the Law, comprising of more than 3.2 million members. After the enactment of the Law from 2020 to 2023 the number of trade unions has risen to over 12,000, encompassing more than 4.2 million members. This clearly demonstrates that the Job Creation Law has no negative impact on the Workers' right to organize. In addition, the Indonesian Constitution guarantees that no party may engage in discrimination or anti-union acts against specific groups. This has been stipulated in Law No. 21/2000 on Labour Unions. Therefore, concerns regarding the potential negative impact of the Job Creation Law on the implementation of the Convention are deemed irrelevant. The Job Creation Law does not amend collective bargaining provision. In general, the provisions of collective bargaining applied to all scales of business. Both in terms of collective bargaining agreements and in the event of industrial relation dispute settlement. Regarding the wage, Indonesia reiterates that the agreement between employers and workers in micro and small enterprises are conducted through collective bargaining, with the provision that the wage should not be lower than minimum limit set by the regulation. This is intended to protect workers' wage and to maintain the sustainability of the business, considering that the capacity of companies at this scale is not the same as the medium and large-scale enterprises. Therefore, concerns regarding the Job Creation Law would limit collective bargaining between workers and employers in micro and small-scale businesses are unfounded. Furthermore, regarding the amendment of the Job Creation as the follow up to Constitutional Court decision, we would like to provide the following information.

The Amendment of the Law, both procedural and substantive, have been carried out through the revision of Law No. 12/2011 on Formulation Legislation that regulates the method of Omnibus law and meaningful public participation and Law No. 6/2023 on the Stipulation of Government Regulation Regarding Job Creation to become Law. The Amendment of the Law has undergone dissemination and public engagement with various stakeholders such as labour unions, employers, academia, and civil societies. In addition, the Government has considered inputs from independent research institutions, particularly on critical issues raised by the public.

Secondly, regarding the observations that Indonesia does not provide adequate protection against anti-union discrimination. Indonesia reiterates that our national laws guarantee protection of workers and labour unions against anti-union discrimination. Furthermore, the procedures for resolving disputes of anti-union discrimination or violation of

workers' rights to organize are explicitly stated in Law No. 21/2000 on Labour Union and Law No. 2/2024 on Dispute Settlement of Industrial Relations. Workers and labour unions whose rights have been considered violated are encouraged to utilize the national arrangements as stipulated in the two laws. The Government provides services to facilitate complaints on alleged violation in this regard.

Third, concerning the Committee of experts' recommendation to amend several of Indonesia's regulations. We have thoroughly examined inputs from the Committee of Experts regarding the voting procedure in collective bargaining, collective bargaining agreements Article 122, Law No. 13/2003 and mandatory arbitration to resolve industrial relation dispute Articles 5, 14, 25, Law No. 2/2004. The regulation on voting procedures as outlined in Article 122 of Law No. 13/2003, which refers to Article 119, paragraph 2, holds significant importance. This is because it upholds the fundamental rights of every worker to join or not join in a trade union, as well as the right to establish or refrain from establishing a trade union. In our assessment, these articles retain their relevance and lack compelling justification for modification.

Fourth, with regard to sectoral level collective bargaining. Indonesia is currently focusing on promoting the establishment of collective labour agreements at the company level, which is in line with Regulation No. 13/2003 and Minister Labour Regulation No. 28/2014, and to prevent broader industrial relation disputes. We are taking this focus by considering that capabilities of companies at the sectoral level are varied.

Fifth, regarding the rights of workers to make collective bargaining agreements in Export Processing Zones. I wish to reiterate my Government's commitment to ensuring equal treatment for all workers, including those working in export processing zones and their rights to make collective bargaining agreements.

In conclusion, Indonesia remains steadfast in its commitment to the principles of the ILO and the implementation of the Convention. Our commitment to fulfil our obligations and address the Committee of Experts' observations are unwavering. We are open to constructive dialogue and collaboration with the ILO and wider stakeholders on the issue.

**Employer members** – As we know, Convention No. 98 is a fundamental Convention, and it was ratified by Indonesia in July 1957. This case has been previously discussed six times in the Committee: 1991, 1993, 1994, 1995, 1997 and 1998, but not for some time since. It has also been the subject of 21 previous observations by the Committee of Experts.

By way of background, overlapping regulation, and historical and out-of-sync policy data within central and local government, was proving increasingly destructive to the investment climate in Indonesia. The Government took the initiative to bring these conflicting elements together under an integrated framework known as the Omnibus Law. Aspects of this law as originally drafted were deemed unconstitutional by the Constitutional Court, and the Government undertook as process of revision to rectify the shortcomings to produce the current law. This was done by a public socialization process and engagement with various stakeholders including unions, employers, universities, and other public sectors. The Government, we note, also paid attention to proposals and suggestions from independent research institutions, on critical issues raised by the public.

We note that the omnibus methodology or concept is used in other countries to overcome similar obstacles. Certainly, the Employer members believe that a comprehensive approach such as this can lead to a strengthening of the economic systems in Indonesia, enhancing

conducive and attractive investment climate and providing comprehensive protections and systems to manage the labour market.

Care needs to be taken however, that these are done in such a way that they do not offend the international Conventions that have been ratified. Turning to the observations by the Committee of Experts concerning adequate protection against anti-union discrimination and notwithstanding the revision of the Omnibus Law, the ITUC, KSBSI and KSPI assert that the Omnibus Law exposes certain categories of workers to a greater risk of anti-union discrimination. Noting that the Law was undergoing revision as a result of a decision of the Constitutional Court. In its 2023 report, the Committee of Experts requested the Government to examine the concerns expressed by the trade unions before the National Tripartite Council with a view to ensuring the full conformity of the revised law with the Convention. We understand that process, in fact, is underway.

With respect to ensuring adequate protection against acts of interference, the Committee of Experts again expected the Government to amend section 122 of the Manpower Act, so as to prohibit the presence of the employers during voting procedures. Interestingly, this comment appears more relevant to article 119 which requires that votes be administered by a committee that is composed of workers' representatives and union officials witnessed by the government official and by the Employers.

We note here that there is no provision for anything other than a passive role for Employers and Government who nevertheless by their presence can ensure that there is no undue influence placed on voting workers.

We also note that few if any complaints have been received from the very many Indonesian unions or indeed workers about the exercise of this provision. Nor have there been any consequent judicial reviews regarding compliance with Article 4 of the Convention.

In relation to the promotion of collective bargaining, the Committee of Experts requested the Government to take the necessary steps to also promote collective bargaining at the sectoral and regional levels and to provide information in this regard.

However, the Employer members note that the Convention does not require promotion of a particular level of collective bargaining, only that and I quote "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation 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." I think you'll agree that that's a pretty general statement, not one more specific.

In the case of Indonesia, the Job Creation Law regarding CBAs for workers of small and medium-sized businesses, provides that wages and workers' rights must be based on agreement between workers and employers. This in large part recognizes that the achievability of collective bargaining at higher than enterprise level is limited by the sheer number of micro and small enterprises in Indonesia and the practical difficulties inherent in organizing them. There are similarly large numbers of unions in Indonesia. As we heard, over 12,000.

By way of context, micro and small enterprises contribute over 60 per cent of the whole Indonesian economy with more than 99 per cent of total enterprises in Indonesia categorized as micro and small and absorbing about 97 per cent of employment. There are also already a significant number of current collective bargaining agreements. At the end of 2021 there were 17,495 odd; at the end of last year, it was over 18,000.

Historically, most of the micro and small enterprises have been located in the informal economy where wages are unregulated, mainly due to the inability to pay the minimum wage which was too high compared to the profits they generated.

The Omnibus Law changed this. It brought MSEs into the formal economy in a way that they can contribute more directly to the national economy, and are provided all the protections of employment law, albeit in forms that reflect the precarious reality of many small enterprises.

One of these forms is the exemption of MSEs from applying provisions related to the minimum wages. This is aimed at ensuring that a fair wage for the workers in MSEs is fulfilled with still considering the viability of MSEs. This is not an open chequebook.

Any agreed wage must be at least 50 per cent of the average consumption at the provincial level and at least 25 per cent above the poverty line. Furthermore, setting wages in this way does not eliminate the role of collective bargaining, instead, the policy emphasizes the need for free and voluntary negotiation between employers and workers.

Notwithstanding that the Government is currently focusing on the creation of collective agreements at the enterprise levels, there is also an eye on the future. We understand that the ILO, Government, and social partners have agreed to organize Mediation Skills Training and training for workers' and employers' representatives in collective bargaining.

On Export Processing Zones, we note that the Committee of Experts requested that the Government take steps to ensure that the rights of the Convention are guaranteed for workers where export products are produced and to continue to inform it.

The Committee of Experts also requested information on a number of collective agreements in force. We note that the collective agreements at the moment in the export processing zones are 687.

Overall, we have a small number of recommendations with all these points in mind, the Employer members urge the Government to continue to address the various issues arising from the introduction of the Omnibus Law through the National Tripartite Council and to avail itself of the technical assistance available from the ILO in this regard. And to ensure that any presence of employers or government officials on an occasion of voting is strictly in accordance with the provisions of the Convention.

**Worker members** – The application of Convention No. 98 by the Government of Indonesia is the subject of our discussion. The report of the Committee of Experts refers to a number of issues with respect to the application of the Convention in law and practice, including adequate protection against anti-union discrimination, adequate protection against acts of interference, promotion of collective bargaining and the extension of the coverage of protections afforded by the Convention to workers in export processing zones and in all such industrial and economic zones. The Convention protects workers from anti-union discrimination, from acts calculated to undermine the rights of workers to join or form a genuine workers' organization, or otherwise prejudice a worker because of their union activities or membership. It calls for the setting up of appropriate machinery to ensure respect for the right to organize and calls for measures to be taken to encourage and promote the full development and utilization of the machinery of collective bargaining for the regulation of conditions of employment. The ILO Flagship Report of 2022 on collective bargaining, shows the potential of collective bargaining to make an important contribution to the inclusive and effective governance of work, with positive effects on stability, equality, efficiency, compliance and the resilience of enterprises and labour markets. We are concerned that the Government

is not taking the measures that will enable workers in Indonesia to realize the protection afforded by the Convention. We have a particular situation in mind.

On 2 November 2020, President Joko Widodo signed Law No. 11 of 2020 on job creation, known as the Omnibus Law, over the strong objection of a broad coalition of Indonesian trade union organizations and other civil society organizations. The Constitutional court of Indonesia struck down the law on 25 November 2021. While this could have been an opportunity to engage in meaningful tripartite dialogue to address the trade unions' many legitimate concerns, the Government instead issued an emergency regulation for job creation in December 2022, which re-enacted the Omnibus Law with only minor amendments. Parliament passed the emergency decree into Law No. 6 of 2023 on 21 March 2023. The stated motivation behind the enactment of the omnibus bill, was to attract foreign investment in order to stimulate economic growth. Instead of upholding the provisions in the Convention with a view to achieving sustainable and productive economic growth by lifting real workers out of the low income, low labour protection merry-go-round. The path chosen by the Government will instead drive down wages and worsen working conditions. Making life even more difficult for workers already reeling from the impact of the COVID-19 pandemic. Foremost, the law creates significant damage to the existing system of wage setting in Indonesia, by removing minimum wage protection for almost all Indonesian workers, which has the effect of undermining the tripartite wage negotiations that determine minimum wages as well as the capacity of the unions to negotiate wages at the enterprise level. In fact, instead of encouraging and promoting a machinery for collective bargaining, the law exempts micro and small enterprises, which must now be determined based on agreement between the entrepreneur and the workers in the company.

The vast majority of Indonesian workers as we have heard, 97 per cent, are employed in micro, small or medium-sized enterprises, according to 2018 figures from the Central Bureau of Statistics.

Additionally, a number of provisions undermine the obligation to set up measures to encourage and promote the full development and utilization of collective bargaining by fermenting more precarious employment and thus undermining the protection afforded to workers to form unions, organize their activities and to bargain. For example, reforms related to fixed term contracts, outsourcing of work and labour and the termination of employment threaten an ever-greater usage of precarious employment in the country. Exacerbating already significant economic and social instability and insecurity for workers. The law effectively removes many provisions and limitations on the use of fixed term contracts contained in the previous Law No. 13 of 2023. Without these provisions, workers are exposed to risk of an abusive recourse to fixed-term contracts, leading to social inability and lack of balanced and sustainable economic growth that improves the lives of real people.

The new flexibilities in the Law if not amended, will render the minor protections remaining in the law cosmetic, and largely meaningless. As the Committee of Experts have recently observed, a worker whose fixed-term contract was not extended or renewed, will usually bear the burden to show that the failure to extend or renew the contract, was the result of anti-union discrimination, or some other prohibited reason, undermining the effect of provision against anti-union discrimination, required under the Convention. The law also provides that labour providers can outsource labour to perform any functions of the user company, including its core functions. Further, the labour provider is solely responsible for workers, apparently absolving the user company of any responsibility to all workers, even when the labour provider violates the law.

As with fixed-duration contracts, the deregulation of labour outsourcing will have profoundly negative impacts on the exercise of fundamental labour rights. As the ILO has explained, the presence of multiple labour providers can fragment the bargaining unit, preventing workers from reaching a regulatory threshold necessary to either form a trade union or gain recognition as bargaining agent. Moreover, if there are multiple bargaining units within an enterprise, they may not have sufficient bargaining power in collective bargaining negotiations.

In addition to the problems created by the Job Creation Law, the Committee of Experts has also highlighted a number of legislative and policy issues which the Government should have addressed, rather than creating new and serious problems. Here we would refer to the Committee of Experts' request to amend section 122 of the Manpower Act, so as to prohibit the presence of the employer during voting procedures. Amend sections 5, 14 and 24 of Law No. 2 of 2004, or the Industrial Relations Dispute Settlement Act, to ensure that compulsory arbitration during collective bargaining can only be invoked under exceptional circumstances, so as to ensure that the principle of free and voluntary collective bargaining is respected, take the necessary steps to also promote collective bargaining at the sectoral and regional levels and to provide information in this regard and ensure that the rights under the Convention are guaranteed for workers in all the zones, including Export Processing Zones, where export products are produced and continue to inform of the progress of the above-mentioned tripartite consultation.

The Government has much work ahead to bring its laws and practices into compliance with the Convention. We urge the Government to immediately undertake a thorough review of its laws, including the new job creation law, in a tripartite manner and with the technical support of the ILO, in order to ensure full compliance with the right to collective bargaining protected by the Convention.

**Employer member, Indonesia** – Thank you for granting APINDO, the Employer's Association of Indonesia, the opportunity to address this Committee and provide additional information regarding the Indonesian case on Convention No. 98. For this matter, we invite you to follow the prevailing labour situation that prompted Indonesia to enact the Job Creation Law 2020, then confirm as Act No. 6 2023, using the omnibus method.

According to a survey conducted by the Indonesian Central Statistics Bureau, the Indonesian workforce on August 2019 reached approximately 133 million, with 126 million people employed and 7 million unemployed. There were 28 million part-time workers and 8 million underemployed. Meanwhile, the new workforce reached 2 million and every year it is estimated that there will be about 3 million annual increase in the new workforce. There should be efforts to create job opportunities for approximately 45.8 million people. The issue of employment opportunities directly correlates to the education level of the Indonesian workforce, which is predominantly at the junior high school level or below.

The employment challenges are also exacerbated by the upcoming peak of Indonesia's demographic bonus projected in 2030. The abundant productive working-age population must be effectively managed to ensure maximum benefits for the country.

Based on data from the Indonesia Investment Coordinating Board, there has been a significant decline in labour absorption. In 2013, investments amounted to 398 trillion Indonesian Rupiah (IDR), with a job absorption ratio of 1 trillion per 4,594 workers. However, in 2022, investments reached IDR1,207 trillion, but the job absorption ratio decreased to 1 trillion per 1,081 workers. These figures demonstrate that investments have tripled over the past ten years, while job absorption has drastically declined by 75 per cent. This declining trend

in labour absorption requires careful attention, particularly considering the fact that over 50 per cent of Indonesian workers were employed in the informal sector.

This Job Creation Law involved revisions and updates to articles covered in the previous Manpower Law 2003.

These changes to the labour regulations were implemented to fulfil the demands of the Indonesian people's constitutional rights, as stipulated in article 27(2) of the Indonesian Constitution of 1945 which states that every Indonesian citizen has the right to work and a decent livelihood for humanity.

We need to further note, that although there have been some changes to the term of employment, the new Law also introduces new protection schemes for workers. The Job Creation Law provides a new protection mechanism for terminated workers through an unemployment benefit scheme and compensation for temporary workers, which were not previously addressed by the Manpower Law.

As Indonesia has ratified nine fundamental Conventions, we believe the formulation of the said Law has carried out deliberately to ensure the provision does not jeopardize the principles of respecting workers' fundamental rights as outlined in the ILO Declaration on Fundamental Principles and Right at Work.

Concerns regarding potential violations of the Convention due to the changes in labour regulations are not substantiated. The specific regulations governing the wage for workers in micro and small enterprises (MSEs) exist because it will be unrealistic if we apply the same standards for MSEs as medium and large companies. However, Article 90B of Job Creation Law also stipulated agreement between employer and worker on minimum wage for MSE workers may not be lower than a certain percentage of average public consumption. Additionally, the workers in MSEs continue to be covered by all social protection and occupational safety and health regulations. The Law needs to strike a balance between achieving ideal goals and addressing the existing realities.

According to recent data, the business world in Indonesia is mainly supported by micro, small and medium-sized enterprises (MSME/UMKM), since it accounts for 119.56 million people (96.92 per cent). This fact supports the objectives of the Job Creation Law, which is to empower and promote the development of micro and small enterprises so that they can expand job opportunities and equal distribution of welfare for Indonesian people.

In line with the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the formulation and the process of Law No. 11 2020 has undergone a detailed and comprehensive process including incorporating the aspirations of various stakeholders and conducting a thorough social dialogue in Tripartite Consultation Forum.

On this occasion, we would like to also emphasize that Indonesian Employers' Association, respects the rights to collective bargaining in the workplace. Therefore, we continuously strive to strengthen the capacity for collective bargaining in the workplace. One example is our collaboration with the Dutch Employers' Cooperation Programme, Christian National Trade Union Federation, and the Confederation of Indonesian Prosperity Trade Union to conduct training on the social dialogue between management and workers in the workplace, enabling them to formulate collective labour agreements that are suitable for their respective companies.

APINDO does not claim that everything is perfect. There is still much work to be done by the Government to ensure that the Job Creation Law fulfils its intended role, of providing

extensive job opportunities for the welfare of the entire Indonesian nation. The coordination between the central government and local authorities to achieve a common goal still needs to be improved along the line to enhance the quality and productivity of the workforce which is becoming an ongoing challenge.

However, the Government has continuously demonstrated its commitment to the welfare of the Indonesian nation. This was evident during the global COVID-19 pandemic as we were able to navigate through it successfully.

We believe that through collaboration among all stakeholders who share the same vision, the welfare of the Indonesian people can be promoted. What business associations need now is a preferable domestic situation that enables all parties to fulfil their role to the fullest. Therefore, we hope that the Committee will share our views that domestic issues will be resolved internally by the relevant parties, focusing on the best interests of the Indonesian people through constructive dialogue and enforced by the tripartite spirit. By doing so, we believe social justice and decent work can be achieved.

**Worker member, Indonesia** – The discussion of this case by the Committee is very timely and critical. As highlighted in the Committee of Experts' report, the implementation of the Convention in Indonesia is very problematic. The Job Creation Law, which has become known as the "omnibus law", and its implementing regulations, clearly undermine labour rights, remove many protections and in particular the rights which were protected under the Convention.

Before I get deeper into the main issues on the implementation of this Convention, I will inform this house on the matters related to this job creation law. On 2 November 2020, President Joko Widodo, signed Law No. 11 on Job Creation, which became known as the omnibus law. Trade unions and civil societies opposed this job creation law for its negative impact on the promotion and protection of labour rights.

In developing the Law, the Government of Indonesia failed to have proper consultations with trade unions. Trade unions unitedly voiced their opposition. As a result, on 25 November 2021, the Constitutional Court ruled the formation of the omnibus law was unconstitutional and ordered the Government to improve the Law within two years. But instead of enacting the Constitutional Court's decision, President Joko Widodo, took a shortcut by issuing the Government regulation in lieu of Law (*Perppu*) No. 2 of 2022 to impose the enforcement of this omnibus law.

Similar to the job creation law, the provisions in the *Perppu* entirely downgraded workers' fundamental rights and workers' welfare, particularly on minimum wage-setting, short-term contract employment prolongation, flexible regulation on outsourcing, longer overtime and reduced severance payment, and so on.

The Government claimed *Perppu* No. 2 of 2022 was released on the grounds of a state of emergency caused by the economic impacts of the Russian/Ukraine war. Trade unions and civil society organizations opposed this by nationwide strikes and [*claims*] that there were no such emergency grounds.

On 20 March 2023, the Director-General of the ILO wrote a letter to the Government of Indonesia to raise the concerns submitted by the three largest trade union confederations (KSPI, KSBSI and KSPSI) so as not to pass this emergency regulation into law. However, this regulation was passed by parliament and became Law No. 6/2023. Still protests against this law continued. Chairperson, with the enactment of this law, the previous Law No. 11 of 2020 on job creation automatically no longer applies.

There is an ambiguity in this regard. On the one hand, the new law is already promulgated and in effect, however, there are at least 49 implementing regulations currently in force originated from the annulled Law No. 11 of 2020. Nonetheless, the examination of the Convention by this Committee is very timely and relevant because the law clearly undermines the principles of the Convention.

To facilitate the implementation of the job creation law, the Indonesian Government issued several implementing regulations including; (i) Government Regulation No. 35/2021 on fixed-term employment, outsourcing of labour, and so on; (ii) Government Regulation No. 36/2021 on wages; and (iii) Minister of Manpower Regulation No. 5/2023 concerning adjustment of working time and wages. I will limit my intervention on how these critical implementing regulations undermine the Convention.

First, Government Regulation No. 35/2021 has weakened the power of unions to bargain collectively. On fixed-term employment contract this allows flexibility to employers, as there is no longer any restriction on extension and renewal, except that the total length of the fixed-term contract should not exceed five years. It was also recently circulated on media when the women workers disclosed the practise of “staycation”. Staycation is a practice where women workers are asked to spend a night with their boss as a requirement to extend the short-term employment contract.

On the outsourcing of labour, under the omnibus law, a company could easily undermine an existing trade union of directly hired workers performing core functions simply by hiring new workers through a labour agency. On the termination of employment, omnibus law dismantles a crucial safeguard on employment termination. With such relaxation of employment termination processes, fixed-term contract workers would be more reluctant to join trade unions, therefore it has an impact on weakening the function and role of trade unions. On severance payment, under the omnibus law, the severance pay has been reduced. Second, Government Regulation No. 36/ 2021 limits the union rights to collective bargaining and caused significant damage to the wage system. Omnibus law significantly reduces the role of tripartite wage council negotiation in determining minimum wages. The omnibus law introduced a new formula in which minimum wage would be set based on data provided by the National Agency of Statistics.

The fact that through this system, trade unions no longer have room to negotiate commodity prices as one of the most important elements in determining the minimum wage, means that these changes affect the capacity of trade unions to effectively negotiate wages.

The job creation law also abolished sectoral minimum wages. In addition, the law also exempts micro and small enterprises from having to pay the minimum wage. This wage exemption rule is a clear violation of the universal right to wages, which states that everyone is entitled to a fair and decent wage without discrimination in any form.

Third, the Minister of Manpower Regulation No. 5/2023 violates trade unions’ right to bargain collectively. On March 2023, the Minister of Manpower Regulation No. 5 of 2023 was put into force. In article 8 of this regulation, it states that the companies in the above-mentioned sector may adjust and reduce workers’ working hours and wages up to 75 per cent. Although the wage cut will be made based on an agreement between the employer and (individual) workers, trade unions are very concerned about the fact that the regulations deny the existence of union representatives, especially at the company level, and are thus violating the collective bargaining process.

The regulation clearly ignores the employers' obligation to disclose proper data to trade unions on the cause of wage cuts. Facts on the ground showed that a number of companies in the above-mentioned sectors have decided on certain acts of wage cuts and working hour [reductions] without any prior dialogue with the existing unions.

As highlighted in the report, we support the Committee of Experts' view that the Government should take measures to amend the Industrial Relations Dispute Settlement Act (PHI).

The above explanations clearly illustrate how the job creation law and its implementing regulations undermine the basic principles stipulated in the Convention. Therefore, through this Committee, we urge the Government of Indonesia to immediately take steps to: (i) amend the job creation law along with its implementing regulations, in consultation with the social partners, to ensure full compliance with the Convention; and (ii) suspend the operation of all regulations under the job creation law.

In this regard, we request the technical assistance from the ILO to ensure the proposed amendment is in conformity with the Convention by way of a direct contact mission request to Indonesia.

**Government member, Brunei Darussalam**, speaking on behalf of the **Association of Southeast Asian Nations (ASEAN) member States**. ASEAN acknowledges the numerous endeavours and initiatives undertaken by Indonesia to adhere to the Convention. In this regard, ASEAN commends Indonesia on the recent amendments made to its legislation, known as the Job Creation Law, aimed at enhancing economic development, trade, investment and worker protection.

The amendments to legislation represent a substantial undertaking that will require time to observe their impact on implementation. Ensuring public oversight is crucial to guarantee the enforcement of this law. In this context, ASEAN is pleased to note that the Indonesian Constitution guarantees every citizen's right to bring concerns regarding national laws to the Constitutional Court. ASEAN remains optimistic that the Indonesian Government is fully committed to preventing any violation of individuals' rights due to the enactment of this law.

ASEAN also urges Indonesia to sustain meaningful engagement and consultation with the tripartite constituents. The Job Creation Law should facilitate and encourage dialogue and consensus-building between employers and workers. ASEAN expresses appreciation for Indonesia's commitment in this regard, which highlights its dedication to safeguarding workers' rights and ensuring equitable treatment for all workers, including those employed in micro-and small enterprises, as well as those working in the Export Processing Zones.

Moreover, Indonesia has established and implemented legal frameworks that incorporate safeguard elements and provisions for remedies, which can be deemed adequate in addressing concerns related to anti-union discrimination. Nevertheless, ASEAN recommends that Indonesia continues reviewing these provisions to ensure full compliance with the Convention and the complete effectiveness of their implementation.

ASEAN acknowledges and appreciates Indonesia's strong partnership with the International Labour Organization throughout the amendment process, recognizing that this collaboration serves as a pathway towards full compliance with the Convention. ASEAN views this as a timely moment for Indonesia to persevere in its commendable endeavours to safeguard and advance the rights of workers. We express our unwavering support for the continuous and sustainable implementation of planned activities in this regard.

In addition, ASEAN emphasizes the importance of addressing emerging issues and challenges that impact the traditional labour market and industrial harmony. We urge the ILO to maintain close cooperation with its Member States, fostering an environment that promotes decent work for all workers. Together, we can proactively address these issues and ensure the well-being of our workforce.

*Interpretation from Russian:* **Government member, Belarus** – At the outset I would like to thank the delegation of Indonesia for the report, which contains detailed comments on the questions from the Committee of Experts. We note the commitment on the part of the Government to rigorously observe the ILO Conventions. We welcome the pursuit of a consistent policy on employment and work and also the measures taken at the national level to develop social dialogue.

We welcome the measures taken by the Government to ensure participation in the preparation of the Job Creation Law by the social partners, representatives of civil society, and academia. We are sure that such an approach to the development of this legislation will enable the state to broaden the possibility for the organization of collective bargaining. Whilst also enhancing the legal basis to prevent all forms of discrimination in labour and employment. While also raising awareness among workers of their rights.

We call upon the Government to pursue these efforts. We also call upon the ILO to continue providing to Indonesia and to the social partners in the country the necessary technical assistance.

**Employer member, Thailand** –The Employer Confederation of Thailand is making the statement here on behalf of the ASEAN Confederation of Employers (ACE). With the ending of the pandemic, all countries must adapt to the new ways of working and develop a global strategy to reconstruct their economies. In this regard, we believe there is no “one size fits all” strategy because every country has unique challenges. It is therefore imperative for Indonesia, to rebuild her economy by rejuvenating the Labour Law by enacting Job Creation Law No. 11 of 2020 through Omnibus method. Concerning this case, ACE believes that the Government has conducted a robust and comprehensive consideration by accommodating the interest of all the relevant stakeholders, including by conducting a social dialogue between Government, Labour Unions and The Indonesian Employers’ Association (APINDO). This practice is in line with the spirit of tripartism under Convention No. 144.

ACE believes that during the social dialogue, not all interests, including those of employers could be accommodated. However, for the long-term need of Indonesia’s economic sustainability, ACE believes that the Job Creation Law is the way forward for the realization of social justice and decent work in Indonesia. The social dialogue is the clear proof that the Indonesian Government has put its best efforts to embrace all relevant parties in order to fulfil their responsibilities in enhancing the welfare of the Indonesian society.

ACE is hopeful that the Indonesia case could be settled internally through social dialogue among Tripartite members and requests the Committee of Experts to comprehensively review and reconsider this case for the better future of Indonesian people.

**Membre travailleuse, Belgique** – La loi n° 13 de 2003 comportait de nombreuses protections et limitations concernant l’objet, la durée et les renouvellements des contrats de durée déterminée. Toutes ces protections ont été abrogées par la loi Omnibus de 2020. La limitation à trois ans des contrats de durée déterminée a été portée à cinq ans par le Règlement gouvernemental n° 35 de 2021. La disposition qui prévoyait la transformation d’un contrat oral en un contrat de durée indéterminée a été supprimée. Si les contrats à durée

déterminée pour un travail de nature permanente restent interdits, la nouvelle loi rend cette interdiction inopérante.

Le déséquilibre important du pouvoir de négociation entre employeur et travailleur fait qu'en pratique l'employeur peut imposer les conditions contractuelles au travailleur sans négociation. Dès lors, beaucoup plus de travailleurs sont embauchés via des contrats précaires consécutifs, avec des protections légales limitées. Et des entreprises ont licencié des travailleurs sous statut permanent, pour les réembaucher comme travailleurs temporaires.

Les contrats précaires créent des obstacles à l'exercice du droit à la liberté syndicale. Les travailleurs engagés dans une activité syndicale peuvent être plus facilement soumis à des représailles, et licenciés. Ces contrats ont un impact négatif sur les groupes exposés à la discrimination en matière d'emploi, en particulier sur les femmes. Ainsi, il est courant que les employeurs ne renouvellent pas le contrat des femmes enceintes.

Enfin, le pouvoir accru de l'employeur du fait de la précarité de l'emploi peut aussi conduire à la violence et au harcèlement. Le renouvellement des contrats peut faire l'objet d'un chantage aux relations sexuelles via la pratique répandue de la «staycation». Récemment, une travailleuse d'une entreprise de cosmétiques de la ville de Bekasi, à l'ouest de Java, a témoigné qu'avant le renouvellement de son contrat, le directeur l'avait invitée via WhatsApp à le rejoindre dans un hôtel pour de soi-disant vacances. Si elle rejetait cette invitation, la travailleuse risquait de voir son contrat non renouvelé. L'affaire a été traitée par l'inspection du travail et la police et, le 29 mai, le ministre du Travail a publié un décret n° 88 concernant les lignes directrices pour la prévention et le traitement du harcèlement sexuel et de la violence au travail en lien avec cette pratique.

Il est certes hautement souhaitable que l'Indonésie lutte contre la violence et le harcèlement, notamment fondés sur le genre et ratifie la convention (n° 190) sur la violence et le harcèlement (2019).

Cependant, la protection contre la violence et le harcèlement requiert aussi la possibilité de négocier de meilleures conditions de travail, notamment une meilleure sécurité de l'emploi et une véritable protection contre le licenciement.

**Government member, United States of America** – We thank the Government of Indonesia for providing additional information to this Committee regarding updates on the Job Creation Law, also known as the Omnibus Law.

The Government reports on various measures it has taken to address concerns related to the Job Creation law, including efforts to revise the law procedurally and substantively through the amendment of Law No. 12 of 2021 on the Creation of Law to include provisions detailing an "omnibus law model" and meaningful public participation process. It also indicates that Law No. 2 of 2022 on Job Creation replaces Law No. 11 of 2020. We also note that the law was promulgated through an emergency regulation, or "*Perppu*".

We note significant concerns with respect to both the development and consultation process, as well as impacts to existing labour laws. We also note reports that workers continue to express concerns related to changes in several laws.

We are especially concerned that the legal changes made by the omnibus law, threaten Indonesian workers' freedom of association and right to organize and bargain collectively.

Namely, we note that increased flexibility for companies to use temporary contracts for extended periods of time in place of hiring a permanent workforce and the expanded ability

for companies to outsource permanent work to private labour-only outsourcing companies supplying temporary workers specifically imperil these rights.

Further, contract and outsourced workers will have little to no recourse to address working conditions at the user companies and risk losing their jobs if they attempt to raise concerns about working conditions to an industrial relations tribunal; and, also, the use of workers from multiple outsourcing companies at a single user company can seriously fragment the workforce, enabling the use of multiple employers by the contracting company, which will prevent workers from organizing and bargaining collectively.

To that end, we urge the Government to remove labour-related provisions from the Job Creation Law that impede the rights to freedom of association and collective bargaining, and we call on the Indonesian Government to work closely with the ILO to ensure all future labour law reforms are consistent with international labour standards.

We also call on the Government to immediately implement the recommendations of the Committee of Experts and end compulsory arbitration obligations by amending sections 5, 14 and 24 of the Industrial Relations Dispute Settlement Act. The United States remains deeply committed to engaging with the Government to advance workers' rights in Indonesia.

**Worker member, United States of America** – I want to begin by echoing the comments of my Indonesian trade union colleague: The Indonesian Government's imposition of the omnibus Job Creation Law, represents a grave threat to workers' fundamental rights to freedom of association and collective bargaining.

Indeed, despite the November 2021 ruling of the Constitutional Court ordering the Government to reformulate the law with the full input from the social partners, the Government has instead chosen to plough ahead with a highly unpopular set of regulatory changes in a misguided attempt to attract foreign direct investment.

Let me focus on one highly problematic change that directly undermines the right of Indonesian trade unions to bargain collectively on behalf of their members. Through Government Regulation No. 36 of 2021, the Indonesian Government has eliminated the ability of trade unions and businesses to negotiate sectoral minimum wage levels that can exceed the prevailing minimum wage. Removing sectoral negotiations from wage setting will significantly reduce the salaries of workers in several sectors, such as mining, construction, and apparel. It also violates the right of trade unions to use a proven method of collective bargaining to raise wages for their members and workers more generally.

In our view, this attack on workers' rights to organize and bargain collectively has implications for Indonesia's efforts to position itself as a sustainable source of critical minerals in the growing electric vehicle battery industry.

Presently, the Government of Indonesia is proposing a free trade agreement for critical minerals to the United States so that companies who utilize Indonesian mineral inputs can benefit from US tax credits for electric vehicles.

The United States Labor Movement is watching this closely and will insist that any trade deal contains strong commitments to uphold workers' fundamental rights to freedom of association and collective bargaining.

Moving forward, we urge this Committee to issue a strong recommendation for Indonesia to amend the omnibus law, in consultation with the social partners, to ensure compliance with the Convention.

*Interpretation from Arabic:* **Government member, Egypt** – We have taken note of the statement delivered by the Government representative concerning implementation of the Convention. Indonesia has extensively overhauled its employment legislation. This is being reviewed by the Government and Parliament through public consultation with participation of all stakeholders, unions, employers, academia and other sectors. The Indonesian Government has seen to it that domestic legislation contains provisions to govern various elements of work. The Government encourages all the stakeholders to avail themselves of these provisions in their industrial relations. The Government has encouraged the establishment of collective bargaining agreements involving 18,000 collective agreements as of 2022. The Government has seen to it to undertake a thorough assessment at the enterprise level and to take the necessary steps to avoid workplace conflict. We reiterate the important role to be played by the ILO in supporting Member States to enable them to ensure that they are in line with the provisions of international labour standards.

**Worker member, Netherlands** – The Job Creation Law impacts the Indonesian world of work in several areas ranging from curtailing wage increases to increased labour flexibility limiting freedom of association and collective bargaining. As already said by previous speakers, I want to focus on an aspect that has to do with minimum wage. The Job Creation Law has made substantial changes regarding the calculation of the minimum wage. The new regime shifts from a decent wage calculation based on purchasing power to a safety net calculation. Under the 2003 Manpower Law, the minimum wage was based on three components, namely the tripartite negotiated wage basket, also known as *Komponen Hidup Layak*, productivity and economic growth. The Job Creation Law introduced a new formula in such a way that the connection between the statutory minimum wage and the cost of living is weakened and thus no longer adequately counter-balances rising inflation for minimum-wage earners. This in turn reduces the capacity of wage earners to maintain or raise their standard of living and those of their families.

On top of that, I also would like to add to this a comment regarding Government Regulation No. 36 of 2021, which exempts micro and small enterprises from the provincial, regional or city-level minimum wage.

The vast majority of Indonesian workers, around 97 per cent of the workforce, it was already said before, are employed in so-called SMEs, the micro, small and medium-sized enterprises. Based on data published by the Ministry of Cooperatives and SMEs of the Republic of Indonesia, there were over 64 million SMEs in 2019, which made up 99.9 per cent, or even more, of the total business population and employed, I repeat, 97 per cent of the total workforce. The exemption of the SMEs is in contravention with section 90 of the Manpower Act 2003, which “prohibits employers from paying lower than the minimum wage”. To be more precise this section says clearly: (i) entrepreneurs are prohibited from paying wages lower than the minimum wages as referred to under article 89; (ii) entrepreneurs who are unable to pay minimum wages may be allowed to postpone paying minimum wage; and (iii) procedures for postponing paying minimum wages shall be regulated with a Ministerial Decision. All this is an important floor for workers in their wage negotiations with any employer.

This is not the case as long as there are exceptions in the application of the minimum wage for large groups of workers, even though this minimum wage is not even equal to a living wage.

Therefore, government Regulation No. 36 of 2021 denies the right of a meaningful wage negotiation to 97 per cent of the workforce, which goes against the core objective of the Convention.

**Membre gouvernemental, Algérie** – La délégation algérienne remercie le gouvernement de la République d'Indonésie pour les informations fournies, ce qui est un signe de sa bonne volonté de coopérer avec les organes de contrôle de l'OIT. Les informations supplémentaires fournies par le gouvernement contiennent des éléments qui résument diverses questions et décrivent la volonté du gouvernement de continuer à progresser dans le dialogue social inclusif, à améliorer la liberté syndicale et à renforcer la protection contre tout acte de discrimination antisyndicale.

C'est pourquoi, nous saisissons la présente occasion qui nous est offerte pour indiquer qu'il est important d'accorder au gouvernement le temps nécessaire pour engager un dialogue social constructif avec les organes et ses syndicats représentatifs, dans le cadre de sa législation nationale et dans le respect de ses obligations et engagements au titre des normes internationales en la matière, et ce à l'effet de renforcer la négociation collective dans tous les lieux de travail, ce qui permettra une meilleure adaptation des relations de travail aux spécificités des entreprises.

Le gouvernement indonésien a mis en place des mécanismes pour promouvoir la négociation collective sectorielle et le dialogue social tripartite, en réalisant des progrès constructifs en matière de création d'emploi décent et de lutte contre le chômage et de prévention des conflits collectifs de travail, y compris dans les zones franches. Aussi, la Constitution du pays dispose clairement que les droits et libertés de chacun sont protégés par la loi de manière indépendante et impartiale.

Nous apprécions également la communication et les échanges approfondis avec les partenaires sociaux et le nombre important de conventions et accords collectifs de travail conclus notamment en matière de conditions de travail.

Enfin, la délégation algérienne espère que les conclusions de la commission seront objectives, techniques et équilibrées sur la base des informations fournies par le gouvernement indonésien.

**Worker member, Republic of Korea** – In solidarity with Indonesian workers, I would like to express concerns about the government regulation No. 36 of 2021 on wages, which is effectively abolishing the negotiation process in minimum wage setting.

Under the Manpower Law of 2003, Wage Councils, consisting of representatives of government, employers and trade unions have taken leading role in setting provincial and district minimum wages. At the same time, "Decent Living Needs" a list of items covering the expenses on food, housing, clothes, education, health, transportation, recreation, and savings, was jointly determined by wage councils. Other elements, including productivity at national and local level, economic growth and the position of marginalised industries had also to be considered. So, debates in relation to decision-making in wage councils, especially over the "Decent Living Needs" were crucial space for negotiation where unions can exercise the rights to represent their members and the workers.

This mechanism was once deteriorated and the space for negotiation were limited when the Government Regulation No. 78 of 2015 was introduced. This Regulation changed the cycle of updating the "Decent Living Needs" from one year to five years. In other years minimum wage was set automatically set by combing the rate of inflation and economic growth. But the "Decent Living Needs" were still used as a basis for determination of minimum wage and the room for negotiation existed.

The Government Regulation No. 36 of 2021, an implementation decree for the Job Creation Law, dramatically worsened the mechanism. Under the new regulation, minimum

wage is determined technocratically based on predetermined formular and data provided by the National Agency of Statistics. The actual cost of living that workers need to make ends meet is not the consideration anymore and trade unions have no say in determining minimum wage.

While the collective bargaining system is yet to be effectively established, minimum wage setting process served as de facto wage negotiation. The minimum wage setting only based on predetermined formular, when it is combined with other changes in the Government Regulation No. 36, will deprive trade unions of right to bargain for wage increase.

I join my worker colleagues in calling on the Government of Indonesia to bring the laws in conformity with the Convention.

**Miembro trabajador, Brasil** - El Gobierno de Indonesia modificó de manera sustancial el artículo 66 de la Ley N.º 13 de 2003, relativo a la tercerización de actividades de las empresas y sus efectos en las condiciones de trabajo.

Previo a la llamada Ley Ómnibus, la legislación establecía que los trabajadores de un proveedor de mano de obra autorizado no podían ser ocupados para la realización de las funciones básicas o de giro principal de la empresa usuaria. Lamentablemente, la Ley Ómnibus ha desregulado la relación triangular de trabajo, extendiendo el alcance de la tercerización a cualquier actividad de la empresa usuaria, incluyendo sus funciones básicas o giro principal.

Se trata de un modelo de descentralización de la actividad productiva en directo perjuicio de los derechos de los trabajadores que es muy conocido en los países de la región latinoamericana, como el caso del Brasil, preso de políticas neoliberales aplicadas por gobiernos autoritarios, hasta el año pasado.

Por otra parte, la nueva normativa exime a la empresa principal de toda responsabilidad por los eventuales incumplimientos laborales y previsionales de la empresa subcontratista.

Pero, la gravedad de la Ley Ómnibus está en el desconocimiento del derecho a la libertad sindical, ya que la empresa podría afectar seriamente a los sindicatos, contratando trabajadores a través de agencias de mano de obra.

La legislación indonesia no reconoce a los trabajadores contratados a través de una agencia o suministradora el derecho a afiliarse al sindicato de la empresa principal. La Ley define que estos trabajadores deben limitarse, en el mejor de los casos, a organizarse en el único entorno del colectivo de su empleador directo.

Desde luego que esa fragmentación extrema del trabajo no permitirá la aplicación del convenio colectivo de la empresa principal.

Se generará así una diferenciación de condiciones de trabajo entre trabajadores de la empresa subcontratada y la empresa principal, pese a que seguramente presten su labor en el mismo lugar y realizado, probablemente, idéntica tarea.

En definitiva, el Gobierno debe proceder a una urgente derogación de las normas de tercerización laboral que han afectado el trabajo decente en Indonesia.

**Government member, Türkiye** - We thank the Government of Indonesia for the information it provided and welcome its willingness to constructively engage and cooperate with the ILO. The Government of Indonesia has demonstrated efforts to revise the Job Creation Law and adapt its current legislative framework to bring it in line with the ILO standards. We encourage the Government of Indonesia to continue to undertake necessary steps in this regard.

We welcome that the Job Creation Law does address the unique circumstances faced by workers in small and medium-sized enterprises (SMEs) and this law considers the financial capacity of SMEs, ensuring a fair balance between workers' rights and the sustainability of these enterprises.

Furthermore, we commend the Indonesian Government for actively seeking input from various stakeholders, including trade unions, employers, universities, and other sectors of society. The Government's affirmation that national law incorporates procedures to address anti-union discrimination and the violations of workers' rights to organize, along with its encouragement for workers and trade unions to utilize these procedures, is noteworthy.

Recent developments regarding adequate protection against acts of anti-union discrimination and interference, promotion of collective bargaining, recognition of organizations for the purposes of collective bargaining made by the Government of Indonesia in order to bring their national legislation in accordance with standards of the Convention should be acknowledged. It should also be highlighted that the Government is focused on creating enterprise-level collective bargaining agreements (CBAs) to prevent disputes, while workers in export processing zones (EPZs) have the right to engage in collective bargaining.

It should be emphasized that the Government is determined to work on the issues raised by the ILO and the social partners in a spirit of constructive dialogue and is ready to enter an open discussion on how to further improve the situation with them.

We have confidence that Indonesia will continue to work with the ILO and social partners in close cooperation.

**Observer, Building and Wood Workers International (BWI)** – I would like to call on the attention of members of this august chamber that the Ministry of Manpower Regulation No. 5/2023 that allows the company to cut the wages by 25 per cent and reduced working hours has gravely undermined the rights of workers and their representatives as guaranteed by the Convention.

This regulation does not provide opportunities for equal and transparent negotiations between trade unions and employers. Provisions of Article 9(1) do not explicitly stipulate the obligation for employers to prove to workers and/or workers' organisations that the company has indeed experienced losses due to global economic recession. Reports from the Trade Unions indicated that the employer's claim that the company has experienced loss or decrease in orders is only a matter of verbal claim; it is not supported by any verifiable documents or data like an externally audit report. The negotiation and conclusion of collective negotiation is always anchored in good faith in which disclosure of actual and factual financial standing of the company is necessary.

The provision of Article 9(1) has also had impact on workers hours, adjustment of wages in cases where there are multiple unions in a particular company. A case in point is a Korean company in the city of Karawang. There are 11 trade unions, with a total of 20,000 workers. The production is stable, orders are good, and some production lines employ workers for overtime.

The method used by the companies gather workers to sign agreements related to regulation 5/2023 with intimidation, if they refuse to sign agreements, companies will lay off workers in large numbers. Workers who are mostly women had no choice. After obtaining "approval" from workers, the company entered negotiations with 11 unions to pass regulation 5/2023 into force. The union has no choice since the members have already agreed. The

company has reduced working hours under the term “Stay At Home” on Saturdays. The reduction in working hours resulted in a reduction in wages of up to 35 per cent.

This problem is more pervasive and massive in companies where there is no union to challenge the enforcement of this regulation.

**Observer, Public Services International (PSI)** – I would like to congratulate in public the new spokesperson of the Employers’ group. I think that new blood, new ideas, new voices in this Committee are welcome and essential for the survival of this Committee. We hope that his presence will bring new approaches and help revitalize the work of this Committee. Of course, this applies to all of us including myself. Now with regard to the case, I would mostly like to stress that, despite assurances from the Government to the ILO’s supervisory mechanisms, a significant proportion of workers in Indonesia are denied the rights provided for in the Convention.

I am referring to workers who deliver vital public services, including health workers, civil servants in local and municipal government and also those in national administration. These workers are denied the right to unionize and the right to collective bargaining. So, in other words, the restriction applies to a broad range of workers, well beyond the exceptions afforded in this Convention.

The Committee of Experts noted that the Constitution grants civil servants the right to join “professional organizations” of their own choosing. But it seems to be a contradiction because the Committee also notes that the Government referred to an obligation imposed on these civil servants, depending on their status, to join respective professional organizations of functional positions. So, we have on the one hand a contradiction and on the other, all that the Constitution does is to offer them to join a professional organization which are not trade unions in the sense provided for in the Convention.

I would also like to stress that civil servants have freedom of association according to Law No. 21/2000, but until now, that law that grants, an additional law that grants these rights has not been passed.

So, to conclude I just want to say that we hope this Committee adopts conclusions and addresses these issues in line with their significance of these allegations.

**Observer, IndustriALL** – I am speaking here on behalf of IndustriALL Global Union to express our complete frustration over the adoption of the emergency decree for Job Creation on 21 March of this year. This law for Job Creation is identical to the previous regulation, which was declared conditionally unconstitutional by the constitutional court in 2021.

The Job Creation Law is very dangerous for the future of Indonesian workers and their families, including those workers in manufacturing, mining and energy industries. 56.4 million formal workers in Indonesia (along with their families around 80 million people) will be denied decent work and decent welfare.

In the past and for the new decree, due process was ignored, and many anti-worker provisions remain unchanged. We join all the Indonesian unions, students, and civil society organizations in strongly opposing this political choice. IndustriALL Global Union also supports the call for a judicial review before the constitutional court.

The provisions in the Job Creation Law undermines workers’ rights and environmental protections. The law includes provisions that affect working hours, severance pay, contract work, outsourcing, and the ability of unions to organize and strike, deteriorating current working conditions, although it must be other way around.

The government of Indonesia should not use the global crisis, economic slow-down, and plans to attract more foreign investment, to justify its roll back of workers' rights. The Job Creation Law leads to greater labour flexibility at the expense of fundamental labour rights, which is not acceptable.

The Law eliminates sectoral minimum wage and regional minimum wage, even reduces the current wage levels, it imposes excessive use and expansion of precarious work, particularly outsourcing, it undermines fixed-term employment contracts, the wages of women workers on leave and maternity will not be paid, working hours will be exploitative, and dismissals will be easier to carry out, without recourse to negotiation or appeal.

Therefore, IndustriALL Global Union calls on the Government of Indonesia to revoke the Job Creation Law, which is against the interests of the Indonesian people and workers.

**Government representative** – Allow me to convey my appreciation once again to the Committee and all ILO constituents for their valuable observation and recommendation. The Committee is critical in advancing social justice, decent work and the global protection of worker's rights. Consequently, we have attentively listened and taken thorough note of the Committee's recommendation. We are pleased to acknowledge that certain delegation recognized Indonesia's unwavering commitment to upholding and adhering to the principles enshrined in the ILO Convention.

Equally, we attentively acknowledge the concerns and recommendations provided by workers, employers and government groups. We heard many constructive recommendations that will contribute to the Government and their work in effectively implementing the Convention. Although we note that some concerns expressed by some colleagues were unrelated to the context of the Convention. I wish to reiterate unequivocally that Indonesia remains resolute its dedication to the principles of the ILO and the effective implementation of the Convention.

As previously articulated in our return, or our responses, we maintain that concerns of infringement of the Convention related to the application of Job Creation Law and the implementation of collective bargaining in Indonesia lacks essential ground.

First, the legislative process governing the Job Creation Law, fully adhered to our Constitution and the fundamental principle of public participation. Furthermore, Indonesia ensures that every citizen possesses the right to raise concerns regarding the law before the Constitutional Court.

Second, it is essential to highlight that the Job Creation Law seeks to enhance rather than to hinder access to collective bargaining. In fact, the provision governing collective bargaining as delineated in our existing labour framework remain fully intact and applicable.

Third, our Government maintains unwavering commitment to safeguarding workers right to join unions. We have active robust legal frameworks to prevent discrimination within the workplace and we have actively engaged in promoting awareness among workers regarding their rights.

Fourth, as the third largest democracy in the world, Indonesia remains fully committed to implementing the Convention, as we believe that the right to organise and collective bargaining is part and parcel of democracy. Indonesia is also committed to continue enhancing social dialogue at national level and would like to request ILO to continue facilitating such processes in providing the necessary and relevant technical support for our social partners in this matter.

Fifth, the Government is currently in the process of formulating derivative(?) regulation of the Job Creation Law. In this regard, Government assures that public participation and collective bargaining as the fundamental principle of Convention No. 98, remains fully upheld.

Indonesia's efforts to promote collective bargaining represents an ongoing continuous process. We acknowledge the challenges that lie ahead, including economic shocks and global disruption in commodities. Nevertheless, these challenges will not lessen our steadfast commitment to promoting and protecting the right of workers to collective bargaining. Indonesia will continue to take steps to strengthen supervision of the implementation of worker rights, including the rights to associate and engage in collective bargaining. Simultaneously, we will increase training and capacity-building programmes. In conclusion, the Government of Indonesia welcomes the constructive and balanced perspectives on implementation of the Convention. The Government is also open to collaborating with all ILO Member States as well as Workers' and Employers' groups, with the aim of minimizing potential violations of the Convention.

**Worker members** – As you have heard from the discussion, the Job Creation Law is not the product of tripartite social dialogue. We remind the Government of Indonesia that its obligation under the Convention is to consult with social partners and workers' and employers' organizations. It is not enough to talk to academics and researchers about the law.

The unilateral imposition of new laws and regulations is contrary to the obligation to put in place appropriate machinery to ensure respect for the right to organize and collective bargaining.

Indonesian workers suffered numerous, serious violations of their fundamental rights while they had some formal protections under Law No. 13 of 2003. While the Law was not often respected or enforced, workers, especially workers with the union, could protect themselves from exploitation. Whatever pre-existing protections have been weakened even further.

These reforms will very likely lead to the further erosion of trade unions and collective bargaining coverage and quality.

The Committee of Experts, and the Committee on Freedom of Association, have documented serious issues relevant to our discussion. We are not seeing any progress on addressing these issues, which have included the violent repression of trade unionists merely for demanding a wage which can support themselves and their families. We need to see the Government sitting together with worker organizations and to address these critical issues.

We therefore urge the Government to review the Job Creation law with the social partners and adopt in the shortest possible time the amendments necessary to bring that law into compliance with the Convention. The Government, in the meantime, must:

- Suspend the operation of all regulations under the Job Creation Law.
- Amend section 122 of the Manpower Act to prohibit the presence of the employer during voting procedures.
- Amend sections 5, 14 and 24 of Law No. 2 of 2004 or the Industrial Relations Dispute Settlement Act to ensure that compulsory arbitration during collective bargaining can only be invoked under exceptional circumstances.
- Take the necessary steps to also promote collective bargaining at the sectoral and regional levels. In our view, collective bargaining at these levels is appropriate in the national circumstances of Indonesia and therefore in line with the Convention.

- Ensure that the rights of the Convention are guaranteed for workers in all the zones, equivalent to export processing zones, where export products are produced.
- Report to the Committee of Experts this year on measures taken to comply with these recommendations and accept the technical assistance of the ILO in undertaking these recommendations. Particularly focusing on Legislative reform with the full involvement of social partners and to accept a direct contacts mission.

**Employer members** – Just reiterating a couple of the points made earlier in relation to concerning adequate protection against anti-union and discrimination. We again note that the Committee of Experts has asked the Government to examine the issues of concern expressed here by the contributors and by the Government and we note the Government's willingness to work together with unions, with employers and with the ILO on all of these issues. So we would urge them to basically get on with it. The recommendation in the report of February 2023, basically says use the National Tripartite Council to do these things. It is not that long since the Report came out, but time is going on, and we would echo the Workers call for the Government to report to the ILO by this year on the measures that they are taking. So in other words, in New Zealand language, get on with it.

In relation to the promotion of collective bargaining, one of the things we have heard a bit about this afternoon was the call for wide collective bargaining and even the call for sectoral and industry-level bargaining. All of that is appropriate to ask for, but the other side of any request, is to make sure that we examine a reality and we have heard just how much of the economy is reliant on micro and small businesses. How little of that is organised in any, what regard as traditional ways, just how unions there are already involved, over 12,000 involved in the country, that are already part of the collective bargaining environment, even if there are many workers who are not yet members of unions and there is the sheer number of collective agreements involved as well. There is ample evidence that collective bargaining is open to be used and at the voluntary level, envisaged by the Convention, that the actual form of it, is not so much about what people want, but what is possible. So, our caution is that we don't simply go down the path of saying this has to be the outcome. All outcomes are possible, depending on what will work most and best.

In terms of the description by some of the extent to which the Omnibus Law applies, it has been impression that the primary exemption from the provisions of the act are in fact those relating to the minimum wage. There does not seem to be wholesale exemption. Our impression has been that the Omnibus Law in fact brings far more people under the ambit of legal protection than was the case before, but at various levels. We will acknowledge that the treatment of the minimum wage for micro and small businesses is different from the treatment of the minimum wage for larger businesses and there is an issue for the future. That is something that starting now, that is an issue to be worked upon again, at the tripartite level to ensure that the country grows towards an economy that has an equally applicable and adequate minimum wage throughout. In the meantime, people have to grow towards that.

Quickly on dispute resolution and the use of compulsory arbitration. We note that the industrial relations dispute, provides that a party to bargaining may file a lawsuit only after the disputing parties have conducted bipartite mediation or conciliation. This correlates with the Committee of Experts' view that permissible uses of compulsory arbitration include the circumstance where bargaining has become protracted or it is at a stalemate and basically, arbitration becomes the only viable mechanism to break the circuit. So it seems that on face value at any rate, that the use of arbitration under the terms of the Industrial Disputes Act, is in fact consistent with what the Committee of Experts have looked at in the past.

Lastly, we would simply just reiterate what we have asked for the Government to do, which is to continue addressing the various issues arising from the introduction of the Omnibus Law through the National Tripartite Council and to avail itself of all of the technical assistance available from the ILO, to ensure that the presence of employers or government officials on occasions of voting, are in fact strictly in accordance with the provisions of the Convention, and as I said before, to report to the ILO on all of these issues this year, so that we can ensure and measure progress.

## 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 deep concern the significant gaps in law and practice regarding the protection against anti-union discrimination, the scope of collective bargaining permitted under the law, promotion of collective bargaining and interference in free and voluntary collective bargaining with respect to the Convention.**

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

- **review the Law on Job Creation in consultation with social partners and adopt without delay the amendments necessary to bring that law into compliance with the Convention;**
- **ensure in law and practice that there is no interference of employers or government officials in a voting procedure of trade unions in accordance with Article 2 of the Convention;**
- **ensure that unilateral recourse to compulsory arbitration as a way to avoid free and voluntary collective bargaining is employed only in very limited circumstances and ensure its use does not impede the right of trade unions to freely organize their activities;**
- **promote collective bargaining, and provide information to the Committee of Experts on the measures taken in this regard as well as on the results achieved, including the number of collective agreements specifying the sectors of activity concerned;**
- **ensure that the rights under the Convention are guaranteed for workers in all the zones, equivalent to export processing zones, where export products are produced, and provide information to the Committee of Experts on the trends and number of collective agreements in force in these zones;**
- **prevent any act of violence and ensure, in law and practice, adequate protection of individuals for their legitimate exercise of their rights under the Convention, including through effective and expeditious access to justice, adequate compensation as well as the imposition of effective and sufficiently dissuasive sanctions;**
- **provide to the Committee of Experts statistics on the number of complaints of anti-union discrimination and interference filed, the number of complaints brought before the courts, as well as any remedies and sanctions imposed and the average duration of proceedings under each category; and**
- **take decisive and effective measures to promote a climate of non-violence, as well as constructive social dialogue and labour relations at all levels.**

**The Committee requests the Government to avail itself, without delay, of ILO technical assistance with a particular focus on legislative labour law reform, including the Job Creation Law, with the full involvement of social partners, to ensure full compliance with its obligations under the Convention in law and practice.**

**The Committee requests the Government to provide detailed and complete information on measures taken and progress made on the recommendations to the Committee of Experts made before its next meeting.**

**Government representative** – I take note of the conclusion of the Committee regarding the application of Convention No. 98 by Indonesia. We fully appreciate numerous calls and support from the Employers' group and a number of governments, to Indonesia, to make the job creation law effectively implemented with a view to create and foster job creation and enhance employment opportunities. As the third largest democracy in the world, Indonesia remains fully committed to implement the fundamental principles and rights at work of the international labour standards including Convention No. 98. In this regard, the Government in consultation with the social partners will take the necessary step to strengthen the implementation of the Convention in accordance with its national priorities and policy.