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Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Convention (nº 87) sur la liberté syndicale et la protection du droit syndical, 1948

Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87)

Discussion by the Committee

Chairperson – The third case today on the agenda of this Committee is the Netherlands, Sint Maarten on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). I invite the Government representative of Sint Maarten, to take the floor.

Government representative (Minister of Public Health, Social Development and Labour, Sint Maarten) – Sint Maarten, is a constituent state within the Kingdom of the Netherlands, and as such is a Member of the ILO, via the Kingdom of the Netherlands.

The Government of Sint Maarten has taken note of the conclusions adopted by the ILO in the 2023 report of the Committee of Experts in February 2023, specifically concerning the application of the Convention by Sint Maarten.

In relation to Article 3 of the Convention, the right of organizations to elect their representatives in full freedom and the Impasse concerning the Social Economic Council (SER), Employers Council of Sint Maarten (ECSM) and the Soualiga Employer Association (SEA), we agree with the Committee that the representatives appointed to the SER are selected from organizations that are freely established and chosen by employees and employers. We understand the significance of consulting with the social partners to ensure inclusivity and fairness in the appointment process.

We would like to make note of the fact that the allegations made by the ECSM, that the Government of Sint Maarten violated their rights of free association, have been clearly rejected, not only by the Government of Sint Maarten, but also by the Court of Appeals (Aruba, Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba) in different instances, including the verdict which has also been sent to the Committee as stated in our previous letter dated 18 November 2022. The Court does not agree with the ECSM that its right of freedom of association has been violated. Freedom of association has a legal basis in article 12 of the Constitution of Sint Maarten. Both the ECSM and the SEA are independently recognized as representative employers' organizations. This is possible under article 3 of the SER legislation as the law allows for multiple representative employers' organizations and not just one.

The Court also stated and recognized that most representative employer organizations can be changed over time, based on factors like the number of active members. As a result, the Court has ruled that the ECSM cannot derive legal expectations from previous designations

of members that now fall under their organization, which did not exist in 2018, and furthermore, they would always be the sole most representative of employers' organization.

The Court ruled that this is not a realistic expectation. The Court furthermore highlighted the fact that the SEA represents about 500 employers who have joined the SEA of their own free accord and who have also requested representation both on the SER as well as within the tripartite committee. As stated, both the ECSM and the SEA were granted the opportunity to present their nominees for representation on the SER, with zero involvement of the Sint Maarten Government, with the exception of the approval, which is regulated by law.

At the time of the court verdict, the SEA represented more employers than the ECSM. Employers can freely choose to be part of either organization. The Government of Sint Maarten hereby makes emphasis on the fact that there was no involvement by the Government on the choice of the employers regarding their membership to either organization, whether it be the ECSM or the SEA.

In addition, the Sint Maarten SER requested advice from the Netherlands SER concerning the above-mentioned matter, in which the Netherlands SER indicated that the manner in which the employers' associations – the employers were selected to this association – was not in conflict with kingdom laws.

The Government of Sint Maarten also met with the Regional Director in June 2022, whereby we discussed and requested ILO assistance with resolving the ongoing impasse with the employers' representative organizations. A follow-up letter requesting technical assistance was also sent on 27 June 2022. Although we received confirmation of our request, there was no further correspondence for the remainder of the year. We recently, however, met once again with the ILO Regional Director for the Caribbean prior to and during the ILO subregional meeting of the Caribbean Ministers of Labour in Georgetown, Guyana, from 23 to 25 May 2023. The Government of Sint Maarten indicated its desire for ILO assistance to have discussions and engage in dialogue with all partners concerned regarding this current impasse.

The conclusions during this meeting were that the situation is of a technical nature and, as a result, the suggestion coming from the ILO Regional Office is to have the ILO engage in conversation with both organizations, namely the ECSM and the SEA. The intended purpose of this assistance by the ILO is to identify any bottlenecks and find amicable solutions in the shortest period possible. The Government of Sint Maarten welcomes this initiative of the ILO to mediate this impasse and will await any outcome of this process. It is important to know that the Government of Sint Maarten depends heavily on these social partners to assist with our laws and any further evolution of our legal system. This is very important, so the SER forms a vital part in our legislative process.

We move to the right of workers' organizations to organize their administration and activities and the striking rights (direct request 2017) and the response to the observations of the International Trade Union Confederation (ITUC). The ITUC calls on the Government of Sint Maarten to ensure in law and practice that public employees can fully exercise their right to strike and to repeal any provisions in the legislation imposing penalties. It is important to note that there are no provisions in the current legislation that impose penalties on public employees exercising their right to strike. However, the Court may forbid a strike that threatens public welfare or safety.

Pertaining to the concerns of the Committee on the rights of public employees, particularly teachers, to engage in strikes under the new Penal Code, the Government of Sint

Maarten can elaborate further on the information which was also provided via letter on 18 November 2022.

Sections 372, 373, 374bis, 374ter, 374 *quater*, 376, 387 and 391 were referenced in the previous letter drafted to the Committee. These articles refer to consequences for three different types of individuals including ministers, Members of Parliament and civil servants. The sections which make direct reference to civil servants and consequences for striking are sections 374a, 374 *ter* and article 374c.

Previously these sections created barriers to striking or types of striking for public sector workers. The consequences for civil servants regarding striking included monetary fines or even imprisonment. Considering that Sint Maarten became an autonomous country on 10 October 2010, all legislation was taken from the former Netherlands Antilles. In 2015, these sections were removed and this has been implemented via the amendment to the new Penal Code of 2015. Furthermore, reference is also drawn to sections 86 and 87 of the National Ordinance of Substantive Civil Service Law.

With regard to disciplinary actions, according to section 86, a civil servant would be subjected to disciplinary action in certain cases: for example, if they did not fulfil the professional obligations requested; are guilty of any violation of the regulation or acts of omission; or if they are involved in a criminal prosecution, these can result in disciplinary actions described in section 87, paragraph 1. Considering that these sections mentioned above in the Penal Code have been removed, public workers can no longer be subjected to disciplinary actions in connection to their right to strike. To facilitate your understanding of the new Penal Code, we are pleased to provide you with a copy for your reference.

The Government of Sint Maarten can conclude that our national legislation related to the rights of workers, including public sector workers, has since been amended in line with the Convention. Therefore, it does not require further amendment in this regard.

In conclusion, public employees, including teachers, are not forbidden from striking under the new Penal Code and we hope that we have provided sufficient information pertaining to the direct request of 2017. We remain steadfast in our commitment to promoting a fair and inclusive environment that respects workers' rights and encourages constructive social dialogue and continued development. We look forward to continuing our dialogue and cooperation with the ILO to achieve our shared objective.

Employer members – The Employer members thank the representative of the Government of Sint Maarten for the explanation on the national situation. But allow me first to make a small technical point of order. This is not the Netherlands/Sint Maarten case but simply a case against Sint Maarten. Sint Maarten acts independently on the matters before us; they are an autonomous consistent Member State of the ILO.

First of all, we deplore the substantive administrative burden that the Government imposed on the Employers' delegate to be able to participate in the Conference. We also deplore the fact that the Government did not provide us with any information in writing.

The Convention is part of the body of ten fundamental Conventions of the ILO, and because of that, the Convention is given priority for follow-up and control. This Committee examines this case for the second time and it is already the third observation by the Committee of Experts on this matter, meaning it has been on the agenda uninterruptedly since 2020. We regret that the conclusions of the Committee taken here last year, were not taken up by the Government authorities. In short, the Committee had requested the Government, last year, to refrain from any interference in the exercise by the social partners of their freedom of

association in general, and to refrain from promoting organizations not freely set up or chosen by the workers and the employers of Sint Maarten.

The Committee also requested the Government to consult with the organizations of workers and employers in order to designate their respective representatives in the SER and to provide information on the outcome of the legal appeal concerning the composition of that council.

The Government does not seem to have understood the concept of freedom of association under Article 3 of the Convention. As already explained last year, Sint Maarten created an SER by national decree following the obtaining in 2010 of its status of semi-autonomy vis-à-vis the Kingdom of the Netherlands. The SER is a tripartite economic and social council whose governing board is made up of three workers' representatives and three employers' representatives, appointed by the respective representative organizations, and three independent representatives, and only the latter are, in principle, appointed by the Government.

In practice, through the Chamber of Commerce and Industry (COCI), the Government created the SEA, a so-called representative organization of employers. The Government explains that the SEA is an umbrella organization responsible for representing employers in a balanced way within the SER.

This is disputed by the Employers' group because neither the COCI nor the SEA reflects a freely chosen and freely organized representation by the employers of Sint Maarten. According to the Sint Maarten Hospitality and Trade Association (SHTA), which is a member of the International Organisation of Employers (IOE), this political operation would be an attempt to marginalize the existing representative groups of employers, in violation of Article 3 of the Convention. The SHTA has created an employers' cupola with three other representative organizations. This ECSM umbrella employers' organization has been appealing to the Prime Minister for several years, unfortunately without success.

So, what are the national developments since 2022? The Appeal Court delivered a judgment on 29 June, in which it states that the ECSM and the SEA would have been designated autonomously as representative employers' organizations, and that the participation of the Minister of General Affairs and the COCI in the creation of the SEA would not disqualify that organization as a representative organization. In our view, this judgment is not relevant to the present case, insofar as it does not address the crucial point that representative employers' and workers' organizations are not by definition autonomous and independent as required by the Convention. Although the COCI and the SEA are representative, the COCI, as an organization whose membership is compulsory by law, is a state-established entity, and the SEA, which was created by the COCI on the instructions of the Government, shares this status as a state-established entity. Both are therefore not independent, and this is, I repeat it for the Committee, of crucial importance. Representativeness and independency are not the same and the Convention is about independency.

According to the ECSM, the SEA has been allocated one seat, and even two seats out of three in 2023, but the SER has not even been convened since February 2022, and therefore the ECSM has not been consulted on issues that affect its interests, in particular the preparation of the Government's report to the ILO. One even wonders if the recent labour laws are legitimate, insofar as the SER has not been regularly associated to discuss those matters.

A new law was passed by Parliament in 2023 concerning the composition and functioning of the SER. In particular, it introduces a list of legal criteria to be met by members as well as a

limitation of duration to two successive terms of three years. We believe that these limitations are disproportionate and constitute additional attacks on the autonomy of the organization and representation of the social partners. Furthermore, this law is contrary to article 79.2 of the Constitution of Sint Maarten because it delegates certain decisions of the legislator to the executive power. Therefore, we hope that this law will never be published.

In law, under Articles 2 and 3 of the Convention, workers and employers are free to form organizations of their own choosing, without prior authorization, and to join them and to elect their representatives in full autonomy. The Government should, under all circumstances, refrain from any interference in this regard. I quote Article 3 of the Convention in full:

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Freedom of association is a fundamental democratic principle, which applies in particular to representative organizations of employers and workers.

As explained in the 2012 General Survey, *Giving globalization a human face*, public authorities must respect freedom of association 100 per cent. The prohibition of any public interference translates in particular into a prohibition on creating, in place of the social partners, a coercive organization or an organization benefiting from preferential treatment. Last year, I already quoted paragraphs 95 and 108 of this General Survey, which condemn in particular any favouritism, any unequal treatment between organizations and which recommends that the legal framework be limited to a global framework that leaves organizations maximum autonomy in their operation and in their management. Restrictions on this principle should have the sole purpose of safeguarding the interests of members and guaranteeing the democratic functioning of organizations.

Another observation from the Committee of Experts in 2022 concerns freedom of association for workers: the widespread use of temporary contracts would limit the right to organize, as these contract workers would not be allowed to participate in referendums or elections to establish unions. The Employer members want the Government to explain how it reconciles this restrictive legislation with the freedom of social partner organizations to freely organize their functioning and activities in line with Article 3 of the Convention.

Finally, the Committee of Experts has questions for the Government on a possible legal restriction on the right to strike for public sector servants, such as teachers. The employers have repeatedly stressed that the right to strike is not part of the scope of the Convention. The comments and the questions of the Committee of Experts therefore have no ground in the context of application and supervision of the Convention. This point therefore should never have been mentioned in the conclusions of the Committee for this case.

In conclusion, taking into account all the elements gathered, the Employer members regret that the dialogue between the Government and the autonomous organization of employers has not been able to lead to a satisfactory result, since the conclusions of the Committee in 2022. We therefore urge the Government to take the necessary measures, in consultation with the social partners, to ensure that workers' and employers' representatives on the SER are only appointed by organizations freely established or chosen by workers and employers, as well as to engage in a dialogue with the ECSM on issues that affect the interests of private sector companies.

This would ensure full respect for the rights of employers and their organizations to form and join organizations of their own choosing, and to elect their representatives in total freedom, and to remedy any interference by public authorities on this subject.

Finally, given that there remains confusion about the fundamental concepts of freedom of association, we urge the Government to seek technical assistance from the ILO, with a view to bringing the national situation into conformity with the Convention.

Worker members – We are discussing the application of the Convention by the Government of Sint Maarten for the second consecutive year.

Freedom of association is a basic human right with universal scope, and one which enables the enjoyment of other rights. It is essential for establishing peace, ensuring social justice and improving the conditions of labour. As previously expressed by the Committee of Experts, workers' and employers' organizations are essential components of good labour market governance and of the development of industrial relations systems that are vectors of stability, progress and economic and social prosperity, making it possible to ensure the effective application of labour legislation through the denunciation of violations of the law.

Regarding the specific observations of the Committee of Experts on the application of the Convention by the Government of Sint Maarten, we notice the practice of the authorities in Sint Maarten that affects the right of organizations to elect their representatives in full freedom. This is inconsistent with the principles contained in the Convention.

We further note the concerns raised that a governmental agency in Sint Maarten has established the SEA, an umbrella organization, to represent employers, including within the tripartite SER. We note the concern expressed by the employers' association of Sint Maarten that the SEA is a government creation attempting to establish an employer representative organization which does not genuinely represent employers and is being used to marginalize the existing employer representative groups.

Since our last examination of the case in 2022, the Court of Appeal of Sint Maarten has handed down a judgment recognizing both employers' organizations as representative and has found no infringement of the right to freedom of association.

We recall the importance that should be attached to the right of workers and employers to establish their own organizations, to elect their representatives in full freedom and to establish higher level organizations without undue interference from the authorities.

We also note that in its most recent comment, the Committee of Experts noted with regret that the Government intended to proceed with the establishment of the SEA as an umbrella employers' organization. The Committee of Experts further noted that the Government, contrary to the conclusions of the Committee from last year, apparently had recognized one seat on the SER to the SEA while the other two seats were suspended, and that the SER had apparently not been convened since the Committee of 2022.

We must emphasize that under Article 3 of the Convention read together with Article 10, workers' and employer's organizations have the right to organize their administration and their activities and to formulate their programmes and to do so for the purpose of furthering and defending the interests of workers and employers. Public authorities must refrain from any interference which would restrict this right or impede its lawful exercise.

The purpose here is clear: without genuine and real representation, backed by autonomy and independence from the Government and with regard to the formulation and

implementation of their own activities, freedom of association of workers and employers and their organizations becomes meaningless and a mockery of its envisaged scope.

Such an outcome is contrary to the Government's obligations under the Convention. To better appreciate the extent of its obligations under the Convention and to effectively comply with them, the Government of Sint Maarten must respect the observations of the Committee of Experts and give full effect to its guidance.

The Worker members further note that in 2017 and in 2023, the Committee of Experts raised serious issues regarding the right to strike of public employees and that these issues remain pending to this day. The Committee of Experts noted that section 374(a), (b) and (c) of the Penal Code and section 82 of Ordinance No. 159 of 1964 which contain the Conditions of Service of Public Servants prohibited public employees, including teachers, from striking under penalty of imprisonment.

We note that the Penal Code was reviewed and a new Penal Code entered into force in 2015, and we thank the Government for the additional information they have just supplied.

We urge the Government to fully reflect the guidance of the Committee of Experts on essential services and to specify whether public employees, such as teachers, are forbidden or can be forbidden from striking under current legislation.

The Government of Sint Maarten must promote, respect and fulfil its obligations under the Convention in line with guidance provided by the Committee of Experts.

Employer member, Sint Maarten – It is my pleasure to speak to you on behalf of the four oldest employers' associations of the beautiful island of Sint Maarten united and the ECSM, representing 40 per cent of its private sector labour force and even greater socio-economic weight.

It is 75 years ago this exact week that the following fundamental rights were adopted. Workers' and employers' organizations shall have the right to draw up their constitutions and rules and to elect their representatives in full freedom. The public authority shall refrain from any interference which would restrict this right or impede the lawful exercise thereof. For Sint Maarten, the SER is a key tripartite body. By law, its advice is mandatory for all policies with social economic impacts. The law mandates the SER to be an important part of the policy-making process of the Government. In addition to this, it can issue unsolicited advice as it pleases. Lastly, the law provides it as a forum function for workers' and employers' associations. Regardless, it also provides equal optional seats for Government representatives as a tripartite body.

In the case of the Sint Maarten SER, this vulnerable balance was unfortunately disrupted or disturbed on 21 April 2020, when the Government decided to unilaterally suspend the SER. In the literal words of the Minister of General Affairs, and I quote, "In order to ensure a balanced representation of the employers' organizations on the board of the SER, the appointment of the 2020–2023 Council is advised not to be executed until the structure is rectified."

The COCI, as a business registrar, where companies are registered, will facilitate the organization of an employers' organization in order to create one locally established umbrella employers' organization from which various organizations will obtain membership. All SER appointments of the previous cycle expired on 30 April 2020 and it would take ten months to have a new council appointed. The subsequent void of both solicited and unsolicited advice to

government policies covered a period of uniquely important social economic decision-making during the worldwide COVID-19 pandemic.

It is clear that Article 3 of the Convention, stating “public authorities shall refrain from any interference which would restrict”, does not allow the Government to unilaterally suspend an important tripartite body. In addition, the Government mandated the COCI, a compulsory administrative organization regulated by laws, to do this restructuring. With this assumed mandate against our laws and the Convention, the COCI founded the SEA, carrying a government mandate and membership for life for the COCI in its statutes.

Thirdly, the SEA convenes in the COCI facility, makes use of the manpower of the COCI and until recently it even had this government office’s address and phone number on its stationery. When it pertained to the SEA membership acquisition, emails were sent from the COCI, inviting companies to join, mentioning an assignment of the SEA by the Government to fill all three SER seats.

Other interventions like not appointing employer seats and appointing government paid officials on said positions also took place in 2021. The two ECSM employers were suspended as of spring 2020 without further motivation.

It is unfortunate that five advisers of the ILO (NORMES), the SER and the Committee, as well as the addressing of these fundamental rights in the Sint Maarten Tripartite Committee under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), has not altered the Government’s course sooner. It has seemingly led the Government further astray.

Sint Maarten is a young country, yes, but that does not take away the easy responsibility of the Government to engage in social dialogue and respect the fundamental rights of its workers and employers. Disregarding the Committee’s advice in 2022, there has been no attempt made by the Government to meet pertaining to this topic since. Even more so, the Committee’s advice to refrain from any undue government interference seems to have been poorly understood and to have only developed in the opposite direction. For example, a law has been proposed that broadens the SER’s advisory instruments to the Sint Maarten Parliament. Not much can be held against this main body of law but, in its sidelines, the law also limits the terms of workers’ and employers’ representatives in the SER. By extension, the law intends to have the Government screen new candidates for the SER based on, among others, fluency in English and Dutch, understandings of Sint Maarten’s society, confidentiality and having a peaceful mindset.

The ECSM is of the opinion that these restrictive criteria are not just subjective, but more importantly, they seem at odds with the liberty of workers and employers to elect their representatives in full freedom as stipulated by Article 2 of the Convention.

Last but not least, the SEA is now granted two SER seats by the Government instead of one. The ECSM offered the SEA, a week ago, to entirely dissolve both federations, forget the past government support and to reunite under a new flag representing all Sint Maarten employers to its utmost. In the end, it is how government means were and are used for the SEA which are disputed, not the SEA’s people, its members or their needs which oftentimes are the same as our own members. This offer unfortunately was declined.

The Government avails itself of the misunderstood reasoning that the ECSM wishes to be the sole employer entity in Sint Maarten – it does not. It simply wants employer and – if such would be the case at any point in time – worker representation free of government interference, whereas an opposite road seems to continue.

In any regard, the ECSM remains grateful for ongoing objective recommendations from the ILO and the Committee. They provide hope that in an increasingly complex situation, a better tripartite situation in Sint Maarten is dawning.

Worker member, Sint Maarten – As the employees’ representative of Sint Maarten, delegated by the Windward Island Chamber of Labour Unions (WICLU), I want to express our sincere gratitude for the opportunity to provide the Conference with the following statement concerning the issues about the status of the application of the Convention in Sint Maarten, brought to your attention on pages 192–193 of the Report of the Committee of Experts.

First, temporary contracts limited the right to organize. The Committee of Experts has requested the Government to comment on the statement that widespread use of temporary contracts by employers constitutes a significant limitation to the right to organize workers. As the employees’ representative of Sint Maarten, I can comment based on the labour unions’ experience in Sint Maarten that, formally, all workers in a company have the right to freely associate with the union of their choice. When a referendum is organized in a company to establish which union represents the majority of the workers in the company, only workers directly employed by the company can participate. Contract workers from employment agencies, in jobs in the client company which are permanent, are excluded from participating in the referendum because they are formally considered not employed by the client company where the worker is placed, but employed by the employment agency.

We see that workers of employment agencies lose their job placement if they stand up for better labour conditions at the client company and/or if they unionize or unite with workers directly employed by the client company. From one day to the next, if the client company management so desires, workers of employment agencies can be replaced by other workers hired by the employment agencies. As a consequence of this so-called “flexibility” in the labour market, contract workers are not being paid by the employment agency during the time that no other placement is found for the contract worker. Contract workers are therefore afraid to unionize or to unite with workers directly employed by the companies. The current legislation, which permits the use of contract workers, does not provide sufficient protection to workers directly hired by a company for a short term or for workers hired by employment agencies. This illustrates the limitation to the right of organization of workers in the reality of Sint Maarten.

For teachers in Sint Maarten, especially at one faith-based government-subsidized school, the right to organize (the Convention), and become members of a union is actually taken away in their labour contract. It is stated that they cannot join a union when working with this school board. Although this was denounced as a violation of teachers’ rights, no national laws were amended to curtail this violation. Most of the other teachers are intimidated and therefore fearful of joining the union so as not to lose their job. The United Nations Educational, Scientific and Cultural Organization (UNESCO)’s Recommendation concerning the Status of Teachers (1966) and its Recommendation concerning the Status of Higher-Education Teaching Personnel (1997) can serve to guarantee that conventions are made to protect the rights of teachers to organize, according to the Convention.

Second, the right to strike for public servants The Committee of Experts has requested the Government to specify whether public employees, such as teachers, are forbidden from striking under the new Penal Code and to provide a copy of the new Penal Code. The Government was also requested to provide detailed information on the types of circumstances in which strikes may be prohibited based on the National Ordinance on Substantive Civil Service Law.

As the employees' representative of Sint Maarten, we can comment that even though, under the Convention, workers' organizations have the right to organize their administration and activities, public servants and their unions are still limited in their right to strike. The right of civil servants is governed by the Constitution of Sint Maarten, the Civil Code, the National Ordinance on Collective Agreements, the National Collective Labour Dispute Ordinance and the cohesive Labour Peace Decrees, as well as Article 6.4 of the European Social Charter, as determined by the Supreme Court of the Netherlands. The amended National Ordinance on Substantive Civil Service Law allows the courts to forbid strikes, which threaten public welfare or safety. Recent jurisprudence in the case against the police officers and the Nationale Algemene Politie Bond (NAPB) public strike against their unequal treatment since 2010 and the case against the air traffic controllers who had a meeting with their union, the Windward Islands Civil Servants' Union (WICSU), during working hours, shows that the court does not deny the right to strike, but ordered the workers and their unions to observe procedures to give the employer enough time to take responsible measures to continue operations. More protection for the right to strike of public servants has to be guaranteed by legislation. For the teachers, it is more of not calling the actions a strike, but a "membership meeting" during working hours to address the grievances of the teachers. This situation arises mostly because some teachers employed in public schools are civil servants and others working on government-subsidized school boards are not civil servants, but have most of the rights and benefits as those teachers in public schools. The Windward Islands Teachers Union (WITU), as the teachers' union, observed an elevated and repeated attempt to forbid teachers to strike by the Government. However, due to the strong nature of the WITU in its ongoing fight to address the plight of teachers, the Government did not formally act on it. The national laws are not clear on the rights to strike for teachers, and legal opinions can be contradicting and different. Therefore, the UNESCO's Recommendation concerning the Status of Teachers (1966), and its Recommendation concerning the Status of Higher-Education Teaching Personnel (1997), can serve to guarantee that conventions protect teachers' rights and guarantee their rights to strike.

Third, COVID-19 measures imposed violating the Convention, the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Equal Remuneration Convention, 1951 (No. 100). Let me illustrate the bigger picture to be prioritized with the example of the imposition of COVID-19 measures by the Kingdom Government on the working class of Sint Maarten, violating the Convention and Convention No. 89. Just as the KLM unions in the Netherlands have denounced the violation of the right of collective bargaining by the Dutch Government and management of KLM, the Chamber of Labour Unions in Sint Maarten has protested and demonstrated against the unilateral imposition of measures on the remuneration of workers by the Dutch Government and the local government and Parliament.

As a condition to provide liquidity support for the Government of Sint Maarten, the Kingdom Government demanded that the Government and the Parliament of Sint Maarten pass legislation to cut private sector remuneration of workers by 20 per cent and in public sector remunerations by 12.5 per cent. They also demanded to legislate the maximization of top incomes, after imposing a 25 per cent cut on the remuneration of the elected and appointed public officials. This remuneration of employees in Sint Maarten was already much lower than in the Netherlands before the pandemic. With these unilateral impositions by the Dutch Kingdom Government, the gap in remuneration within the Kingdom has only worsened.

Fourth, unequal social protection floor violating the Social Protection Floors Recommendation, 2012 (No. 202) While the cost of living in Sint Maarten is much higher than in the Netherlands, until today this inequality in remuneration of workers and the social

protection floor in the Kingdom of the Netherlands is affecting the workers and more than 75 per cent of the households in Sint Maarten live in poverty.

In closing, employee organizations of Sint Maarten therefore want to urgently address these inequalities and violations of ILO Conventions and Recommendations. Solidarity and support from all delegations at the Conference is very much appreciated. We look forward to discussing with you which solidarity actions can advance the cause of the workers and their households in Sint Maarten.

Membre travailleuse, France – Entre autres clarifications, la commission d'experts a demandé au gouvernement de commenter la déclaration selon laquelle, je cite: «le recours généralisé aux contrats temporaires par les employeurs constitue une limitation importante du droit à l'organisation des travailleurs».

Sint-Maarten, partie néerlandaise d'une petite île des Antilles, résulte d'un héritage historique colonial, marquée par le cosmopolitisme et par le recours à une main-d'œuvre autrefois servile et aujourd'hui fortement précarisée. Le recours aux agences de placement pour servir les intérêts économiques liés aux activités touristiques, entre autres, est particulièrement important. La flexibilité prônée par le gouvernement, dans le but de favoriser les activités économiques, s'accompagne de mesures qui privent les travailleurs de sécurité de l'emploi et du libre exercice de l'activité syndicale en total irrespect des principes de la convention.

À titre d'exemple, s'agissant de la désignation par voie référendaire d'un syndicat représentatif, seuls les travailleurs directement employés par l'entreprise peuvent y participer. Les travailleurs contractuels des agences de placement, y compris ceux exerçant des emplois permanents de l'entreprise cliente, ne sont pas autorisés à participer au référendum parce qu'ils sont formellement considérés comme non employés par l'entreprise cliente où le travailleur est placé, mais employés par l'agence de placement.

Les revendications internes à l'entreprise des travailleurs placés par les agences sont interdites, et les travailleurs placés dans une entreprise cliente perdent leur emploi s'ils défendent de meilleures conditions de travail dans l'entreprise cliente, ou bien s'ils se syndiquent ou s'unissent avec les travailleurs directement employés par l'entreprise cliente. D'un jour à l'autre, si la direction de l'entreprise cliente le souhaite, les travailleurs des agences de placement peuvent être remplacés par d'autres travailleurs embauchés par ces mêmes agences. En conséquence de cette soi-disant «flexibilité» sur le marché du travail, les travailleurs contractuels ne sont pas payés par l'agence de placement si aucun autre emploi ne leur est proposé alors qu'ils ont été remplacés. Cette latitude laissée aux entreprises au motif qu'elles se servent d'intermédiaires est une violation avérée de la convention.

La conséquence qui en résulte est que les travailleurs contractuels ont peur de se syndiquer ou de s'unir aux travailleurs directement employés par les entreprises. Par ailleurs, la législation actuelle n'offre pas une protection suffisante aux travailleurs embauchés en contrat à durée déterminée directement par une entreprise, et le recours abusif à ce titre de contrat permet aussi aux entreprises de limiter l'accès à la représentation syndicale et à l'exercice du droit syndical.

Selon les dernières informations, des employeurs ou des directions d'entreprise, voire des ministères, adressent à ces travailleurs ainsi qu'à leurs syndicats des lettres d'avertissement. Ces travailleurs reçoivent même des convocations de la justice.

Il est donc clair qu'en dépit des allégations de bonne pratique apportées par le gouvernement, le droit explicite des travailleurs à la pratique de l'exercice syndical, quel que soit le contrat de travail auquel il est rattaché, est bafoué à Sint-Maarten.

Au-delà du droit fondamental qui leur est dénié, de telles pratiques privent les travailleurs d'un accès à une vie décente. Précarisés par des contrats non pérennes, ils ne peuvent faire face à certaines obligations administratives afin de bénéficier de conditions de vie dignes. Ceci est inacceptable pour la commission.

Government representative – We thank the Employers and the employers' association. It is important to realize not to take this meeting as a combative meeting but as a meeting to better ourselves, better our country.

There are a couple of rebuttals I would like to make. First, the SER – the allegations that the SER has not met or convened since February 2022 are absolutely false. Being the Minister of Public Health, Social Development and Labour, I have received advice from the SER as far as April 2023 of this year.

It is important to note that the ECSM – it was at no point that the SER ever restricted the ECSM from participating but on the other hand, I have emails here that state that “if the Government does not withdraw its mandates for the SEA and does not appoint three members to the nomination committee from the ECSM, the ECSM will not reconvene in coming to any meetings”. That is right here in the email. Also, it is important to note that the very organization that we speak about right now, the SER, has been established by the Government. We facilitate in the best interest of the country. There has been no involvement in who is selected for the committee by the Government at all.

What the Government did receive was many complaints via the business sector, that they felt that only a specific group, be it the hospitality sector, was being represented and not the small businesses in the country. It was facilitated, suggested in this manner. It is important to note that the COCI has always been a representative in the SER as well. When the facilitation or recommendation came about, it is important to note as well that the SHTA was also re-established right around the time of the SEA. The employers and employees both advised in this meeting that we receive technical assistance from the ILO but, as stated before, we had meetings as early as June 2022. We had meetings at the subregional conference in which it was advised to allow ILO the opportunity to mediate and the Government to refrain for the moment and allow the ILO to take charge and mediate this process. That is exactly what we are doing. So, I also here take note that the representative states that there were no advances from the Government to meet or facilitate a meeting, but I am just letting the Committee know that this was also on the basis of the ILO telling us in 2022 to allow them to see if they can facilitate an amicable solution.

There were also statements made of the newly passed law by Parliament, but I would also like to note that Parliament is the highest legislation body within our country. Parliament has the right to amend, approve, disapprove any articles or laws that come to the floor of Parliament. They are the representatives of the people of Sint Maarten. So, it is very important to note that if Parliament passes a law, it is above the ministers' jurisdiction.

As a new country within the Kingdom, we consider ourselves a small island and therefore a weak civil society. It remains our role to ensure the inclusivity and involvement of our social partners in developing our country. We represent all of the people and not some of the people. We hear also the employees speak of short-term contracts, the abuse of short-term contracts. It is important to note that we have also facilitated in taking into consideration these

complaints and we made a new amendment to our Civil Code which is currently before the SER. So, hence my reason for saying that this is a very important body that pertains to our legislative process.

Trust me, no one would be more appeased if we can handle this amicably because with the SER being in disarray, it hinders a lot of our legislative processes and enhances some of these same issues that the employers and employees speak about so, therefore, it is important that we are willing to sit down and handle this in an amicable manner, because a lot of what is being requested is now at the same SER for us to change our legislation.

As the SEA was established, we were advised not to intervene. That is most of the rebuttal that I have now for the Committee. I just thought that it was important to point out certain aspects that were mentioned to the Committee.

Worker members – We thank the Government of Sint Maarten for the information provided today and likewise for the helpful contributions from other members of the Committee. We take note of the comments of the Government concerning the situation in the non-metropolitan territory of Sint Maarten. We emphasize that the authorities have an obligation to promote and ensure the effective application of the Convention in full. This includes the right of organizations to elect their representatives in full freedom, as required by the provisions of the Convention. Further, the widespread use of temporary contracts by employers constitutes a significant limitation to the right to organize, as these contract workers are not allowed to participate in referendums for the creation of trade unions. The Government should ensure that contract workers are able to fully enjoy their rights as guaranteed under the Convention.

Regarding the right to strike of public employees, especially teachers, we call on the Government of Sint Maarten to ensure, in law and in practice, that public employees can fully exercise their right to strike and to repeal any provisions in its legislation that impose penalties for doing so. The Worker members therefore call on the Government to take comprehensive action to bring all relevant law and practice in Sint Maarten in line with the Convention. We also observe that Sint Maarten has no established culture of consultation with the social partners. Noting the importance of social dialogue to devising and implementing law and practice that are in line with ILO Conventions, we urge the Sint Maarten Government to swiftly act to engage with the most representative workers' and employers' organizations to establish regular, formal consultation on the matters raised by the Committee of Experts and others relating to the competence of the ILO as set out in the Convention No. 144. Finally, we invite the Government to continue to avail itself of the technical assistance of the ILO.

Employer members – On behalf of the Employer members, we thank the various speakers and, in particular, the Government of Sint Maarten. On the substance, we insist on the fact that the Convention is a fundamental Convention and that as such, it requires special attention from the ILO, from governments and social partners. Our position with regards to Sint Maarten remains clear: we do not compromise with the freedom of association of employers. The Employer members therefore urges the Government to take immediate and effective measures to ensure that, both in law and in practice, freedom of association for employers is fully guaranteed in its territory.

We ask the Government to take the following measures:

- (i) start a dialogue with the employers' organizations on the creation and functioning of the umbrella association of employers SEA and their participation in the SER, in full respect of the Convention;

- (ii) take the necessary measures, in consultation with the social partners, to ensure that workers' and employers' representatives on the SER are appointed by organizations that are completely autonomous and freely established by workers and employers, as well as to engage dialogue with the ECSM on issues that affect the interests of private sector companies;
- (iii) to follow up, in a constructive manner, on the conclusions of the Committee, we urge the Government to request technical assistance from the ILO, with a view to bringing the national situation into conformity with the Convention; and
- (iv) fully respond to the Committee of Experts' comments that have remained pending since 2017. We emphasize the quality and relevance of this data as well as future regular reports, in order to be able to assess the effective progress in law and practice in the application of the Convention.

We all support lifelong learning as a key concept, but in this case, lessons should have been learned by now. We therefore really want to see a positive attitude from the Government to make sure this national case does not have to appear a third time before the Committee.

Conclusions of the Committee

The Committee took note of the oral and written information provided by the Government and the discussion that followed.

The Committee expressed with deep concern that the Government had not implemented the previous recommendations of the Committee.

Taking into account the discussion, the Committee urges the Government, in consultation with the social partners, to:

- **fully implement all pending recommendations of the Committee;**
- **refrain from any undue interference with the right to freedom of association of employers' and workers' organizations, including any interference through the promotion of organizations that are not freely established or chosen by workers and employers, and ensure that this right is fully guaranteed both in law and in practice;**
- **ensure in law and practice the ability of workers' and employers' organizations to establish higher-level organizations in full freedom, including for the purpose of participation in the Socio-Economic Council (SER);**
- **ensure that workers' and employers' representatives on the SER are appointed by autonomous organizations freely established by workers and employers and convene the SER without delay;**
- **engage in a dialogue with autonomous organizations freely established by workers and employers on all matters affecting their interests or of their members; and**
- **ensure that public sector workers are able to fully exercise the rights and guarantees protected under the Convention in law and practice.**

The Committee once again encourages the Government to request technical assistance from the ILO, with a view to bringing national law and practice fully in conformity with the Convention.

The Committee requests the Government to provide a report containing information on all measures taken and progress achieved to the Committee of Experts before 1 September 2023.

Government representative – The Government acknowledges the Conclusions and recommendations of the Committee and is committed to addressing the concerns brought forward. The Government fully embraces the concept of social dialogue and the importance of the tripartite consultations. As a small island state, we recognize the challenge of having a strong civil society and having the necessary expertise to execute all that is needed to adhere to international standards. As such, we reiterate the need and welcome the technical assistance from the ILO which was requested in 2022. We look forward to together being able to resolve the issues, following the recommendations and coming to amicable solutions for everyone involved and thereby ensuring adherence to Convention No. 87.