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Part Two

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Report of the Committee on the Application of Standards

Part Two

Discussion on the General Survey and on the situation concerning
particular countries

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I. Discussion on the General Survey

Achieving gender equality at work

Chairperson – We will now turn to the second item on the agenda, which is the discussion on the General Survey of the Committee of Experts entitled *Achieving gender equality at work*, and this is based on several Conventions: the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Workers with Family Responsibilities Convention, 1981 (No. 156), the Maternity Protection Convention, 2000 (No. 183), the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), the Workers with Family Responsibilities Recommendation, 1981 (No. 165), and the Maternity Protection Recommendation, 2000 (No. 191).

I would like to recall for the benefit of the Committee that, according to its working methods, we have already established speaking time limits for the discussion of the General Survey and let me share these timings with you: 20 minutes for the Employer and Worker spokespersons, 12 minutes for Government groups, 5 minutes for other members and 10 minutes for the concluding remarks by the spokespersons of the Workers' and Employers' groups. I would like to invite the two Vice-Chairpersons to make their introductory statements.

Worker members – Discussion of the General Survey offers us an opportunity to go in greater depth into a subject addressed by ILO standard-setting instruments, to draw up an exhaustive review and to foresee initiatives in which we can engage as ILO constituents with a view to reinforcing the effectiveness of the instruments and promoting their universality. The subject this year is gender equality. It is a subject that has always been at the heart of ILO action.

Gender equality is also at the heart of the 2030 Sustainable Development Agenda and the Sustainable Development Goals (SDGs).

More specifically, the General Survey this year covers Conventions Nos 111, 156 and 183 and their accompanying Recommendations Nos 111, 165 and 191. These instruments address, respectively, discrimination, workers with family responsibilities and maternity protection.

Over the years, many countries have recognized that the concept of gender discrimination covers a very broad spectrum of situations, such as discrimination based on sex, maternity and pregnancy, on the aptitudes and physical, mental and professional capacities attributed to one or other sex or gender, on civil status, family situation, family responsibilities, sexual orientation and gender identity. In short, it consists of a truly inclusive approach to the concept of gender discrimination.

One of the important observations made by the Committee of Experts concerns the interconnection, and even interdependence between these instruments.

Although the General Survey is limited to these six instruments, the Committee of Experts also very rightly emphasizes that many other ILO standards also deal with issues relevant to gender equality. It provides a comprehensive overview of this in paragraph 5 of the General Survey.

This all demonstrates the need to address the issue of gender equality in a transversal manner. If we refer, for example, to the question of the reduction of wage gaps between



women and men, it would be false to believe that the single instrument for the achievement of this objective is the Equal Remuneration Convention, 1951 (No. 100).

The effective application of Conventions Nos 156 and 183 can also contribute to this objective, since maternity protection and the protection of workers with family responsibilities are essential both to promoting gender equality and accordingly reducing the wage gap.

The General Survey allows us to draw up an inventory of the areas in which work is required to fully achieve such equality, and there are many of them.

All of these areas must be included in any coherent national policy to combat discrimination. And evaluation and continuous follow-up of this national policy are also fundamental to ensuring its effectiveness and making the necessary adaptations where needed.

As rightly indicated by the Committee of Experts, the development of statistical tools and data gathering are essential for this follow-up and the review of national policies. They make it possible to determine objectively the nature, extent and causes of discrimination and to remedy the shortcomings observed.

Finally, it appears to be important to insist on the fact that action to combat gender discrimination is a shared responsibility for all ILO constituents. Indeed, gender equality is a fundamental value that lies at the heart of the ILO's mandate.

The social partners must play a primary role in the implementation of the instruments to combat discrimination and in the formulation, evaluation and revision of national policies to promote equality.

It is in the interests of everyone and of all Member States, enterprises and trade unions to work fully for the development of an environment that is conducive to the achievement of gender equality, particularly through the adoption of specific and proactive measures. The General Survey offers an excellent catalogue for this work.

Another Worker member, speaking on behalf of the Worker members – No society in the world can reasonably claim to be free from discrimination. Discrimination is a universal and constantly evolving phenomenon that requires constant attention and action. Discrimination is not always obvious. It can be subtle and pernicious, but has equally devastating effects on women's equal opportunities. This is a point clearly made by the Committee of Experts, who further note that the concept of indirect discrimination is still not clear and fully recognized in some countries. Indirect discrimination is often the result of the interaction between apparently neutral conduct and structural barriers that produce unequal outcomes. These structural barriers may be linked to gender stereotypes or to phenomena such as occupational segregation. For example, minimum wage levels in sectors or occupations where women predominate remain significantly lower than in other sectors. The elimination of direct discrimination is essential, but not sufficient to ensure substantive equality and to close persisting gender gaps. Remedying both direct and indirect forms of discrimination through clear definitions, strong legal frameworks and firm prohibitions is therefore essential if we are to achieve gender equality. Particular attention must also be paid to multiple and intersectional discrimination. Where persons belong to more than one disadvantaged group, multiple and intersectional discrimination tends to compound and exacerbate existing inequalities. This can typically be the case for women and girls of African descent, women and girls with disabilities, rural women and indigenous women. Similarly, migrant or foreign women, refugees and women from minority groups can experience



multiple and intersectional forms of discrimination. As recalled by the Committee of Experts, it is not the addition, but the inextricable link between two grounds of discrimination that creates a unique disadvantage.

Addressing multiple discrimination requires legal approaches, including by fully recognizing the phenomenon in the legislation, by allowing complaints of discrimination on combined grounds and by ensuring effective protection and redress in these cases. Too often, women are still more likely than men to work in the informal economy, often as self-employed, in non-standard forms of employment or in sectors or occupations traditionally considered “female”, such as domestic work. Foreign and migrant women workers are especially at risk. The Committee of Experts also underlines that women workers are sometimes constrained to choose or remain in jobs that offer them the possibility to reconcile work and family responsibilities, or where they feel more protected against violence and harassment. These realities trap women in a vicious circle. As a result of occupational segregation, women are constrained to low-skilled work, lower pay, poorer working conditions and fewer career prospects. They also have more limited access to social security coverage, which compromises their income and access to health and long-term care services and puts them at a significantly higher risk of old-age poverty.

As ILO constituents committed to the realization of gender equality, we cannot accept that whole economic sectors and occupations are still excluded from the scope of protection. Member States must take the necessary measures to extend rights and protection, including social security coverage, to all workers, regardless of types of jobs, sectors or occupations, of employment status or types of working arrangements. Concrete measures should also be taken to address the discrepancies between statutory coverage and actual access to rights and protection which particularly affect women in these sectors and occupations.

Another Worker member, speaking on behalf of the Worker members – Discrimination in employment and occupation has harmful repercussions on the health and well-being of workers. Discrimination in the workplace must be seen as an unacceptable form of violence against workers and its elimination must be a cross-cutting concern for countries in all their national policies. In this regard, the Violence and Harassment Convention, 2019 (No. 190), is a pivotal piece of any strategy to achieve gender equality. The Committee of Experts recalls that Convention No. 111 and Convention No. 190 are mutually reinforcing and therefore, in order to prevent and eliminate violence and harassment in the world of work, it is essential to guarantee equality and non-discrimination in employment and occupation. However, to date, only 27 countries have ratified Convention No. 190. ILO Member States can and must do better if they are serious about effectively tackling all aspects of gender discrimination.

Women across the world continue to face obstacles that prevent them from entering and remaining in the labour market and reaching their full potential at work from the moment they seek to start working until they retire. Despite the efforts made by Member States to combat gender discrimination, gender gaps have not narrowed in any meaningful way for over 20 years. The gender employment gap stands at 27.9 per cent, only 2 per cent less than 27 years ago, and the global gender pay gap is around 19 per cent.

The Committee of Experts also highlights the impact of pregnancy and motherhood on women’s employment and pay. Far from decreasing, the motherhood pay gap increased by 38.4 per cent between 2005 and 2015. These sobering statistics only confirm that women workers still face enormous challenges to employment. Too often national frameworks for gender equality do not provide adequate protections for women. The Committee of Experts



has identified significant shortcomings, particularly regarding maternity protection. Women are still exposed to discriminatory practices in recruitment, including in the use of pregnancy tests, and being asked about their plans to have children. Mothers' rights to return to work and to protection against discriminatory dismissals are often not guaranteed.

Many countries still make no provision for 14 weeks paid maternity leave and they do not fully guarantee remunerated nursing breaks or a daily reduction of working hours, nor do they provide cash benefits equal to the benchmarks provided in Convention No. 183.

The Committee of Experts also points out that there is no right to paid leave for prenatal medical examinations in a staggering 132 countries. This gap puts the health and economic security of both mother and child at risk and results in very high maternal mortality rates in many parts of the world, in particular in rural areas. The Committee of Experts rightly points out that the COVID-19 pandemic has set us back in the pursuit of gender equality. Employment losses have been more severe for women. Cost reduction measures which primarily affected sectors in which women are over-represented and where levels of social protection are already low were compounded by measures which were inadequate to mitigate the gendered impact of the crisis.

Adding to this situation, women are also over-represented in high-risk sectors. During the pandemic, these women were often required to work excessive hours in extremely difficult working conditions, while shouldering most of the family responsibilities and unpaid work. These alarming findings should serve as a reminder to all ILO constituents that there is a pressing need to provide solutions to the lack of decent work and social protection for women workers, particularly mothers.

Conventions Nos 156 and 183 are essential tools to achieve these objectives. However, the rate of ratification of these Conventions is currently far too low. We urge Member States to ratify Conventions Nos 156 and 183 and to implement national legislation and policies that meet these requirements.

For far too long, gender equality indicators have been in the red. Behind these statistics, millions of women workers around the world are suffering from a lack of decent work and are subjected to physical, psychological, economic and social violence as a result of persistent discrimination in the world of work. It is vital that all ILO constituents adopt a cross-cutting and comprehensive approach to gender equality.

Another Worker member, speaking on behalf of the Worker members – The situation of persistent inequality between women and men transcends the world of work and takes on political, social and cultural overtones. It concerns matters that make up human dignity. It is a transversal injustice that employers, workers and governments must address together. We are very well aware that the reasons for gender discrimination are deeply rooted in our societies and that stereotypes hinder access to education, training, employment and vocational opportunities. These are structural problems, as these stereotypes have an impact on the respective roles assigned to women and men in our societies, on their skills and aspirations in the world of work, and help to perpetuate the decent work and social protection deficits that we suffer as women. It is therefore vital for Member States to endeavour to take effective measures to eradicate gender stereotypes and bring about profound and lasting cultural and social change to combat gender-based segregation and discriminatory stereotypes.



Member States must accept their responsibility and take an active role in addressing these issues, together with the social partners. There are many good practice initiatives that can be shared.

In Argentina, for example, bipartite framework agreements have been concluded in the highly male-dominated construction sector with the aim of eradicating gender-based violence in the sector, promoting the recruitment of women workers and builders, and reducing such inequality in access to employment in the industry. There are other examples from other sectors that we could cite.

The General Survey identifies many other highly relevant initiatives at the national level that emphasize the vital role that must be played by tripartite social dialogue. The implementation of national equality policies in collaboration with employers' and workers' organizations is crucial in a world of work that is constantly changing. These policies have to introduce profound changes in relation to gender issues, be sensitive to the needs of families and comply with relevant legal instruments. Similarly, as highlighted by the Committee of Experts, employers have a very important role and responsibility in the achievement of gender equality at work and the promotion of social change, starting with a business culture that is more favourable to families. Employers can have a significant impact by adopting specific and proactive measures, including flexible working arrangements and other measures that benefit families, as well as measures to promote equal access to training and promotion.

The issue of the unequal burden of unpaid care and family responsibilities borne by women has also been identified as a key factor that hinders their progress in the world of work. The value of such care corresponds to between 20 and 60 per cent of gross domestic product, depending on the country, which is a considerable figure. Nevertheless, neither governments nor international institutions take the value of this type of work into account. It is of the utmost importance to guarantee the equitable sharing of such unpaid care and family responsibilities through parental leave, the provision of childcare, cash transfers and medical care.

We also believe that it is essential to recall the potential for employment creation in the paid care economy, particularly for women.

When we discussed the General Survey last year, we emphasized that the existing care economy represents a significant source of employment, both now and in the future. It is therefore essential to invest in the sector which, in addition to comprising a high proportion of women, can make a decisive contribution to strengthening their position in the world of work through a more equal sharing of family responsibilities.

The profound changes that will be brought about by climate challenge should also encourage us to take the gender dimension into account in the transition to a green economy. The employment creation potential of these transformations requires us to guarantee that women can benefit equally from investment in green infrastructure, sustainable agriculture and renewable energy.

Social dialogue and collective bargaining are therefore crucial in promoting equality and ensuring that these aspirations become reality.

Employer members – I will start off by giving some introductory remarks and then provide analysis on Part I of the General Survey. I will then give the floor to my colleagues to present our comments on Part II of the General Survey. The Employer members thank the Committee of Experts and the Office for preparing this General Survey on six ILO instruments



related to gender equality at work. The Employer members note that information sent by 114 Governments, as well as 47 workers' organizations and nine employers' organizations, was included in the General Survey. The Employer members also note that the General Survey examines the six selected instruments from the specific perspective of achieving gender equality at work. In doing so, the General Survey does not examine the instruments one by one but considers them together, first under the aspect of the legal and institutional framework for gender equality, and then under the aspect of achieving gender equality at work through labour rights and policies. While this approach may have provided some findings regarding links and synergies between the instruments, it leaves gaps. For one thing, the General Survey ignores the fact that the standards under review also have objectives other than gender equality at work, such as Convention No. 111, but these other objectives are not addressed. Furthermore, the General Survey does not provide assessments of the individual instruments, nor does it identify concrete follow up measures for them. The Employer members question whether this new approach of General Surveys focusing on a theme, rather than on selected ILO instruments or standards, is in line with the purpose of article 19 of the ILO Constitution. This purpose is to get a better idea of the implementation in law and practice and the obstacles encountered for non-ratified Conventions and Recommendations and to define appropriate follow up measures on this basis. The Employer members invite the parties to also reflect and comment on this point. Another general comment concerns the views expressed by the Committee of Experts in the General Survey, in particular the various comments and recommendations highlighted in bold print. The Employer members note that the Committee of Experts tends to make extensive interpretations of the rights and benefits of workers provided for in the instruments, and expresses satisfaction where countries go beyond the requirements of the instruments. It considers the instruments mainly from the point of view of women workers with family responsibilities and work-life balance. On the other hand, the perspective of the employers is hardly taken into account and almost absent in the Committee of Experts' comments and recommendations. This gap significantly depreciates the practical usefulness of the General Survey as a document providing guidance on the examined instruments. The Employer members wish to recall in this context the 2019 ILO Centenary Declaration, which states that international labour standards also need to take into account the needs of sustainable enterprises. The Employer members call upon the Committee of Experts to adopt a more balanced and restrained approach in future General Surveys if these documents are to be widely recognized. After these general remarks, the Employer members would now like to provide more specific comments on the individual chapters of the General Survey.

Regarding the legal and institutional framework for gender equality and non-discrimination in Chapter 1 on the framework for gender equality and non-discrimination in Convention No. 111 and Recommendation No. 111, the Employer members note that, according to the Committee of Experts in paragraph 154, Convention No. 111 does not impose a strict obligation to legislate, but requires Member States to review whether legislation is needed within the framework of the national policy as a whole. This means that, while existing legislation that possibly enables or promotes discrimination must be eliminated, the absence of legislation on discrimination per se is not necessarily an infringement of the Convention, if the objectives of the Convention are achieved by other means. The Employer members consider indeed means other than legislation, such as incentives for equal treatment and the respective removal of disincentives, as well as awareness-raising and affirmative action, can often be more effective in gradually changing attitudes and behaviours. The Employer members also note that the Committee of Experts, in the context of discrimination based on sex, discusses measures taken to fight discrimination



based on sexual orientation and gender identity. The Employer members consider that such discrimination falls within the scope of Article 1(1)(b) of Convention No. 111. That is as a distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organizations. It seems that a number of countries in their national law and practice have recognized these grounds and are therefore bound under Article 1(1)(b) of the Convention to include measures in their policies to eliminate discrimination based on them. However, the Employer members also note that the Committee of Experts, for a number of years now, has considered sexual orientation and gender identity as covered by the ground of sex, under Article 1(1)(a). The Employer members consider this doubtful, as it is arguable that sex is different from sexual orientation and gender identity. Moreover, it also means that ratifying countries are automatically bound by the grounds of sexual orientation and gender identity, whether they recognize these grounds or not. The Employer members call upon the Committee of Experts to limit its comments on discrimination based on sexual orientation and gender identity to Article 1(1)(b) and to countries where governments, after consultation with representative employers' and workers' organizations, have recognized these grounds.

Regarding Chapter 2 on the framework for workers and family responsibilities in Convention No. 156 and Recommendation No. 165, the Employer members note in paragraph 172 that, according to the Committee of Experts, Convention No. 156 and Recommendation No. 165 have a dual objective of creating equality of opportunity and treatment in working life between men and women with family responsibilities and, on the other hand, between men and women workers with and without family responsibilities. According to footnote 422, however, there seem to have existed different views about the double objective among participants in the discussion of the instrument. The Employer members consider that this confusion about the purpose of the instruments may have impaired their acceptance, as reflected in the very moderate ratification by only 43 countries over more than 40 years. In the Employer members' view, a reasonable goal should be to enable workers with family responsibilities who wish to do so to participate in working life as much as possible as workers without family responsibilities, with as little burden as possible on their employers. Nevertheless, it should be understood that taking on family responsibilities can also be a personal choice with which the State should not interfere, and that not all inconveniences linked to family responsibilities can be avoided and related costs be passed on to third parties. Convention No. 156 and Recommendation No. 165 should be implemented in this sense. The Employer members also note in paragraph 195 that the Committee of Experts stresses that measures implementing Convention No. 156 should aim to promote a fair distribution of family responsibilities in that both men and women can equally access and engage in employment, to the extent they wish to do so. The Employer members would agree with this and consider that much progress has been achieved in ensuring a fairer distribution of family responsibilities. They would nevertheless point out that the ultimate objective should not just be to distribute family responsibilities, but to improve the work situation for both men and women as far as possible.

Regarding Chapter 3, the Employer members agree with the Committee of Experts when it states in paragraph 234 that maternity protection is fundamental to the achievement of social inclusion and gender equality, as well as addressing inequalities and discrimination in the world of work and beyond. Another question however is whether Convention No. 183 and Recommendation No. 191 are recognized as a useful framework that can encourage and bring about further progress. A total number of 43 ratifications in the last 23 years, the rather reluctant pace of ratification of the Convention, as well as the fact that 23 of the 41 countries



that ratified the ILO Maternity Protection Convention (Revised), 1952 (No. 103), have preferred to remain bound by it, rather than to ratify Convention No. 183, is not convincing evidence that this is the case.

In paragraph 239, the Committee of Experts reports that only one in ten potential mothers is covered by statutory protection against dangerous or unhealthy work globally and that there is no right to paid time off for prenatal medical examinations in 132 countries. The Employer members consider it important that countries implement the Convention and Recommendation with a sense of proportion and an eye for what is feasible for all parties involved in order to achieve genuine progress in maternity protection without causing possible discriminatory effects.

Another Employer member, speaking on behalf of the Employer members – Let me provide our analysis on Part II of the General Survey. Referring to Chapter 5 on protecting against discrimination and ensuring equality at all stages of employment and occupation, the Employer members now read here that, according to Article 9(1) of Convention No. 183, ratifying Member States have to adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including access to employment.

In paragraph 362, the Committee of Experts seems to understand this to mean that Member States need to fully apply non-discrimination legislation which should be accompanied by compliance and enforcement measures, including penalties for employers, compensation and sanctions. The Employer members do not consider that a primarily repressive approach will work in practice.

As pregnancy and maternity-related costs, if borne by individual employers, can be a significant burden for them, this should be prevented through financing by tax or social security. This should be accompanied by further measures, for instance, a comprehensive and efficient childcare infrastructure and incentives for mothers to return to work as soon as possible. Such measures can, more effectively than penalties, prevent pregnancy and motherhood from being a source of discrimination within the meaning of Article 9(1) of Convention No. 183 and thus can contribute to gender equality.

The Committee of Experts also notes that women can be disadvantaged when it comes to promotions and access to higher-level jobs. According to the Employer members, promoting gender-sensitive recruitment, retention and promotion policies can be an effective remedy in this regard. In contrast, legal provisions requiring high quotas to be reserved for women in management positions in larger companies do not seem appropriate, as they may unduly disadvantage other equally qualified applicants.

In the context of Convention No. 111 and Recommendation No. 111, the General Survey refers to the discrimination of women with regard to remuneration and the gender pay gap. It is stated that the gender pay gap is linked to factors such as occupational gender segregation and differences between women's and men's occupational careers resulting from the difficulty of reconciling work and family responsibilities, rather than direct discrimination between and women carrying out work of the same value. While this may be true, the Employer members would also point to existing societal perceptions as a reason which only generally change over time.

Although there is work yet to be done in this area, it should also be mentioned that, according to Organisation for Economic Co-operation and Development (OECD) data, the gender pay gap has been decreasing in recent years in many industrialized countries. As regards protection against termination of employment, the Employer members note



Article 8(1) of Convention No. 183, according to which termination of employment of a woman is excluded as a rule during pregnancy, maternity leave, leave in case of illness or complications and a period following her return to work to be prescribed by national laws or regulations. The Employer members note that in some countries termination of employment of women is prohibited until the child is 6 years old or for single mothers raising a child until the child is 14 years old, or for a child with a disability until the child is 18 years old.

Considering the constraints that these long protection periods may impose on companies' human resources policies, the Employer members advise that the protection period for mothers after returning to work should not be unduly long. Moreover, unduly long protection periods could result in further undesirable discrimination against women, as employers may be discouraged from hiring young women or women with children.

Regarding Chapter 6 on maternity protection, the Employer members note that, according to Article 3 of Convention No. 183, pregnant or breastfeeding women are not obliged to perform work which has been determined as prejudicial or a significant risk to the health of the mother or the child, implying therefore that pregnant or breastfeeding women retain the right to choose.

The Committee of Experts in paragraph 490 of the General Survey nevertheless seems to accept as compatible with Article 3 bans on performing such types of work where they represent a true danger to the health of these workers. The Employer members find this interpretation difficult to understand because of both the clear wording of Article 3 as well as the clear intention in Convention No. 183 to move away from generalized prohibitions of hazardous work for pregnant and breastfeeding women.

The Employer members feel that such lack of clarity of explanations could result in inconsistent implementation and hesitation to ratify the Convention. The Employer members also note the Committee of Experts' extensive interpretation of time off for medical examinations as addressed in Paragraph 6(6) of Recommendation No. 191. In particular, the Committee of Experts has requested the governments concerned to take the necessary measures to ensure that time off for prenatal medical examinations is paid.

The Employer members would first point out that Paragraph 6(6) does not contain any indications in this regard. They would also point out in this context a European Directive which calls for time off without loss of pay only if examinations cannot take place outside working hours. The Employer members note that, according to Article 4(1) of Convention No. 183, women are entitled to a period of maternity leave of not less than 14 weeks. According to Article 4(4), maternity leave should include a period of six weeks' compulsory leave after childbirth unless otherwise agreed at the national level by the government and the representative organizations of employers and workers.

The Employer members note that a number of ratifying countries have made use of the latter possibility and have shortened the period of compulsory leave after childbirth. Such tripartite national agreements do not shorten the leave entitlement of mothers who need six or more weeks after childbirth, but allow those workers who are able and wish to do so to return to work earlier.

As regards the financing of social security benefits, the Employer members note that in 45 countries, employers are directly liable for the cost of maternity cash benefits and, in 20 countries, employers have to provide these benefits together with social protection systems. According to Article 6(8) of Convention No. 183, the direct liability of employers for maternity benefits is permitted if it was provided for in national law or practice in a Member



State prior to the ratification of Convention No. 183, or where this was subsequently agreed at the national level by the government and the representative organizations of employers and workers.

The Employer members agree with the Committee of Experts that direct liability can place an undue burden on employers, in particular SMEs, and runs counter to the objective of gender equality at work as employers, in view of the maternity cost risk, maybe unwilling to hire women. Furthermore, the employer's direct liability may jeopardize the actual payment of maternity benefits where individual employers are unable to pay. The Employer members trust that countries where direct employer's liability still exists will move to social security or tax-funded systems of maternity benefits. They still consider it a significant deficiency of Convention No. 183 that it does not at least provide for a gradual phasing out of direct employer's liability.

In connection with nursing breaks, the Employer members note that the legislation of certain countries does not foresee breastfeeding breaks because of entitlements to long maternity or parental leave that are meant to provide for the opportunity to breastfeed. Given that excessively long periods of maternity leave can affect women's employment and career opportunities, the Employer members believe that adequate paid breastfeeding breaks should be provided for by law in any case. This would ensure that their absence does not act as a disincentive to the extent that women who would like to end their maternity leave earlier and resume work do not do so. Moreover, in the Employer members' view, breastfeeding breaks and facilities, like all maternity benefits, should be paid from public funds or social security in order to avoid undue burdens on individual employers, especially SMEs.

Government member, Sweden – I speak on behalf of **the European Union (EU) and its Member States**. The candidate countries, **Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Republic of Moldova**, the potential candidate country, **Georgia**, the European Free Trade Association countries, **Iceland and Norway**, and members of the European Economic Area, align themselves with this statement. At the outset, we would like to thank the Committee of Experts for its well-drafted and important report, providing a solid foundation for our discussions in this Committee. It also highlights the legal and institutional framework required to achieve gender equality at work, as well as measures and proposals for future action in promoting gender equality. We would also like to commend the input of constituents into this General Survey, underlining their commitment to supporting and advancing gender equality in the world of work. Despite the report's findings of tremendous advances for gender equality at the workplace over the last century, the General Survey recognizes that progress in closing gender equalities in the world of work has unfortunately stalled in recent decades, with gender gaps that have not narrowed in any significant way. The report underlines that women's progress in the world of work has been hindered in particular by unequal sharing of unpaid care work and family responsibilities, including as a result of pregnancy and motherhood. The impact of the COVID-19 pandemic has also further deepened the traditional gender gaps across many areas, including the labour market, and notably as regards working conditions, work-life balance and overall working time. We are concerned by the lack of progress and recent developments and consider that addressing these obstacles and gaps in a timely and effective manner is critical for advancing a transformative agenda for gender equality, as called for by the ILO Centenary Declaration for the Future of Work, as well as adapting to a changing world of work and demographic transitions. In light of our rapidly changing world characterized by these societal, demographic and organizational changes, we must ensure and foster equality of treatment



and equity of opportunity for gender equality in all areas including regarding participation in the labour market, terms and conditions of employment, equal pay and career progression. Gender equality at work is of crucial importance for the EU and its Member States. Article 23 of the Charter of Fundamental Rights of the EU declares that equality between women and men must be ensured in all areas, including employment, work and pay. We acknowledge that obstacles and gaps towards this aim also remain within the EU, and we reiterate our commitment towards eliminating them. Gender equality, equal opportunities and work-life balance are three of the 20 principles of the European Pillar of Social Rights that guides the EU in its efforts towards a fair and inclusive Europe.

Regarding the factual section of the report on sexual orientation, gender identity and intersex status, we welcome the clear trend towards inclusion in national legislation and policies of additional prohibited grounds of discrimination, including sexual orientation and gender identity, while we also see persistent challenges. Article 21 of the EU Charter of Fundamental Rights explicitly prohibits discrimination based on sexual orientation and Article 19 of the Treaty on the Functioning of the European Union allows for action to combat this type of discrimination. The existing inequalities are also reflected and addressed in the European Commission's Gender Equality Strategy and several other initiatives, including tackling women's under-representation in the labour market and the gender pay gap with the pay transparency Directive, rules on gender balance on corporate boards, and the implementation of the Directive on work-life balance for working parents.

At the international level, the EU and its Member States reiterate their commitment to equality and non-discrimination and to the entitlement of all persons to enjoy the full range of human rights and fundamental freedoms, and to the participation of youth, girls and women, persons with disabilities and LGBTI persons, as well as the protection of those who are in disadvantaged and marginalized situations, including children. The EU will consistently and constructively engage with UN mandates focusing on combating violence and all forms of discrimination and will continue to give strong support to the UN's work, including the ILO, in this regard. We also continue to promote gender equality in the world of work internationally beyond the EU. In this regard, the European Commission has adopted the EU Gender Action Plan (GAP) III 2021-2025, which was welcomed in the Presidency Conclusions of 16 December 2020.

Here, the ILO plays a unique normative role in promoting gender equality at work, which the EU and its Member States continue to stand ready to support. The full realization of the fundamental principles and rights at work is essential to ensuring gender equality at work for all workers. A few issues stand out in particular.

First, there is a need for action at all levels, as gender equality cannot be achieved without the elimination of discrimination in employment and occupation. Non-discrimination and equal access to employment of vulnerable groups should be put at the centre of actions to make the labour market more inclusive and promote decent work and opportunities for all. These actions need to include both legislative and non-legislative measures, including the design of necessary legislative frameworks and the construction of an enabling and also gender-responsive environment.

Second, it should be noted that recent changes in the digital economy have created a lot of new opportunities, but can also perpetuate gender segregation. Therefore, it is important for governments to take targeted measures, such as strengthened gender perspectives in all digitalization policies, to ensure equality of opportunity and equal treatment in all aspects of employment and genuine protection against discrimination.



Third, it is crucial to ensure that no workers are excluded from the scope of application of labour and social security legislation. Women work more part-time, are paid less and often still carry out the bulk of private domestic and care responsibilities. This can hinder their financial independence and progress in the world of work. Taking action is both a social and an economic imperative, and national policy measures, such as maternity protection, that support workers with family responsibilities are an essential pillar of any policy that aims to create effective equity of opportunity and equality of treatment for all workers. Quality and affordable childcare and other care services for dependent family members should be arranged, giving both parents and other workers with family responsibilities the opportunity to work full time, and also taking into account atypical work arrangements.

Fourth, we need to address the origins of gender-specific constraints and structural obstacles. We must all make it a priority to challenge stereotypes and understandings that assign certain roles to people based on their gender or that attribute different and unequal skills or capacities to them. In this case, educational campaigns, awareness-raising and public information are critical in promoting substantive equality and ensuring that cases of inequality and discrimination are identified and properly addressed.

Fifth, considering that achieving gender equality at work is key for sustainable development, it is important to incorporate gender equality into national development strategies, followed by continuous monitoring, assessment and adjustment of national policies. This ensures that the important ILO instruments discussed in the General Survey are fully implemented in order to achieve gender equality at work.

Finally, and very importantly, the EU and its Member States reiterate that social dialogue and tripartism are essential policy tools for the effective realization of gender equality in the world of work. The EU and its Member States will continue to place the achievement of gender equality at work among their priorities and to support the ILO and other constituents in their actions.

Government member, Pakistan, speaking on behalf of the Organization of Islamic Cooperation (OIC) Group – We take note of the General Survey on achieving gender equality at work. We remain committed to making steady progress on achieving gender equality at workplaces and reaffirm our commitment to counter discrimination at workplaces on grounds universally agreed and as enshrined in various international labour and human rights Conventions.

Among other things, the General Survey identifies Sexual Orientation and Gender Identity (SOGI) as an emerging ground of discrimination. Description in the General Survey on this account only confirms that this is not a universally accepted ground of discrimination. For the record, we would like to reiterate that international law clearly stipulates grounds for discrimination, and these have been codified in inter-governmentally negotiated human rights and labour covenants. This international legal framework does not recognize SOGI as a ground of discrimination. We underscore that the concepts of any real or perceived emerging ground of discrimination for addition must first be universally agreed upon before an effort is made to weave them into the documents of international organizations.

I conclude by reasserting that we all need to join forces to combat discrimination and promote gender equality at the workplace and must share ways to enhance international cooperation rather than negatively impacting it by imposing a certain value system and world view onto others.



Interpretation from Arabic: **Government member, Bahrain, speaking on behalf of the Member States of the Gulf Cooperation Council (GCC)** – At the outset, on behalf of my group, I wish to express our deep thanks to the Committee of Experts for having produced this year's General Survey, which sheds light on a vital aspect of our current and future working relations in the development of working patterns and use of technology. The choice of Conventions and Recommendations in terms of their overlapping provisions and objectives allows all of us to better understand the social dimension as a fundamental pillar of the issue of non-discrimination, which is the backbone of the work on standards carried out by the ILO and other international bodies.

This survey of law and practice looks at how to maximize measures reconciling work-life balance, balancing responsibilities towards the family and also the requirements of a professional life. We have clearly identified the desire of the Committee of Experts to encourage the diversification of working arrangements and time, so that workers can spend more time on their private lives, especially those with family responsibilities, and also to play an important role in human welfare when it comes to their relatives. A number of different interesting models and practices have been examined when it comes to advancing gender equality and sharing family responsibilities in a number of countries around the world, although the General Survey indicates that these are still far below our ambitions.

Perhaps it is no exaggeration to say that psychological illnesses caused by work stress and stress, or what is now called "burn-out", is largely due to the lack of an ideal situation for workers in which they can enjoy a sufficient degree of personal and family time as well as their social responsibilities. This important aspect may not be a priority for the General Survey overall, but it is certainly one of the priorities in the future programme of the Organization's work.

We wish to launch innovative initiatives on working time and arrangements using modern instruments within the framework of social partnerships involving all stakeholders in any given economic sector, to provide a more social dimension to work and its performance, without considering labour as a form of a commodity. Easing many restrictions on family and motherhood will undoubtedly have a positive and significant impact on the well-being of workers and society as a whole, in several areas in particular, by reducing labour tensions and disputes, and this is what we would like to underline as evidence that has come from independent studies carried out by the ILO.

In this context, we wish to emphasize that the regulation of working hours, particularly in the context of the changes taking place in the world of work, namely digitalization, teleworking and platform work, is subject to many challenges. We must recall the discussions that took place at the last sessions of the Governing Body in November and March, which underline the need to deepen the issue of platform work and also to look at the involvement of the social partners. This General Survey has been very successful in highlighting a number of areas that have either been overlooked or omitted altogether which prevent us from achieving gender equality. Business should not be incompatible with the social requirements of workers, both male and female, especially when it comes to female employment and motherhood, as well as caring for older persons and persons with disabilities. In this regard, we would add that the policies adopted by any country must be as consistent as possible with workers' family responsibilities, thanks to a series of protective measures.

We, in the GCC states, believe in the central mandate of the ILO in the world of work. On more than one occasion, we have expressed support for its mandate, our States have been engaged in technical cooperation programmes covering all aspects of the working



environment. If we want the ILO to continue with its central role in promoting this work environment globally, we must take into account national and regional contexts.

Once again, despite opposition from a number of States and territories expressed on a number of different occasions, the most recent of which was the 347th Session of the Governing Body, the General Survey makes reference to groups in the context of Convention No. 111 on which there is no agreement among the constituent bodies of the Organization.

The continuation of the approach of using controversial concepts that have not received an agreed definition in labour or human rights law could undermine the role of the Organization and international labour standards. We believe that no one must be left devoid of legal protection, but that does not mean issues that have not been raised in discussions between the partners and which have not been internationally accepted. Therefore, we wish to express our opposition to the analysis of the Committee of Experts in including a certain number of groups that are not agreed upon as part of the application of Convention No. 111.

Government member, Argentina, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC) – The GRULAC would like to express its satisfaction at the General Survey, *Achieving gender equality at work*. It is a timely endeavour to address collectively the three selected Conventions and their accompanying Recommendations. The detailed, painstaking and very precise examination undertaken by the Committee of Experts contributes to its comprehensive and complementary vision. The review of both national laws and practices reveals unacceptable deficits in the field of gender equality and structural inequalities and challenges in a good number of Member States to renew their efforts to address the deficit through transformational gender programmes and policies, with a view to making decent work and social justice a reality.

The provision of leave for pregnant and non-pregnant persons with adequate guarantees in terms of employment and income security, combined with the provision of accessible and sufficient maternal health services, are essential. The importance also needs to be emphasized of having a care system that contributes to the achievement of co-responsibility in this work. There can be no gender equality without this equitable sharing of the unpaid work that is currently almost without exception undertaken by women.

It is necessary to address these and other structural gaps faced by women and other groups that are vulnerable to discrimination in the world of work. The ILO and its standards supervisory system have a clear mandate to do so. In this respect, GRULAC takes note of Report III(A)/Addendum (Part A) to the report of the Committee of Experts containing the joint statement with the Chairpersons of United Nations Human Rights Treaty Bodies.

Finally, the Committee of Experts has once again provided us with a General Survey that can be a formidable tool for Member States to confirm their unshakable commitment to equality at work.

Employer member, Norway – I will return to the Employer members' comments on Part II of the General Survey, and the important Chapter 7 on reconciling work and family responsibilities. The Employer members note the various measures described by the Committee of Experts to help reconcile work with family responsibilities. The Committee of Experts' focus here seems to be on the various types of leave which are addressed in Recommendations Nos 165 and 191, including parental leave, leave in the event of illness of a family member, paternity leave and adoption leave. The Employer members note that the Committee of Experts generally welcomes and advocates an extension of these kinds of leave. While the Employer members recognize that leave can be one element within a set of



measures to help workers meet their family responsibilities, they do not consider that it should be the focus. As women are more likely than men to use these leave entitlements, it can reduce their labour market participation, which would be counterproductive to the objective of achieving gender equality at work. Major leave entitlements to meet family responsibilities can also be a significant burden for micro-, small and medium-sized enterprises, which account for over 90 per cent of enterprises in all countries and are an important source of wealth and employment. It is also problematic that the Committee of Experts provides views and makes recommendations on long-term leave to care for dependants or paternity leave, although these kinds of leave have no textual basis in the ILO Conventions and Recommendations examined in this General Survey. The Employer members would emphasize that, while the Committee of Experts in the General Survey may explain the provisions of the standards examined and describe their implementation in law and practice, it is not its role to give general policy advice and opinions which are not grounded in ILO standards. In contrast with the Committee of Experts, the Employer members consider the creation and extension of cost-effective facilities and services for the care of children, older people and people with disabilities as the most important way to help workers reconcile work and family responsibilities. The wider availability of such facilities and services would allow both male and female workers with family responsibilities to stay at work as much as possible. More continuous employment participation would promote women's professional development, which would both have a positive impact on gender equality in terms of income and pension rights, and contribute to reducing discrimination. Enabling more continuous employment participation by women with family responsibilities would also help address the skills shortages that exist in many countries and improve the sustainability of social security systems in the face of dramatic demographic change. Comprehensive and effective care facilities could also avoid possible friction for workers' organizations in companies, in particular small and medium-sized enterprises, and thus have positive effects for both workers and employers. All in all, the extension and upgrading of childcare facilities, with prolonged opening hours, as well as the expansion of care facilities for older people and people with disabilities, should be prioritized and promoted. This is in particular a task for governments, but public-private partnerships could also be useful in this area. As a complementary measure, the Employer members would recommend a flexible work arrangement, as far as agreed by workers and employers. Such arrangements, which could include, for instance, flexible working hours, part-time work or telework, could also help reconcile work with family responsibilities and company needs, while at the same time increasing women's participation in employment. In the context of other social security measures to improve the situation of workers with family responsibilities, as mentioned in paragraph 807, the Employer members note that the Committee of Experts expresses disagreement with the cash transfer programmes under which benefits are provided subject to meeting certain requirements, for example school attendance by children or their vaccination. While the Committee of Experts admits that these programmes have a positive impact on the well-being of children, it claims that they may negatively affect women and, as a result, advises against them. The Employer members would not agree with this and would suggest that the overall positive benefits of such programmes can only be assessed in their concrete context. In this connection, encouraging school education and vaccination should not just be seen as beneficial for children, but also as beneficial for overall development. On Chapter 8, the Employer members note the Committee of Experts' considerations regarding effective redress and sanctions in case of gender-related discrimination. In this connection, the Committee of Experts found that in some instances the proportion of cases presented by countries that culminated in the imposition of an actual sanction was small. The Employer



members wonder on what basis this assessment is made. Is there a benchmark for a correct ratio between discrimination cases and sanctions imposed. The Employer members would point out that neither Convention No. 111 nor Recommendation No. 111 refer to sanctions, but rather to “measures to foster public understanding and acceptance of the principles of non-discrimination”. To conclude, the Employer members would stress that gender-related discrimination often relates to societal perceptions based on historical attitudes and stereotypes which sometimes require a long period of adaptation. While sanctions may be one possible means, the focus should rather be on the erasing and removal of incentives for discrimination.

Government member, Pakistan – We take note of the General Survey. Pakistan is proud of its long-standing tradition of women’s active participation in all walks of life. In this context, I am privileged to pay tribute to Bégum Ra’ana Liaquat Ali Khan, who served on the Committee of Experts from 1954 to 1977. In keeping up with these rich traditions, women parliamentarians in Pakistan have steadily gained more significance in their role of advocating and working towards achieving progress in legislation at both the national and provincial levels. Pakistan’s legal architecture and policies are aligned with its obligations under international labour and human rights laws. Articles 25(3) and 26(2) of the Constitution of Pakistan bind the State to take proactive measures to protect women and promote their active and meaningful participation in public affairs. We are pleased to have made good progress in this connection. One of the many examples is the amendment of the Protection against Harassment of Women at the Workplace Act in 2022, passed by our Parliament, which has further strengthened the protections available for women against harassment. Provincial assemblies have also enacted legislation to criminalize various forms of gender-based violence. These laws established an effective system of protection, relief and rehabilitation for women, children, elders and any other persons against domestic violence. In order to improve women’s representation, there are 20 per cent of reserved seats for women in Parliament and provincial assemblies. The current level of women’s representation in Pakistan’s national and provincial legislatures is among the top in the region.

Pakistan has 4.4 million home-based workers, of whom 3.6 million are women. The participation of women in our overall labour market is on the rise. Pakistan is working with international partners to support increased women’s participation in the world of work. In recent years, our efforts have led to the adoption of ten laws by the country’s provincial assemblies. The new laws are intended to extend informal homebased workers’ access to social security and fair wages; to improve, for women workers, access to childcare, separate toilets and transportation; to achieve equal pay and end discrimination. These measures aim at easing women’s access to the labour force and lifting constraints for them, and have improved Pakistan’s score in the World Bank’s 2022 Women, Business and the Law indicators. We are committed to staying on this path. The Government continues to take initiatives with a view to enhancing social mobility and empowering women. We also launched a National Gender Policy Framework in 2022. There are several social security schemes to protect workers and support women. They include the Benazir Income Support Programme, which provides unconditional cash transfers to eligible families. The Programme helped families affected by the COVID-19 pandemic, especially women. The Prime Minister’s youth programme, which has been running for the last ten years, also has various programmes, including skills development, access to capital for entrepreneurship and distribution of laptops, as enabling devices with a special quota for women. All of these initiatives act as enablers for women to enter the workforce. Recently, the Government has approved a project worth 400 million rupees for the provision of motorbikes at a subsidized rate to working women and students, initially in the capital territory. I would like to reiterate our



commitment to the obligations under the ILO's labour standards and to continue to take affirmative steps to protect worker's rights, especially of our female workers.

Finally, I would pay tribute to Mr Zaki Ahmed Khan and Mr Zegir Mhatran, two senior members of the Pakistan Employer's delegation to the ILC, who passed away a few days ago. Their deaths represent a loss, but their legacy will endure.

Worker member, Philippines – The right to freely participate in society as equals, without any discrimination, harassment or violence, must be constantly asserted across our societies. In this effort, we must recognize that patriarchy is a system that continues to negatively shape our lives – at home, in our workplaces, communities, as well as government policies. Globally, gender inequality remains one of the greatest forms of inequality. Worldwide and in the Philippines, the gender pay gap remains 20 per cent. Meanwhile, women spend on average 4.25 hours a day performing unpaid care work, compared to 1.23 hours for men.

In the General Survey, we note some of the action needed: ensuring the use of objective criteria for recruitment and promotion that do not perpetuate gender inequalities and discrimination, as well as promoting gender equality in organization and workplace cultures; addressing discrimination in terms of conditions of work, particularly with regard to remuneration, social security and conditions for termination of employment; creating and maintaining an enabling environment for gender equality; regular monitoring and reviewing of policy measures, as well as enforcement of non-discrimination legislation; adopting a comprehensive system of leave policies as a transformative tool to enhance gender equality at work; improving the availability of affordable, accessible and good quality childcare and long-term services and facilities to ease pressure on workers with family responsibilities; and the need to address the gaps in the legal and effective coverage of women by maternity protection.

All these are important elements in our vision of realizing gender equality. We in the trade unions, together with our allies in the legislative bodies in the Philippines, pushed hard to improve our maternity leave benefits from 60–78 days to 105 days in 2019. Now, we are working jointly with other stakeholders to provide maternity leave benefits for women workers in the informal economy. This, again, is not an easy battle, but it is an important one. The point is clear, maternity protection is a joint responsibility of government and society, as highlighted in the General Survey.

We have many things to do. We need to push for a robust public employment programme with a clear gender quota. We need to invest in our care economy. We need to make sure that our efforts and proposed programmes have clear financial resources, staffing and mechanisms. We in the Philippine trade unions continue to campaign for the ratification of ILO Convention No. 190 to be able to review and improve existing policies concerning violence and harassment in the world of work.

Finally, the efforts of trade unions in developing women leaders are a must. We need to ensure that women are participating at all levels of decision-making. It is what would make other policies – like paid leave, working conditions, equal pay, hiring – actually work for women. Together with general consciousness raising, our fight is not just economic and political, but also cultural. Therefore, holding gender sensitivity training for both women and men members is imperative. We need to break away from the culture of machismo to advance equality.



Employer member, Belgium – Like the International Organization of Employers (IOE), we consider that this General Survey addresses equality between men and women at work, which is a broader subject than the intended examination of the implementation of a selection of ILO standards in the law and practice of Member States. In principle, Belgian employers support gender equality and the prohibition of all discrimination in employment. It is essential to take into account the diversity of talent if our countries are to be able to face climate, digitalization, demographic and budgetary challenges, among others.

However, diversity is not always easy to implement. The legal, institutional and cultural environment often leads couples to take decisions that are not conducive to the sustainable inclusion of women in employment. We therefore need to change the environment to make it easier for couples and families to make choices that are more favourable to equality between women and men. The authorities accordingly need to ensure a change in attitudes and invest more in childcare facilities and long-term care for the elderly. This is a shared responsibility.

As for employers, it is up to them to put in place measures that are compatible with the requirements of the organization of work. A predictable legal framework can enable enterprises, if necessary, to develop affirmative action in favour of certain groups of people without legal risk. It would be unjust and ineffective to place the obligation to foster work-life balance solely on enterprises. Moreover, Convention No. 156 does not take sufficiently into account the relevant economic realities, such as the needs of enterprises and fluctuations in labour market conditions. Nor does it take into account the benefits that can be drawn by workers with family responsibilities from the existence of different working arrangements, such as overtime, part-time work, night work and shift work. It is therefore important to remain vigilant in applying Convention No. 156.

In relation to Belgium, the General Survey highlights a very large number of good practices in the implementation of the three Conventions, such as the practical guide to promote diversity and equality in recruitment. This guide was developed in 2020 by the social partners. It is a tool intended for employers and workers to use in recruitment and selection policies with a view to guaranteeing equality of opportunity for applicants. Since the drafting of the General Survey, the Act promoting gender equality has been strengthened and the Belgian social partners have concluded two new collective labour agreements. These agreements aim to foster social dialogue within the enterprise to find solutions that balance the needs of enterprises with those of workers with family responsibilities and to improve the predictability of working hours in a realistic way. Regulation and practice in Belgium are leading to exceptional results in terms of the gender pay gap. In 2022, this gap amounted to 1.2 per cent. This is the smallest gap among all the countries of the OECD. Belgian employers' organizations have made a firm commitment to diversity in practice with the Inter-federal Centre for Equal Opportunities (Unia). Their cooperation agreement aims to develop awareness-raising action and practical support for willing enterprises. Rather than creating a climate of suspicion and the risk of legal disputes, it is important in practice to encourage enterprises to embrace diversity in all human resources processes and to promote negotiated social agreements.

Finally, guaranteeing equality of opportunity at school has a considerable impact on the professional future of young people. Public authorities must therefore focus on preventing discrimination, starting with education.

Government member, Cuba – We note the General Survey, on which excellent comments have been made. The Government of Cuba recognizes the need to continue making progress towards gender equality at work and the relevance of deeper analysis of the



ILO Conventions and Recommendations proposed to the Committee. For Cuba, gender equality at work has been a seminal issue in the transformations of our society since 1 January 1959, not only at the legislative level, but also through the active participation of women in the world of work based on an inclusive vision of the broadening of rights for the achievement of high levels of participation in the socio-economic and political life of the country. Women today account for 55.74 per cent of the members of the National Assembly of the People's Power, the legislative and supreme body of State authority. It represents the people as a whole and expresses their sovereign will. The national programme for the promotion of women is designed to promote progress by women and equality of rights, opportunities and possibilities based on the Constitution of the Republic of Cuba, and to review in greater depth the objective and subjective factors that persist in Cuban society and which are impeding better results for women in the economic, political, social and family contexts with a view to their elimination.

Over recent years, Cuba has developed a broad range of legislation guaranteeing the legal protection of women and guarantees for the exercise of individual rights. Gender equality remains an important element in the recognition and exercise of these rights. The Constitution of the Republic of Cuba of 10 April 1992 provides that workers shall participate in the processes for the planning, regulation, management and control of the economy. Article 42 of the Constitution provides that all persons shall be equal before the law, receive the same protection and treatment from the authorities and enjoy the same rights, freedoms and opportunities without discrimination on grounds of sex, gender, sexual orientation, etc., and that they shall also receive equal wages for equal work without any discrimination whatsoever. The violation of the principle of equality is prohibited and is punishable by law. Article 43 also provides that women and men have equal rights and responsibilities in economic, political, cultural, labour, social, family and all other areas. The State guarantees that both are afforded the same opportunities and possibilities: the basic law also provides that maternity and paternity shall be protected by the State and that mothers and fathers have essential responsibilities and functions in the overall education and upbringing of new generations. With reference to moral and ethical-civic values in relation to life and society, Legislative Decree No. 56 on maternity of women workers and family responsibilities, of 13 October 2021, applies to mothers, fathers, grandparents and other family members, workers in the State and non-State sector, and provides for each to take shared responsibility in the family for the care and upbringing of children, which facilitates the participation of women in employment and society. Progress is also being made in designing and approving the basis for the comprehensive system of overall care throughout life, which includes self-care from the gender, rights and lifestyle perspectives as a viable alternative in light of the impact of the ageing of the population, with the provision of broad-based services, assets and infrastructure for personal care and to strengthen the well-being and protection of carers and persons receiving care.

The issues under examination today are of a transversal nature with rights and functions in other United Nations treaty bodies and are guaranteed to all citizens by the Government of Cuba. Cuba will continue its productive cooperation with the ILO and maintains its unwavering commitment to continue making progress in the development of a society in line with the Organization's standards.

Worker member, Republic of Korea – The Republic of Korea has ratified two Conventions out of the three under examination, namely Convention No. 111 and Convention No. 156. However, the statistics and data suggest that achieving gender equality at work is still a long way off. The gender pay gap in the Republic of Korea is 31.9 per cent, while the



global gender pay gap is around 19 per cent. The employment rate gap between men and women has been narrowed over the past 20 years, but is still high – 71.5 per cent for men and 52.9 per cent for women. A total of 47.4 per cent of women wage workers are in non-regular employment, 16.4 per cent higher than men. In the Republic of Korea, employment overwhelmingly reflects individual demographic characteristics, such as age, gender and parental status, rather than skills and tertiary education. Fathers are considerably more likely to be employed than men without children, while mothers are considerably less likely to be employed than women without children. Very high rates of Korean women tend to leave the labour force following childbirth and regular employment opportunities are hard to find for “mother returners”, for whom low-paid and non-regular jobs are the only opportunities available. This adverse outcome can be explained by a couple of elements mentioned in the General Survey. First, the misaligned goals and direction of the legal and political framework. In 2008, when the Equal Employment Opportunity Act was revised to become the Equal Employment Opportunity and Work-Family Balance Assistance Act, the focus was moved from “realisation of substantive equality in employment between men and women” to “resolving the low birth rate by supporting work-family balance for women”. Since then, the goal of achieving gender equality at work has become secondary and gender roles and stereotypes in family and society have been enhanced, while the discriminatory employment structure remains unchallenged. Second, the gap and lack of coverage in applying the Conventions. In the Republic of Korea, most of the rights and protections provided in the six instruments examined are being applied through the national legislation, which is based on the employment relationship and the narrow definition of worker in the Labour Standards Act. In this situation, women workers in non-standard and precarious forms of employment and self-employed women hardly enjoy these rights and provisions. So, as the Committee of Experts points out, the measures on maternity protection and reconciliation of work and family responsibilities should be an integral part of the comprehensive national policy on gender equality and these measures should not in practice reflect an assumption that the main responsibility for family care lies with women. I also call on Member States to take the necessary measures to extend to all workers the protections offered by the relevant laws and policies on gender equality and non-discrimination, maternity protection and family-friendly measures. Lastly, the General Survey refers to the case of the Korean Federation of Construction Industry Trade Unions as an example that shows how trade unions’ engagement can address occupational segregation. The unions in the construction sector have extended access to the male-dominated occupation for women workers by providing vocational training to build the skills needed in the sector. At the same time, through a persistent campaign to organize precarious workers and build a collective bargaining system, the unions have improved working conditions so that women can work without discrimination and sexual harassment. However, under the targeted crackdown against trade unions launched by the Government, the unions’ activities, especially collective bargaining, have become a crime of collective coercion, and the outcome of collective bargaining is used as evidence of collective racketeering. So far, 19 construction union officers are in jail for such criminal charges and one union officer took his life in resistance. Moreover, all the achievements the unions have made, including gender equality at work have been totally nullified.

I would like to reiterate that freedom of association and the right to collective bargaining are enabling rights for achieving gender equality and I call on all Member States to promote, not repress, the trade unions’ role in achieving this goal.

Government member, Australia – Australia welcomes the comprehensive General Survey on gender equality, which highlights significant global action, but also global



challenges, in the implementation of these important ILO instruments. The Australian Government is committed to upholding universal human rights and advancing gender equality. Since Australia's response to the survey in 2022, we have had a change of government, with the incoming Government making significant reforms to enhance gender equality. This includes measures to help improve pay and conditions in low paid feminized workforces and improve the equitable sharing of work and care responsibilities in families. Since responding to the survey, Australia has: embedded the principles of job security and gender equality into the decision-making processes of the national workplace relations tribunal, the Fair Work Commission, by making job security and gender equality objects of Australia's workplace relations legislation; introduced a statutory Equal Remuneration Principle to help guide the way the Fair Work Commission considers pay equity cases and addresses gender-based undervaluation of work; established new expert panels in the Fair Work Commission for pay equity and the care and community sector, with a dedicated research unit, which will ensure that the Commission has the expertise needed to decide cases dealing with pay and conditions in low-paid feminized workforces; prohibited pay secrecy clauses and enabled our Workplace Gender Equality Agency to publish gender pay gaps at the employer level; improved the government Paid Parental Leave scheme, and strengthened the right to request flexible working arrangements and an extension of unpaid parental leave to help families balance and share work and caring responsibilities; introduced ten days' paid family and domestic violence leave as a national minimum standard; and expressly prohibited sexual harassment in the Fair Work Act to ensure that all workers, especially women, are safe and respected at work. We will shortly be ratifying Convention No. 190 to complement these efforts.

The Government is committed to preventing discrimination against all people in vulnerable situations to ensure equality of opportunity for all in the world of work. In December, changes were made to our national workplace relations law to update its protections against discrimination and bring it into line with our other anti-discrimination laws. As a result, employees who experience discrimination in the workplace because of gender identity, intersex status or breastfeeding can now pursue complaints through the Fair Work Commission.

But we know more can be done, and we will continue to take action. Starting from 1 July 2024, and subject to the passage of the legislation, the Australian Government will increase the government Paid Parental Leave scheme to 26 weeks by 2026. This builds on paid parental leave reforms taking effect this year that will help encourage more men and partners to take leave. This includes making paid parental leave more flexible and giving men and partners access to more leave. We are complementing this with changes to unpaid parental leave that give families more choice in how they take that leave and help them better share work and caring responsibilities.

Australia appreciates the extensive work of the Committee of Experts and expresses its support for sustained action to achieve gender equality across the globe.

Worker member, Spain – The participation of women in the Spanish labour market is characterized by their gradual inclusion, rising from an activity rate of 42 per cent in 2002 to 53 per cent in 2022, with significant segregation. On the one hand, at the sectoral level, 73 per cent of women's employment is concentrated in seven sectors and, on the other, there is vertical segregation by occupation. Two of every three women work in low-paid occupations, compared with only one of every three men. Women are concentrated in occupations considered to be "feminine", which have historically been given lower value and, consequently, lower wages.



In Spain there have been legislative developments with the objective of achieving equality between women and men in the various spheres: personal, social and labour. The Spanish Constitution sets out the right to equality and non-discrimination on grounds of sex, in accordance with Article 1 of Convention No. 111. Basic Act No. 3/2007 on equality between women and men defines the basic concepts and legal categories in relation to equality, such as direct and indirect discrimination. Its adoption constituted unprecedented progress in equality policy in all areas of life. The Act makes reference to the participation and representation of women in the world of work, sport, communication media, the armed forces and State security forces and bodies, and provides for statutory leave for the care of children under 8 years of age and dependent persons, and extends maternal, paternal and nursing leave. The latter types of leave, which are consonant with Conventions Nos 156 and 183, have been updated through subsequent legislation.

From 1 January 2021, leave for the birth and care of a child amounts to 16 weeks for each parent. Nursing leave is paid and both parents are entitled to it for children up to 9 months of age. The reduction of working hours for care purposes allows workers to decrease their daily hours of work by various amounts for the direct care of children under 12 years of age, persons with disabilities who are not in paid work, family members up to the second rank or kinship who, by reason of age, accidents or illness cannot care for themselves and are not engaged in paid work, and dependent minors suffering from cancer or any other serious disease, who are hospitalized or receiving long-term continuous care and require direct, continuous and permanent care. There is also extended leave to care for children, which is voluntary leave that can be taken up to three years following childbirth, and extended leave for the care of family members, under which workers can request the temporary and voluntary suspension of the employment contract to care for family members up to the second rank. The period covered by both types of extended leave is taken into account for purposes of seniority and social security contributions.

Act No. 3/2007 introduces equality plans as an instrument for collective bargaining intended to achieve equality in enterprises with 50 or more workers. It establishes the requirement for the participation of the legal representatives of workers in the committee that negotiates the plan, thereby guaranteeing negotiation throughout the process. The principle of equal remuneration for work of equal value covers all enterprises irrespective of the number of workers. Two instruments have been agreed for that purpose: on the one hand, the tool of pay records, which make it possible to detect the existence of wage gaps in enterprises with a view to correcting existing gaps and, and on the other, a procedure for the evaluation of jobs from a gender perspective, the objective of which is the correction of any gender bias that exists in jobs occupied by women.

Finally, the labour reform adopted in 2021 had the objective of reducing precarious and temporary employment, two variables that are characteristic of women's employment. Since its entry into force, the permanent employment of women has risen to the detriment of temporary employment, which shows the success of the labour reform. With reference to the care sector, my organization, the Trade Union Confederation of Workers' Commissions, is calling for a comprehensive State agreement which covers the sector in the broad sense, including child care, long-term care and indirect care.

Worker member, Botswana – We recognize that, over the years, the ILO has adopted a number of resolutions and declarations reaffirming the goal of achieving gender equality, including most recently: the 2019 Centenary Declaration for the Future of Work; the Global Call to Action for a human-centred recovery from the COVID-19 crisis; the Resolution concerning inequalities and the world of work; the Resolution concerning the second



recurrent discussion on social protection (social security); and the Resolution concerning the third recurrent discussion on employment, which all call for a transformative agenda for gender equality. These are just some of the efforts that we believe have been put forward to ensure gender equality and end discrimination to achieve this critical objective.

Recent engagements at the African continental level indicate that there has been a regression in the progress made prior to the COVID-19 period in achieving the 2030 Agenda for Sustainable Development and the SDGs. The major goals affected by the regression are in particular SDG 1 on “no poverty”, SDG 3 on good health and well-being, SDG 5 on gender equality and SDG 8 on decent work and economic growth. These challenges have led to the widening of the gender equality gap in workplaces and clearly mean that there is a need for renewed and strong commitment by ILO constituents towards the realization of the gender equality objective under the SDGs as we continue to find our way post COVID-19, and in the midst of the effects of the Russian Federation–Ukraine conflict.

Botswana has been reviewing its labour laws to address the recommendations of the Committee of Experts and the conclusions adopted by this Committee. The review has been done by the tripartite constituents in an effort to align with ILO standards, and some of the key agreements by the Labour Law Review Committee are on maternity promotion and recognition that there is need for family-friendly measures that assist both men and women in reconciling work and family responsibilities. In addition, the Botswana Decent Work Country Programme (BDWCP) was signed in 2020. The goal of the BDWCP 2020–24 is to contribute to Botswana’s progress towards the achievement of full and productive employment and decent work for all. To realize this goal, the constituents identified the following top three priorities: sustainable employment creation, particularly for young women and men; improved quality social protection and conditions of work for all; and effective labour market governance institutions and practices.

In Botswana, any discrimination based on gender, sex, sexual orientation or marital status is automatically unfair, as stated in section 23(d) of the Employment Act. The above provisions and instruments when used together with the necessary protection and monitoring illustrate the interconnection of the six ILO instruments examined and how they are conducive to social and economic development, including their high significance for the promotion and fulfilment of the ILO decent work and social justice agenda.

However, there is still a lot to be done in Botswana to achieve gender equality. Culture is still used to oppose gender equality and exacerbate the dual burden of women. Also, informal sector workers have no maternity protection, which is a precondition of gender equality. The concept of indirect discrimination does not appear to be clear and recognized in our laws and job insecurity, as well as unemployment, continue to escalate cases of the exploitation of workers.

In conclusion, we want to support the Committee of Experts’ findings and determinations and to call on Member States to strengthen their national legal and policy framework to combat gender discrimination. We highlight the complementarity of Conventions Nos 111 and 190 in addressing sexual harassment, which should be envisaged within the broader objective of the elimination of gender-based violence and harassment in the world of work. We recall that the ratification and effective implementation of Convention No. 190 and its accompanying Recommendation No. 206 are a pivotal piece of any strategy to achieve gender equality and we call on Member States to adopt and implement effective and comprehensive policies and responses to gender-based abuse, harassment and violence at work. The ILO should also encourage such action through technical assistance.



Government member, Norway – I would like to thank the Committee of Experts for their comprehensive General Survey on this important topic. Norway is strongly committed to working towards achieving gender equality at work and has ratified all three Conventions examined in the General Survey.

Women around the world still face hurdles to access employment and decision-making positions and jobs in certain sectors. Women should have the right to pursue freely any job or profession of their own wish. Access to affordable childcare is important in increasing women's labour force participation, while maternity protection is a vital element in realizing equality between men and women at work. Norway considers it essential that women and men have equal responsibilities towards their children and other members of their family. Maternity and paternity leave and accessible and affordable childcare have been key factors in the work to achieve equality in Norway. As the General Survey reports, there are also established initiatives to achieve less gender-divided education.

In our view, it is of great importance for the legislation protecting against discrimination to prohibit discrimination on grounds of sexual orientation and gender identity. The Norwegian Government has bolstered efforts for gender and sexual diversity in a new Action Plan launched earlier this year. Sexual harassment is still widespread, even in a gender equal country such as Norway. Norway is currently taking legislative measures to prevent sexual harassment in employment and occupation, together with information and awareness-raising campaigns.

There are still systemic differences that affect the opportunities available to men and women in Norway. Continuous action is required to address discrimination and inequality in employment and occupation. Women in Norway still undertake a disproportionate share of unpaid care work. Closely related to this, women in Norway are over-represented in part-time jobs, despite both legislative regulations and awareness-raising campaigns. Further, the proportion of women in leading positions in private business is still low. The proportion of women in the executive committees of the 200 largest companies has increased somewhat in recent years. However, men still account for 81 per cent of operational positions with responsibility for profit and loss. On the other hand, at the top level in the state sector in Norway, the majority of managers are women.

Norway will continue the important work to overcome the remaining gender equality challenges. The Government will intensify its efforts through a strategy for equality between women and men. This will be the first gender equality strategy launched by a Norwegian Government. We would strongly encourage all other Member States to address the important issues highlighted in the General Survey and to ensure equal opportunities and gender equality in work life. Norway considers the three Conventions discussed in the General Survey as important tools for achieving gender equality at work.

Worker member, France – Regarding the application in practice of Convention No. 111, equality at work has visibly been a top social priority for the French Government for years and measures began to be put in place in 2019, such as transparency on pay gaps, compulsory bargaining in enterprises on professional equality between women and men and the establishment by a 2018 Act of a professional equality index in enterprises. However, there is clearly a very significant gap between stated ambitions and reality. Two-thirds of the gender pay gap is linked to jobs which, in the great majority of cases, are undervalued. This is the case in service occupations which, unlike technical and industrial occupations, are assumed to be less based on vocational skills, capacities and responsibilities. There is a great deal of confusion between professional expectations, the skills required and the qualities



supposedly inherent to each of the sexes. It is believed that women are naturally and in essence more attentive and “ready to serve” and that these qualities, which are not recognized as skills, do not need to be recognized because they are innate.

Moreover, women and men in the same sector do not do the same jobs and women and men do not have access to the same positions in enterprises. This vocational segregation between the sexes is compounded by hierarchical inequalities. In total, 23 per cent of jobs held by men were at the managerial level in 2018, in comparison with 17.5 per cent for women. For men, 3 of the 20 most frequent occupations corresponded to managerial roles, compared to only one for women. A woman has a 30 per cent likelihood of obtaining one of the best paid jobs. and a 55 per cent lower likelihood than a man of having one of the 1 per cent of best paid jobs.

Yet laws do exist in France. Indeed, a professional equality index has been progressively implemented for private enterprises with at least 1,000 employees as of 1 March 2019, then for enterprises with at least 250 employees as of 1 September 2019. All enterprises with at least 50 employees were included as of 1 March 2020. The question that may be raised is whether this professional equality index is enough to drive progress in enterprises. According to the Public Policy Institute, an independent research institute, the results so far are very mixed due to the complexity of the calculations used. Worse still, the professional equality index is reported to have had no effect on reducing gender inequality. The main criticisms of the index relate to the lack of transparency and readability of this tool, which is run entirely by the management of enterprises. As a result, employers may be tempted to measure what suits them in order to achieve the minimum score. Trade unions in France believe that equality between women and men is essential to overcome the crisis and we are taking this opportunity to point out that the existing professional equality index needs to be corrected on four points: the calculation method for the wage score, which underestimates inequalities; greater transparency; the financial resources to catch up; and the extension of the results requirement to the public service, as the index currently only covers private enterprises.

Government member, Belgium – Belgium aligns itself with the statement made by the EU and its Member States.

Belgium is happy that the ILO has decided to study Conventions Nos 111, 156 and 183 and their Recommendations from a gender equality perspective. Indeed, these instruments are essential to give effect to the fundamental principle of equality of treatment for all, and to remedy the main forms of gender inequality in the world of work.

As indicated in the General Survey, despite the considerable progress made in relation to gender equality at the workplace over the last century, the elimination of inequalities in the world of work has unfortunately stagnated over recent decades and the gender gap has not narrowed significantly. Moreover, the unequal sharing of unpaid work and family responsibilities continues to hinder women’s progress in the world of work. The same negative conclusion applies to pregnancy and maternity. Moreover, the COVID-19 pandemic has exacerbated inequalities.

In this context, the General Survey is a very valuable tool. It sets out the legal and institutional framework required to achieve gender equality, and describes in great detail the law and practice in Member States. It explains the way to promote gender equality at work, in light of the main difficulties and opportunities encountered by Member States. It is a very useful tool for political decision-makers at both the national and international levels.



Belgium has ratified and implemented Convention No. 111 and Convention No. 156. Preparatory steps have been taken for the ratification of Convention No. 183. In this light, Belgium fully supports the content of the General Survey and the recommendations made by the Committee of Experts. Like the Committee of Experts, Belgium hopes that this General Survey will contribute to the development and effective implementation of measures to guarantee gender equality at work. Belgium hopes that the General Survey and our discussions in the Committee will encourage ILO Member States to ratify Conventions Nos 111, 156 and 183 as widely as possible.

Worker member, Brazil – For Brazilian workers, it is important at this political moment in the country to envisage the ratification of Convention No. 156, which the Brazilian Government has put forward and which the General Survey describes as central to decent work and gender equality.

In Brazil, an inter-ministerial committee has been set up to develop a national care system, the next steps of which will be the preparation of draft legislation for submission to the National Congress on the basis of discussions with civil society and the leaders of working-class trade union organizations through public hearings.

Brazil could be a successful example if we manage to include in this process a clear interpretation of care as a human right and its link to the redistribution of family care responsibilities between men and women workers in future, as indicated by the Committee of Experts, challenging the gender risks which perpetuate the inequality of occupational segregation, family status and the disproportionate impact on production borne by women.

In Brazil we can also address key issues such as the working day and working hours to adapt them to the right to care, and the provision of a care infrastructure and services in the world of work. Today's discussion and the recommendations that this Committee will make to the 111th Session of the International Labour Conference offer an invaluable opportunity.

I therefore confirm that Brazilian workers commend the views of the Committee of Experts, especially as they coincide with the process that we are following, both in terms of the integration of interdisciplinary government action demonstrating the political will of the State and Government, and the essential value of the redistribution of care work between families and the State (through public services) to shift the burden of care work from families, and the role played by national care systems in that regard.

In light of the above, I call on the Committee to highlight the indivisible link between the application of Convention No. 156 and existing, emerging and future national care systems.

Government member, United States of America – The Government of the United States thanks the Committee of Experts for this General Survey, which for the first time examines together the topics of gender discrimination, maternity protection and workers with family responsibilities. We commend the Committee of Experts for the comprehensive overview of the steps being taken, and the challenges we face, in realizing gender equality in the world of work today.

Across the world, women continue to face significant disadvantages in the labour market. This is clearly conveyed by the persistent and unfair gender pay gap. According to the United Nations, women earn 77 cents for every dollar earned by men. Closing this gap at the current rate of progress would take a full 257 years, which is 10 years longer than my country has existed. And it is unacceptably long. Clearly, we need to address the defining challenge of gender equality with greater urgency and resolve. This means that women must be a central focus of our efforts to advance all aspects of decent work. While Convention No.



111 is a focus of the General Survey, we know that the fundamental principles and rights at work are mutually reinforcing and together comprise the foundation for gender equality and women's economic security.

I would like to highlight in particular the essential role of freedom of association and collective bargaining in realizing gender equality and narrowing the gender pay gap. There is extensive evidence that women who are members of unions experience smaller gender pay gaps, improved protection from discrimination, and better employment-related benefits. The rights to organize and bargain collectively are a central focus for the United States in our efforts to advance women's labour rights and gender equality, including through the creation of the White House Task Force on Worker Organizing and Empowerment in 2021. This task force is mobilizing the federal Government to empower workers and increase awareness, particularly among women workers, of their federally protected rights to organize and bargain collectively with their employers. At the international level, the United States Government has recently launched a Global Women's Economic Security Strategy which, among other priorities, recognizes that freedom of association and collective bargaining are foundational rights for women to secure vital protections and benefits at work. Through the Multilateral Partnership for Organizing, Worker Empowerment and Rights or M-POWER, the United States Government is partnering with other governments here today, global and national labour organizations, and civil society and others to uphold and advance workers' rights, again with emphasis on the rights of women at work.

I would like to close by welcoming the focus in the General Survey on the growing efforts by countries to address discrimination based on sexual orientation and gender identity. In the United States, we are making strides to provide equal employment opportunity for LGBTQI+ workers, including through the Executive Order on Advancing Equality for LGBTQI+ individuals, which was signed by President Biden on 15 July 2022. In addition, and as noted in the General Survey, the United States Supreme Court issued a landmark decision in June of 2020, which held that the prohibition against sex discrimination in the Civil Rights Act of 1964 also includes employment discrimination based on sexual orientation or transgender status. The United States encourages the Office and ILO constituents to pursue policies and initiatives to protect the rights of LGBTQI+ persons within the framework of Convention No. 111 in order to give full effect to the elimination of discrimination based on sex. Taking measures to ensure that all workers – no matter their sex, gender identity, or sexual orientation – participate fully and equitably in the world of work is essential to realizing our common goal of gender equality, social justice and decent work for all.

Worker member, Kenya – Despite the ratification of Convention No. 111 by the Government of Kenya in May 2001 and positive legislative developments towards gender equality, women in Kenya continue to face significant obstacles to enjoy equality of opportunity and treatment in respect of employment and occupation. Women in Kenya continue to suffer discrimination based on gender stereotypes, which prevents them from entering and remaining in the labour market and reaching their full potential at work. Women have been disadvantaged in taking up positions equal to those of men at work due to a variety of factors, including lower educational level, family responsibilities and gender specific roles and discrimination. Legislation has not been fruitful in achieving pay parity for women. In 2019, a study found that on average women earn 32 per cent less than their male counterparts. According to UN Women, only 66.7 per cent of legal frameworks that promote, enforce and monitor gender equality under the SDG indicators are in place in Kenya. Kenya should develop more comprehensive legislation guaranteeing equality of opportunity and



treatment, and also of outcomes for women. Furthermore, the Government should reinforce the establishment and implementation of measures to implement the 2019 National Policy on Gender and Development to combat gender stereotypes in training, employment and occupation.

The informal economy in Kenya is a significant employer of women, with 87 per cent being employed within it, with no social security or other benefits. A recent study has illustrated the gender gap in the ownership of informal enterprises, with males owning the more productive small and medium-sized enterprises, while females own the less viable micro-enterprises. More effort should be made by the Government to prohibit gender-based discrimination in access to credit and allow women to register a business in the same way as a man.

As of December 2020, only 41.8 per cent of the indicators needed to monitor the Sustainable Development Goals from a gender perspective were available, with gaps in key areas, in particular: unpaid care and domestic work, and key labour market indicators, such as the gender pay gap and information and communications technology skills (UN Women). The Government should continue its efforts to collect and provide gender disaggregated statistics, enabling the Government and the social partners to develop gender responsive action for the full implementation of Convention No. 111.

In Kenya, women in formal employment are entitled to three months maternity leave with full pay through employer liability. However, this only covers about 6 per cent of women, leaving the rest without any protection against income loss after giving birth, and their premature return to work puts their health and that of their children at risk. Furthermore, in Kenya, women and girls are spending a disproportionate amount of time providing unpaid care work in their households and communities. A survey was carried out in 2019 by Oxfam in five urban informal settlements. The results indicate that women report 11.1 hours per day for any care compared to 2.9 hours per day for men. In contrast, men spent almost double the time that women spent on paid work (10.5 versus 5.3 hours per day, respectively). The Government of Kenya therefore should ratify Convention No. 183, as well as Convention No. 156, which are critical to achieving gender equality at work for women. This is a call for all Member States.

Last but not least, there cannot be gender equality if women continue to face gender-based violence and harassment. Gender-based violence and harassment is prevalent in Kenya, including domestic violence. Government statistics from the Kenya Demographic and Health Survey (KDHS), indicate that over 40 per cent of women have experienced physical or sexual intimate partner violence in their lifetime. It is therefore urgent for Member States to ratify and implement effectively Convention No. 190 and its accompanying Recommendation. This is a pivotal piece of any strategy to achieve gender equality.

Government member, Türkiye – I would like to thank the Committee of Experts for their comprehensive and updated General Survey.

As we all know, gender equality has become the heart of the ILO's mandate and its normative action through its Conventions, Recommendations, declarations and resolutions, as well as its reports examined since its establishment in 1919. In this historical process, all governments and social partners are called upon to actively contribute to the elimination of all forms of discrimination in the labour market and to promote gender equality between men and women. Türkiye was one of the countries that heeded this call in the very early stages. Türkiye has ratified various UN and ILO Conventions related to gender equality and reflects them in its national legislation. The Turkish Constitution, as the basic text, along with



the Turkish Civil Code, Labour Act and Penal Code, regulate all issues relating to gender equality and oblige decision-makers to implement them accordingly. The principles of equality before the law and non-discrimination, as well as the principle of equal pay for work of equal value, are introduced in these documents. They uphold equality between women and men, put an end to discrimination based on sex, render women equal to men in both family and society, and value women's work.

Gender equality goals can only be achieved by means of an integrated combination of a supportive legal system, improved awareness, more effective sanctions and proper enforcement. However, before elaborating on how to achieve gender equality in education, participation in the labour market, and politics, and in all spheres of life, the fundamental question that needs to be addressed is how to prevent, prosecute and eliminate violence against women. The Law on the Protection of Family and the Prevention of Violence Against Women has become an important step in Türkiye and has brought substantial improvements to the protection system for victims.

Türkiye is continuing its efforts to increase the participation of girls in education and to remove sexist language, pictures and expressions which perpetuate gender stereotypes from textbooks. Besides the application of active labour programmes and the provision of social security incentives to companies, the Government has taken the necessary measures to ensure better working conditions, equal pay for work of equal value, lifelong learning, flexible work schemes, and a fair balance between family life and work to increase women's participation in the labour market. Despite an increase in the ratio of women in decision-making processes, we still have a long way to go to achieve the desired level of political representation of women in Türkiye. We are confident that the ILO's continuous efforts and commitment on this issue will contribute substantially to building the transformative agenda for gender equality that is urgently needed in the world of work and will guide constituents in effectively bringing about this transformation.

Worker member, Netherlands – The Netherlands is one of the very few ILO Member States that has ratified all three Conventions covered by this General Survey. By doing so, our country has shown its commitment to the realization of gender equality and to a comprehensive approach to addressing any gaps and barriers. And this is of course very laudable.

However, in practice, discrimination persists against women, and particularly against pregnant women and mothers, despite the legislation in place to prohibit such discrimination.

According to the Netherlands Institute for Human Rights, 43 per cent of pregnant women experience some form of discrimination. Women working on temporary contracts are particularly vulnerable to discrimination and to losing their employment. In an increasing flexible labour market, this makes women and pregnant women all the more vulnerable.

The Netherlands Trade Union Confederation (FNV) and the National Federation of Christian Trade Unions (CNV) acknowledge the Government's efforts in the Pregnancy Discrimination Action Plan of 2017. However, we remain sceptical as to the lack of sanctions imposed on employers. Women are the focus of the action plan, even though they are the "victim", not the perpetrator. The second pillar of the Action Plan focuses on raising awareness of the rights of pregnant women and the third pillar focuses on getting women to report incidences.



Even though both are necessary, FNV and CNV stress that employers should assume their responsibility and should be sanctioned when they break the law.

As reaffirmed by the Committee of Experts in the General Survey, we also recall that employers and their organizations have an important role and responsibility for the realization of gender equality at work. There needs to be greater commitment by employers to promoting societal change, starting with more family-friendly enterprise cultures. The State should support such changes at the enterprise level through incentives and sanctions.

Finally, we want to recall that maternity protection is a precondition for gender equality and that both maternity protection and the protection of workers with family responsibilities are essential to promote gender equality and close the gender pay gap.

Therefore, it is of key importance to ensure that broader national policies on gender equality systematically include measures for maternity protection and for workers with family responsibilities.

Government member, Saudi Arabia – We would like to commend the role of the Committee of Experts in selecting the topics of the General Survey and we stress the importance of the instruments that have been covered by the General Survey this year, as they have a significant impact on achieving the basic principle of equal opportunities and treatment between men and women in the world of work. We also thank the Committee for its continuous support to Member States in promoting compliance with international labour standards.

The Kingdom of Saudi Arabia ratified Convention No. 111 in 1978. We conducted a fundamental reform at the legal and institutional levels in order to promote equal opportunities between women and men in all fields, including the field of work. The Government of Saudi Arabia issued in early 2023 a national policy to encourage equal opportunities and equal treatment in employment and occupation. The policy was adopted following a series of deliberations and efforts made in coordination with the social partners and with technical support provided by the ILO under the cooperation programme signed in 2018. This was preceded in 2020 by the abolition of restrictions on women's work in the Saudi Labour Code with regard to professions in which it was forbidden to employ women and for them to work at night. The Government has set a national target to include women's participation in the labour market to reach 30 per cent by 2025, yet we have succeeded in exceeding this target already reaching 37 per cent in the third quarter of 2022. It also encourages continuous learning and training opportunities with values, initiatives and projects within the human capacity development programme, which is included in the Kingdom's vision for 2030. We have launched a package of training products aimed at workers and jobseekers, both women and men. The Government is also working to encourage all nationals to be pioneers in science, technology, engineering and mathematics (STEM disciplines) as a part of its national policy on the digital economy. The Kingdom has also issued unified regulations on the work environment, defining the main criteria that must prevail in the work environment for all women and men alike. This regulation prohibits discrimination in wages between women and men for work of equal value. It provides for the right to a healthy and safe environment for all without discrimination.

My country is aware of the urgent need to ensure the protection of everyone from violence and harassment, especially in the world of work. In 2018, the Government issued a law to combat harassment and adopted regulations for the protection against behavioural abuse at work, as well as a national policy on occupational health and safety. The Government has taken concrete measures to protect motherhood, starting with providing



paid maternity leave in the Labour Code and prohibiting the dismissal of women during this leave and during pregnancy. It has also introduced the national programme called Qurrah to provide care for the children of working women. The Kingdom's laws also include provisions regulating maternity and paternity leave.

In conclusion, the Government stresses the importance of international labour standards in light of the challenges and renewed developments in the world of work and also within the framework of the United Nations Sustainable Development Goals for decent work and gender equality. We commend the efforts of Member States in achieving these goals. I reiterate my thanks to the Committee and the Committee of Experts for their key roles in following up compliance by Member States with international labour standards.

Government member, Canada – Canada would like to begin by warmly thanking the Committee of Experts for its meticulous and diligent work in producing this important General Survey on gender equality at work.

Canada is firmly committed to the values of equality and equity at work and constantly strives to promote and implement programmes and policies aimed at achieving real equality in the world of work for all Canadians. Canada is even more committed to promoting gender equality on the international stage and in the ILO, in the knowledge that, without such equality, there can be no true social justice and universal and lasting peace. The General Survey sheds light on the global framework governing gender equality in the world of work, as well as the various understandings of discrimination, which are an evolving phenomenon. These different understandings remind us of the need to define precisely what is meant by discrimination and to establish a comprehensive regime of prohibitions in order to combat effectively all forms and grounds of discrimination at work. It is also necessary to reassess legislation, policies, programmes and the means of measuring their effectiveness on an ongoing basis in order to adapt them to the changing circumstances of the world of work. In this vein, the General Survey highlights various programmes, policies and initiatives that are being implemented by ILO Members at the national level to combat the different forms of discrimination at work. These initiatives can inspire other Members of the Organization, which demonstrates the importance of the General Survey.

The General Survey also reminds us that some workers are more likely to find themselves in a situation of vulnerability in the work environment, due to their personal situation or their membership of a group that has historically suffered discrimination. This includes members of the LGBTQI+ communities, who are discriminated against on the basis of their sexual orientation or gender identity. It is therefore important to continue working to ensure the integration of all these workers in the labour market on an equal footing with other members of society, and to adopt proactive measures for their professional development. Moreover, the pandemic exacerbated an already existing phenomenon, that is that girls and women generally take on more family-related responsibilities. It is more important than ever to implement practical measures to remove the obstacles that prevent women and girls from entering and progressing in the labour market on an equal footing. These include access to continuing education and training, leave for parents and those providing care, access to care and to childcare services, health and safety at work for pregnant women, various working arrangements and social protection for women and carers, and the need for equal pay for men and women.

Similarly, the General Survey shows that achieving real gender equality necessarily implies greater protection for members of LGBTQI+ communities, who are disproportionately discriminated against throughout the employment cycle, from access to



education to access to the world of work. It is therefore imperative to take the necessary measures to remove all the structural barriers that prevent them from gaining equal access to training and apprenticeships, as well as the labour market, including of course their development, promotion and development on the labour market, and to combat all forms of violence and sexual and psychological harassment against them. States have the duty to combat the socio-cultural prejudices that fuel the barriers, marginalization and exclusion of members of LGBTIQ+ communities within their societies.

Finally, the General Survey reminds us that action to combat discrimination is an ongoing challenge and that there is always room for improvement. The fight against all forms of discrimination, whatever the grounds, is an ongoing battle that requires constant vigilance to ensure that no one is left behind, and that workers have a working environment in which they can flourish and achieve their full potential. Action to combat all forms of discrimination, irrespective of the form it takes, is at the heart of the ILO's mandate to protect and defend the most vulnerable and marginalized, and Canada is more determined than ever to support it unreservedly.

Government member, Republic of Korea – First of all, I would like to thank the Office for publishing this General Survey. We are pleased to observe the relevant policies in each and every country and to be able to reflect them in designing our country's policy to build a world of work where male and female workers are equally respected.

The main cause of the gender wage gap is the issue of career discontinuity during childbirth and childcare and, to address this, the Korean Government is strengthening support for pregnancy, childbirth and childcare. For example, maternity leave benefits have increased by 30 per cent since 2018. The age requirement of eligible children has been extended and the duration and benefits have been extended in relation to fertility treatment leave and reduced working hours. After childbirth, we are extending workplace childcare centres not only in large companies, but also in small and medium-sized companies.

In addition, to reduce discrimination between genders within the workplace, the Equal Opportunity and Work-Life Balance Assistance Act stipulates affirmative action. And we analyse and compile the status of male and female employees and managers at workplaces with 500 or more employees, as well as all those in the public sector, and publish a list of companies that do not meet the relevant standards.

The Korean Government has also been operating the Correction System for Gender Discrimination in Employment since May 2022, which allows the Government to order companies to stop discrimination, improve working conditions and compensate for it, including punitive damages.

Furthermore, we are supporting women to enter high-quality jobs by expanding vocational education and training in promising fields, such as IT and bio-industry. As a result, the gender wage gap has been reduced since 2017, as the above policies have been effective. And even in the challenging situation of COVID-19, the employment rate of women increased in both 2021 and 2022.

Lastly, I would like to request corrections to the General Survey. There are some parts of the General Survey regarding the Republic of Korea that need to be updated. Paragraph 672 of the General Survey states that “the duration of parental leave for families was increased in 2019 in the Republic of Korea from 52 days to 104 days”. However, the relevant laws in the Republic of Korea grants one year, or 52 weeks, of parental leave to each parent, for a total of 104 weeks of parental leave. Second, paragraph 686 of the General Survey states that the



average rate of earnings replacement for the parental leave period in the Republic of Korea has increased from 40 per cent to 58 per cent. However, following the amendment of the relevant Act in 2022, 80 per cent of the ordinary monthly wage is provided to those on parental leave.

The Korean Government will continue to make various efforts to ensure gender equality at workplaces.

Government member, Brazil – On behalf of the Government of Brazil, I would like to start by expressing our thanks for the General Survey prepared by the Office, which examines the application of Conventions Nos 111, 156 and 183 and their respective Recommendations through the lens of gender equality, addressing the issues of non-discrimination on the ground of gender, maternity protection and workers with family responsibilities. We also commend the General Survey's conclusion, which draws attention to the interrelation between the issues addressed and the six instruments analysed.

Following a period of regression in terms of gender in our country, I am pleased to report the action taken recently by its democratically elected Government, which respects all women. In March 2023, the Government of Brazil submitted to the National Congress a set of proposals on gender equality in the world of work, including in relation to ILO Convention No. 156 and Convention No. 190, as well as a bill providing for wage equality for women and men in the same work.

In line with the Conventions examined by the Committee of Experts, the Bill recently adopted by our National Congress establishes equal wages and remuneration for women and men for work of equal value, or with the same functions, and emphatically prohibits distinctions based on sex, race, ethnicity, origin or age. It provides for fines for non-compliance and transparency measures to monitor compliance, as well as requiring companies to present plans to reduce wage inequality.

In accordance with the new legislation and the Convention, and with the aim of implementing and regulating the measure, an interministerial working group has been established to draw up a national policy for wage and employment equality for women and men. The national wage equality policy has been further strengthened by the country's recent accession to the Equal Pay International Coalition (EPIC), a joint initiative by this Organization, UN Women and the OECD.

Brazil has protected maternity and children from the outset of the consolidation of its labour laws, and more recently, in 2018, this protection was extended to adoptive parents and adopted children, in addition to the introduction of other specific policies to extend maternity and paternity leave. However, we know how much care weighs in the work life of workers, and more specifically and disproportionately on women, and accordingly in March this year another working group was created to design a national care policy and programme. This working group will propose comprehensive policies to guarantee the right to care of all persons who require it, as well as decent work for workers in the care sector. It will also value, redistribute and reduce care work, thereby alleviating the burden of unpaid domestic work and care that falls mainly on women, allowing them to free up their time so that they can exercise their rights in other areas and in their lives.

In accordance with Convention No. 156, the national care policy that is to be developed will aim to articulate family and work responsibilities and the equitable distribution of household responsibilities. Therefore, as suggested by the Committee of Experts, the working group's activities include dialogue with civil society representatives.



Another issue highlighted by the Committee of Experts in relation to Convention No. 111 is the persistence of occupational gender segregation. In line with the suggestion of the Committee of Experts that specific scholarships and courses should be introduced for the vocational training of women in areas dominated by men, the Government of Brazil signed a decree establishing a national policy for the inclusion, retention and promotion of girls and women in science, technology and innovation. It has also reactivated a vocational and technological training programme to accompany an increase in school attendance by socially vulnerable women.

The measures being implemented in Brazil demonstrate the country's return to its role on the international stage as a pioneer of gender equality and social justice in general. They also reflect its resumption of its role as a partner and advocate of the ILO, the Organization's values and its mission to advance social justice and promote decent work for all.

We believe that the measures adopted have set us on the course of equality, based on recognition by the State and society of the rights of all persons involved in the world of work, because workers are vital to building an equalitarian and just society.

Government member, Côte d'Ivoire – The Government of Côte d'Ivoire commends the Office on the quality of the General Survey, which addresses gender equality through six international labour instruments. The provisions of these instruments, whether ratified or not, contain solid guidance to help all Member States achieve gender equality at work. Indeed, gender equality is no longer optional. Rather, it is a collective commitment and a major challenge for all the tripartite constituents in view of its cross-cutting nature and the concerns that it raises. We have to show the sustained and total will to achieve it. For this reason, since the adoption of the ILO Centenary Declaration for the Future of Work in 2019, which has become a priority, our country has spared no effort in implementing and accelerating measures to achieve SDGs 3, 5 and 8 by 2030.

With reference to discrimination in employment and occupation, for which the respective Convention has been ratified by our country, the judicial and institutional framework prohibits discrimination in this respect. Protection against discrimination and the promotion of equality are enshrined in the following non-exhaustive provisions of laws and regulations: Act No. 92-570 of 11 September 1992 issuing the General Public Service Regulations, which is currently being reformed; section 4 of Act No. 2015-532 of 20 July 2015 issuing the Labour Code; Act No. 2019-574 of 26 June 2019 issuing the Criminal Code, as amended by the Act of 21 December 2021, which punishes all forms of discrimination, particularly in section 227; and Decree No. 2018-456 of 9 May 2018 on the employment of persons with disabilities in the private sector.

The implementation of these provisions required the recruitment, by way of exception, of 2,100 workers with disabilities in the public service between 1997 and 2022, the establishment of a 30 per cent quota for women in elected assemblies, the creation of technical guidance and occupational reclassification committees in the private sector and the public service and the readjustment of the guaranteed interoccupational minimum wage and, subsequently, of minimum wages by category irrespective of gender. Measures have also been adopted to facilitate the reconciliation of work and family responsibilities, including changes to grant additional paid leave and the introduction of teleworking through a 2021 ordinance amending the Labour Code. Teleworking offers the parties the possibility to make the employment relationship more flexible and to combine the demands of work and the family in a manner that suits them. Moreover, the various social protection mechanisms established by the Government (the Social Protection Institute (IPS), the National Social



Welfare Fund (CNPS) with the scheme for self-employed workers and the National Health Insurance Fund) offer workers greater well-being so that they are able to fulfil their family responsibilities adequately. The Government is also particularly attentive to decent work, which seeks to protect the safety and health of workers in general, and of pregnant women in particular. The legal framework in this regard was reformed and has been strengthened by Decree No. 2021-919 of 22 December 2021 on the protection of pregnant women at work, which has been added to the provisions of the Labour Code on maternity leave and nursing breaks.

The challenge that we have set ourselves is to improve the working and living conditions of workers, and the action and measures developed for that purpose have been formulated through the inclusive tripartite social dialogue introduced in Côte d'Ivoire. Mature social dialogue takes place in bipartite and tripartite structures, such as the Standing Independent Dialogue Committee (CIPC), the Labour Advisory Commission (CCT) and the Tripartite Advisory Committee on International Labour Standards (CCTNIT), and offers the means of evaluating the impact of the measures adopted, identifying their shortcomings and developing appropriate corrective measures. However, further effort is required for ratification in view of the low number of States that have ratified the three Conventions examined in this General Survey, that is 20 countries out of 187. In the movement towards ratification, which has served to pave the way for greater commitment and action, Côte d'Ivoire has adopted many measures, strategies and programmes to resolve inequalities of all kinds. This constant challenge is always central to our reflection.

Government member, Senegal – The Government of Senegal commends the quality of the General Survey produced by the Committee of Experts, the theme of which is gender equality at work, which is a major concern of the ILO. Indeed, achieving gender equality at work is one of the commitments made by the ILO in the 2019 Centenary Declaration for the Future of Work.

The Government of Senegal reiterates its commitment to achieving gender equality at work. This highly relevant commitment is reflected in the adoption of a number of measures aimed in particular at ensuring equality in employment and occupation in order to combat discrimination at work more effectively. Hence measures inspired by the Conventions on non-discrimination at work, on the one hand, and maternity protection, on the other, have been adopted, in the form of two laws. One is concerned with providing protection for pregnant women; the other is about non-discrimination at work. With regard to protection for pregnant women, Act No. 2022-02 of 14 April 2022 issuing the Labour Code has introduced a major innovation. From now on, it is prohibited to dismiss a woman worker on the grounds of pregnancy. With regard to non-discrimination at work, Act No. 2022-03 of 14 April 2022, amending and supplementing certain provisions of the Labour Code, defines the different forms of discrimination at work, describes their manifestations, lays down the obligations and responsibilities of employers in this area, penalizes persons who commit infringements in terms of discrimination at work, and provides for the establishment of a National Observatory of Discrimination at Work (ONDT). Furthermore, Decree No. 2021-1469 of 3 November 2021 concerning the work of pregnant women has removed all restrictions on work for women. Hence there are no longer types of work which are prohibited for women. Now women can freely choose the jobs which they wish to do.

In addition, the Government, with the support of the ILO Country Office, has set up a national tripartite committee on follow-up action to the ratification of Convention No. 190. The tripartite committee has carried out a number of activities, including a study on violence and harassment in the world of work and another comparing national laws and regulations



with Convention No. 190 and Recommendation No. 206. In other words, the Government of Senegal is firmly committed to ratifying Convention No. 190. Indeed, all the technical measures for the ratification of this instrument have been adopted.

Lastly, with regard to the Government's objective to achieve gender equity and equality, in accordance with the National Gender Equity and Equality Strategy (SNEEG), the Ministry of Labour has drawn up a Gender Strategy 2022–26, outcome 4 of which is to develop initiatives promoting the reduction of gender inequalities in the sector, with the particular aim of installing creches in enterprises. This important document will result in the institutionalization and mainstreaming of gender in organizational mechanisms and procedures and in instruments for action, such as development policies and programmes in all sectors of political, economic and social life. It is worth mentioning that, at the institutional and legal levels, remarkable efforts are being made to reduce gender inequalities, and also to reduce exclusion and marginalization.

The Government remains open to any proposal aimed at improving the national legislation in order to ensure better conditions for workers with family responsibilities and the principles of gender equality at work.

Government member, Colombia – We support the statement by GRULAC. The Government of Colombia thanks the Committee of Experts for the preparation and presentation of the General Survey. The relevance of the instruments examined for current discussions on the promotion of equality at work and the equitable distribution of care responsibilities offer a valuable opportunity to study the potential of these instruments for the promotion of effective measures and the rectification of shortcomings.

The images that emerged from the COVID-19 pandemic have demonstrated the importance of recognizing care work in macroeconomic structures and in economic systems and analysis. However, this subject remains a challenge.

Even though Colombia has ratified Convention No. 111, the Committee of Experts has indicated a number of actions that we must take regarding legislation to bridge the gaps in relation to the Conventions we have ratified. In this regard, and since our Government considers the recommendations made by the ILO supervisory bodies to be of vital importance to make progress in delivering on the commitments that we have entered into as a country, the Government of change has presented two structural reforms which respond to the ILO's requests.

The Pension Reform Bill will enable us to strengthen the old-age protection system, making it fairer and more financially sustainable. It is structured around four pillars and, in the case of women, contributes to overcoming gender inequalities.

In the case of Colombia, the ILO has shown that gender bias in the design of the pension system affects the income security of women affiliated to the individual savings scheme.

The greater longevity of women and the fact that gender-differentiated mortality tables are applied to calculate the level of benefits implies that, to be entitled to an old-age pension, women are required to save a significantly greater amount than men.

Hence, the design of the current structure of the system perpetuates the gender inequalities of the labour market, compromising the basic income security of older women.

This situation is addressed in the Pension Reform Bill, which provides for a reduction in the minimum number of weeks required for entitlement to a pension by 50 weeks for each



child, up to a maximum of three children, that is a total of 150 weeks in compensation for care work.

Moreover, the draft labour reform has included various initiatives to improve the working situation of women in the country, such as: the prohibition of discrimination against women and LGBTQI persons at work; the prevention, punishment and measures to address gender-based violence and harassment at work; the reduction of the gender wage gap; the formalization of paid domestic work; the provision of maternity and paternity leave on equal terms; the balanced participation of women in representation and negotiation mechanisms in the world of work; and the implementation of flexible working arrangements enabling women to combine their work with childcare and family responsibilities.

These initiatives, which form part of the labour reform, recognize the care burden borne by women, which prevents them from finding and retaining formal jobs.

We are therefore grateful to the ILO for the support it has provided to us for the development of the reforms and we hope that it will continue to support this process until its approval by Congress.

We appeal to the tripartite constituents to ensure that through social dialogue we move towards protection for workers and we firmly hope that Congress will move forward decisively on the proposed reforms and does not miss the historic opportunity to deliver for workers and make the transition towards a country in which the rule of law prevails.

The Ministry of Labour has created an elite group on gender, including women labour inspectors, to promote gender equality. Moreover, Colombian legislation establishes maternity protection for all women without any discrimination.

There are also explicit regulations governing the payment of maternity leave. However, in addition to the labour reform proposals referred to above, and in order to continue with maternity protection, Colombia is making progress towards the ratification of the Convention No. 183.

Lastly, with regard to the integration of women into the labour market over recent decades, the work of caring for dependent young persons and adults, as well as domestic work, continue to be largely the responsibility of women.

In this regard, we would like to announce here with great satisfaction that the law ratifying Convention No. 156 has just been adopted.

Government member, Algeria – The General Survey consists of an in-depth analysis of the difficulties encountered by women in gaining access to decent work, and describes the measures required to ensure them a better future at work, in accordance with the relevant international instruments. It shows that the obstacles that women face exist not only throughout their careers, but also at a much earlier stage. The General Survey questions the apparent disinterest of women, which may explain their particularly low labour market participation in certain countries.

Moreover, inequalities in time allocations in households weigh heavily on the development of professional equality between women and men and are a significant barrier to parity at work. In this respect, the Algerian delegation favours an integrated approach. The ILO is therefore called on to assist Member States in ensuring the coherence of the measures adopted in the framework of family, employment and social protection policies and action to combat all forms of discrimination at work, to enable women to be integrated into professional life and take part in decision-making processes.



Algeria considers that the obstacles lie, first and foremost, in the specific framework of societies as a whole. From this point of view, society, family and school play a major role. Women themselves ultimately accept social constraints, refusing to take responsibility in their lives. To overcome this, the Algerian delegation supports the General Survey's approach of calling for specific objectives, with follow up and evaluation, for working-time arrangements, the development of public childcare services and the adoption of measures and incentives for the sharing of parental work, the improvement of working conditions, and the prevention of and action to combat gender-based violence and harassment. It is also important to achieve a balanced representation of women in decision-making, dialogue and bargaining structures. The significant number of women present in these structures will no doubt contribute to achieving gender equality at work and in cultural, political, economic and social development.

Nevertheless, Algeria considers that issues of sexual orientation and gender identity, as formulated, may come up against certain fundamental principles and values of our societies. In this context, and on this particular issue, my country endorses the positions expressed by the African and Arab groups and the Organization of Islamic Cooperation.

Finally, the Algerian delegation has noted with great interest the conclusions of the General Survey, which should challenge us all to bring national legislation into conformity with international labour standards with a view to correcting the existing imbalance between women and men in terms of their capacity to enjoy equal respect, equal protection and equal promotion of their fundamental rights at work.

Government member, Nigeria – Nigeria welcomes the General Survey of the Committee of Experts and notes that this is the first occasion on which the topics of gender discrimination, maternity protection and the situation of workers with family responsibilities have been considered together in a General Survey.

It is indeed worrying to observe from the General Survey that projections for the closure of gender gaps at work are more than two centuries away.

Nigeria supports the Committee of Experts' call for Member States of the ILO to consider denouncing the Night Work (Women) Convention (Revised), 1948 (No. 89), and further supports the Committee's call for ratification of the Night Work Convention, 1990 (No. 171), and the Protocol of 1990 to Convention No. 89.

However, Nigeria cannot align itself with the Committee of Experts' call, in paragraph 97, for Member States of the ILO to address existing legislation regarding certain relationships, such as same-sex relationships, that are not legally, socially or culturally accepted in the country. Nigeria holds the carefully considered view that this does not fall within the spirit and original intent of Convention No. 111, and hereby states that, within the context of the definition of discrimination in the Convention, that is "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation", Nigeria will continue to review its legislation accordingly.

It is Nigeria's carefully considered position that all forms of gender-based discriminatory legislation and family relationships preventing women and men from participating equally in the world of work as a result of societal stereotypes should be reviewed by all ILO Member States.

Maternity discrimination, or the unfair treatment of women due to pregnancy or maternity, is prohibited under several Nigerian laws and policies. However, more work



remains to be done. Despite the following legal protections, many women still face discrimination, losing their jobs or suffering adverse treatment due to pregnancy or maternity: (i) the Nigerian Constitution has provisions that prohibit discrimination based on gender, including pregnancy and childbirth; (ii) the Labour Act prohibits the dismissal of female employees during their maternity leave and entitles female employees to take maternity leave without loss of pay; (iii) the National Gender Policy promotes equal opportunities for women and acknowledges that maternity should not be a barrier to career progression; (iv) the Discrimination against Persons with Disability (Prohibition) Act 2018 prohibits discrimination against women with disabilities, including in relation to pregnancy and childbirth; and (v) although Nigeria has not ratified Convention No. 183, it recognizes the right of female workers to safe and healthy working conditions during pregnancy and after childbirth.

Despite these legal protections, some employers still engage in discriminatory practices against female workers who become pregnant or have children. There is an obvious need for increased awareness, education, and enforcement of these laws and policies to ensure that women are not discriminated against in the workplace due to pregnancy or maternity.

In conclusion, Nigeria further notes the Committee of Experts' observation that discrimination based on sexual orientation and gender identity is included within discrimination based on sex by several communications from the Office of the United Nations High Commissioner for Refugees (UNHCR) based on the provisions of the International Covenant on Civil and Political Rights (ICCPR). Nonetheless, Nigeria's position on this is in consensus with its social partners.

Government member, Egypt – The Government welcomes the efforts of the Committee of Experts and the General Survey on gender equality in the workplace. We reaffirm its importance, as well as that of its conclusions, and we welcome its focus on the measures undertaken in countries to put a stop to discrimination and to promote equal pay and integrate technological progress. Egypt has made a great deal of effort in this area. We have a workplan for gender equality and Ministerial Decisions from 2022, which reaffirm the importance of not making women work at night or in certain professions. We also have a National Council for Development Projects which seeks to promote the emancipation of women economically.

We agree with the content of the General Survey, but firmly reject what is said with regard to innovations that are not covered by international law or international humanitarian law. This very much relates to the guidance on gender and we suggest to avoid areas where there are such different views between countries. We would recommend that such language be avoided if there is no global agreement on it. I think this is particularly important in regard to a decision coming from this particular Organization.

Observer, Public Services International (PSI) – PSI, the trade union that gives voice to women public service workers around the world, welcomes the exhaustive analysis in the General Survey of the global and national contexts in terms of positive trends and the effective conditions of gender equality at work. We also commend the thorough description in the General Survey of the efforts made to close gender gaps and its message that all of this is still insufficient. The confirmation by the Committee of Experts is fundamental of the interrelated and interdependent nature of international labour standards, and in order to continue closing gender gaps it is impossible to overlook the indivisible nature of these standards which, in addition to Conventions Nos 111, 156 and 183, examined in the General Survey, also include: Convention No. 100 and Convention No. 190; the Freedom of



Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), on freedom of association; and the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154), which relate specifically to the public sector. We wish to take this opportunity to highlight Convention No. 156 due to our interest in rebuilding the social organization of care, since that Convention addresses the five “Rs” of our care manifesto, that is, recognizing, reducing and redistributing unpaid care work, which falls mainly on women, as well as rewarding and representing paid women care workers. The final “R” is also crucial: reclaiming the public nature of care, which is a public good, and highlighting the vital role of the State in funding it and providing comprehensive public care services and systems. We therefore wish to propose two central themes that we hope may be considered in the conclusions of this session. Firstly, the redistribution of family responsibilities between workers must be promoted in tandem with the provision of public services, and joint responsibility for care must be understood as falling under the management and oversight of States. Lastly, we wish to recall that the General Survey provides an opportunity to promote commitment to increasing the ratification and implementation of Convention No. 156 at the current significant time in the building of national care systems with public workers and decent work.

Observer, Education International (EI) – I am speaking on behalf of the 32 million teachers affiliated to Education International.

The General Survey proposes a set of proactive measures, particularly in and through education, to encourage the presence of women in employment and positions of responsibility. These measures are essential to combat vertical segregation between men and women and create an environment conducive to genuine gender equality in the workplace. Unfortunately, archaic and stereotyped models and social and cultural representations of men’s and women’s roles and capacities continue to influence educational and professional choices. Barriers to vocational training, and consequently to women’s employment, are often based on gender norms and stereotypes related to the social roles attributed to each sex, as well as prejudices and preconceived ideas about competences.

My colleague from PSI has just stressed the need for governments to properly fund quality public services, particularly schools and training centres. With regard to positive initiatives, the General Survey refers to several examples of efforts to promote gender equality in education and training. In Australia and Jamaica, for example, information campaigns have been launched to encourage girls’ interest in certain fields of study, notably STEM (science, technology, engineering, mathematics and information technology). In Norway, there are initiatives offering less gendered education, by encouraging applications from men for healthcare and girls for technology. In Cabo Verde, teachers have been trained in gender equality, particularly in areas where gender-based violence is widespread. Challenging gender stereotypes in schools and among educational staff is crucial. This helps to transform behaviour, norms and practices. As teachers’ unions, we know that parents and educational staff tend to encourage obedience, meticulousness and empathy in girls, while temerity, physical skills and a competitive spirit are valued in boys.

It is essential for vocational guidance and training measures to facilitate the access of women to a wider choice of training courses. Selection criteria and quotas can be adopted, and financial support measures and distance learning services can be put in place to facilitate women’s participation. It is also important to develop quality childcare services to support parents and encourage women’s participation in education, vocational training and employment. It should be noted that the pandemic, marked by working from home and the



closure of many public services, including schools and day-care centres, led to increased levels of stress and malaise, particularly among women. Hence the interest of trade unions in regulating teleworking and periods of disconnection.

Finally, I would like to conclude with a thought for the more than 4 million Afghan girls deprived of secondary and higher education, as well as the more than 20,000 Iranian female pupils who were injured in the gas poisoning phenomenon that began last November at the height of the “Women, Life, Freedom” protests. The poisonings affected 325 schools in 29 of the 31 provinces in the country. Many parents have withdrawn their daughters from school, fearing that they will be targeted by the gas attacks. This withdrawal means that fewer girls are taking their exams at the moment, jeopardizing the continuation of their studies.

Observer, International Transport Workers’ Federation (ITF) – Occupational segregation along gender lines persists in many industries, including the transport sector. My organization is a dedicated advocate against the myths and stereotypes relating to gender roles and gender bias that dominate patterns of employers’ action and inaction, perpetuate discriminatory national laws and policies, and reinforce an historic and enduring male-dominated transport sector. In 2020, women made up just 1.28 per cent of the overall global seafaring workforce of 1.8 million. Since then, the cruise and ferry industries, which are key sectors for women seafarers, were brought to a halt during the COVID-19 pandemic. Even in public transport, where women represent more than half of passengers, fewer than 15 per cent of public transport workers are women.

The ITF refers to gender-based occupational segregation by what we think is its true name: the systemic exclusion of women workers from decent work. It is not a passive natural circumstance, but the result of decades of state laws and policies actively supporting archaic misinformed stereotypes in relation to gendered capabilities, competencies and potential. They affect women’s aspirations and deprive them of opportunities throughout education, training, recruitment, promotion and retention, in contravention of Convention No. 111.

The General Survey notes that structural inequalities that exclude women from decent work apply both horizontally and vertically – that is, both by sector and in the hierarchy of more well-paid, stable and respected roles in an industry, for example in transport, in train driving versus ticket selling. Horizontal segregation is not only about the distribution of roles in one company or industry, but also how they arise, with women often engaged in services on the sidelines of an industry, such as cleaning, catering and ticket inspection. This explains women’s over-representation in informal work, with lower job security, lower salaries, fewer social and labour protections, increased risks of automation, and less access to information on workers’ rights or opportunities to organize in unions. Occupational segregation is a root cause of gender inequality and a barrier to women’s full and equal participation. It is the single largest cause of the gender pay gap, accounting for more than half.

In many industries, women are not welcome, comfortable, provided for or safe. The General Survey reiterates its concern over direct discrimination by States legislating to prohibit women working in particular sectors or at night, by stating that blanket limitations on the basis of sex or gender or based on any stereotypical perceptions about their capabilities and appropriate role in society, are contrary to Convention No. 111. Indeed, these are misguided attempts to protect women from dangerous working conditions, which are hazardous for any worker, regardless of gender. The focus should instead be on measures to offset any scientifically supported gender differences in health risks, and also to avoid indirectly discriminating against women workers. Our experience shows that bringing women into the workplace benefits the occupational health of both men and women



workers, through improved conditions and safety records. Where women transport workers have won improved sanitation facilities, for example, men workers also benefit. Sanitation provision, including frequent and prompt access to adequate, clean and safe bathroom facilities, is a human right and a simple dignity, but also an often ignored contributing factor to the systematic exclusion of women.

Discrimination under Convention No. 111 may arise either directly or indirectly. This risks further indirectly discriminating against specific groups of women. Pregnancy directly increases the health risks of a lack of sanitation, with particular impacts extending to post-partum, menstruating and menopausal workers. Women transport workers regularly report losing out on job appraisals on the grounds that, particularly in the case of pregnant workers, they have accumulated too much “lost time” caused by using toilets more frequently or for a longer time. Non-provision of adequate sanitation could amount to maternity discrimination under the Convention as well. Occupational segregation is one of the most insidious aspects of gender inequality in the labour market, since it is accompanied by lower pay and worse working conditions in female dominated occupations. States, employers and even unions, in terms of the better representation of women in leadership, need to do more to end this terrible phenomenon.

Observer, Confederation of University Workers in the Americas (CONTUA) – We would like to begin by highlighting the importance of the General Survey, which provides a comprehensive overview of the Conventions that are examined and their application by Member States.

The perspective that we wish to share with Committee members is based on the cross-cutting nature of the standards examined, which regulate labour rights that have taken on new meaning in the light of the social transformations brought about by successive waves of feminism.

These Conventions give expression to the victories of workers, particularly women workers, which reflect a specific time and context, but which, owing to the dynamic nature of labour relations, which are in a constant state of change and development, require constant updating and review. Standards influence, and are influenced by technological change, but fundamentally they are interrelated with, articulate and feed social and cultural change.

We have learned during this period that the gender perspective needs to be taken into account in standards, their application and interpretation. More recently, we have learned that an intersectional approach is also required to ensure effective protection, taking into account structural inequalities as a starting point.

The gaps are not only economic, but have many other causes that we must address.

We have learned more recently that it was wrong to talk about the care economy, that this perspective was inadequate, and that there is a need to discuss a new social organization of care that breaks away from the patriarchy that continues to burden women.

The General Survey is an important resource that the trade union movement values as a contribution to our intention to insist on the need for this Organization, the home of tripartism, to place a standard-setting discussion on the subject on its agenda.

We have also learned that maternity is not the exclusive result of the life plans of heterosexual couples, and that there are families that are based in diverse relationships and, in many cases, that single people decide to have children with the assistance of medical advances, resulting in new single-parent families. The scope of application of the standards



regulating maternity protection has therefore broadened, and we must be able to extend rights to respond to the new cases that are emerging.

We have also learned that standards that regulate human and labour rights, and all standards, must break away from the binary logic of interpreting gender. We must therefore broaden the scope of the Conventions under examination to adapt them to the new circumstances, extending their interpretation so that they cover all persons in need of the warmth of protective rights.

The General Survey encourages us to reconsider what has been written and adopted, to find a new contextual interpretation, and I could say to adopt a feminist perspective when interpreting the standards covered by the General Survey. States, employers, trade unions, judges and academics all have to reinterpret standards.

The Committee of Experts indicates where the path to change lies. It invites us to make progress through the stimulus of institutionalized social dialogue and collective bargaining.

Conventions Nos 98, 151 and 154 are fantastic tools to guarantee and extend rights. The great progress in protection propelled by the ILO since 1919 has materialized through collective agreements that have extended coverage at the national level through legal provisions and public policies.

While Convention No. 111 was of great importance in its day, it needs to be updated in the light of new discriminatory phenomena, the effects of which are aggravated by current labour practices and new communication media and algorithms. We must be capable of building a new conceptual definition that more fully encompasses discriminatory practices in the world of work.

We want greater protection for maternity and families, of all types. We want to address soon the debate on the new social organization of care. We want to link the General Survey and this discussion to the problems created by wage inequality and the glass ceiling. We want these issues to be prioritized, not only for women in these discussion forums. Ultimately, we want the ILO to be open to the wonderful message of equality of the feminist movement.

Government member, Sweden – Again, I am speaking on behalf of the **European Union and its Member States**.

First, we wish to thank all the constituents who have shared their views on the General Survey of the Committee of Experts. We are compelled to react to some remarks that have been made, and notably, that concepts that are not universally agreed should not be included in ILO documents. We would like to remind the constituents that the report of the Committee of Experts is independent and impartial, based on inputs from Member States' governments and social partners. It is factual and looks, among others, at how countries apply Article 1(1) of Convention of No. 111. We would like to underline, and decisively support the independent mandate and autonomy of the Committee of Experts to monitor and analyse the application in law and practice of any ILO Convention.

Employer members – Before I get to my closing remarks, I would like to just conclude on my earlier remarks and I will start with Chapter 4 of the General Survey, but within the time that you have allocated. In the framework of national policies to promote gender equality and the implementation of Conventions Nos 111 and 156, the Employer members would agree with the Committee of Experts' statement in paragraph 289 that educational measures, awareness-raising and public information are of key importance. The Employer



members would highlight that one important element can be awareness-raising and sensitization initiatives aimed at reducing existing inhibition thresholds and the absence of women and girls with regard to technical professions. Such initiatives are not only helping advance gender equality as a societal goal, but can also address the skills shortage in technical professions by unlocking the potential of qualified women. The Employer members would also stress the importance of the role of employers' and workers' organizations in the implementation of Conventions Nos 111, 156 and 183. In particular, employers' organizations could advise on innovative implementation options that are compatible with the needs of enterprises and which can also help prevent or reduce discrimination. The Employer members also believe that equal representation of women in decision-making positions in employers' and workers' organizations, as well as in tripartite social dialogue institutions, can serve as a model for promoting gender equality. They would also like to highlight that the ILO and the IOE recently conducted a survey on this topic among 95 Employer and Business Membership Organizations (EBMOs) worldwide. This survey will form the basis for a new report that will assess the representation of women in governance, leadership and management positions in EBMOs. It will also present the services provided by EBMOs to their members and contribute to improving gender equality and diversity and discuss success stories, as well as challenges, and how they can be overcome. This report will be published later this year.

In my concluding remarks, I shall first address Part III of the General Survey and then talk through the conclusions. In Part III, the Committee of Experts deals with the ratification prospects for Conventions Nos 111, 156 and 183, as well as proposals for related technical assistance and standards-related action. As for the possible further ratifications of these three Conventions, the prospects appear rather slim. Although Convention No. 111, a fundamental Convention, has already been ratified by all but 12 ILO Member States, there have been no concrete announcements or forthcoming ratifications, especially not from big countries such as Japan and the United States. With regard to Convention No. 156, apart from three countries that confirmed that they are considering ratifying the Convention, there are no concrete ratification prospects for this instrument. In terms of ratification obstacles, some countries referred to the broad scope of application of the Convention, which has to be applied to all categories of workers and does not allow for exemptions, as well as Article 8, which stipulates that family responsibilities as such shall not constitute a valid reason for termination of employment. With regard to Article 8, the Committee of Experts refers to its earlier explanations of this provision, but given that these explanations seem to encourage a further extension of protection against dismissal, this may be a reason for the reluctance of countries to ratify Convention No. 156. It should be noted that Convention No. 156 has not received any ratification in the past eight years. The instrument was adopted more than 40 years ago and may no longer be fully reflective of the needs of today. Finally, as regards the ratification prospects for Convention No. 183, the picture is not substantially different. Apart from one country that indicates it is in the process of ratifying the Convention, there are no further concrete announcements of ratification. Ratification obstacles here seem to be related to the length of maternity leave and the right to paid nursing breaks. The absence of information by most countries may also reflect a general lack of interest in ratification, related to hesitation to undergo the procedures and administrative burdens linked to ratification, such as pre-ratification assessments and changes in law and practice, reporting under article 22 of the ILO Constitution, as well as interaction with ILO bodies. The Employer members would invite the Office to get further information from countries and explore the reasons for non-ratification. In this context, the Employer members also call upon the Office to stress to governments the need for proper pre-ratification assessments, as well as



comprehensive consultation concerning the envisaged ratification and implementation of Conventions with free, representative and independent employers' and workers' organizations.

In conclusion, the Employer members wish to suggest that overall significant progress has been made in many countries over past decades in the implementation of the six instruments examined in this General Survey. Further progress is nevertheless needed and possible when the right policies and measures are applied. These policies and measures should build, above all, on the common interests of women, mothers and workers with family responsibilities, on the one hand, and employers, on the other, in keeping their employment running as smoothly as possible and avoiding unnecessarily long interruptions to work. Governments have an important role to play in supporting this by providing both an affordable and efficient infrastructure for child and family care and by avoiding undue and unnecessary burdens for individual employers, in particular small and medium-sized enterprises. Employers' organizations will continue to advise their members on what they can do in their own interests, beyond legal requirements, to facilitate the employment of women, mothers and workers with family responsibilities. While flanking measures in other areas of society are also needed, the world of work can in this way play a pioneering role in promoting gender equality.

Worker members – Despite the many initiatives that we have discussed, obstacles to the participation of women in the world of work still have solid roots. This requires us to seek ways of further reinforcing these initiatives so that we can achieve gender equality in our societies. The legislative framework respecting non-discrimination requires the adoption of a whole range of specific and precise measures in order to guarantee the effective right to equality and non-discrimination. Robust measures are required to remedy the underlying causes of discrimination and inequality. As we have been able to see, there are many reasons for gender discrimination which have their roots in development that has resulted in an approach that includes gender discrimination.

The discussion has shown that there are divergent visions of certain of the concepts addressed in the General Survey. May I recall the need to address issues of discrimination in the most inclusive manner, so that no one is left out. The Worker members are fundamentally convinced that no worker should suffer discrimination for any reason.

As emphasized by the Committee of Experts, policies on matters other than employment and occupation have also proven to be useful in the implementation of the Convention, and particularly in relation to gender equality, such as economic development policies, policies for the independence of women and policies against violence and harassment. With reference to this latter issue, we were able to recall during the discussion the intrinsic link that exists between action to combat discrimination and action to combat violence and harassment at work. The efforts made to promote the ratification of Convention No. 190 and the implementation of Recommendation No. 206 need to be reinforced. Efforts also need to be renewed to ensure the universal ratification and effective implementation of Convention No. 111 and to promote the broad ratification and application of Conventions Nos 156 and 183. Maternity protection is an essential prerequisite for gender equality. The protection of workers with family responsibilities is also essential for the promotion of gender equality.

The work of the ILO has shown that the imbalance between women and men in terms of unpaid care work is the main reason why women are staying out of the labour market and the principal obstacle to their progress in the world of work. This imbalance leads to decent work and social protection deficits throughout their lives. It is essential for Member States, in



dialogue with the social partners, to take measures for the removal of these deficits, to which mothers are even more exposed. Conventions Nos 156 and 183 are there essential in affording them protection. However, we have to admit that the ratification rates of these Conventions are too low. In contrast with what we have heard, the low ratification rate cannot be seen in any way as an indication of the inadequacy of these Conventions. On the contrary, it is a sign of the need for further initiatives to guide Member States to promote their ratification and implementation. We call on the ILO to reinforce these initiatives and the technical assistance provided to Member States. Specific measures are necessary to bring national legislation into full conformity with Conventions Nos 156 and 183 and their Recommendations, and to ensure that Member States fulfil their international obligations in relation to human rights.

The Committee of Experts has also emphasized that the instruments on workers with family responsibilities do not provide detailed guidance to help Member States formulate leave policies, including in relation to the duration of leave, its distribution between those providing care and the benefits available during their periods of absence. It could be useful for the Office to envisage developing more detailed guidance on this subject.

The protection of maternal health, the safety of the working environment and access to specific working arrangements for nursing mothers promote the health, nutrition and general wellbeing of mothers and children and contribute directly to a decrease in infant and maternal mortality and morbidity. The right to maternity leave, to a replacement income and to security through social protection, and financial protection in access to medical care, are not only an integral part of decent work, but also play an essential role in preventing and reducing poverty and vulnerability, and in promoting economic growth.

The preparatory work also clearly shows that the instruments cover all workers, whether they work full or part time, are in temporary or permanent work, and irrespective of their employment status. It is fundamental to recall this very broad scope of application of the Conventions in view of the erosion of the traditional employment relationship and the proliferation of precarious forms of employment, often principally affecting women. These precarious forms of work often lead to many deficits in social protection and labour law, which could be corrected through the Conventions under examination.

It is essential to ensure that action to guarantee equality of opportunity and treatment in employment and occupation produces uncontested results. With a view to evaluating these results, it is vital for Member States to undertake the constant evaluation of the policies implemented to combat discrimination. That presupposes the development of statistical tools with a view to collecting data so that, where necessary, the policies that are followed can be adapted on the basis of objective data. In this respect, the technical assistance of the Office can be very useful and we invite Member States to avail themselves of it.

We have also been able to discuss the importance of awareness-raising and education in promoting genuine equality. It is essential to address the attitudes and beliefs of workers, employers, societies and the public in general. It is only through the implementation of such initiatives that the necessary deep-rooted transformations can be achieved. It is important to recall that the promotion and achievement of a world free from discrimination cannot be made subject to economic imperatives. If, as indicated by the Committee of Experts, mechanisms to combat gender discrimination, for which the financing is borne exclusively by employers, can give rise to discrimination in practice, it cannot be inferred that employers should not contribute to their financing. While it may be understood that the financing of such measures should not rest exclusively on employers, it is however fundamental for



enterprises, and the organizations representing them, to commit to seeking lasting and sustainable financing for such measures and to making their full contribution to them.

Moreover, it is only by developing practices that are fully in conformity with the fundamental principles and rights at work and international labour standards, including gender equality, equality of opportunity and treatment of vulnerable groups, that enterprises can be classified as sustainable enterprises. Enterprises therefore have a crucial role to play in the achievement of gender equality at work.

I would like to add that the attacks made on the Committee of Experts do not appear to us to be justified. The Committee of Experts confined itself, in complete independence and in conformity with its mandate, to reflecting the manner in which Member States cover these grounds of discrimination in their law and practice. I would also like to recall that the scope of the General Survey was the result of a tripartite process in the Governing Body. Finally, it is useful to note that the General Survey is based on the observations provided by the social partners. The more they provide, the more their observations are reflected in the General Survey.

Gender discrimination has been and will always be the focus of many initiatives. However, we still have to strengthen these initiatives to obtain tangible results. We have been forced to note that there has been very little progress for many years and that the COVID-19 crisis has even resulted in a backwards step in action to combat gender discrimination. Combating discrimination is a matter for all of us. That is why all the tripartite constituents must be convinced of the imperative necessity of resolutely committing to achieving genuine gender equality as soon as possible.

Chairperson – This brings us to the conclusion of our discussion on the General Survey. It has been a very rich discussion, with very comprehensive treatment of the various aspects of equality, non-discrimination and so on and so forth.

II. Discussion of cases of serious failure by Member States to respect their reporting and other standards-related obligations

A. Update based on the information and reports received since the last session of the CEACR

1. Failure to supply reports for the past two years or more on the application of ratified Conventions

Countries mentioned in [paragraph 90](#) of the General Report – page 62

Afghanistan, Antigua and Barbuda, Chad, Comoros, Dominica, Gabon, Haiti, Lebanon, Saint Lucia, Slovenia, Somalia, Syrian Arab Republic, Timor-Leste, Tuvalu, Vanuatu and Yemen.

Since the last session of the Committee of Experts, reports have been received from the following countries:

Gabon. The Government has sent some reports due.

Slovenia. The Government has sent all reports due.

Timor-Leste. The Government has sent all reports due.



Therefore, the countries invited to supply information to the Committee on the Application of Standards concerning this failure are:

Afghanistan, Antigua and Barbuda, Chad, Comoros, Dominica, Haiti, Lebanon, Saint Lucia, Somalia, Syrian Arab Republic, Tuvalu, Vanuatu and Yemen.

2. Failure to supply first reports on the application of ratified Conventions for two or more years

Countries mentioned in [paragraph 93](#) of the General Report – page 64

State	Conventions Nos
Cook Islands	– Since 2021: MLC, 2006
Grenada	– Since 2021: MLC, 2006 and Convention No. 189
Lebanon	– Since 2021: MLC, 2006
Marshall Islands	– Since 2021: Convention No. 182
North Macedonia	– Since 2021: Conventions Nos 141 and 171
Sudan	– Since 2021: MLC, 2006
Tuvalu	– Since 2021: Convention No. 182
United Kingdom of Great Britain and Northern Ireland (Falkland Islands (Malvinas))	– Since 2021: MLC, 2006
Vanuatu	– Since 2021: Convention No. 138

Since the last session of the Committee of Experts, a first report has been received from the following country:

United Kingdom of Great Britain and Northern Ireland (Falkland Islands (Malvinas)). The Government has sent the first report on the application of the MLC, 2006.

Therefore, the countries invited to supply information to the Committee on the Application of Standards concerning this failure are:

Cook Islands, Grenada, Lebanon, Marshall Islands, North Macedonia, Sudan, Tuvalu and Vanuatu.

3. “Urgent appeals” – Failure to supply reports on the application of ratified Conventions for at least three years

Observations concerning particular countries ([Part II](#) of the CEACR Report – page 95)

Antigua and Barbuda, Dominica, Haiti, Lebanon, Saint Lucia, Syrian Arab Republic, Tuvalu, Vanuatu and Yemen.



Since the last session of the Committee of Experts, no reports have been received from these countries.

These countries are therefore invited to supply information to the Committee on the Application of Standards concerning this failure:

Antigua and Barbuda, Dominica, Haiti, Lebanon, Saint Lucia, Syrian Arab Republic, Tuvalu, Vanuatu and Yemen.

4. Failure to supply information in reply to comments made by the Committee of Experts

Countries mentioned in [paragraph 98](#) of the General Report – page 64

Afghanistan, Albania, Antigua and Barbuda, Argentina, Barbados, Burundi, Central African Republic, Chad, Comoros, Congo, Croatia, Dominica, El Salvador, Equatorial Guinea, Gabon, Grenada, Guyana, Haiti, Iraq, Kenya, Lao Peoples' Democratic Republic, Lebanon, Liberia, Libya, Malta, Mongolia, Montenegro, Netherlands (Aruba), North Macedonia, Papua New Guinea, Romania, Saint Lucia, Samoa, Sao Tome and Principe, Singapore, Slovenia, Somalia, South Sudan, Syrian Arab Republic, Tajikistan, Timor-Leste, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland (Falkland Islands (Malvinas), Guernsey and Jersey), Vanuatu and Yemen.

Since the last session of the Committee of Experts, replies to all or most of the comments of the Committee of Experts have been received from the following countries:

Albania. The Government has sent all replies to the Committee's comments.

Argentina. The Government has sent all replies to the Committee's comments.

Croatia. The Government has sent replies to the majority of the Committee's comments.

Equatorial Guinea. The Government has sent all replies to the Committee's comments.

El Salvador. The Government has sent all replies to the Committee's comments.

Gabon. The Government has sent replies to the majority of the Committee's comments.

Guyana. The Government has sent all replies to the Committee's comments.

Kenya. The Government has sent replies to the majority of the Committee's comments.

Lao Peoples' Democratic Republic. The Government has sent all replies to the Committee's comments.

Liberia. The Government has sent replies to the majority of the Committee's comments.

Mongolia. The Government has sent all replies to the Committee's comments.

Netherlands (Aruba). The Government has sent all replies to the Committee's comments.

Samoa. The Government has sent all replies to the Committee's comments.

Sao Tome and Principe. The Government has sent all replies to the Committee's comments.

Slovenia. The Government has sent all replies to the Committee's comments.

Tajikistan. The Government has sent all replies to the Committee's comments.

Timor-Leste. The Government has sent all replies to the Committee's comments.



United Kingdom of Great Britain and Northern Ireland (Guernsey and Jersey). The Government has sent all replies to the Committee's comments.

In addition, written information was received from the Governments of **Croatia and Montenegro**

See below under Part B.

Therefore, the list of countries invited to supply information to the Committee on the Application of Standards concerning this failure is as follows:

Afghanistan, Antigua and Barbuda, Barbados, Burundi, Central African Republic, Chad, Comoros, Congo, Dominica, Grenada, Haiti, Iraq, Lebanon, Libya, Malta, Montenegro, North Macedonia, Papua New Guinea, Romania, Saint Lucia, Singapore, Somalia, South Sudan, Syrian Arab Republic, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland (Falkland Islands (Malvinas)), Vanuatu and Yemen.

5. Failure to supply reports for the past five years on unratified Conventions and Recommendations

Countries mentioned in [paragraph 142](#) of the General Report – page 82

Albania, Barbados, Belize, Brunei Darussalam, Chad, Congo, Djibouti, Dominica, Haiti, Lesotho, Liberia, Marshall Islands, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Sierra Leone, Timor-Leste, Tuvalu, Uganda and Yemen.

Since the last session of the Committee of Experts, **Belize, Brunei Darussalam, Congo, Lesotho and Sierra Leone** have sent reports on unratified Conventions and Recommendations.

Therefore, the countries invited to supply information to the Committee on the Application of Standards concerning this failure are:

Albania, Barbados, Chad, Djibouti, Dominica, Haiti, Liberia, Marshall Islands, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Timor-Leste, Tuvalu, Uganda and Yemen.

6. Failure to submit instruments to the competent authorities

Countries mentioned in [paragraph 153](#) of the General Report – page 85

Angola, Bahamas, Belize, Plurinational State of Bolivia, Brunei Darussalam, Chad, Comoros, Congo, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Gabon, Gambia, Grenada, Guinea, Haiti, Hungary, Kazakhstan, Lebanon, Liberia, Libya, Maldives, Marshall Islands, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Solomon Islands, Syrian Arab Republic, Timor-Leste, Tuvalu, United Arab Emirates, Vanuatu, Yemen and Zambia.

Since the last session of the Committee of Experts, information has been received on this failure by the following countries:

Bahamas. On 30 November 2022, Bahamas ratified the Violence and Harassment Convention, 2019 (No. 190). According to the criteria established by the Committee of Experts, Bahamas is not in serious failure to submit; however, due to the substantial number of pending submissions, it remains in failure to submit status.



Kazakhstan. On 24 July 2021, Kazakhstan submitted the 39 instruments adopted by the Conference between 1993 and 2019, to the Parliament. Moreover, on 29 May 2023, Kazakhstan submitted the Protocol of 2014 to the Forced Labour Convention, 1930, to the Parliament. According to the criteria established by the Committee of Experts, Kazakhstan is now no longer in serious failure to submit.

Maldives. On 2 January 2023, Maldives submitted the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2010–19), to the Parliament of the People (*Majlis*). According to the criteria established by the Committee of Experts, the Maldives is no longer in serious failure to submit.

In addition, written information was received from the Governments of the **Bahamas, the Plurinational State of Bolivia, Brunei Darussalam, Seychelles, Yemen and Zambia.**

See below under Part B.

Therefore, the countries invited to supply information to the Committee on the Application of Standards concerning this failure are:

Angola, Belize, Plurinational State of Bolivia, Brunei Darussalam, Chad, Comoros, Congo, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Gabon, Gambia, Grenada, Guinea, Haiti, Hungary, Lebanon, Liberia, Libya, Marshall Islands, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Solomon Islands, Syrian Arab Republic, Timor-Leste, Tuvalu, United Arab Emirates, Vanuatu, Yemen and Zambia.

B. Written information received from Governments concerned by serious failure

Bahamas

We acknowledge that article 19 of the ILO Constitution on submission and reporting obligations for the Bahamas has not yet been satisfied. However, we have utilized the technical assistance offered by the ILO Caribbean Office and in doing so, have finalized the Submissions Report. The Submissions Report contains an amalgamation of all outstanding international instruments for the country.

In the coming weeks, it is anticipated that this report will be submitted to the Cabinet for approval to be tabled in Parliament. Consequently, the next correspondence on this matter should advise that the Bahamas is now fully compliant, having satisfied its submission and reporting obligations.

Plurinational State of Bolivia

The Government of the Plurinational State of Bolivia reaffirms its commitment to decent work and wages, the protection of workers' rights, equal opportunities and combating the patriarchal approach. It is also respectful of the international system and cooperation, and in accordance with the principles of the sovereignty and dignity of our territory, is always receptive to the observations and recommendations of the ILO, which strives for the protection of workers, as well as the promotion of collective social justice. We inform the Committee that note has been taken of the observation on the 31 instruments adopted at the 20 sessions held between 1993 and 2019.



In this regard, it should be emphasized that the Plurinational State of Bolivia (formerly known as the Republic of Bolivia) has undergone constitutional, and thus regulatory and structural, changes since 2009, and that many of the recommendations are already implicitly reflected in the national legislation. We also recognize that there has been a new government administration, headed by President Luis Arce Catacora, in the Plurinational State of Bolivia since November 2020, which is working tirelessly for economic reconstruction, rebuilding and industrialization with import substitution in our country. Given the panorama of instability worldwide, we are stepping up efforts to protect workers, as well as laying economic foundations that are favourable to employers as a whole, as a fundamental pillar of our productive social community economic model.

As part of this commitment to furthering rights, protection and duties, we have analysed the list of the 31 instruments to which the above-mentioned observation refers, and wish to point out that:

- The Labour Inspection (Seafarers) Recommendation, 1996 (No. 185), has been withdrawn by the ILO. Similarly, the Recruitment and Placement of Seafarers Recommendation, 1996 (No. 186), has been withdrawn.
- Regarding Convention No. 190, we wish to report that in 2021, a bill on workplace harassment was presented to the Legislative Assembly while the ratification of Convention No. 190 was being discussed. Similarly, in 2010, Ministerial Resolution No. 868/10 for the restitution of labour rights was published. As part of the complementarity and action to combat violence against women and patriarchy, drawing primarily on aspects of Recommendation No. 206, Ministerial Resolution No. 196/2021 on the procedure for dealing with complaints about workplace harassment and sexual harassment of women in the workplace has been drafted.
- The Plurinational State of Bolivia also presented the Protocol of 2014 to the Forced Labour Convention, 1930, to the Plurinational Legislative Assembly, after complying with the corresponding procedures.
- With respect to the remaining 26 instruments, we inform the Committee that a process of review and technical analysis will be initiated by the various state bodies, within the framework of sovereignty and complementarity, to ensure compliance with the recommendations and also to produce draft regulations to be presented to the Plurinational Legislative Assembly. It is clear that the submission of the instruments to the relevant bodies must be carried out in an effective, timely and responsible manner, ensuring all the elements that the recommendations can contribute to our society while upholding the mandates of the Political Constitution of 2009.
- The Plurinational State of Bolivia reiterates its ethical and political commitment to working towards a more just society that respects workers' rights to decent work and wages, as well as the responsibility of representing our society in international cooperation bodies, in a framework of respect and sovereignty.



Brunei Darussalam

The Government of Brunei Darussalam take note of the concern raised by the Committee regarding the objective and purpose of the submission's obligation, as outlined in the 2005 Memorandum of the Committee of Experts. The Government understand that the objective of this obligation is to promote the ratification of international labour standards and enhance public awareness of the instruments adopted by the Conference, by

communicating them to the competent authority for examination, discussion, and possible action.

The Government would like to provide further information on Brunei Darussalam's efforts. Brunei Darussalam has been actively sharing information on previously adopted Conventions with relevant government agencies. The Government is committed to building on this existing practice and refining it to ensure compliance with the objectives of the submission's obligation.

Given the importance of this matter, the Government recognizes the need for a further consultation and exploration to identify the most appropriate mechanisms and platforms within our national context to fulfil these objectives comprehensively and ensure widespread understanding and participation. The Government appreciates the Committee's support in facilitating and providing guidance and assistance in understanding the obligations and identifying the best approach to submit any reports. By seeking guidance, the Government aims to fulfil its responsibilities in a timely and accurate manner.

The Government of Brunei Darussalam highly values the Committee's understanding and support and seeks additional guidance from the ILO to ensure a comprehensive approach to meeting our obligations. The Government is committed to working collaboratively to enhance its compliance, promote public awareness, and strengthen its commitment to the principles and goals of the ILO.

The Government looks forward to continued cooperation with the Committee and the ILO in addressing this matter.

Croatia

The Ministry of Labour, Pension System, Family and Social Policy of the Republic of Croatia faced serious challenges in fulfilling reporting obligations under article 22 of the ILO Constitution in 2022.

Unfortunately, the reason for this was a sudden shortage of employees during 2022 an overload of tasks and activities within the Service for European and International Cooperation in the Field of Work that is responsible for all the work and fulfilment of obligations related to ILO activities. Moreover, an additional reason for this challenge was a significant increase in the number of ratified Conventions due for reporting obligations in 2022, from the usual 4 in previous years to 24 Conventions in 2022, presenting a significant difference.

However, we are pleased to inform you that we have prepared first batch of ten reports that will be submitted after the receipt of comments from social partners that will be incorporated in the prepared reports, certainly before the commencement of the 111th Session of the Conference. According to the work schedule and preparatory work that has already been undertaken, we can assure you that all requested and remaining reports will be submitted by 1 September 2023.

On this occasion, we would like to express our appreciation for the ILO's devoted work in the field of promotion of tripartism and social dialogue, as well as in creating and promoting international labour standards globally. We can strongly reconfirm our commitment to fulfilling of obligations deriving from membership of the ILO.



Montenegro

Montenegro has been recognized as one of the cases by the Committee of Experts due to substantial violations of reporting obligations or other obligations related to the ILO standards. The Government of Montenegro acknowledges that its reporting obligations for the past year have not been met.

The Government is committed to ensuring the timely submission of its reporting obligations on ILO Conventions. Significant effort was put into submitting the article 22 Reports in 2022. Due to an unprecedented cyberattack that impacted the digital infrastructure of the Government in August 2022, all efforts made towards the preparations of reports were lost, thus requiring the process to commence anew.

The Government will provide information for reports due for 2022 and most of the reports due for 2023. The reports will be sent according to the established deadline, between 1 June and 1 September 2023.

Seychelles

The Ministry for Employment and Social Affairs of the Republic of Seychelles notes with regret that the Seychelles has not been able to honour this standard-related obligations under article 19 of the ILO Constitution, due to various factors.

The Ministry is pleased to inform the Committee that 20 of the pending ILO adopted instruments were presented to the Cabinet of Ministers on 24 May 2023 and approval was received to submit the instruments to the National Assembly for information. Furthermore, the Domestic Workers Convention, 2011 (No. 189), was also presented to the Cabinet at the same meeting for ratification. The Cabinet approved for the Domestic Workers Convention to be ratified and submitted accordingly to the National Assembly.

Also, the proposal for ratification of Convention No. 189, and submission of the 20 pending instruments, were presented prior to the tripartite National Consultative Committee on Employment (NCCE), at its meeting on 23 February 2023. The NCCE which comprises the most representative employers' and workers' organizations, had no adverse comments and supported the proposal for ratification and submission of the pending instruments.

The Ministry shall proceed with the formalities for ratification and submission of instruments within the shortest possible time and trusts that this new development will be favourably considered by the ILO and the Committee at the 111th Session of the Conference in June 2023.

The Government of Seychelles would also like to acknowledge the technical support received from the ILO and the International Labour Standards Specialist, which provided guidance in ensuring the appropriate process is undertaken, to fulfil this constitutional obligation as a Member State of the ILO.

Yemen

The permanent delegation of the Republic of Yemen to the United Nations and other international organizations in Geneva conveys its compliments to the International Labour Organization (ILO) and has the honour to advise the ILO that under the current circumstances in Yemen, the country could not submit the required instruments. We are also pleased to advise the ILO that the Ministry of Social Affairs and Labour will initiate dialogue



among the tripartite constituents to discuss the required instruments, which will be referred to the Council of Ministers as soon as possible for submission.

Zambia

The Ministry of Labour and Social Security regrets that Zambia has not been able to honour this standard-related obligation under article 19 of the ILO Constitution.

Zambia is pleased to inform you that the process on ratification and submission of the ten instruments to the competent authorities has begun. Convention No. 190, and its Recommendation were adopted by the Tripartite Consultative Labour Council comprising Government, Employers' and Worker's representatives for ratification. A Cabinet memorandum was submitted to the Cabinet for consideration on 27 March 2023.

With regards to the Protocol of 2014 to the Forced Labour Convention, 1930, the Tripartite Consultative Labour Council adopted the instrument for ratification on 9 May 2023 and the necessary processes for submission to the Cabinet and National Assembly have commenced.

Convention No. 189, was also adopted for ratification by the Tripartite Consultative Labour Council and other stakeholders and the Ministry is in the process of finalizing the submission to Cabinet.

The HIV and AIDS Recommendation, 2010 (No. 200), the Social Protection Floors Recommendation, 2012 (No. 202), the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), and the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), are also in the process of being submitted to the Cabinet for information.

The Ministry shall proceed with the formalities for ratification and submission of instruments within the shortest possible time and trusts that this new development will be favourably considered by the ILO and the Committee at the 111th Session of the Conference in June 2023.

C. Discussion by the Committee

Chairperson – We will start our discussion of cases of serious failure of Member States to respect their reporting obligations and other standards-related obligations. Before giving the floor to the Vice-Chairpersons for their opening remarks, I would like to recall the Committee's working methods when dealing with the cases of serious failure to fulfil reporting and other standards-related obligations. The Committee has established specific criteria to determine what constitutes serious failure when it examines these cases. These criteria are contained in document CAN/D.1 which is available on the Committee's web page. The cases of serious failure have been identified in the relevant parts of the General Report of the Committee of Experts.

It should be recalled that the following criteria is applied: (i) none of the reports on ratified Conventions have been supplied during the past two years or more; (ii) first reports on ratified Conventions have not been supplied for at least two years; (iii) urgent appeals, that is failure to send reports on the application of ratified Conventions for at least three years; (iv) none of the reports on unratified Conventions and Recommendations requested under article 19, paragraphs 5, 6 and 7, of the ILO Constitution, have been supplied during the past five years; (v) no indication is available on whether steps have been taken to submit the instruments adopted during the last seven sessions of the Conference to the competent



authorities in accordance with article 19 of the ILO Constitution; (vi) no information has been received as regards all or most of the observations and direct requests of the Committee of Experts to which a reply was requested for the period under consideration; and (vii) the government concerned has failed during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23, paragraph 2, of the ILO Constitution, copies of reports and information supplied to the Office have been communicated.

To take account of recent developments, updated information on the countries concerned was provided to our Committee in document CAN/D/SF, which was made available yesterday. This document takes into account the fact that some governments have submitted the required information and reports before the present sitting, and also compiles the written information received from governments with respect to these failures as indicated in part V of document CAN/D.1.

Government representatives from the countries mentioned in this document and registered on the list of speakers will be invited to provide information and explanations to the Committee. When providing information to the Committee, governments are asked to include information on all the cases of non-compliance in one single statement. The governments concerned may, in particular, highlight the challenges they are facing in fulfilling their obligations and indicate the areas in which ILO assistance and technical cooperation might be desirable. Such information would enable the Committee to have a better understanding of the situation in the country and is helpful to the Office when it is responding to government requests.

I would like to invite the two Vice-Chairpersons to make their introductory statements.

Worker members – The Committee cannot afford to evade the fundamental issue of reporting obligations under the ILO Constitution. Indeed, the work of the ILO, and more particularly the work of this Committee, relies on the reports provided by ILO Member States and on the observations submitted by trades unions and employers' organizations.

The failure to meet these obligations inevitably hinders work in the ILO's many policy areas, rendering the Organization unable to evaluate the implementation of ILO instruments in its Member States or to provide the necessary responses. Yet, ensuring the effective implementation of those instruments means ensuring respect for the dignity and rights that workers should enjoy under them.

Not for nothing, then, are serious failures to meet reporting obligations the subject of a special sitting of the Committee. It is vital that the Member States concerned are reminded that compliance with these obligations is fundamental and invited to make every effort to fulfil them as soon as possible.

It should be noted that no fewer than 56 Member States were invited to submit written explanations of their serious failures to respect reporting and other standards-related obligations to the Committee. That significant number highlights the extent of the work that remains to be done to increase compliance with those standards-related obligations.

This assessment is even more disappointing given the Office's extensive efforts to assist Member States in that task and the numerous tools that it has put at their disposal.

The "Managing International Labour Standards Reporting" website, for example, addresses reporting obligations specifically, while the online guide on established practices across the ILO supervisory system clearly sets out the essential role of these reporting



obligations for the system. We invite Member States to familiarize themselves with these new tools and invite the Office and experts to ensure that they are given as much visibility as possible.

Clearly, training for government officials responsible for preparing these reports is an essential part of ensuring compliance with reporting obligations. The training programmes of the International Training Centre of the ILO aimed at the Organization's constituents have proven invaluable in that regard. Many Member States have made use of these training programmes in the past, with good results.

Member States can also count on the unfailing technical assistance provided by the Office and the expertise of the many standards specialists deployed on the ground by the ILO. We encourage the Office to continue its efforts in that connection and to strengthen the numerous measures already developed under the ILO Programme and Budget.

It is nonetheless important to recall that despite the development of all these tools, responsibility for ensuring that the resources necessary to comply with these obligations are deployed at the national level lies primarily with each Member State, and that not everything can be left to ILO assistance. Despite all these initiatives, we note that significant effort remains required to strengthen compliance with reporting obligations in the future.

Although there has been a slight improvement in the number of reports submitted, more than half are submitted late, hindering the work of the Committee of Experts. The fact remains that a number of Member States have, for several years, failed to submit the reports required under article 22 of Constitution.

In this regard, the Workers' group wishes once again to commend the urgent appeals procedure set up by the Committee of Experts, in collaboration with the Office. This is an initiative that can unquestionably contribute to improving compliance with Member States' reporting obligations. This year, the procedure has enabled the Committee of Experts to examine the substance of the cases of eight Member States on the basis of publicly available information following an urgent appeal launched at the previous session that, unfortunately, remained without response, sending a clear message that a failure to report can in no case allow a Member State to escape supervision of its compliance with ILO instruments.

This year, nine Member States are subject to an urgent appeal due to a lack of reporting for more than three years; the substance of those cases will be examined at the next session of the Committee of Experts if no report is submitted. We invite those Member States to respond favourably and as soon as possible to the appeal launched by the Committee of Experts.

The compilation of the General Surveys also relies on reports from Member States. It is essential that all Member States contribute to them. We must, however, regret that 20 countries listed in paragraph 142 of the report of the Committee of Experts have not submitted any report to contribute to General Surveys in the last five years. These Member States' contributions would have been greatly appreciated and would also have afforded them an opportunity to begin to reflect on the implementation at the national level of instruments addressed by General Surveys.

As to initiating discussions at national level on the implementation of ILO instruments, the submission of the instruments adopted by the ILO to the competent authorities is also a fundamental obligation in that it enables the enhancement of ILO's standard setting. We note, however, that at least 42 Member States have not submitted the instruments adopted by the ILO at the seven previous sessions of the Conference to the competent authorities.



These are all missed opportunities to promote the implementation of ILO instruments and thus improve workers' rights.

This year, Member States were once again given the opportunity to submit written information on the serious failures of which they were accused. Only eight of them did so. We would like to thank those Member States, but regret that so few of them took this opportunity.

Based on the compiled information provided by the secretariat, it should be noted that, between when the serious failures of Member States were highlighted in the Report of the Committee of Experts and the special sitting of the Committee was held, 28 Member States either met all their reporting obligations or responded in part to the serious failures of which they are accused. We encourage these Member States to continue their efforts to fully comply with their obligations, but there are still many Member States that have yet to take any concrete initiatives in this regard.

The Worker members hope to learn more about the difficulties faced by these Member States during this session and hope that they will firmly commit to fully meeting their reporting obligations.

Employer members – The Employer members take note that the Committee of Experts once again expressed concerns in its report at the low number of government reports received by the 1 September deadline. We fully understand that some governments are still managing the aftermath of the COVID-19 pandemic and parallel interlocking crises. Nonetheless, we count on them to continue complying with their reporting obligations under articles 19, 22 and 35 of the ILO Constitution in a timely manner and to do so in consultation with the most representative employers' and workers' organizations. This is important, and it cannot be stressed often enough, because it is the governments' reports that provide the core basis for our supervisory work.

The high number of comments of the Committee of Experts (there are 572 observations and 1,159 direct requests this year) suggest that ratification is often not taken sufficiently seriously. It seems that ratification is often considered to be more of a political statement or a declaration of intent, rather than what it is really is, namely a conclusion of a treaty under international law containing legal obligations, all of which have to be complied with.

In promoting ratification, the Office needs to better advise Member States of the need for thorough pre-ratification assessments in close consultation with the social partners, including the Employers. These pre-ratification assessments must include not only an appraisal of the country's implementation capacity, but also of its reporting capacity for the Convention envisaged for ratification, to avoid as far as possible cases of serious failure to report.

On governments' compliance with reporting obligations, the Employer members observe that there has been increase in the proportion of reports received by the end of the session from last year's 67.6 per cent, to this year's 70.9 per cent, which seems to reflect the further normalization of administrative activities in the aftermath of the pandemic. However, 59 per cent of the 2023 reports due this year were submitted after the 1 September deadline. While we commend governments for sending a greater number of the reports due, we also encourage them to send such reports in a timely manner so that the Committee of Experts can perform its work efficiently.

However, the Employer members note with real concern that, according to paragraph 90 of the General Report of the Committee of Experts, none of the reports due on



ratified Conventions have been sent for the past two or more years from the following 13 countries: Afghanistan, Antigua and Barbuda, Chad, Comoros, Dominica, Haiti, Lebanon, Saint Lucia, Somalia, Syrian Arab Republic, Tuvalu, Vanuatu and Yemen. This is totally unacceptable and the Committee of Experts rightly urges the Governments concerned to make every effort to supply the reports requested. We encourage these countries to request ILO technical assistance if necessary to address this problem in a sustainable manner.

As regards the first reports on ratified Conventions, according to paragraph 93, eight Member States have failed to supply these reports for two or more years, namely the Cook Islands, Grenada, Lebanon, Marshall Islands, North Macedonia, Sudan, Tuvalu and Vanuatu. First reports are vital as they are meant to provide complete information about government action to comply with all provisions of the ratified Convention. First reports are thus the indispensable baseline for an initial comprehensive supervision of implementation. The Employer members strongly encourage the Governments of these eight countries to make a real effort to provide to the Committee of Experts the overdue first reports without further delay. If necessary, they may request ILO technical assistance to address this problem in a sustainable manner.

In paragraph 98, the Employer members note with concern that the number of comments by the Committee of Experts to which replies have not been received from the governments concerned remains significantly high. There have not been government responses to no less than 48 comments this year. In this regard, we appreciate that eight States have provided information regarding their failure to reply to all or most of the Committee of Experts' comments in advance of the Conference, namely Bahamas, Plurinational State of Bolivia, Brunei Darussalam, Croatia, Montenegro, Seychelles, Yemen and Zambia.

The Employer members welcome the provision of an explanation by these States as well as the steps taken to address the situation. We hope that they will be able to meet their reporting obligations in due time and would like to recall that governments that have not done so can avail themselves of ILO technical assistance. The Employer members welcome the commitment of the States to fulfilling reporting obligations, including submitting the requested reports before the 1 September deadline, and we commend the steps taken to this end.

Regarding the other governments concerned, the Employer members would like to understand from them for what reasons they are not responding to the Committee of Experts' comments. Is it a lack of understanding, or disagreement with the content of the observation or direct request? Or is it for other reasons? The absence of government responses to such a high degree is an indication that something in the system is not functioning well and needs to be reviewed. However, any remedial action depends on clarity about the reasons for not responding.

Also, the Employer members note with regret from paragraph 142 that the following 15 countries have not provided reports on ratified Conventions and Recommendations requested under article 19 of the ILO Constitution for the past five years: Albania, Barbados, Chad, Djibouti, Dominica, Haiti, Liberia, Marshall Islands, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Timor-Leste, Tuvalu, Uganda and Yemen. As a great majority of cases of failure to report concerns developing and small island States, we suggest that the Office give appropriate attention to this fact, in order to better prioritize and focus its assistance. This would help States meet their reporting obligations under article 19 of the ILO Constitution in a sustainable manner.



We express our appreciation for the decision taken by the Committee of Experts to further extend the practice of urgent appeals with cases meeting certain criteria of serious reporting failure that require the Conference Committee's attention. This makes it possible to have in the Committee a direct and serious dialogue on this point with the governments concerned and point out to them that the Committee of Experts will examine the substance of the matter at its next session even in the absence of a government report. We note that three first reports have been received following an urgent appeal, with technical assistance provided by the Office and we trust that there will be even more positive results in the future.

Finally, regarding the social partners' role as participants in a regular supervisory system under article 23, paragraph 2, of the ILO Constitution, governments of Member States have an obligation to communicate copies of their reports to representative employers' and workers' organizations. Compliance with this obligation is necessary to ensure proper involvement of the social partners in the implementation of standards at the national level. According to paragraph 136, the social partners submitted 1,156 observations to the Committee of Experts this year, compared to 757 last year, 212 of which, compared to 230 last year, were communicated by employers' organizations, and 944, compared to 527 last year, by workers' organizations. The Employer members welcome the overall increase in submissions and we trust that the Office will continue to provide technical assistance, including capacity-building, to social partners where needed to enable them to send relevant comments to the Committee of Experts.

From the Employer members' side, the IOE, together with the ILO Bureau for Employers' Activities (ACTEMP) is supporting employers' organizations to contribute to the supervisory system in an effective manner. We are doing this by helping employers' organizations to submit up-to-date and relevant information to the Committee of Experts on how Member States are applying ratified Conventions in law and in practice. Employers' organizations, in this way, communicate both shortcomings and progress achieved in the application of the Conventions as well as proposals for alternative ways to implement ILO instruments, better taking into account the needs and realities of sustainable enterprises.

We trust that the Committee of Experts, in their observations, will fully consider these comments as well as any additional comments made by the Employers in their discussions in the Committee on the Application of Standards.

Government representative, Central African Republic – In response to the calls made by the Committee, as indicated by the Director of NORMES, I refer to the failure to produce and supply 24 reports on the application of Conventions, most of which should have included information in reply to the comments of the Committee of Experts.

The Government is honoured to provide full information on the action taken at the national level to comply with the ILO's basic text. The Government assures the Committee of its intention to submit, by 30 October 2023 at the latest, the remaining 22 reports following the receipt of the views of national employers' and workers' organizations, with the exception of those for Conventions Nos 150 and 155, which have already been provided to the Chancellery of NORMES. It also draws the Committee's attention to the fact that nearly all the relevant provisions of the Conventions for which the Government has to provide reports have now been transposed into the revised draft text of Act No. 09.004 of 29 January 2009, issuing the Labour Code of the Central African Republic, which is currently being examined by the National Assembly, and undertakes to provide the Office with a copy for information.

In 2022, five managerial-level staff were trained and sent to the African Regional Labour Administration Centre (CRADAT) and, in 2023, these officials were incorporated with



responsibility for leading the reform of the Ministry in the field of labour standards, social protection and employment and vocational training. At the 110th Session of the Conference, the Government requested and obtained ILO support for capacity building for national institutions with a view to promoting rights and fundamental labour rights, as well as social justice, action to combat child labour, raise the awareness of national actors concerning international labour standards and transpose them into our national legislation.

With the ILO Country Office for Central Africa in the Democratic Republic of the Congo, the Government agreed to launch the process of developing a plan of action for the implementation of the SDGs within the framework of Alliance 8.7, of which the Central African Republic is a pathfinder country, and to continue the process of trade union elections through a preliminary diagnostic study for social dialogue in the country financed by the ILO.

The Government recalls that it requested and obtained a meeting with the ILO Director-General in Geneva in April 2023, on the occasion of which the request by the Central African Republic for ILO technical assistance was reaffirmed, with a favourable response by the ILO. The availability of a standards specialist in the subregion will also facilitate the reinforcement of the technical capacities of labour inspectors to prepare reports, which will enable us to be up-to-date with our constitutional obligations within the specified deadlines.

The Central African Republic undertakes, with the support of the ILO Kinshasa Office, to provide all the reports due before 1 September 2023. All of the requests made offer sufficient proof of the Government's commitment to comply with the ILO Constitution. In light of the above, the Government requests the Committee to note its good will to comply with its commitments, despite the difficult socio-economic situation. It thanks the Committee for its understanding.

Chairperson – I do not see any further requests for the floor, so we will therefore turn to the concluding remarks from the Employers' group and then the Workers' group.

Employer members – In order to be effective, the regular ILO supervisory system relies on government reports that contain relevant information and are sent regularly and on time, as well as additional comments by the social partners, where needed, to clarify the situation. It is only with these inputs that the Committee of Experts and this Committee can properly supervise the implementation of ILO standards.

The Employer members are pleased to see an increase in the number of reports from governments and in the number of comments from social partners from last year. We appreciate all the efforts made to enable the supervisory system to continue to do its work. We also hope that further joint efforts to streamline reporting and extend the possibilities for e-reporting, will help increase the number of government reports and comments from social comments in the future. These efforts need to be complemented by the consolidation and simplification of ILO standards. This could not only lead to better implementation of the standards, but could also focus the reports on elements that really matter. In that regard, we hope that the work of the Standards Review Mechanism will help us move forward.

Worker members – We thank the representative of the Central African Republic for appearing before the Committee, but regret that only one government has come forward to provide the Committee with information. We hope that in future the Office will ensure that governments appear before the Committee to provide the necessary explanations.

We have nevertheless taken due note of the written information submitted and of the difficulties encountered by certain Member States and are pleased to note that these



Member States generally call on the ILO for assistance, and that the latter systematically responds favourably and in a very effective way.

We also note, however, that some Member States deliberately ignore their reporting obligations. The approach towards these Member States should be firmer than towards Member States whose technical difficulties or insufficient capacities are well-established. The urgent appeal procedure is a first response, but it applies indiscriminately to Member States acting in good or bad faith.

In terms of activities to promote international labour standards, additional resources could still be allocated to technical assistance and support activities for Member States and social partners, so that they are able to meet their standards-related obligations and are actively engaged in the ILO's tripartite dialogue.

The Worker members have noted the commitments made by some governments and hope that these will be followed by concrete actions to ensure full compliance with their obligations. It is essential that all these governments, and particularly those that have not provided any information to the Committee, put an end to the serious failures of which they are accused as quickly as possible. We also ask Member States to bear in mind that these reporting obligations, beyond the formalism they may present, are fundamental insofar as they underpin the dynamics of tripartite social dialogue, as well as the respect and promotion of international labour Conventions. Member States must fully commit to these dynamics.

In view of this, the ratification of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), as well as its effective implementation, should be actively promoted, as this can also foster greater compliance with reporting obligations. Proactive support through the Office's technical assistance is essential so that Member States can properly implement this Convention and promote its ratification.

Lastly, we would like to respond to some of the comments made by the Employer spokesperson. The Worker members are open to discussions aimed at promoting greater compliance by Member States with their constitutional standards-related obligations. However, we do not believe that this objective can be achieved by consolidating or simplifying standards, but rather by strengthening Member States' technical assistance capacities.

Moreover, the process of ratifying international labour Conventions must be guided by the willingness of Member States to implement the principles, rights and freedoms that these contain. Concerns about the ability to meet reporting obligations should never be an obstacle to ratification. Member States can count on ILO technical assistance and on tripartite social dialogue in this regard.

Conclusions of the Committee

Chairperson – As announced, I will now read out the draft conclusion on cases of serious failure with reporting.

The Committee takes note of the information and explanations provided during the session by the Government representative of Central African Republic who made a statement as well as the written information provided by the Governments of the Bahamas, Plurinational State of Bolivia, Brunei Darussalam, Croatia, Montenegro, Seychelles, Yemen and Zambia.

However, the Committee regrets that the Governments of Afghanistan, Albania, Angola, Antigua and Barbuda, Barbados, Belize, Burundi, Chad, Comoros, Congo, Cook



Islands, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Gabon, Gambia, Grenada, Guinea, Haiti, Hungary, Iraq, Lebanon, Liberia, Libya, Malta, Marshall Islands, North Macedonia, Papua New Guinea, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Singapore, Solomon Islands, Somalia, South Sudan, Syrian Arab Republic, Timor-Leste, Tuvalu, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland (Falkland Islands (Malvinas)) and Vanuatu did not make statements or provide any written communication.

The Committee notes in particular the specific difficulties mentioned by some governments in complying with the constitutional obligations related to reporting and the submission of the instruments adopted by the International Labour Conference to the competent national authorities.

It also takes note of the promises made by some governments to comply with these obligations in the near future. The Committee recalls that the governments can avail themselves of ILO technical assistance to comply with their reporting obligations.

Concerning the failure to supply reports for the past two or more years on the application of ratified Conventions, the Committee recalls that reporting on the application of ratified Conventions is a fundamental constitutional obligation and the basis of the supervisory system. The Committee also stresses the importance of respecting the deadlines for such reporting. The Committee expresses the firm hope that the Governments of Afghanistan, Antigua and Barbuda, Chad, Comoros, Dominica, Haiti, Lebanon, Saint Lucia, Somalia, Syrian Arab Republic, Tuvalu, Vanuatu and Yemen will supply the reports as soon as possible and decides to note these cases in the corresponding paragraph of its General Report.

Concerning the failure to supply first reports for two or more years on the application of ratified Conventions, the Committee recalls the particular importance of the submission of first reports on the application of ratified Conventions. The Committee expresses the firm hope that the Governments of Cook Islands, Grenada, Lebanon, Marshall Islands, North Macedonia, Sudan, Tuvalu and Vanuatu will supply the first reports due as soon as possible and decides to note these cases in the corresponding paragraph of its General Report.

Concerning the urgent appeals, the Committee underlines the fundamental importance of sending the reports and the detailed information requested in the first reports on the application of ratified Conventions. The Committee stresses the importance of the information provided in the reports submitted by governments on ratified Conventions to enable the regular supervision by the Committee of Experts. The Committee expresses the firm hope that the Governments of Antigua and Barbuda, Dominica, Haiti, Lebanon, Saint Lucia, Syrian Arab Republic, Tuvalu, Vanuatu and Yemen will send the reports due as soon as possible and decides to note these cases in the corresponding paragraph of its General Report. The Committee brings to the attention of these governments that the Committee of Experts will examine in substance at its next session the application of the Conventions concerned on the basis of publicly available information, even if the governments mentioned have not sent the reports due. The Committee reminds governments that they can request technical assistance from the Office to overcome their difficulties in this respect.

Concerning the failure to supply information in response to comments made by the Committee of Experts, the Committee underlines the fundamental importance of



clear and complete information in response to the comments of the Committee of Experts in order to permit continued dialogue with the governments concerned. The Committee expresses the firm hope that the Governments of Afghanistan, Antigua and Barbuda, Barbados, Burundi, Central African Republic, Chad, Comoros, Congo, Dominica, Grenada, Haiti, Iraq, Lebanon, Libya, Malta, Montenegro, North Macedonia, Papua New Guinea, Romania, Saint Lucia, Singapore, Somalia, South Sudan, Syrian Arab Republic, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland (Falkland Islands (Malvinas)), Vanuatu and Yemen will supply the requested information in the future and decides to note these cases in the corresponding paragraph of its General Report.

Concerning the failure to supply reports for the past five years on unratified Conventions and Recommendations, the Committee stresses the importance it attaches to the constitutional obligation to supply reports on unratified Conventions and Recommendations. The Committee expresses the firm hope that Governments of Albania, Barbados, Chad, Djibouti, Dominica, Haiti, Liberia, Marshall Islands, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Timor-Leste, Tuvalu, Uganda, and Yemen will comply with their obligation to supply reports on unratified Conventions and Recommendations in the future. The Committee decides to note these cases in the corresponding paragraph of its General Report.

Concerning the failure to submit instruments to the competent authorities the Committee recalls that compliance with the obligation to submit Conventions and Recommendations and Protocols to competent national authorities is a requirement of the highest importance to ensure the effectiveness of the Organization's standards and related activities. The Committee expresses the firm hope that the Governments of Angola, Belize, Plurinational State of Bolivia, Brunei Darussalam, Chad, Comoros, Congo, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Gabon, Gambia, Grenada, Guinea, Haiti, Hungary, Lebanon, Libya, Liberia, Marshall Islands, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Solomon Islands, Syrian Arab Republic, Timor-Leste, Tuvalu, United Arab Emirates, Vanuatu, Yemen and Zambia will comply with their obligation to submit Conventions and Recommendations and Protocols to the competent authorities in the future. The Committee decides to note these cases in the corresponding paragraph of its General Report.

In relation to the failure to indicate during the past three years the representative organizations of employers and workers to which copies of the report and information supplied to the Office have been communicated, the Committee stresses the importance it attaches to the constitutional obligation under article 23, paragraph 2, of the ILO Constitution of governments to communicate copies of the reports and information supplied to the Office to employers' and workers' organizations. The Committee recalls that the contribution of employers' and workers' organizations is essential for the evaluation of the application of Conventions in national legislation and in practice for their participation in ILO's supervisory mechanisms.

The Committee welcomes the fact that this year again no Member State has failed to indicate during the past three years the representative organizations of employers and workers to which copies of the reports and information supplied to the Office have been communicated. The Committee expresses the firm hope that this is a sign that genuine tripartite social dialogue has been established in all ILO Member States. The



Committee decides to note this positive development and to encourage Member States to continue in that direction in the corresponding paragraph of the General Report.

(The conclusions are adopted.)



III. Information and discussion on the application of ratified Conventions (individual cases)

The Committee has adopted short, clear and straightforward conclusions. Conclusions identify what is expected from governments to apply ratified Conventions in a clear and unambiguous way. Conclusions reflect concrete steps to address compliance issues. Conclusions should be read with the full minutes of the discussion of an individual case. Conclusions do not repeat elements of the discussion or reiterate government declarations which can be found in the opening and closing of the discussion set out in the Record of Proceedings. The Committee has adopted conclusions on the basis of consensus. The Committee has only reached conclusions that fall within the scope of the Convention being examined. If the Workers, Employers and/or Governments had divergent views, this has been reflected in the Committee Record of Proceedings, not in the conclusions.

Afghanistan (ratification: 1969)

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Discussion by the Committee

Chairperson – The first case on our agenda is Afghanistan on the application of the discrimination (employment and occupation) Convention – that is, Convention No. 111. I now invite the representative of the accredited delegation of Afghanistan to the International Labour Conference.

Government representative – The Embassy and the Permanent Mission of Afghanistan to the United Nations (UN) and other international organizations in Geneva appreciate the work of the Committee of Experts and notes its findings on this specific matter. We also thank the ILO and the ILO Office in Kabul for its recent report on exploring the impact of discrimination against women on Afghanistan's economy.

Between 2001 and 2021, Afghanistan made significant progress in tackling various kinds of discrimination and creating a legal framework that respected equality of men and women. Women had an important role in public life and the economy of Afghanistan. They could work in any field. There were women Vice-Presidents, Ministers, Members of the Parliament, Senior Judges, Ambassadors and Governors.

Just before 15 August 2021, 3.5 million girls were going to different educational institutions. Unfortunately, since 15 August and the military takeover of Afghanistan by the Taliban and the Doha Peace Process failure, women have systematically been discriminated against. A situation that the very recent reports of the Human Rights Council, the Special Rapporteur on the situation of human rights in Afghanistan and the Working Group on discrimination against women and girls have hinted is an apparent "gender apartheid", which is unprecedented in the history of the world.

As the Committee of Experts rightfully mentions, there are numerous reports, resolutions and findings by the Security Council, the Human Rights Council, and other credible entities on the systematic violations of human rights in Afghanistan, which include the complete exclusion of women from public life and the violation of their rights, including the right to education and the right to work. As a result of these violations, a "gender apartheid" is being committed in Afghanistan.



I also want to draw the attention of the members of this Committee to the fact that the violations of human rights in Afghanistan do not end with the destruction of women's rights. Men, minorities and other groups are also systematically discriminated against. Extrajudicial killings, arrests and dismissals of all judges, prosecutors and public administration officials, the influence on humanitarian organizations, and very recently the banning of women from working at the UN and in other international organizations, are recent examples of this discrimination.

Unfortunately, the enabling legislative and the legal environment that existed before does not exist anymore. The Taliban have nullified the Constitution and the other laws and are ruling by decree. The courts are filled with unqualified persons in the judiciary, which does not depend on the Constitution anymore.

With all this information in our hands, we understand that the international community, which has at its head the UN Secretary-General (António Guterres), is working tirelessly to put in place a framework of permanent peace and reconciliation of political process. This began in Doha at the beginning of May. We are hoping that this regional and international forum can find a solution for a political settlement in Afghanistan, so that we can get an inclusive and representative Government with which we can address not only the questions of discrimination at work, but all different kinds of discrimination, and the economic issues that Afghanistan is facing. And until that time, I would suggest the Committee of Experts and this Committee to defer the examination of the case of Afghanistan. If there are any questions, I will be happy to answer them.

Employer members – We take due note of the presence of the representatives of the previous Government of Afghanistan and their statement. Unfortunately, we must face the reality that if I lived in Afghanistan, I would not be here with you. I would not have been able to access this rostrum, simply because I am a woman, forbidden from having an occupation and prevented from moving around.

Since the Taliban took power in 2021, the situation of women and girls in Afghanistan has deteriorated dramatically. They no longer enjoy the fundamental rights enshrined in ILO Conventions, such as the prohibition of all forms of discrimination in Convention No. 111, which has nevertheless been ratified by Afghanistan. The comments made by the Committee of Experts give rise to serious concerns about the application of this Convention. I will begin by addressing the procedural aspects and then examine the main grievances.

Regarding procedure, Convention No. 111 is one of the ILO's fundamental Conventions and therefore requires special attention and priority supervision. This fundamental Convention aims to guarantee human dignity and equality of opportunity and treatment for all workers, prohibiting any discrimination on the basis of race, colour, sex, religion, political opinion, national extraction or social origin. Afghanistan ratified this Convention on 1 October 1969, as well as other ILO Conventions. It is therefore unacceptable that no written report has been submitted on the application of this fundamental Convention since 1 July 2016. Like the Committee of Experts, we are very concerned by this lack of cooperation from the authorities. The Committee of Experts has already commented on this case 22 times – that is, almost every year for three decades. Moreover, this is the third time that our Committee has analysed this individual case: in 1999, 2000 and again this year.

As to substance, this extremely serious case is marked by a double footnote. Drawing primarily on the recent and concordant observations of several high-level UN human rights bodies, the Committee of Experts strongly deplores the discrimination in education, vocational training and employment primarily against Afghan girls and women.



The first grievance concerns the systematic exclusion of women and girls from all education, vocational training and access to employment. Countries that have ratified the Convention have undertaken to apply a national policy of equality, with a view to eliminating any discrimination within the population. These countries must therefore repeal any legislative provisions, administrative instructions or practices that are incompatible with the national policy of equality. The authorities must take positive measures to ensure that women enjoy the same rights as men to access education, vocational training and employment. But what do we find in law and then in fact? In law: the fundamental rights of women and girls have been reduced to nothing since August 2021: women no longer enjoy freedom of movement; women are no longer allowed to work, including in the civil service; girls no longer have access to secondary and higher education; the Ministry of Women's Affairs and the Human Rights Commission have been dissolved; the prosecution offices and courts responsible for combating violence against women have been closed.

In practice, discrimination, harassment and violence against women are commonplace and go unpunished. Because they are forbidden to work, women have lost their ability to support themselves. This fundamentally affects their human dignity. Now is the time for the fundamental rights of Afghan girls and women to be restored. For the good of Afghan society in general, and Afghan women in particular, immediate action must be taken to eliminate all legislation and practices that discriminate against girls and women in education, training and access to employment, as well as to prevent and combat all forms of harassment and violence targeting girls and women in this country.

The second grievance concerns the very broad terms of the law prohibiting discrimination at work. Section 9 of the Labour Law, both in the private and public sectors, does not cover in a sufficiently explicit and detailed manner all the grounds covered by the Convention (Article 1(1)(a)) – that is, “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin”. This legislative shortcoming has been mentioned for several years, without any improvement having been communicated to the ILO bodies by the Governments of Afghanistan. In a previous report, the Government had indicated that a draft Anti-Discrimination Law had been developed, which defined direct and indirect discrimination and prohibited discrimination in employment and occupation. We would like to know the current status of this draft Law. In any case, there is an urgent need to bring the national legislation into line with the Convention.

The third grievance concerns discrimination against girls and women with disabilities. Although section 15 of the Law of Rights and Benefits of Persons with Disabilities provides for equal rights for persons with disabilities in terms of social, economic and educational participation, the Human Rights Council expressed deep concern at the situation currently faced by girls and women with disabilities who are often subject to multiple, aggravated or intersecting forms of discrimination and disadvantages. The Committee of Experts reiterated its call for specific actions to be taken in order to facilitate access to education and vocational training and promote employment opportunities of persons with disabilities, in particular girls and women, both in the private and public sectors. Afghan society urgently needs to put an end to this double discrimination in law and in practice.

The fourth grievance concerns discrimination in access to justice. The High Commissioner for Human Rights found that, from August 2021, the legal and justice systems became dysfunctional and justice-level personnel were side-lined. The “de facto authorities” then gradually set up a country-wide justice system and courts, which are now based on Islamic law. This reform of the justice system does not, however, offer guarantees of respect



for the fundamental human rights and freedoms guaranteed in customary international law and human rights treaties. We therefore urge that all necessary steps be taken to ensure access to non-discriminatory formal justice mechanisms and effective remedies. The "de facto authorities" are urged to respect the principles of non-discrimination and equality themselves. It is also their duty to raise public awareness of these fundamental principles.

To conclude, we can only encourage Afghanistan to review and revise, with the social partners, the laws and practices deemed discriminatory against girls, women and minorities, particularly ethnic and religious minorities. Technical assistance from the International Labour Office should be sought for this purpose. Lastly, capacity-building for all parties (authorities, companies, trade unions and workers) on combating discrimination must be actively encouraged and supported.

Worker members – We are discussing the case on Afghanistan in unusual circumstances, given the absence of international recognition of the authorities in place, and in the presence of a Government representative accredited to this Conference. These circumstances are troubling to say the least, as we are accustomed to addressing our comments to recognized authorities who are in a position to influence the situation.

Our discussions should nevertheless have some merit, if only to stress the gravity of the situation and the concerns that it gives rise to. It will be for us to envisage concrete ways of improving the situation on the ground, while taking into account the country's position in the international community.

The issues raised by the Committee of Experts revolve around three points. First, there is the absence of a report since 2019, which does not make it any easier for the Committee of Experts to examine the situation. The main point raised by the Committee of Experts concerns the structural discrimination against women. This discrimination seriously obstructs their access to education, training and employment. And this situation follows a period during which some improvements were made. However, since the change of regime in August 2021, the return of the old regime has resulted in a return to past practices and policy choices, and these practices are based on systematic discrimination against women. As the Committee of Experts points out, these practices constitute a clear violation of the Convention and the fundamental principle of equality between women and men.

Women have been excluded from the workforce. They are also absent from the public administration, where all members are men. Since September 2021, women and girls have been denied access to secondary and higher education. Even where girls have been allowed to attend schools, instruction has been restricted due to the absence of women teachers.

The Ministry of Women's Affairs and the Afghanistan Independent Human Rights Commission have been disbanded. Specialized courts addressing the elimination of violence against women and prosecution offices have also been closed, thus leaving women without access to justice.

I will not dwell on the other two points, which are covered by the comments by the Committee of Experts, namely the inadequacy of the definition of the concept of discrimination in Afghan law and the lack of a mechanism for access to formal justice. I will not dwell on these issues because, despite their importance, they are the consequence of the structural discrimination that we have outlined and that is repeatedly condemned by other UN bodies.

The Worker members will pay particular attention to any suggestions made during our discussions aimed at resolving the issues raised.



Worker member, Afghanistan – I speak as President of the National Union of Afghanistan Workers and Employees (NUAWE), the largest trade union confederation in Afghanistan. Since the takeover of my country by the Taliban in August 2021, many trade union leaders, including myself, have been forced to relocate and leave the country.

During the past 20 years, the people of this country have improved the rights and well-being of the people of Afghanistan, whose lives had been devastated under the previous rule of the Taliban between 1996 and 2001. Afghanistan was progressing towards democratization and promoting the status of women, which can be clearly seen from the presence of 64 women in Parliament, 17 women in the Senate, 4 women in Cabinet, 4 women ambassadors, and 261 women judges in the courts and judiciary under the previous administration. Some 1,500 women were working as defence lawyers, 2,500 women as journalists in private free media, 3,650 women in the security forces. Some 3.5 million girls were engaged in education, and thousands of women were working in the private sector, altogether constituting 30 per cent of the labour force in the Afghan labour market.

Unfortunately, the takeover of the country by the Taliban in 2021 has reversed the course of the development of our country. Since 15 August 2021, the people of Afghanistan have been living in a legal vacuum. The interim Cabinet of Taliban has declared the country's Constitution, Parliament, and hundred-year-old laws invalid: the Afghanistan Labour Code, the Elimination of Violence against Women Law, the regulation of women's support centres and the Child Rights Protection Law, which stipulated fundamental rights and equality of treatment and opportunities between men and women, are no longer applicable. In September 2021, the Taliban closed the Ministry of Women's Affairs and replaced it with the Ministry of Prosperity and Prohibition, which had existed under their previous regime to police the behaviour of citizens and enforce a strict interpretation of Sharia according to Taliban's interpretation.

Twenty decrees have been announced by the Taliban to impose their religious beliefs, as well as the way of life, attire, and ethics based on the Taliban's interpretation of Sharia. Non-observance of these set of rules is not tolerated. Penalties, including corporal punishments, are imposed.

Women have been effaced from the public sphere. They are prohibited from receiving education, going to work, or even going to parks, markets, spas or traveling within and outside the country. The Taliban Ministry of Prosperity and Prohibition and the Ministry of Information and Culture have imposed restrictions on the role of women in publications, broadcasting series and films, and banned some on the grounds that they do not comply with the rules.

Since September 2021, the return of all Afghan girls over the age of 12 to school has been banned: 1.1 million girls and young women do not currently have access to formal education. Currently, 80 per cent of Afghan girls and young women who are eligible for school – roughly 2.5 million – have been thrown out of school. Thirty per cent of girls in Afghanistan have never entered primary education. In December 2022, university education for women was suspended until further notice, affecting more than 100,000 female students who were studying in public and private higher education institutions.

The economic crisis has worsened the situation for women, minors and those marginalized in the country. Presently, at least 90 women have been arrested, imprisoned and abused by the Taliban in three northern provinces – in the Faryab, Samangan and Jawzjan provinces – under various allegations of breaching the Taliban-imposed Islamic laws and rules. They remain in prison without any investigative procedure, legal representation or



trial. Sixteen of them have fallen pregnant due to rape. Forced abortions in local hospitals have also been reported.

LGBTI persons in Afghanistan continue to face grave human rights violations perpetrated by the Taliban, including threats, targeted attacks, sexual assaults, arbitrary detentions and other violations. Many LGBTI persons remain fearful that past discriminatory practices by the Taliban will resurface. These, historically, included the death penalty for those believed to be engaging in same-sex relations. Many LGBTI persons remain in hiding, fearing a risk to their lives.

The space for free media shrank drastically as the Taliban created an increasingly intimidating environment, forcing many media outlets to close. Journalists face growing restrictions including arbitrary arrest, unlawful detentions, and torture for reports criticizing the Taliban, leading many to self-censorship. Journalists are beaten and face other forms of torture while detained. Many journalists have fled the country. Women television reporters are forced to cover their faces almost completely. The Afghanistan Independent Human Rights Commission (AIHRC), the national human rights institution, remains closed, and the space for civil society organizations to document and report on human rights has shrunk significantly. Independent human rights groups are unable to work freely. The Taliban arrest and unlawfully detain those who criticize them on social media. The Taliban dismantle any space for peaceful assembly, demonstration or gathering. The Taliban police uses excessive and unnecessary force against demonstrators, and peaceful protesters are arbitrary arrested, detained, tortured and forcibly disappear. Detained protesters face physical and psychological torture. Family members prevent their female relatives from protesting out of fear of repercussions, further shrinking the space for freedom of assembly. Democratic and human rights institutions have been shut down or have ceased to operate.

NUAWE is the only trade union, at the national level, defending the rights of male and female workers, and promoting gender equality through training and programmes. The Taliban have refused to return the trade union assets, offices and properties of NUAWE, which had been seized under the previous Government. It has become impossible for our affiliates to operate or pursue normal activities to redress gender-based violations. The Supreme Labour Council and the commission for resolving disputes arising from work have ceased to function. Social dialogue, which is one of the essential means for solving labour disputes and promoting an inclusive economic and social policy framework in the country, has also been paralyzed.

Since 2021, 97 per cent of the population has been living below the poverty line. Some people have been forced to sell their body parts. Forced marriage of minor girls, as well as child labour of boys and girls engaging in hazardous work, has increased. The Taliban's repeal of all the rights and equality of treatment and opportunities once enjoyed by the people of Afghanistan, and the absence of international intervention to stop it, poses a threat before this House to the enforcement of the fundamental labour Conventions in such a failed State.

We request the international community and the UN authorities to take practical and serious measures so that the people of Afghanistan – without discrimination based on sex, race, extraction or social origin, religion and political opinions – can have access to personal security, basic rights and freedoms, as well as employment, education and development opportunities.

Government member, Sweden – I have the honour to speak on behalf of the **EU and its Member States**. The candidate countries **Albania, Bosnia and Herzegovina, North**



Macedonia, Republic of Moldova, Montenegro, Serbia, the EFTA countries **Iceland and Norway**, members of the European Economic Area, align themselves with this statement.

The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights. We actively promote the universal ratification and implementation of the fundamental international labour standards. We support the ILO in its indispensable role to develop, promote and supervise the application of ratified international labour standards and of fundamental Conventions in particular.

The principle of equality and non-discrimination is a fundamental element of international human rights law. In the EU's founding treaties and the Constitutions of the Member States, the prohibition of discrimination is a core principle. ILO Convention No. 111 is the translation of this fundamental human right to the world of work.

We are deeply concerned about the steep deterioration of the overall human rights and fundamental freedoms situation in Afghanistan since the Taliban forcefully took power in 2021. The Taliban have structurally and systematically violated the economic, social and cultural, political and civil rights of the people of Afghanistan, especially of women and girls. Afghanistan is the only country in the world that prohibits education beyond primary level for girls. We note with concern that lack of access to education hinders future possibilities of employment or income-generating activities for women and girls.

We are deeply concerned that women have been largely removed from the workforce, including in public administration, legal professions, and especially in sectors providing humanitarian aid and basic needs support, despite women's role in providing humanitarian aid. We note the only country-wide exceptions of health and primary education. Excluding women from the workforce is not only unacceptable from a human rights' perspective but also economically disastrous. We strongly condemn the Taliban's decisions to ban Afghan women from working for international and national NGOs and UN agencies and bodies.

We strongly regret that the Ministry of Women's Affairs and the Afghanistan Independent Human Rights Commission have been disbanded and that specialized courts addressing the elimination of violence against women and prosecution offices have also been closed. This leaves women without access to justice. According to the recent report of the UN Special Rapporteur on the situation of human rights in Afghanistan, women are particularly affected by human rights violations and restrictions, hindering the promotion of full, productive and freely chosen employment and therefore their ability to sustain themselves and their dependents. By early 2021, women-owned businesses were creating jobs, but by March 2022, 61 per cent of previously economically active women had lost their jobs or income-generating activities. Movement restrictions including the Taliban's requirement that women travel with a male chaperone or a "mahram" and market closures prevent women in the informal sector from selling products in markets, and those who continue to work often face harassment and abuse.

We fully echo the call of the Committee of Experts to urgently remove bans, discriminatory practices and unequal treatment based on sex that hinder girls' and women's access to education, vocational training, employment and occupation and increase their exposure to sexual and gender-based violence. We share the Committee of Experts' urgent requests to the de facto authorities in Afghanistan to provide information on measures taken and results in achieving equal participation of women in employment and education, including statistical data disaggregated by sex and occupation.



We also urge the de facto authorities in Afghanistan, in line with the Committee of Experts' report, to undertake urgent actions required to ensure the implementation of specific measures to improve equal access to education at all levels, vocational training and employment opportunities for persons with disabilities, with a particular focus on girls and women in both the private and public sectors. We note that girls and women with disabilities are often subject to multiple, aggravated or intersecting forms of discrimination and disadvantages.

We are deeply concerned by the previously operating legal and justice systems becoming dysfunctional and the lack of a legal framework addressing discrimination in employment and occupation. Afghanistan must meet the obligation it committed itself to, by voluntarily and willingly ratifying international conventions and human rights treaties, including Convention No. 111. Therefore, it is essential to take all the steps required to explicitly define and prohibit discrimination based on at least all of the grounds listed in the Convention.

In support of and with respect to the interests of the Afghan people, especially women and girls, and in absence of a recognized Government, the EU has re-established a minimal presence in the country and continues to be a key donor in support of humanitarian and basic needs support to the Afghan people. We will continue to monitor the situation closely.

Government member, United Kingdom of Great Britain and Northern Ireland – I have the honour to deliver this statement on behalf of the **United Kingdom, Australia, Canada** and **United States**. The United Kingdom, Australia, Canada and the United States unequivocally condemn the human rights abuses taking place in Afghanistan. Since taking power, the Taliban have repeatedly and systematically undermined international human rights and failed to live up to their promises. We share the Committee of Experts' deep concern at the deterioration of the situation of women and girls, as well as ethnic and religious minorities, in Afghanistan since 2021. Through a series of egregious decrees, the Taliban are subjecting women and girls to devastating, systematic discrimination, denying them their human rights and fundamental freedoms. This includes restrictions on access to education and training, freedom of movement, and employment.

We also express our concerns on the lack of legal framework explicitly defining and prohibiting direct and indirect discrimination as required by the Convention, to which Afghanistan has been a State party since 1969. The international community has a responsibility to hold the Taliban to account for their actions. The United Kingdom, Australia, Canada and the United States have repeatedly called on the Taliban to abide by international law, including by respecting the human rights and labour rights of all the citizens of Afghanistan and bringing an end to the repressive measures which will prevent Afghanistan from achieving longer-term stability and prosperity. We call on the Taliban to respect women and girls' equal opportunity in employment and occupation, including access to education and vocational training. Not only is it an affront to the human rights of women and girls in Afghanistan, the Taliban's pursuit of discriminatory practices is an act of harm against their own country, risking further unemployment, poverty, illiteracy, and skill shortages in critically needed professions. Women and girls' public and economic participation and leadership are fundamental for stability and progress in Afghanistan. As women and girls make up half the workforce, their participation in public life is fundamental to the economic development of Afghanistan. Excluding half the population from social and economic spheres will only perpetuate the economic crisis affecting all Afghans.



We regret that Afghanistan has not provided a report to the Committee of Experts, especially in light of its urgent appeal in 2021. We strongly emphasize our support to the ILO in its request for Afghanistan to reply in full to the comments made in the Committee of Experts' report. We will continue to work with like-minded countries to secure a better future for Afghan women and girls, where they are free to express themselves in the public sphere and pursue their educational interests and working lives.

Government member, Switzerland – Switzerland regrets that the issue of the application of the Convention in Afghanistan has to be discussed again before the Committee, despite the many observations made by the Committee of Experts and the dialogues held over the last 15 years.

Since autumn 2021, Afghan women and girls have seen their rights and fundamental freedoms violated on a daily basis, including their right to full, equal, meaningful and safe participation in all spheres of public life. These restrictions also affect other minorities. Switzerland condemns in the strongest possible terms the restrictions on access to employment and higher education imposed on Afghan women and girls and recalls that these measures violate their fundamental rights, in particular the principle of non-discrimination and the right to education for girls beyond the sixth grade.

For example, Afghan women are no longer allowed to work for NGOs or the UN, with negotiated exceptions, while secondary and higher education is forbidden for women and girls. These measures are contrary to the Convention, which aims to prevent, combat and eliminate all forms of discrimination in education, vocational training and access to employment. Furthermore, as Switzerland has already pointed out on several occasions in the Security Council, the restrictions on Afghan women working for NGOs and the UN hamper humanitarian assistance, which must be rapidly accessible to people in need under international law. This has a devastating impact on the entire Afghan population.

In this respect, Switzerland supports the conclusions and recommendations of the Committee of Experts and calls on the Taliban to amend their decisions and comply with the obligations set out in the Convention.

Employer member, France – We have known since the times of Plato that men and women are equal because they originate from a single being split in half, as recounted in the myth in the *Symposium*.

The case of Afghanistan is unfortunately simple. The Committee of Experts has examined the subject 22 times, and the case is now before our Committee for the third time. It is an extremely serious matter and is the subject of a double footnote. What does the Convention tell us? It is a fundamental Convention, which aims to guarantee human dignity and equal opportunities and treatment for all workers by prohibiting all forms of discrimination, including discrimination on the basis of sex.

According to the latest observations of the UN, the situation of Afghan women has deteriorated since the change of political regime in August 2021. You have already heard the list of violations of their fundamental rights, so I will just remind you that women and girls cannot move around freely and are not allowed to work, even in the public service. They are denied access to education, and discrimination, harassment and violence against women are commonplace and go unpunished, and so on. Who can claim that such a regime respects human rights?

There is an urgent need to restore the rights of Afghan women in terms of access to education, vocational training and employment. There is an urgent need to put an end to all



discrimination against Afghan women, in order to bring national legislation into line with the provisions of the Convention, without forgetting the painful situation of women with disabilities. There is an urgent need to guarantee Afghan women access to a free and independent justice system, with respect for the fundamental freedoms enshrined in international law.

Of course, I am speaking here today as an Employer member of the ILO, but first and foremost as a human being. How can we remain silent in the face of the unjustly tragic situation suffered by these women and girls, who have been plunged alive into the depths of despair? We are beyond serious breaches of the provisions of the Convention, even beyond the violation of the most basic human rights. We are quite simply faced with a denial of the principles upon which our Organization is founded. For all these reasons and in the name of social justice, the Committee must take a very tough stance against a regime that tramples on human dignity to such an extent. Finally, I would like to conclude by quoting a French poet named Louis Aragon, who loved to open our minds, with this powerful phrase, which is never uttered without a hint of hope: “Women are the future of man”.

Government member, Japan – First, Japan would like to express gratitude to the Office and the Committee of Experts for their efforts in pursuit of the principles enshrined in the ILO Constitution.

Japan is deeply concerned about the deteriorating human rights’ situation that the Afghan people, especially women and girls, are facing and we strongly condemn the Taliban’s measures that restrict the rights of women and girls. It is important that the international community continue to engage with the Taliban in order to make positive changes. Japan continues to support Afghanistan to address the complex challenges faced by the Afghan people by using every opportunity, including through our direct contact with the Taliban.

As a responsible member of the ILO Governing Body, Japan strongly expects Afghanistan to provide the necessary explanations to the Office and all the ILO constituents. We request Afghanistan to address in good faith the points raised in the Committee of Experts’ report and to follow the procedure to be adopted by this tripartite structure.

Worker member, France – Almost two years ago, on 15 August 2021, the Taliban entered Kabul. A deathly veil descended over half of the country’s population. The situation with regard to unequal treatment and gender discrimination is terrifying. The Taliban want to erase women, to make them disappear. Nowhere else in the world is the suppression of women taken to such extremes.

Over the last 24 months, violations of the human rights of women and girls have progressively worsened. Despite initial promises that women would be allowed to exercise their rights under Sharia, including the right to work and study, the Taliban have systematically excluded women and girls from public life. Women have been prevented from entering parks and gymnasiums, among other public places. These are discriminatory measures from an era that Europe would like to forget.

After drastically limiting women’s and girls’ access to education and work during the first year of their reign, the Taliban continue to shock with new restrictions. At the end of 2022, they banned women from studying at universities. Previously, they had banned women from studying certain subjects such as veterinary science, engineering, economics and agriculture. The Taliban claim that women are not fit to be judges or lawyers because they do not know enough about Sharia. Excluded from the legal system, women have become targets of Taliban reprisals. In January 2023, the UN Special Rapporteur on the independence of judges



and the UN Special Rapporteur on the situation of human rights in Afghanistan condemned the exclusion of women from the legal system, describing it as a “shameless act of discrimination”, and called on the international community to offer them protection and safe passage. And then, showing great cynicism, the de facto authorities informed the UN that no Afghan women were allowed to work for the UN in Afghanistan with immediate effect, and that the measure would be actively enforced. This decision extends the directive previously issued on 24 December 2022 prohibiting Afghan women from working for national and international NGOs.

Finally, to add to this unbearable litany, gender-based violence can barely be reported any more, because women can no longer go alone to a police station to report domestic violence. As women’s shelters have been closed by the Taliban, women and girls have lost their last safe havens. This has led to countless physical and psychosocial costs and risks for Afghan women, such as child marriage, depression and suicide due to exclusion and lack of prospects. The risk of falling victim to domestic violence has also increased. According to Amnesty International, there has already been an increase in child marriage, early marriage, forced marriage and fatal abortions since the change of power.

In view of these abuses against the female population, our Committee must immediately and unreservedly condemn the Taliban regime out of respect for the suffering of Afghan women.

Worker member, Philippines – We, the Nagkaisa Labour Coalition, International Trade Union Confederation (ITUC) affiliates in the Philippines, namely the Federation of Free Workers, the Central and the Trade Union Congress of the Philippines, as well as those with the All Philippine Trade Unions, stand in unshakable solidarity with the people of Afghanistan and unequivocally condemn the dangerously high and heart-breaking deterioration of human rights in this central Asian country.

The human rights situation in Afghanistan has declined sharply since the Taliban’s return to power in August 2021, despite the Taliban leadership’s public commitment to upholding and respecting human rights. Amnesty International and Human Rights Watch have repeatedly documented violations of international laws, including Convention No. 111, and serious human rights abuses carried out by the Members of the Taliban since then.

In an alarming development, according to Amnesty International, individuals who are publicly critical of the Taliban’s oppressive rule against women, and ethnic and religious minorities have been arrested and others have been killed extra-judicially. Many of these individuals are prominent advocates for civil liberties and equality, including Narges Sadat, a women’s rights defender; Professor Ismail Mashal, a champion for women’s education; Fardin Fedayee, a civil society activist; Zekria Asoli, an author and activist; Mortaza Behboudi, an Afghan-French journalist; former senator Qais Khan Wakili; and Afghan journalist Muhammad Yar Majroh. According to a recent Amnesty International update, only Professor Ismail Mashal has been reported released, a fact that magnifies our grave concern. The Taliban often provides no reasons for these arrests, and the whereabouts of the detainees frequently remain undisclosed, amounting to enforced disappearances.

The arbitrary arrest and silencing of human rights advocates is part and parcel of the discriminatory environment under which the continuous assaults on the rights of women and girls, and the targeted killings of ethnic Hazara people, are sanctioned to impair their access to equal treatment and opportunities.



Human Rights Watch said that the situation is further exacerbated by the threats faced by religious minorities from extremist groups such as the Islamic State of Khorasan Province (ISKP). The Hazara, a predominantly Shia ethnic group, have been subjected to numerous attacks by the ISKP, leading to the death of at least 700 people.

Worker member, Norway – I am speaking on behalf of the trade unions in the Nordic countries. Afghanistan is discussed here today under Convention No. 111. In addition to discrimination of women, there is also discrimination based on ethnicity and religion. Women continue to be discriminated in access to employment and job security. After the Taliban took over, severe restrictions have been imposed on women's rights, including freedom of movement and access to education and employment. Women do not even have the right to justice. In addition, Afghanistan's ethnic minorities and others who do not adhere to the strict interpretation of Sunni Islam are at grave threat of being a target of violence. Afghanistan was not a safe country where ethnic and religious diversity was respected under the previous Government. The situation has drastically deteriorated after the Taliban's takeover.

Between August 2021 and June 2022, the UN in Afghanistan recorded 2,106 civilian casualties associated with religious intolerance by the Islamic State Khorasan Province (ISKP), which continued to carry out systematic and targeted attacks on minority ethnic and religious groups. The attacks included bombing religious and education centres and attacking public transportation taken by the minority groups. Such instances included an attack on a Sikh temple in Kabul on 18 June, and the bombing of an education centre in a primarily Hazara neighbourhood on 30 September. The latter killed at least 52 teenagers, mostly girls. The Taliban authorities have failed to investigate these attacks or take adequate steps to protect the ethnic religious minorities. Instead, security measures set up under the former Government to protect these minority groups have been removed.

In areas of ongoing armed resistance against the Taliban, civilians continue to face death, arbitrary arrest, torture, and restricted movement enforced by local Taliban authorities. Locals also report that the Taliban carried out forced evictions in these areas, particularly in Panjshir.

The ethnic and religion-based discrimination and violence in Afghanistan in no way comply with the obligations under the ratified ILO Conventions. We urge for an immediate stop to all forms of discrimination, violence and attacks on women, ethnic and religious minorities urgently.

Observer, Educational International (EI) – On behalf of teachers' unions worldwide, Education International expresses deep concern regarding the status of teachers and the access to education for Afghan girls. Many comments have already been made about education, but I would like to stress the profound impact those developments have had on the personal and professional well-being of teachers.

The policies on education since August 2021 have been fragmented and often incoherent, making it difficult to obtain a comprehensive picture of the situation. Effective national and international independent monitoring has been challenging. Moreover, the Afghan media has been muzzled and censored, resulting in limited coverage of the real ongoing situation in education settings. Afghanistan has endured decades of devastating wars and has faced immense challenges in various aspects of life, including education. Throughout these difficult times, Afghan teachers have tirelessly served the youth with dedication. The past two decades have been marred by systemic corruption and mismanagement, squandering the financial assistance provided by the international community and pushing Afghan teachers to the brink of poverty.



The recent takeover by the Taliban has only exacerbated an already difficult context. The imposition of strict rules within the work environment, enforced transfers, and the ban on girls' education have placed significant psychological and economic pressures on teachers, leaving them even more vulnerable. The decision by the Taliban to prohibit girls from pursuing education beyond the sixth grade and to segregate schools and teachers based on gender has had a profound impact. It is disheartening to note that despite initial promises of allowing adolescent girls to return to school, these commitments were never fulfilled. Instead, more and more restrictions on education in general, and on women and girls specifically, have been enforced. Tertiary institutions have been closed to female students and staff, and recently, women and girls have been denied the ability to leave their homes without a male chaperone, to work, or to participate in any aspect of life outside the home.

As a result, many female teachers have been forced to remain at home, while others have been compelled to work in schools located far away from their homes. This has significantly reduced their purchasing power, as they now have to spend a portion of their income on transportation costs. Furthermore, teachers have gone months without receiving their salaries due to the lack of cash in most banks, the waiting period for payments, and the devaluation of the Afghan currency. Also, retired teachers are not receiving their pension payments. This dire situation has led many teachers to abandon the profession. The right to education goes beyond simply opening schools. It encompasses the working conditions and payment of teachers, dress codes and conduct rules, access to teaching and learning materials, changes to the curriculum, gender segregation of classes and staff, and how schools are administered, not to mention their collective union and labour rights as workers.

We urge the ILO and the Government of Afghanistan to take immediate and decisive action to ensure that the rights at work of teachers, both female and male, are protected, their financial security is restored, and that the future of education in Afghanistan is not compromised.

Observer, IndustriALL Global Union – I am speaking here on behalf of IndustriALL Global Union. My organization and my affiliates around the world are extremely concerned about the future of Afghanistan under Taliban control, particularly human and labour rights, as well as the situation for women and girls. Women are in permanent danger. Over the last 20 years, they gradually won back some of their rights, only to see their fight for dignity reduced to nothing in a few hours. We consider it outrageous that the Taliban bans most education for girls and women, imposing brutal punishments and confining women to their homes unless a male family member escorts them. Attacks on women at work and in education have resumed, as have forced marriages. Their lives, their dignity and their integrity are very seriously threatened. Trade unionists are also prime targets of this regime. As soon as they arrived in Kabul, the Taliban confiscated the property of the trade unions and banned their activities, accusing them of violating Islamic laws. The Taliban have repealed laws and removed institutions that guaranteed equality and provided remedies towards the elimination of harassment and violence against women, and an end to discrimination in vocational training, employment, and occupation.

Therefore, we call on Afghanistan to reinstate a legal framework explicitly defining and prohibiting direct and indirect discrimination based on at least all the grounds set out in the Convention, in all aspects of employment and occupation, as well as the lack of access to non-discriminatory formal justice mechanisms and effective remedies to guarantee equal participation of women in employment and occupation; to remove without delay all bans, discriminatory practices and unequal treatment based on sex imposed on girls and women to prohibit, limit or impede their access to secondary and higher education, vocational



training, employment and all types of occupations in all sectors; to prevent and address violence and harassment against girls and women; to give access and ensure completion of education at all levels; to enhance participation in a wide range of training programmes; to promote employment opportunities of persons with disabilities, in particular girls and women, both in the private and public sectors; and finally, to provide access to non-discriminatory formal justice mechanisms and effective remedies and to organize activities to raise public awareness of the principles of non-discrimination and equality.

Government representative – I will be very brief, since I really concur and could not agree more with most of the statements which have been made here today from all the sides: Governments, Employer and Worker members. I also wanted to raise this issue of the discussion on Afghanistan a little bit above the level of what we are discussing here today. We appreciate and highly value this very timely discussion which is happening here in this international Organization and with this importance attached to the issue of Afghanistan. Again, I understand, and I concur that it is the responsibility of Afghanistan to report on Convention No. 111, ratified in 1969. If there were difficulties to fulfil our reporting obligations in the past, it was a problem of capacity rather than a problem of political will. But what we are facing right now in Afghanistan – this discussion is a small part of it – is an anomaly, and it is a threat to the whole international system of which the ILO and the ILC are just one part.

So that is why I wanted to raise the level of the discussion, and I am glad that many people did, like the Employer member from France. The issue that we are facing in Afghanistan and that we are discussing in this hall impacts all of us as human beings and as citizens of the twenty-first century world. In the third decade of the twenty-first century, we are experiencing a takeover of a country by a group that does not believe in this Convention. It is not a matter of how to report, but rather to what extent they will accept the norms and international system to which Afghanistan belongs and is a party to, such as the Universal Declaration of Human Rights and this Convention.

I think this group unfortunately was negotiated by and with a large number of Member States who are present here, and the promises that were made were perhaps made in a way to deceive the representatives of these countries. So I would say that the situation in Afghanistan is a challenge to the all international norms and the whole system. I believe that we need to pass and ponder and think about why and how we came to this situation. We also need to think about how we can remedy the situation and how we can move forward. Because, in Afghanistan, people will say that the Taliban are the reality of Afghanistan. Actually, the reality is that around 100,000 hard-line extremists suicide bombers have taken hostage a country of 38 million people. These 38 million were tired and sick of all the decades of war, broken promises and betrayals. So now we are faced with a situation which, of course, is related to this very specific discussion, but is also related to the whole international system and international human rights system. So how do we solve this issue and how do we face this problem, and go above and beyond the discussions? We need another approach to solve this problem because the consequences of the situation in Afghanistan have repercussions all around the world. If we do not raise our voice as ILO and ILC members – I really appreciate what happened today in this hall – together with the concerned citizens of the world, the Security Council, the UN, and countries in the region, I think the situation would get even worse than what it is now.

Worker members – The situation confronting us in this country is extremely concerning. The UN Security Council has clearly indicated, through resolution 2593, the expectations of the international community, and the full recognition of women's rights is an



integral part. Our Committee can recall and underscore these aspects. The UN and the ILO continue to carry out activities in the field. While these are certainly limited, they should be optimized in order to be able to improve, even just a little, the situation of women and girls in this country. This technical work is seriously hampered by the recent decisions of the ruling power, which prohibit Afghan women from working with the UN or NGOs. We propose that the Office proceed with an examination of the conditions to be able to continue this work and increase its impact. This should be done by bringing together the parties that can provide their expertise and knowledge of the field.

In view of the seriousness of the situation, the Worker members request that this case be the subject of a special paragraph.

Employer members – As recalled in the 2012 General Survey, “with a view to achieving the elimination of discrimination in employment and occupation, States are required to develop and implement a multifaceted national equality policy. The implementation of the policy presupposes the adoption of a range of specific and concrete measures, including the need for a clear and comprehensive legislative framework, and ensuring that the right to equality and non-discrimination is effective in practice. Proactive measures are required to address the underlying causes of discrimination and de facto inequalities resulting from deeply entrenched discrimination.” These fundamental principles are applicable in a general manner to all States.

In view of what is happening in Afghanistan, we condemn, like all the participants here, the fact that this country is seriously failing to implement the Convention. The Employer members request that the “de facto authorities”:

- (1) provide full information on any progress made to put an end to discrimination;
- (2) take the necessary measures to explicitly define and prohibit in law all direct and indirect discrimination;
- (3) take specific measures to facilitate access for persons with disabilities to education, occupational training and employment;
- (4) take necessary measures to guarantee access to formal non-discriminatory justice mechanisms and effective remedies.

There is still a long way to go. What is important is to proceed proactively. The anti-discrimination legislation must not only be improved, but also applied. This will require tackling the deep-rooted causes of discrimination, which are based on deep-seated prejudices in the tradition, or in certain types of traditions.

Given the extreme seriousness of the case, the Employer members push for a special paragraph on Afghanistan to be added to the conclusions of the work of our Committee. The Committee must fully perform its role and thereby be part of international pressure to ensure respect for human rights throughout the world.

Conclusions of the Committee

The Committee noted with deep concern the repeated failure of the Government to respond to the Committee’s comments since 2019.

The Committee expressed its very deep concern at the significant deterioration of the situation of women and girls, including the situation of vulnerable groups of women, and other minorities since 2021.



The Committee deeply deplored the discriminatory prohibitions, bans and restrictions based on sex imposed on girls and women since 2021, which adversely impact on their ability to enjoy fundamental human rights and freedoms. The Committee also deplored the lack of legal framework explicitly defining and prohibiting direct and indirect discrimination based on at least all the grounds set out in the Convention, in all aspects of employment and occupation, as well as the lack of access to non-discriminatory formal justice mechanisms and effective remedies, in line with the Convention.

Taking into account the discussion, the Committee urges that, in consultation with the social partners, effective and time-bound measures be taken to:

- remove without delay all bans, discriminatory practices and unequal treatment based on sex imposed on girls and women to prohibit, limit or impede their access to secondary and higher education, vocational training, employment and all types of occupations in all sectors, and provide information to the Committee of Experts on the measures taken in this regard, and on the results achieved;
- put in place the necessary laws, policies and implementation strategy to prevent and address violence and harassment against girls and women, and provide information to the Committee of Experts on the measures taken in this regard, and on the results achieved;
- amend section 9 of the Labour law in order to explicitly define and prohibit in law direct and indirect discrimination in line with the Convention;
- ensure access to non-discriminatory formal judicial mechanisms and effective remedies;
- organize activities and implement a campaign to raise public awareness of the principles of non-discrimination and equality protected under the Convention;
- provide information on the adoption of all the above-mentioned measures on any progress made in that regard, as well as the results achieved on the equal participation of women in employment and occupation, including by providing statistical information, disaggregated by sex and occupation, on the participation of girls and women in education, vocational training and employment;
- develop a multidisciplinary and multi sectoral action plan to combat discrimination in employment, occupation and education, with ILO technical assistance and in close cooperation with the social partners and other relevant civil society organizations. In addition, coordinate with other UN agencies operating in the territory.

The Committee also calls for specific action to be taken in order to facilitate access to education and vocational training and promote employment opportunities of persons with disabilities, in particular girls and women.

The Committee decided to include its conclusions in a special paragraph of its report.



Armenia (ratification: 1994)

Employment Policy Convention, 1964 (No. 122)

Written information provided by the Government

Article 1

Currently active work is being done on the development of the draft National Employment Strategy, which is considered as the main direct result of the second priority direction of the Decent Work Country Programme (DWCP). The main objective of the draft is to promote employment through the creation of a competitive and employable workforce and the expansion of highly productive work opportunities. The draft is intended to greatly contribute to the strengthening of the education-labour market connection in the coming years. Based on the strategy, as a result of the in-depth analysis of the labour market, working-age citizens of the communities including in the regional cities of Armenia, non-studying, non-working youth aged 18–29 years, middle-aged (30–40 years) non-working women, without family and social benefits are planned to be as the target group of the strategy, the employable beneficiaries to whom the state employment policy will mainly be directed in the coming years.

One of the strategic goals envisaged by the draft is the transformation of the state policy system in the field of employment, aimed at the development of human capital (labour market supply), the growth of high-productivity jobs (labour market demand), and the reduction of discrepancies between labour supply and demand. In the draft National Employment Strategy, such regulation topics as: labour rights, ensuring inclusion and equal opportunities (persons with disabilities, gender equality, migrants, displaced persons, national minorities, etc.) have found their place. Within the framework of the development of the strategic document, the possibilities of introducing the unemployment insurance system are also being studied. While developing the draft between 25 November and 6 December 2022, six focus group discussions were held among employers in prospective sectors of the economy in order to find out the changing trends of the employment structure, labour productivity and labour demand in Armenia, as well as to identify the problems of the target groups of the strategy to be involved in the labour force, and the ways of their possible solution. The recommendations made as a result of the discussions found their place in the draft strategic document.

The draft National Employment Strategy's vision, primary objectives, programmes to achieve these objectives and implementation strategies are currently developed. The draft is currently in the stage of discussion and coordination with the relevant government bodies. At the beginning of next month, a meeting for discussions with representatives of the confederation of trade unions and various employers' associations is also planned, the results of which will also be taken into account in the process of improving the draft National Employment Strategy.

In addition to the development of the draft National Employment Strategy, it should also be noted that the DWCP has greatly contributed to the development of the capacities of employees of both the Ministry and the Unified Social Service (USS) in the field of employment, as within the framework of the latter, large-scale capacity-building initiatives were implemented, and consultation and training materials were translated and provided.



ILO representatives actively participated in the strategic session to discuss the analytical part, vision, goals and programmes of the draft National Employment Strategy. They also carried out an in-depth review of the related materials and provided detailed comments, which have been very useful in revising the document.

According to the Armstat data, in 2022 the preliminary index of the unemployment rate in Armenia was 13.0 per cent, which decreased by 2.5 percentage points compared to the previous year. At the same time, the preliminary index of the employment level was 51.1 per cent, which increased by 2.2 percentage points compared to the previous year. The preliminary index of the number of employed people in 2022 was 1,139,100 persons, which is 4.7 per cent more than last year.

At the same time, the number of unemployed amounted to 170,100 persons, which decreased by 14.5 per cent compared to last year. The tables below present the main indicators of employment and unemployment in Armenia, which are published by Armstat.

As of the end of December 2021, the number of jobseekers registered in the territorial centres of the USS of the Ministry of Labour and Social Affairs (MLSA) was 86,396 persons, which decreased by 1.8 per cent compared to the previous year. During 2021, 10,117 persons were employed, which was increased by 0.08 per cent compared to the previous year.

The number of unemployed registered in the territorial centres of the USS as at the end of December 2021 was 58,153 persons, which decreased by 5.1 per cent compared to the previous year. At the end of December 2021, the share of unemployed women in the total number of unemployed was 64.2 per cent or 37,336 persons, which decreased by 0.5 per cent points compared to the previous year's indicator. A total of 4.3 per cent of the registered unemployed, or 2,517 persons, were persons with disabilities.

As of the end of December 2022, the number of jobseekers registered in the territorial centres of the USS was 70,544 persons, which decreased by 18.3 per cent compared to the same period of the previous year. In 2022 since the beginning of the year, 10,362 persons were employed, which was increased by 2.4 per cent compared to the previous year.

The number of unemployed as of the end of December 2022 was 48,561, which decreased by 16.5 per cent compared to the previous year. As of the end of December 2022, the share of unemployed women in the total number of unemployed was 62.8 per cent or 30,543 persons, which decreased by 1.4 percentage points compared to the previous year's index (64.2 per cent as of the end of December 2021). A total of 4.4 per cent of the unemployed or 2,140 persons were persons with disabilities (as of the end of December 2021 4.3 per cent of the unemployed).

In order to ensure the employment of the population, in 2021 by the USS measures of vocational training, partial compensation to the employer for the salary paid to a person with disabilities, acquisition of work experience, seasonal employment, as well as support for animal husbandry activities were carried out. Measures were also implemented to support the organization of professional training for mothers who are uncompetitive in the labour market and do not have a profession and organization of childcare for working persons alongside work.

In particular, the number of persons included in the vocational training programme was 487, of whom 377 were women, and 58 were persons with disabilities, 353 unemployed persons were included in the work experience acquisition programme, and 322 of them were young persons, 301 were women, and 9 were persons with disabilities, 106 persons were included in the programme of vocational training for mothers without a profession, of whom



34 were young people. In general, in 2021, around 3,958 persons were included in state employment programmes, including 2,600 women, 1,185 young people and 314 persons with disabilities.

At the same time in 2021–22, measures aimed at ensuring the employment of the unemployed citizens of Artsakh (Nagorno-Karabakh), who were displaced as a result of the war unleashed by Azerbaijan on 27 September 2020 and were actually in Armenia, continued to be implemented. In particular, as a result of the support measure for gaining work experience, in 2021–22, around 703 citizens of Artsakh (Nagorno-Karabakh), gained work experience and became employed, and 93 citizens of Artsakh (Nagorno-Karabakh) became temporarily employed within the framework of the organization of paid public works.

During 2022, around 1,800 persons, including 596 women, 345 young people and 200 persons with disabilities, were included in the state programmes for ensuring employment.

In 2022, by the USS the following measures were implemented, which are planned to be implemented also in 2023:

1. Organization of vocational training and provision of employment for unemployed persons who took part in the military operations unleashed by Azerbaijan in 2016 and 2020, within the framework of which, as a result of gaining work experience or being included in vocational training programmes or providing lump sum support to the employer, in 2022 around 276 citizens participating in the military operations became employed, including 224 young people and 30 persons with disabilities. In 2023 it is also planned to include around 500 unemployed persons in the measure.
2. Seasonal employment promotion measure, within the framework of which around 1,178 unemployed persons, including 321 women, 14 young persons, and 157 persons with disabilities, received the opportunity to carry out agricultural work and become temporarily employed. In 2023, it is planned to include about 2,300 unemployed persons in the measure.
3. As a result of providing lump sum support to the employer within the framework of the measure “ensuring the employment of the unemployed”, 23 unemployed persons became employed, including 10 unemployed persons from beneficiary families. In 2023 it is planned to include another 177 unemployed people in the measure.

At the same time, in February 2023, the Government approved a new employment promotion measure, within the framework of which, in the case of hiring an unemployed person, compensation for the expenses incurred by the employer in terms of income tax calculated from the latter's salary is provided. In addition, the amounts and terms of the compensation are different depending on the fact of being from a beneficiary family, age, having a child and having a disability. In the scope of the measure, compensation to the employer for adapting the workplace of a person with disabilities is also planned.

In 2023 it is planned to ensure the employment of around 206 people within the framework of the measure. It is planned to provide support to the employer in the amount of 100 per cent of the income tax calculated and paid from the salary of the employed person for a period of 12 months, but not more than 50,000 Armenian drams (AMD) per month, in case of hiring an unemployed person aged 16–29 years from a family receiving family or social benefits, in the amount of 50 per cent of the income tax, for a period of three months, but not more than AMD15,000 per month, receiving family or social benefits in the case of unemployed family members aged 30–45 years, in the amount of 30 per cent of the income



tax, for a period of six months, but not more than AMD12,000 per month, and in the case of a mother with a child under 5 years of age, an increase in the duration of support by another three months. The provision of assistance to the employer with the same measure is also intended for the employment of unemployed persons of other target groups.

Article 2

National legislation does not define state control mechanisms for the activities of private employment agencies, but discussions are currently under way on the possibilities of cooperation between state and private agencies. In particular, it is planned to take measures to ensure that private agencies become participants in the process of the implementation of state employment programmes.

Undeclared work

The Government will continue to provide updated disaggregated information on the impact of measures aimed at reducing the number of undeclared/unregistered employees and facilitating their integration into the formal economy.

Bringing the informally employed to the formal labour market can also be greatly facilitated by the implementation of the new employment promotion measure, which is mentioned in the information under Article 1. The Government will present information about the impact of the event.

Article 3

In order to implement any initiative in the field of employment, opinions of social partners were continuously taken into account while developing drafts. All drafts of legal acts developed in the field were submitted both to the Confederation of Trade Unions of Armenia (CTUA) and the Republican Union of Employers of Armenia (RUEA) for their opinions.

In addition, as the main strategic document of the sphere, the results of the above-mentioned focus group discussions with various employers were taken into account within the framework of the development of the draft National Employment Strategy.

► Unemployment rate disaggregated by gender, 2020–22

Index	2020	2021	2022 (preliminary)
Unemployment rate (male)	19.1	15.7	–
Unemployment rate (female)	17.2	15.2	–
Unemployment rate (total)	18.2	15.5	13

► Employment rate disaggregated by gender, 2020–22

Index	2020	2021	2022 (preliminary)
Unemployment rate (male)	56.1	59	–
Unemployment rate (female)	40.9	40.5	–
Unemployment rate (total)	47.8	48.9	51.1



► Labour underutilization levels, 2020–22

Labour underutilization levels	2020	2021	2022
Unemployment rate	18.2	15.5	–
Coupled with long-term underemployment and unemployment level	19.8	17.1	–
Combined rate of unemployment and potential labour force	28.6	24.9	–
An aggregate indicator of labour underutilization	30.0	26.3	–
Underemployment rate	2.0	1.9	–
Long-term unemployment level	49.3	54.1	–

► Employed persons by age (1,000 persons)

Age group	Men		Women		Urban		Rural		Total	
	2020	2021	2020	2021	2020	2021	2020	2021	2020	2021
15–24	44.6	40.5	30.9	28.9	42.6	33.7	32.9	35.7	75.5	69.4
25–34	138.3	153.4	88.4	94.1	130.2	131.1	96.4	116.3	226.7	247.5
35–44	134.8	130.2	114.7	111.8	153.8	144.9	95.8	97.1	249.6	242.0
45–54	95.6	98.0	110.0	109.3	117.4	116.7	88.2	90.6	205.6	207.3
55–64	121.6	135.1	118.8	120.7	125.0	134.0	115.4	121.9	240.4	255.9
65–74	31.1	37.0	23.6	29.3	30.7	34.2	23.9	32.1	54.6	66.3
Total	566.0	594.3	486.4	494.0	599.7	594.6	452.7	493.7	1 052.4	1 088.3

► Unemployed persons by age (1,000 persons)

Age group	Men		Women		Total	
	2020	2021	2020	2021	2020	2021
15–24	20.6	15.8	15.4	14.6	36	30.4
25–34	35.3	30.1	25.5	23.4	60.8	53.5
35–44	29	23.9	28	18	57	41.9
45–54	21.2	16.9	16.3	19.1	37.4	36.1
55–64	22.4	19.7	14.3	11.7	36.7	31.4
65–74	4.7	4.2	1.7	1.6	6.4	5.8
75–84	0.2	0	–	0.5	0.2	0.5
Total	133.4	110.6	101.2	88.9	234.6	199.5



► The number of jobseekers and employed persons registered in the Unified Social Service, by gender and age, by marzes (provinces) of Armenia and Yerevan, 2020–22

Index	2020	2021	2022
Total jobseekers:	87 999	86 396	70 544
Female	57 537	56 321	45 097
Young persons	18 181	17 452	13 733
Unemployed	61 320	58 153	48 561
Total employed:	10 109	10 117	10 362
Female	6 960	6 867	6 706
Young persons	2 821	2 950	0
The number of employed people by marzes			
Total Aragatsotn:	569	641	620
Female	332	412	375
Young persons	185	188	172
Total Ararat:	755	888	1 115
Female	499	588	673
Young persons	191	239	266
Total Armavir:	762	830	889
Female	499	572	566
Young persons	275	288	247
Total Gegharkunik:	520	748	895
Female	316	488	532
Young persons	166	241	290
Total Lori:	1 069	902	963
Female	794	658	713
Young persons	360	342	281
Total Kotayk:	1 132	1 223	1 188
Female	801	786	721
Young persons	279	324	293
Total Shirak:	1 506	1 345	1 296
Female	1 019	954	875
Young persons	479	397	314
Total Syunik:	569	619	640
Female	442	448	474
Young persons	145	146	149
Total Vayots Dzor:	273	379	379
Female	180	238	243
Young persons	93	93	115



Index	2020	2021	2022
Total Tavush:	701	601	601
Female	467	401	355
Young persons	211	211	201
Total Yerevan:	2 253	1 941	1 776
Female	1 611	1 322	1 179
Young persons	437	481	335
Number of persons included in the programme "Providing support to the agricultural economy through the promotion of seasonal employment"	2 688	1 076	1 178
Number of persons included in the programme "Provision of temporary employment of the unemployed through the organization of paid public works"	568	0	0

Discussion by the Committee

Chairperson – I would like to open the discussion on the case of Armenia, which is a discussion on the application of the Employment Policy Convention, 1964 (No. 122). I would like to invite the Government representative of Armenia to speak, who will address the Committee remotely.

Government representative – I would like to start with expressing sincere gratitude to the ILO for the continuous collaboration and comprehensive support for the reforms, which the Government initiates to improve the labour environment in the country. Let me also thank the Committee for its contribution to develop more fair and equal labour relations in Armenia.

This year marks the 31st anniversary of our membership in the ILO. During these years, the ILO has been a trusted partner of Armenia in enhancing social justice, developing social dialogue, ensuring occupational safety and health, promoting gender equality in the world of work and many other areas.

The Government attaches special importance to the ILO membership and has implemented fundamental reforms in the protection and promotion of labour rights, sustainable employment and decent work. A number of measures, including legislative reforms, have been implemented in this direction in the course of the past years. Today, state policy is being adjusted and improved even further to bring it into full compliance with our international obligations and commitments to address the evolving challenges.

This is the reason why the Government was very much concerned to be shortlisted with regards to unconformity with the Convention.

Armenia ratified the Convention in 1994 and assumed important international obligations to ensure the employment of its population. Following its international obligations and domestic priorities, in 2013 Armenia adopted the Law on Employment, which established a new model of employment, directed towards implementation of active programmes to ensure stable employment of the unemployed, including those who are uncompetitive in the labour market.



The peaceful and democratic Velvet Revolution of 2018 in Armenia has set a new vision, priorities and action for the development of the country, including in the modernization of the labour environment.

Some of them, in particular, relate to the progress made with regard to the Convention.

Currently, active work is being done on the development of the draft National Employment Strategy, which is considered as the main direct result of the second priority direction of the DWCP. The main objective of the Strategy is to promote employment through creation of a competitive and employable workforce and the expansion of highly productive work opportunities. It is intended to comprehensively contribute to the strengthening of the school to work connection in the coming years.

Based on the in-depth analysis of the labour market of Armenia, first of all, the Strategy addresses and targets working-age citizens of the communities, including in the regional cities of Armenia, non-studying, non-working, non-training (NEET) youth aged 18–29 years, middle-aged (30–40 years) non-working women without family and social benefits beneficiaries, to whom the state employment policy will mainly be directed in the coming years. In addition to those groups, the Strategy envisages addressing the needs of all other groups, for instance, providing an active ageing policy.

One of the strategic goals envisaged by the draft Strategy is the transformation of the state policy system in the field of employment, aimed at the development of human capital (labour market supply), the growth of high-productivity jobs (labour market demand) and the reduction of discrepancies between labour supply and demand. In the draft Strategy, such regulation topics as labour rights, ensuring inclusion and equal opportunities have found their place. Within the framework of the development of the strategic document, the possibilities of introducing the unemployment insurance system are also being studied, which is seen by the Government as one of the key mechanisms to tackle unemployment and protect those who are unemployed.

While developing the draft Strategy between 25 November and 6 December 2022, six focus group discussions were held among employers in respective sectors of economy to reveal the changing trends of the employment structure, labour productivity and labour demand in Armenia, as well as to identify the problems of the target groups to be involved in the labour force, as well as the ways of their possible solution. The recommendations made as a result of the discussions found their place in the draft Strategy.

Currently, the draft Strategy is in the stage of discussion and coordination with the relevant government bodies. A meeting and discussions with the representatives of the CTUA and various employers' associations is also planned to make the Strategy more multifaceted. In this regard, last Friday we held a meeting with representatives of employers.

ILO representatives actively participated in the strategic sessions to discuss the analytical part, vision, goals and programmes of the National Employment Strategy. They also carried out an in-depth review of the related materials and provided detailed comments, which have been very useful in revising the document.

Let me emphasize that the development of the Strategy is only one of the multiple pillars that Armenia is accomplishing in the framework of the DWCP for 2019–23. The Programme has significantly contributed to the development of the capacities of employees in the field of employment both at the MLSA of Armenia and the USS. It allowed implementing large-scale capacity-building initiatives. Additionally, consultancy and training materials were translated and distributed.



The Government is very much looking forward to the continuity of the Programme after 2023 to ensure further smooth and effective collaboration with the ILO in this area.

To continue with the issue of unemployment and to ensure the employment of the population in Armenia, in 2021 by the USS measures of vocational training, partial compensation to the employer for the salary paid to a person with disabilities, acquisition of work experience, seasonal employment, as well as support for animal husbandry activities were carried out. Measures were also implemented to support the organization of professional trainings for mothers who are uncompetitive in the labour market and do not have a profession, as well as for the organization of childcare for working persons alongside work.

Despite the fact that the Strategy is not adopted yet, many activities are being piloted. In particular in 2022, the number of persons included in the vocational training programmes was 487, out of whom 377 were women and 58 were persons with disabilities. A total of 353 unemployed persons were included in the work experience acquisition programme, of whom 322 were young persons, 301 were women and 9 were persons with disabilities. A total of 106 persons were included in the programme of vocational training for mothers without a profession, of whom 34 were young people. In general, in 2021, around 3,958 persons were included in state employment programmes, including 2,600 women, 1,185 young people and 314 persons with disabilities.

In 2021–22, measures aimed at ensuring the employment of the unemployed citizens of Nagorno-Karabakh, who were displaced to Armenia as a result of the war unleashed by Azerbaijan on 27 September 2020, continued to be implemented. The Government implemented not only employment programmes, but also social protection initiatives in general.

Additionally, during 2022 the Government piloted employment programmes for about 1,800 persons, including 596 women, 345 young people and 200 persons with disabilities. All the new programmes are being modelled on a result-based approach.

In the development of pilots, in 2022, by the USS the following measures are planned to implement.

Firstly, the organization of vocational training and the provision of employment for unemployed persons who took part in the military activities undertaken as a result of aggression unleashed by Azerbaijan in 2016 and 2020. In this framework, as a result of gaining work experience or being included in vocational training programmes or providing lump sum support to the employer, in 2022 around 276 citizens participating in the military operations became employed, including 224 young people and 30 persons with disabilities. In 2023, the Government is planning to extend this programme to cover all demobilized military personnel.

Secondly, seasonal employment promotion measures, within the framework of which around 1,178 unemployed persons. In 2023, it is planned to include about 2,300 unemployed persons in the measure. A number of other programmes are in the process of planning and implementation.

The Committee of Experts noted the Government's indication that no control mechanisms are established under the national legislation to monitor the activities of private employment agencies.



In this regard, the legislation of Armenia does not define state control mechanisms for its activities of private employment agencies, but currently discussions are under way on the possibilities of cooperation between state and private agencies. In particular, it is planned to take measures to ensure that private agencies become participants in the process of implementation of state employment programmes. In this context, the Ministry, in cooperation with Democracy International, funded by the United States Agency for International Development (USAID), has already started designing a programme to initiate the above-mentioned measures. Additionally, there is a preliminary agreement with the United Nations Development Programme (UNDP) in Armenia to share costs in the implementation of employment programmes run by private agencies.

In order to implement any initiatives in the field of employment and beyond, the opinions of social partners were continuously taken into account while developing drafts. All drafts of legal acts developed in the field were submitted both to the CTUA and the RUEA for their opinions.

In addition, as the main strategic document of the sphere, the results of the above-mentioned focus group discussions with various employers were taken into account within the framework of the development of the draft Employment Strategy.

Let me briefly touch on some other initiatives, which aim to promote a better employment environment in Armenia.

In particular, in 2022 the Government and UNDP co-financed and piloted an innovation ecosystem-level support mechanism, Platform No. 5, to overcome compound challenges for women's economic empowerment with a focus on employability and entrepreneurship. Following the success on the part of Platform No. 5, the Government has appealed to the ILO to join the ILO Women's Entrepreneurship Development Programme to continue together supporting women in entrepreneurship and employment.

In Armenia, since 2012, career development support system reforms have been undertaken. On 2 June 2023, the career guidance national model of Armenia was presented at an OECD conference as a good practice.

In the meantime, the European Training Foundation recommendation is that the Armenian State regulations are unique in the Eastern Partnership countries.

The Government, giving high priority to the adoption and implementation of the ILO values and standards, has already initiated the ratification process of the Violence and Harassment Convention, 2019 (No. 190). Moreover, the current changes in Armenia's Labour Code have already included some of the provisions from Convention No. 190.

In conclusion, I would like to stress that despite the COVID-19 pandemic and aggression of Azerbaijan against the people of Nagorno-Karabakh and sovereign territory of Armenia, after the peaceful and democratic Velvet Revolution in Spring 2018, the Government is implementing massive reforms and undertaking all possible measures and efforts to address the needs of its citizens and provide a better labour environment. To improve sustainability and more effective cooperation with the ILO, we suggest opening an ILO Country Office in Armenia, extending the DWCP for Armenia, which ends in 2023, as well as supporting Armenia to join the ILO Women's Entrepreneurship Development Programme. Finally, ILO support for the initiatives envisaged by the National Employment Strategy of Armenia will create additional and comprehensive value in Armenia – ILO cooperation.



I am confident, that the above provides the Committee the necessary ground to remove Armenia from the short list, allowing and motivating all stakeholders to continue applying active reforms in the field of employment and labour rights. This will allow the ILO to play its role as a reliable partner to foster democratic development not only in Armenia, but globally.

Worker members – The Declaration of Philadelphia recognizes the ILO’s official obligation to support the implementation of programmes carried out by the various countries of the world aimed at achieving full employment and raising the standard of living. The Preamble of the ILO Constitution provides for the fight against unemployment and the guarantee of a wage that ensures decent living conditions.

Thus, it is incumbent upon the ILO to examine and consider the effects of economic and financial policies on employment policy, bearing in mind the fundamental objective that, “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”. This Convention is the international labour standard that implements the objectives set forth in the founding texts of our Organization.

Today we are examining how Armenia is implementing the Convention. According to Article 1 of the Convention, Armenia shall declare and pursue an active policy designed to promote full, productive and freely chosen employment. This policy shall ensure that there is work for all who are available for and seeking work, that such work is as productive as possible, that there is freedom of choice of employment and that all workers have every opportunity to acquire qualifications for a suitable job.

According to the report of the Committee of Experts, more than 60,000 people are unemployed in Armenia, representing an unemployment rate of 13 per cent. Women make up the majority of the unemployed, accounting for almost 65 per cent. According to 2020 statistics available to the ILO Department of Statistics, the labour participation rate in Armenia was 66.5 per cent. These few statistics demonstrate the many challenges Armenia faces in establishing a national employment policy. Armenia also faces the impact on employment of the geopolitical context in which it finds itself. In particular, part of its territory has been the scene of armed conflict, which has led to the displacement of people to other regions, although they cannot find employment there. The Committee of Experts’ report also mentions the existence of disparities in these statistics at the regional level, suggesting the need to allow for these regional realities to be taken into account in employment policy. Furthermore, the Committee of Experts’ report highlights that, despite the large-scale reforms carried out in the field of employment in recent years, there are still urgent issues to be addressed. These include the mismatch between labour supply and demand, barriers to employment for newcomers to the labour market, vulnerable groups and skilled workers.

Numerous initiatives are under way in Armenia to work in these different areas. One example is the DWCP 2019–23, which sets out the country’s priorities and key deliverables that have been established in close consultation with the tripartite constituents. These priorities include the development of a new National Employment Strategy, which addresses these and other issues such as youth employment, rural employment and informality. The Government makes the promotion of employment and education a priority for the eradication of poverty in the country. An employment policy that complies with the Convention is inconceivable without paying special attention to vulnerable groups, one of which, unfortunately, continues to be women. In this regard, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) has noted with concern the



limited access to stable and adequately remunerated employment for disadvantaged and marginalized groups of women, including those belonging to ethnic minorities, internally displaced women, women in refugee-like situations, migrant women and women with disabilities. The low numbers of persons with disabilities participating in employment regulation programmes are a cause for concern. The same applies to the participation of young people aged between 16 and 29 years. Therefore, in the development of employment policy in Armenia, special attention will need to be paid to vulnerable groups in the labour market, particularly women, persons with disabilities and young persons.

In many countries, private employment agencies are one of the instruments used in the framework of employment policies. This is also the case in Armenia. However, it is essential that these private employment agencies are subject to supervisory mechanisms. In the written information provided by the Government, it is stated that discussions are under way to encourage collaboration between public and private employment agencies. While such collaboration is desirable, it does not resolve the issue of supervisory mechanisms for private employment agencies. Armenia's ratification of the Labour Inspection Convention, 1947 (No. 81) could be an opportunity to break new ground in this area.

The fight against undeclared work must also be an integral part of employment policy. The report of the Committee of Experts indicates that measures have been taken, including tax measures, to increase the number of declared workers. We can only encourage the Government to continue its efforts in this direction and to take further measures.

Finally, let me recall one of the fundamental principles also contained in the Convention, namely that of consultation with the social partners on employment policy. We can only encourage the Government to remain fully committed to the tripartite implementation of an employment policy that will enable the workers of Armenia to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

Employer members – I deeply regret that it was not possible for the Armenian Employers' delegate to participate in and contribute to this discussion in person, as his credentials for the Conference were withdrawn by the Government. The Armenian Employers' delegate has lodged an objection to this action with the Credentials Committee.

With regard to the Convention, we are grateful to the Government for sending updated information on this case. The Convention was ratified by Armenia in 1994 and today is the first time that the Committee is discussing the application of this Convention. The Committee of Experts has commented on the application of this Convention on three occasions in 2015, 2018 and 2022.

With respect to its 2022 observations, the Committee of Experts identified three main issues in relation to this case. The first issue relates to employment trends and the implementation of an active employment policy in conformity with Article 1 of the Convention. We note Armenia's efforts in the field of employment with the implementation of reforms such as the DWCP to promote employment through the creation of a competitive and employable workforce and the expansion of productive work opportunities. In addition, according to the information provided in 2022 the Government developed comprehensive programmes to facilitate the labour inclusion of the unemployed persons who took part in the military operations triggered by Azerbaijan in 2016 and 2020. Tax policies were also adopted that have facilitated the formalization of businesses and are expected to improve employment indicators as a result.



For several years, we have observed a positive trend in labour market indicators in Armenia, such as a reduction in the unemployment rate, which in 2022 fell by 2.5 percentage points compared to 2021.

However, there are still pressing issues to be addressed, such as the gap between labour supply and demand and the barriers to finding a job, both for new entrants to the labour market and for vulnerable groups, in particular women, young people and persons with disabilities.

According to the Government, it is currently engaged in a new employment strategy which it plans to discuss with representatives of the trade union confederation and various employers' associations in the near future. The Employer members consider it essential that the Government implement this strategy and all necessary measures as soon as possible to address labour market deficits. But we consider it imperative that it does so after a process of real and effective social dialogue with the most representative social partners.

The second issue relates to the implementation of active labour market measures in line with Article 2 of the Convention. We note that, according to the information provided by the Government, the national legislation does not define state supervisory mechanisms for the activities of private employment agencies, but discussions are being held on the possibility of cooperation between private and state agencies. This foresight of the Government to take measures to ensure that private agencies are involved in the process of establishing state employment programmes could contribute positively to improving the labour market integration of unemployed persons. We also note that, with regard to undeclared work, the Government is taking measures to reduce the number of undeclared workers and to facilitate their integration into the formal economy. However, it should provide information on the impact of these measures to assess their effectiveness.

The third issue relates to consultation with the social partners in line with Article 3 of the Convention. We note the Government's confirmation that employment policies and programmes are submitted to the CTUA and the RUEA for their opinions. Nevertheless, the Employer members align ourselves with the Committee of Experts in requesting more concrete information on these consultation processes with the social partners for further assurance. Especially given that a recently published study by the RUEA and the research published by the United States Department of Labor indicate that tripartite social dialogue in Armenia is in its infancy and does indeed have serious problems related to legislation on association, and constituents and their representativeness.

Worker member, Armenia – The CTUA would like to share with you our approach on the implementation of the Convention.

On the way of implementation of the Convention, the Government developed a draft of the new Employment Strategy as the Government representative said, which was also consulted with the CTUA. The CTUA provided comments and suggestions, but still the discussions will continue in the upcoming Republican Tripartite Commission. This year the CTUA is coordinating the Republican Tripartite Commission.

We should emphasise that Armenia has been at war for almost 30 years and since September 2020, there were active military actions in Nagorno-Karabakh and Armenia was faced with active war for 44 days. Thousands of people from Nagorno-Karabakh became refugees in Armenia, without living conditions and jobs. These people replenish the unemployment circle, which created new challenges for the Government and for the social



partners. A few programmes were developed for the above-mentioned refugees to make their lives less difficult.

Another big challenge faced by Armenia are the people who come from the Russian Federation to escape the mobilization. These people also have an influence on the labour market of Armenia. Of course, except those who work in the information technology sector, who have remote work and have no influence on the labour market.

The Government does its best to improve lives in the employment sector. There are gaps in the employment sector of Armenia regarding the lack of unemployment insurance and absence of unemployment benefits, even though this is written and provided for in the Constitution of Armenia. Anyway, the Government has some employment programmes through which people can be retrained and start their own business with the support of these programmes.

The National Employment Strategy includes also women's rights and people with disabilities and youth, especially in the rural areas where finding jobs is also very difficult. However, I should emphasize that we have good cooperation with the ILO Bureau for Workers' Activities (ACTRAV) on the DWCP. The CTUA now also sees an opportunity to improve the situation regarding the implementation of the Convention, also with the technical support of the ILO, concerning social partnership and implementation of the strategy which will be adopted after a few discussions. We are going to discuss it again and again in the social partnership framework and in the Republican Tripartite Commission.

Worker member, Germany – The current situation in Armenia is marked by many different kinds of crisis. In September 2020, the armed conflict in Nagorno-Karabakh flared up again. This led to many internally displaced persons. The situation puts great strain on the Armenian labour market and this has been exacerbated by a recent increase in migration from Russia. We therefore welcome all the efforts made by the Government, in terms of labour legislation, protection of vulnerable groups, formalization of employment relationships and last, but not least, the creation of a National Employment Strategy.

For any country in the world, any one of these reforms would represent a major effort. Armenia is not only tackling all of these reforms simultaneously but also within the framework of social dialogue. We commend this approach and we are pleased to see greater trade union representation in the process. At the beginning of May, the Armenian Labour Code was fundamentally overhauled. A total of 122 out of 296 articles were amended. There are improvements in the specific provisions on the employment of minors, on maternity leave and leave periods. For instance, workers can now carry over unused leave from one year to the following year. Access to training programmes has also been made easier. As well as that, the legislation includes a section on the prohibition of sexual violence in the workplace, and it paves the way for ratification of Convention No. 190. Indeed, we have just seen that ratified in my country and we very much hope that the necessary ratification will be endorsed this week. We have also noted that ratification of the Private Employment Agencies Convention, 1997 (No. 181), might be possible and we might be able to consider some kind of partnership. When it comes to the National Employment Strategy, so far, we have some very promising signs, including proposals for unemployment insurance and better inclusion of disadvantaged groups. In view of the disproportionately higher unemployment level of women, the announced focus on gender equality seems to us to be imperative. These changes also took place with the advice of the ILO within the framework of the DWCP. We support the Government's initiative to extend this Programme further. All of these reforms are very promising but we need more to be done. We have questions, for instance, about the



effectiveness of labour law reform, given the continuing large informal sector in Armenia. Aside from that, the sustainability of the proposed unemployment insurance is of limited nature.

In accordance with the Committee of Experts we recommend further efforts to formalize employment relationships in particular. The integration of informal works into the labour market is an indispensable step forward towards the consolidation of an Armenian welfare state. The CTUA has a new Chairperson and she is campaigning for an increase in the minimum wage and an extension of the right to strike. Tripartite structures and processes must be strengthened. We must bridge the gap between agreements on paper and actual implementation. The tense economic situation results in a large imbalance of power in favour of employers. There are few broad-based collective agreements and the unions are not sufficiently involved in many negotiations.

Observer, International Organisation of Employers (IOE) – I would like to introduce the observations of the RUEA regarding the Convention.

First of all, I would like to give thanks for this opportunity to participate in the Committee's session and to voice our concerns regarding the current stage of social partnership and of the application of the Convention in Armenia. I would like to thank the IOE for enabling me to speak at the meeting today. Our union delegate wanted to attend the Conference but then the Government withdrew the credentials without valid justification and in violation of the ILO Constitution. Such actions prevented our union delegate from taking part in the Conference. Of course, despite many positive changes, Armenia still faces social and economic challenges, which remain unsolved and social partnerships are at a weak level. There is a significant gap between the level for supply and demand. There are obstructions for first-time labour market entrants. To support the Government in its commitments with regard to overcoming those obstructions and improving the employment policy, our union has submitted its research results, solutions for improvement and recommendations to the Government since 2016.

Our union has not received a draft of the National Employment Strategy and no consultations were carried out with our union for the development of the document. Of course, we understand that there were some meetings with some of the employers in the framework of several focus groups, but our union was not informed of these meetings, we did not participate in them and did not receive any draft strategy. The Government also did not share observations of the report from the Committee of Experts and we received it only from the ILO. It was difficult to participate when the Government is not consulting our union and keeps withholding crucial information.

Regarding the cooperation with private employment agencies, which is also in the observation of the Committee of Experts, we would be happy to strengthen our cooperation with the Minister of Labour and Social Affairs, in the scope of collaboration with private employment agencies and monitoring their activities and ratification of Convention No. 181.

The social partnership is at a weak level. The Ministry has carried out one meeting of the National Report Commission instead of the eight initially planned. The Ministry has not undertaken concrete and significant measures for the organization of meetings and discussions with mutual acquaintances between the partners in presenting social partners' viewpoints to the Government, etc.



We have expressed our concern to the Government about the low efficiency of the social partnership and our union sent a letter to the Government, last August 2022, which has remained unanswered to date.

We have tried to improve the situation and had a meeting with the Minister of Labour and Social Affairs. However, that also did not take place. To date, as President, I have never met the Minister in the two years since he became Minister. Our union remains committed to work with the social partners and the ILO in overcoming the current challenges in the implementation of the Convention. However, this will be difficult if the Government continues the current practice of withholding crucial information from the employers and conducting consultations by bypassing employers' organizations and denying employers' rights to participate in the process, including participation at this Conference.

In conclusion, I would like to mention that as an employer organization with high representation in the country, our union is eager to support the Government for the development of a national employment strategy and full implementation of the Convention. With this participation, we hope to help effective social partnership in Armenia. Without proper social dialogue, the progress on implementation of essential labour standards cannot be made, neither in Armenia, nor in any other country.

Observer, IndustriALL Global Union – I am making this statement on behalf of IndustriALL Global Union with the support of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF).

My organization has affiliated trade unions in mining, metallurgical energy and manufacturing sectors in Armenia and we closely follow developments in the country. Together with our affiliates, we welcome the Government's commitment to fulfil the requirements of international standards as well as the European Social Charter.

We have heard that, on 3 May 2023, a law providing extensive amendments to the Labour Code of Armenia with specific target on social partnership was adopted. We also note that amendments to the law on trade unions as well as employers' associations are in the process of being finalized and we hope this will provide a solid foundation for the development of social dialogue at all levels.

We also observe that the Government implements the DWCP covering the period of 2019–23 and recently has applied for a prolongation of the programme.

We strongly encourage the ILO to continue with the existing technical assistance programmes and to support Armenia's application for continuous support under the DWCP. Our affiliates report that the Government has finalized the draft National Employment Strategy that provides a credible vision towards the modernization of the employment environment in the country. This strategy addresses the issue of labour rights, envisaging the introduction of the unemployment insurance system. We hope all these initiatives will be implemented in the nearest future.

It is worth noting that the social dialogue between the Government and the CTUA has increased over the last past six months, which we consider as a positive step.

We do hope the employers will also get involved, in a unified way, in the work of the tripartite bodies of the country. It needs to be noted that because of this, neither a general agreement, nor sectoral agreements have been concluded in Armenia. This is critically important because in the world of work in Armenia there are serious problems affecting workers. When workers attempt to exercise their freedom of association, they face



difficulties. When workers want to get the protection of a negotiated collective bargaining agreement, they are confronted with the resistance of employers. When workers want to exercise the right to strike or peaceful assembly, they are exposed to pressure. So, there are serious health, safety and particularly security problems inside the country which must be addressed seriously through general social dialogue and assistance from the ILO.

The country is also facing high levels of unemployment and extremely low social standards of living among refugees from either Nagorno-Karabakh or neighbouring countries, particularly the Russian Federation.

We have difficulties understanding why Armenia has been shortlisted over the Convention, as there are many other serious problems in the world of work in the country which need to be addressed urgently.

We call on the Government to accelerate the legislative processes so that employers have the right to protect their interests in line with international standards. We call on employers to be constructive and return to social dialogue to find solutions for many social and labour matters including the coordination of the National Employment Strategy, developed by the Government in consultation with the CTUA.

We also call on the ILO to continue to give support to the Government, workers, and employers in Armenia, to encourage social dialogue and to strengthen mechanisms to ensure workers fully exercise their fundamental rights at work.

Government representative – I wish to thank all partners for sharing their observations. As I said during my first intervention, the Government is undertaking massive and comprehensive reforms, including in the field of employment and labour relations. The goal is to address all the challenging issues and, inter alia, meet the obligations of the ILO Constitution and ratified Conventions. In the meantime, let me briefly respond to the main issues raised during this session. Firstly, the issue of proportionality between demand and supply on the labour market is a major issue which is the focus of the Government. The new strategy will address the issue to provide comprehensive and multifunctional solutions. Secondly, the Government further implements its active labour programme. The strategy envisages multiple strategies to provide for other developments in the whole labour market, but it particularly focuses on vulnerable groups including youth and so on. However, despite the facts, the strategy is not yet adopted. The Government has already adopted main employment programmes to include the rights and equal opportunities on the labour market.

For instance, in 2022, the Government and UNDP co-financed and piloted a recent ecosystem-level support programme. As a leader in technology and gender equality, Armenia embarked on an ambitious journey to develop bold transformative action for women's economic power in high labour productivity sectors.

Following this success story, the Government asks the ILO to continue supporting the Government's efforts for women's entrepreneurship.

Finally, let me quickly address the observation made by the Chairperson of the RUEA. We appreciate this readiness to develop cooperation with the Government. However, we were surprised to receive the letter, especially in the Committee. Therefore, in anticipation of the above-mentioned letter of the RUEA regarding the suspension of cooperation, participation of the Employers' side in the session of the Conference was not confirmed.



All those measures are called to develop social justice in Armenia, which requires even more attention and support in times of global uncertainty and turbulence.

Concluding, let me reiterate the readiness and willingness of the Government to continue to deepen and develop cooperation with the ILO to promote social justice in Armenia and around the world. I am confident that the Committee will take into account all those measures, which the Committee of Experts recognized as positive and progressive.

Employer members – The Employer members thank the various speakers who have taken the floor, and particularly the Government, for their interventions and the information provided.

In our closing remarks we would like to once again stress that the Convention provides for the declaration and pursuit of an active policy designed to promote full, productive and freely chosen employment. This policy shall aim at ensuring that there is productive work for all who are seeking work and freedom of choice of employment, and at reducing the skills mismatch in the labour market.

We call on the Government to take into account that productive and sustainable employment is the basis for decent work, wealth creation and social justice. While we take good note of the steps forward taken by the Government, we cannot ignore that more effort is needed at the national level to address labour market deficits in Armenia, where barriers to entry into employment persist, in particular for vulnerable groups and skilled workers. In addition, disadvantaged and marginalized groups of women have limited access to employment and are not adequately remunerated. Given that employment gaps still persist in Armenia, long-term solutions are required. The Employer members therefore call for the most representative social partners to receive key information and for their active participation in the design and implementation of employment policies in accordance with the Convention, which requires consultation with the social partners.

In line with the recommendations of the Committee of Experts, the Employer members would like to request the Government to continue to work on the development and further implementation of the measures of the National Employment Strategy, and, in particular, to do so in the context of social dialogue with the most representative social partners, to ensure that the measures are effective and lasting; and also to continue to encourage the decline of the informal economy and to provide information on the impact of the measures. We trust that the Government will take these recommendations into account for the full implementation of the Convention.

Worker members – We would like to thank the Government representative for the information provided to the Committee. As we have heard during our discussion, there are many challenges facing the promotion of employment in Armenia. We have no doubt that the Government is willing and able to face these challenges and to take all the necessary measures to promote decent employment for all working people in Armenia.

It seems to us that, in order to meet this objective, the Government will have to:

- continue to develop, in consultation with the social partners, an employment policy that also has a focus on vulnerable groups, including young persons, women and persons with disabilities;
- continue to provide updated and detailed information on the nature, scope and impact of measures taken to promote full and productive employment, including those taken under the DWCP 2019–23;



- provide a detailed update on progress made in the development and adoption of the National Employment Strategy;
- transmit a copy of the Strategy once it has been adopted;
- continue to provide updated and detailed information, including statistical data disaggregated by sex and age, on employment trends in the country, in particular on employment, unemployment and underemployment;
- continue to provide updated and detailed information, including statistical data disaggregated by sex, age and region, on the nature, extent and impact of measures and programmes undertaken to promote the employment of groups vulnerable to decent work deficits, in particular women, young persons, persons with disabilities and persons vulnerable to intersectional discrimination;
- provide information on the nature, scope and impact of measures taken in the field of vocational education and training in relation to improving the employability of young people;
- provide detailed information on any measures taken or envisaged, in consultation with the social partners, to regulate the activities of private employment agencies operating on the Armenian territory;
- establish mechanisms for monitoring private employment agencies and consider ratifying Convention No. 181, as the most up-to-date instrument in this area;
- continue to provide updated and disaggregated information on the impact of the measures taken to reduce the number of undeclared workers and to facilitate their integration into the formal economy; and
- finally, provide concrete examples of how the views of the social partners are taken into account in the design, implementation and review of employment policies and programmes.

To implement all these recommendations, we request the Government to seek technical assistance from the ILO.

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 the steps taken by the Government to reduce informality and promote employment among women and young persons, persons with disabilities and other marginalized groups.

The Committee also noted that further steps need to be undertaken, in consultation with social partners, in these areas as well as on vocational education and training and activities of private employment agencies to ensure the implementation of the Convention both in law and in practice.

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

- continue to develop an employment policy to address both in law and practice the remaining issues, notably the existing barriers to employment for disadvantaged



groups, including women, young persons, persons with disabilities and persons vulnerable to intersectional discrimination;

- take steps to improve the employability of young persons, notably through vocational education and training programmes;
- take steps towards establishing control mechanisms under the national legislation to monitor the activities of private employment agencies, including considering the possibility of ratifying the Private Employment Agencies Convention, 1997 (No. 181);
- ensure cooperation with the social partners on existing labour market issues, annual employment programs as well as on their implementation and provide concrete examples of the manner in which social partners are included in the development, implementation and review of employment policies and programmes and their views duly considered.

The Committee requests the Government to provide the Committee of Experts with detailed updated information by 1 September 2023 on:

- measures taken to promote full productive employment, including those adopted in the framework of the Decent Work Country Programme (DWCP) 2019–23;
- the development and adoption of the National Employment Strategy (NES) and to provide a copy once adopted;
- statistical data disaggregated by sex and age, on employment trends in the country, particularly on employment, unemployment and underemployment;
- statistical data disaggregated by sex, age and region, on the nature, scope and impact of the measures and programmes implemented to promote the employment of groups vulnerable to decent work deficits, including women, young persons, persons with disabilities and persons vulnerable to intersectional discrimination;
- the impact of the measures taken to reduce the number of undeclared workers and facilitate their integration into the formal economy.

Government representative – I would like to thank the Committee for the hard work and tripartite cooperation, in particular over this recent period of time with regards to the individual case of Armenia regarding Convention No. 122. The Government of Armenia attaches special importance to the ILO membership and has been implementing fundamental reforms in protection and promotion of labour rights, sustainable employment and decent work. A number of measures including executive reforms have been implemented in these directions in the course of the past years. To date, state policy is being adjusted and improved even further to bring it into full compliance with our international obligations and commitments to address the evolving challenges.

I am glad that the Committee has decided to take into consideration information on all the progress and efforts which the Government of Armenia has been undertaking to improve the employment and labour environment in the country. The Government will continue the reforms, inter alia, based on the recommendations made by the Committee. Let me conclude by reiterating the readiness and the willingness of the Government to continue deepening and developing cooperation with the ILO and social partners to foster social justice in Armenia and around the world.



Cambodia (ratification: 1999)

Abolition of Forced Labour Convention, 1957 (No. 105)

Written information provided by the Government

The Government has provided the following written information as well as copies of the Law on Amendment to the Criminal Code of 2018, the Code of Criminal Procedure and the Act on Prisons.

The Kingdom of Cambodia, as a reflection of its resolute commitment to abolish forced and compulsory labour within its jurisdiction, has duly ratified Convention No. 105. This ratification underscores the Kingdom's steadfast determination to eradicate such practices throughout the nation. In the spirit of diligent adherence to this commitment, the Ministry of Labour and Vocational Training (MLVT) endeavours to elucidate the application of the Convention in Cambodia as outlined below.

Ensuring that no compulsory labour is imposed on persons who express political views or views opposed to the established system

We wish to underscore the fact that all Cambodian citizens are vested with unassailable freedoms, including the right to express their opinions peacefully and to partake in political activities. Such freedoms are safeguarded by the Constitution of the Kingdom of Cambodia, as well as the accompanying laws and regulations. It is therefore important to reaffirm that, in the jurisdiction of Cambodia, there exist no punitive measures for individuals who peacefully express their political views, including opposition members, human rights defenders and journalists, provided that such acts do not infringe the rights of others in accordance with the boundaries set by existing laws and regulations.

Human rights, as enshrined under the United Nations Charter, the Universal Declaration of Human Rights, and the other instruments relating to human rights, women's rights and children's rights, are unequivocally recognized and upheld by the Constitution. As articulated in article 36 of the Constitution, Khmer citizens of all genders are conferred the right to seek any employment, contingent upon their capabilities and societal requirements.

In adherence with international labour standards, Cambodia's Labour Law (section 15) unequivocally proscribes forced or compulsory labour, in line with the Forced Labour Convention, 1930 (No. 29). This provision extends to all individuals, including domestic or household and agricultural workers.

In accordance with the Basic Principles for the Treatment of Prisoners, as declared by the United Nations General Assembly resolution 45/111 on 14 December 1990, conditions have been implemented to enable prisoners to engage in remunerated employment. This serves to foster their reintegration into the labour market, contribute to their own financial support and that of their families, and these principles have been enshrined in the national legislation, specifically in the Act on Prisons.

Prison labour is primarily a rehabilitative process aimed at facilitating the reintegration of prisoners into society. As per the Act on Prisons of 2011 (sections 68 and 69), low-risk convicted individuals possessing the requisite physical capabilities may be called upon to engage in work as part of the daily prison routine, or to perform tasks benefiting the community or participate in prison industry, prison handicraft and the prison farming



industry. Such employment is not assigned based on political opposition, human rights advocacy or journalistic activity, and safety measures are diligently implemented.

The Government continually affirms its commitment to the principles enshrined in the Constitution of the Kingdom of Cambodia, as well as in the UN Charter, Universal Declaration of Human Rights and various human rights instruments. All Cambodians, irrespective of race, colour, gender, language, religion, political views, origin, nationality, socio-economic class, or possession, are equal before the law.

The MLVT has never encountered instances of convicted individuals being forced into prison labour on account of political opposition, human rights advocacy or journalistic activity. The MLVT stands ready to cooperate with the relevant authorities to take swift action should it be informed of such an occurrence. Furthermore, no tangible evidence has been uncovered that suggests prison labour is being utilized as a form of punishment for individuals voicing political views or dissenting from the established system. The MLVT therefore, invites the ILO and the relevant stakeholders to provide detailed information should any evidence arise.

Information regarding the draft Cybercrime Law and the Law on Amendment to the Criminal Code

With respect to the formulation of the draft Cybercrime Law, the Ministry of the Interior is steadfastly committed to upholding the Constitution and laws of the Kingdom of Cambodia. This endeavour is grounded on strong recognition of human rights as enshrined in the United Nations Charter, the Universal Declaration of Human Rights and other instruments relating to human rights, women's rights and children's rights. In this regard, a dedicated working group has convened a review meeting, engaging with a technical team from the Ministry of the Interior, and hosted an inter-ministerial technical retreat that featured representatives from the Ministry of Justice, Ministry of Posts and Telecommunications, Ministry of Information, Ministry of Industry, Science, Technology and Innovation, and the Ministry of Commerce. This collaborative process has facilitated the advancement of this initiative. In the meantime, the draft Cybercrime Law is under deliberation with all relevant stakeholders, with a concerted effort being made to integrate and harmonize input from all parties to ensure the law's effectiveness, efficiency, pertinence and coherence.

Prohibiting compulsory labour as a sanction for peaceful strikes

With reference to the matters involving Mr Van Narong and Mr Pel Voeun, the cases are still subject to the appeals process. It is significant to note that both Mr Van Narong and Mr Pel Voeun are actively employed, thus invalidating any alleged imprisonment.

As to the arrest of union leaders at the casino, the MLVT is compelled to clarify that the strike carried out by the union leaders in question breached the legal prerequisites for the exercise of the right to strike. Indeed, while it is an entitlement for workers to organize a strike, certain legal conditions must be met before such an action can take place. These conditions entail the Arbitration Council's (AC) failure to deliver or notify its decision within the legal time frame, and the occurrence of an objection to a non-binding arbitral award. It is crucial to note that these conditions were not met in this instance.

Consequently, on 16 December 2021, the Phnom Penh Court of First Instance issued a provisional ruling indicating that the collective labour dispute at Naga World needed to go through the AC procedure and mechanism. The court further ruled that any new demands



which had not yet been subjected to the AC process could not be a valid cause for a strike, as specified in the Labour Law. However, despite this ruling, the terminated workers initiated their strike outside Naga World.

Naga World's former employees were held accountable for their actions and subsequently detained, following charges under section 494 (incitement) and section 495 (incitement to commit felony) of the Criminal Code. This legal action stemmed from the fact that their participation in the strike, deemed illegal, had created substantial disturbances to public order and safety.

Additional arrests were made when these individuals were found to be infringing the right to life of others amid the COVID-19 pandemic. This violation was predicated on their refusal to comply with the government-mandated COVID-19 preventative measures, notably the omission of rapid testing and disregard for social distancing protocols during the course of the strike. In total, the transgressions led to the arrest of 11 strikers.

In response, these individuals wrote a letter to the MLVT requesting its intervention through legal means to secure their release on bail. They further promised to strictly adhere to health guidelines, desist from obstructing COVID-19 sample testing, and abstain from any gatherings or protests that could potentially compromise public order, peace and security as part of their endeavours to amicably resolve the labour dispute.

In concordance with their plea, and following the provision of legal assistance by the MLVT and the Ministry of Justice, the Phnom Penh court of first instance delivered a ruling on 14 March 2022. The court ordered the release on bail of the former workers, thereby addressing their pleas.

The case of the arrested leaders of the Workers Friendship Union Federation is currently ambiguous, due to insufficient information about their employer. Thus, the MLVT invites the ILO and the relevant stakeholders to share detailed information, facilitating appropriate action.

Discussion by the Committee

Chairperson – We will start our discussion on the second case in our agenda, that is Cambodia on the application of Convention No. 105.

Government representative – This Committee is the cornerstone of the ILO's supervisory system and plays an integral role in ensuring the application of international labour Conventions. Sharing the same dedication, the Royal Kingdom of Cambodia has honoured its commitment to uphold all rights and obligations set forth in this Convention ratified by Cambodia.

As a testament to our dedication, Cambodia proudly holds an outstanding record of having ratified eight fundamental international labour Conventions. We try to maintain cooperative and constructive relations with all social and development partners to ensure the protection of labour rights and foster harmonious industrial relations for bolstering economic development in Cambodia.

Recognizing the Committee's significant contribution, Cambodia has actively engaged with the ILO supervisory mechanism in line with our commitments and in addition to the relevant written information provided in May 2023. My delegation took note of the report of the Committee of Experts and is pleased to offer further updates on the application of the Convention in Cambodia.



In this connection, it is worth noting that the Constitution upholds and incorporates the fundamental principles of human rights enshrined in the United Nations Charter, the Universal Declaration of Human Rights and international human rights instruments. Both human rights and labour rights are well protected by law and practice in Cambodia.

We are proud to declare that forced labour has no room in Cambodia, so there is no suggestion of forced labour in the Kingdom, but what only exists is those who really need a job and work hard to get better paid to support their livelihoods and families. Consistent with international labour standards, section 15 of the Labour Law prohibits forced or compulsory labour in accordance with the Convention, which was ratified by the Kingdom of Cambodia in 1969. We are pleased to highlight that under the Convention, the term forced or compulsory labour refers to all kinds of work or service which are exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

The Convention also excludes any work or service exacted from an individual as a consequence of a legal conviction provided that it is carried out under the public authority's supervision and not hired out to private entities. As stipulated in the UN Basic Principles for Treatment of Prisoners, conditions should be made to enable prisoners to undertake meaningful remunerated employment to facilitate their integration into the labour market.

Cambodia reaffirms its commitment to the promotion and protection of human rights by incorporating this approach into national legislation, particularly its Act on Prisons. Furthermore, the Act on Prisons is in line with a wide range of international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture, among others. This law aims to educate, reform and rehabilitate prisoners for their integration into society. We took note of the Committee of Experts' concern regarding the various provisions of the Cambodian Criminal Code. To provide further context it is pertinent to note that section 5 of the Criminal Code clearly mandates a strict interpretation of criminal law. This is not contrary to the concerns raised by the Committee of Experts to ensure that the provisions of the Criminal Code do not present any coercion.

We took note of the Committee of Experts' concern regarding the alleged imprisonment of two unionists. In this case, we wish to clarify that their cases are currently under appeal. Contrary to the allegation of imprisonment, they remain actively employed and fully enjoy the right to a fair trial. Furthermore, the arrest of the protesters, as indicated in the report of the Committee of Experts, was not merely due to their participation in illegal strikes, but legal action was primarily undertaken in response to their substantial disturbance of public order and safety, in violation of COVID-19 preventive laws to ensure the right to life of others during the pandemic.

We express concern about our double footnoted case. There is no evidence that has been uncovered suggesting that prison labour is being utilized as a form of punishment for those opposed to the established system or who engage in a strike. If such information is sufficiently presented, Cambodia would act swiftly. Therefore, we invite the ILO and relevant stakeholders to provide detailed information should any surface. Our intention to commit to the rule of law, strengthening the implementation of laws and regulations, is of paramount importance to ensure our good governance remains intact. As such, law enforcement should not be misconstrued as a political pressure.

In conclusion, my delegation thanks the Committee for this opportunity and reaffirms the Cambodian commitment to promote protection and respect for the principles enshrined in all relevant instruments to which Cambodia is a state party.



Worker members – The climate that is currently prevailing, and has done for many years in Cambodia, is hardly conducive to the exercise of public freedoms, including freedom of association and the freedom to engage in collective action.

Indeed, the report of the Committee of Experts refers to arrests and prosecutions of members of the opposition party, representatives of non-governmental organizations, trade unionists and human rights defenders. Several members of the only opposition party in Cambodia, the Cambodia National Rescue Party, have been imprisoned with the obligation to perform prison labour. The report also refers to the arrest of 25 human rights defenders and the convictions of 9 opposition politicians. Nearly 50 cases of the harassment of journalists were also reported in 2021. The convictions of Van Narong and Pel Voeun, members of the Cambodian Labour Confederation (CLC), sentenced to imprisonment for misdemeanour and malicious defamation, are also referred to in the report of the Committee of Experts. More recently, we are also bound to deplore the conviction to sentences of imprisonment of the leaders of the Labor Rights Supported Union (LRSU) under provisions of the Criminal Code to which we will return shortly.

All of these events show that public and trade union freedoms are flouted in Cambodia. And yet the free exercise of these public and trade union freedoms is a prerequisite for the exercise of the fundamental freedoms enshrined in the international labour instruments that are applicable in Cambodia. International institutions and experts are raising similar concerns. The UN Human Rights Committee expressed concern at the persistent violations of freedom of expression, the arrest and detention of demonstrators, the dissolution of the Cambodia National Rescue Party in 2017 and of three other opposition parties in 2021, the threats, harassment, arbitrary arrests and collective trials suffered by members of the opposition and the continuing absence of an independent and impartial judiciary. On several occasions, United Nations experts and the Special Rapporteur on the situation of human rights in Cambodia have also denounced these practices.

All of this should not leave the Government of Cambodia unmoved. It is high time to remedy this situation and restore an environment that is conducive to the exercise of public freedoms, which are a prerequisite for compliance with international labour standards, including this Convention.

Today, we are called upon to examine the conformity with the Convention of the law and practice in Cambodia. It will very rapidly be clear from our examination that many legal provisions and their application in Cambodia are contrary to the requirements of the Convention.

Under the terms of Article 1(a) of the Convention, each Member “undertakes to suppress and not make use of any form of forced or compulsory labour ... as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system”. The Act on Political Parties provides that that prison sentences include the requirement to work. Read in conjunction with other provisions of Cambodian legislation, this provision has the consequence that certain of the activities covered by Article 1(a) of the Convention may be punished by prison sentences involving the obligation to work. Section 68 of the Act on Prisons provides that sentences of imprisonment involve the obligation to work. Read in conjunction with other provisions of Cambodian legislation, this provision has the consequence that certain of the activities covered by Article 1(a) of the Convention may be punished by prison sentences involving the obligation to work.



The following provisions are referred to in particular in the report of the Committee of Experts:

- section 42 of the Act on Political Parties, as amended in 2017, under which various offences related to the administration or management of a political party which has been dissolved, or whose activities have been suspended by a court, or whose registration has been refused, are punishable by imprisonment of up to one year;
- sections 494 and 495 on incitement to disturb public security by speech, writing, images or any other audio-visual communication in public or to the public;
- section 522 on publication of commentaries intended to unlawfully coerce judicial authorities;
- section 523 of the Criminal Code of 2009 on discrediting judicial decisions;
- sections 305 to 309 on public defamation and insult; and
- sections 445 and 437 *bis* of the Criminal Code relating to insult and criticism of the King.

As we have seen, these provisions have been used for the imprisonment and conviction of political dissidents, journalists, bloggers and trade unionists, who may be required to perform work. It is clear that the route that should be adopted is the removal of any criminal sanctions for the expression of democratic political opinions. The prohibition set out in the Convention is nevertheless very clear, as such penalties may not involve the requirement to work.

The case of Cambodia also offers an opportunity to address the prohibition contained in Article 1(d) of the Convention, which provides that each Member “undertakes to suppress and not to make use of any form of forced or compulsory labour ... as a punishment for having participated in strikes”. It nevertheless appears from the report of the Committee of Experts that trade unions have been struck with criminal convictions following their participation in peaceful forms of collective action.

We should not have to reiterate the extent to which the exercise of the right to collective action is fundamental for the defence of fundamental labour rights. For this reason, the Convention provides that participation in a strike cannot give rise to punishment involving a sentence of forced labour. And yet the law and practice in Cambodia do not appear to be in conformity with the requirement set out in Article 1(d) of the Convention.

The abolition of forced labour is a fundamental objective of the ILO. There can be no social justice when forced labour is rife. The in-depth revision of the law and practice in Cambodia referred to above in relation to criminal penalties is indispensable to the re-establishment of an environment conducive to the exercise of public freedoms in the country, including freedom of association and the freedom of collective action.

Employer members – The Employer members stress the importance of States’ compliance with the Convention, which is one of the ten ILO fundamental Conventions.

By way of background, Cambodia ratified the Convention in 1999. We note that, so far, the Committee of Experts has provided four observations on this case, namely in 2014, 2017, 2018 and 2022. Today is the second time that the Committee looks at the application of the Convention in Cambodia. We take note that the Committee of Experts identified this case this year as a double-footnoted case. However, we also note that the issues raised were not addressed by the direct contacts mission which was in Cambodia last year. The apparent lack of serious concerns prior to this and their being raised this year in close proximity to the



national elections in which several of the senior union figures quoted in this case are likely to play a prominent part, does actually raise a question in our minds as to why it was double-footnoted. It just does not have the history that other cases that have been double-footnoted have. In any event the Committee of Experts identified two main issues here.

One, sanctions involving the obligation to work as a punishment for the expression of political views contrary to Article 1(a) of the Convention, and second, the compulsory labour imposed on workers as punishment for participating in strikes, contrary to Article 1(d) of the Convention.

Allow me to briefly recall that the Workers have expressed concern over the imposition of sanctions involving forced labour to censor the expression of opposing views on political, social or economic matters, as well as courts' arbitrariness in imposing such sanctions. These concerns arose after the dissolution of a major opposition party in 2017 and the subsequent imprisonment of its leaders.

The Government, for its part, has pointed out that interpreting section 68 of the Act on Prisons as contrary to the Convention is inappropriate. It stressed that imposition of compulsory labour on low-risk prisoners is aimed at providing education and rehabilitation in accordance with international standards relating to prisoners. We note that requiring prisoners to participate in activities that are rehabilitative in nature and do not involve abuse or harm is, in fact, common around the world.

In its observations, as well in the 2012 General Survey, the Committee of Experts notes that, while convict labour exacted from common offenders is intended to reform or rehabilitate them, the same need does not arise in the case of persons convicted for having expressed their opinions or for having organized or participated in a strike. This surprises the Employer members, as there is an inconsistency in the Committee of Experts suggesting that there are different regimes – completely different regimes – depending on whether or not the circumstances relate to freedom of expression or criminal offences. I will come back to this point.

The Employer members emphasize the importance of freedom of expression, including expressing political views and engaging in politics, as fundamental values of democratic societies. We take note of the UN Human Rights Committee's and human rights experts' concern regarding allegations of persistent violation of freedom of expression, the dissolution of opposition parties and the imprisonment – involving compulsory labour – of members of the opposition, human rights defenders and journalists.

We also take note of the Committee of Experts' observation on the continued use of national criminal provisions to arrest, prosecute and convict human rights defenders, opposition members and journalists for expressing their political views or views ideologically opposed to the established system, leading to the imposition of penalties of imprisonment, including involving labour.

In this regard, the Employer members align with the Committee of Experts in asking the Government to take immediate and effective measures to ensure that persons who express political views or views opposed to the established system in a manner not designed to incite unrest, insurrection or violence are not subjected to punitive sanctions involving compulsory labour. The Employer members similarly align with the Committee of Experts' recommendation urging the Government to review the scope of the relevant criminal provisions so as to ensure that their application in practice does not lead to the violation of Article 1(a) of the Convention.



To that end, we echo the Committee of Experts' request to provide a copy of the 2018 Criminal Code amendments criminalizing criticism of the King as well as information on the practical application of criminal provisions falling within the scope of Article 1(a) of the Convention.

Concerning punishment for participation in strikes, this is a new issue that the Committee of Experts identified in its observation in relation to Cambodia's application of the Convention. We take note of the ITUC's observations regarding two members of the CLC being sentenced to imprisonment for misdemeanour and malicious defamation. We also take note of the Committee of Experts' observations on the arrest and prosecution of four trade unionist leaders accused of having organized an illegal strike; of a referral by UN human rights experts concerning the arrest and detention of union leaders and activists during a strike; and of the concern expressed by UN experts as to the use of COVID-19 measures to restrict lawful and peaceful strikes. We agree with the Committee of Experts' request to the Government to take the necessary measures to ensure that the application of legislative provisions does not lead in practice to the imposition of sanctions involving compulsory labour on workers for the mere fact of organizing or peacefully participating in strikes.

Furthermore, we agree with the Committee of Experts in requesting the Government to provide a copy of the court decision regarding the arrest and prosecution of the four union leaders. However, we also note that the instances cited are not clear evidence in themselves of systemic departure from the provisions of the Convention. It is, in our view, not sufficient to conflate membership of a union with imprisonment for offences against national law as an argument to support allegations of breaches of the Convention. Rather, it is necessary to understand the prevailing circumstances in each case. For instance, it would be relevant to know the details of the conduct of the cited individuals at the time of their arrest. That is why sighting the relevant court decision is important.

This is not to deny that those imprisoned have been wrongly treated. Rather it is making the point that we need to look under every stone when such instances occur to make sure there is a breach of international standards and not a straightforward transgression of valid criminal law.

That said, we remain concerned that such discrimination is even possible under Cambodia's law. In that regard, since the discussion of this case in 2018, there has been no apparent progress with regard to legally protecting freedom of expression and national provisions continue to be used to prosecute and convict persons for expressing their political views. We therefore call upon the Government to avail itself of ILO technical assistance to assist in addressing the issues raised here.

We also request the Government to address, in consultation with its social partners, issues arising from the instances of arrest and imprisonment of trade union officials to ensure that these instances were in compliance with the Convention and to that end to provide a copy of the court judgments relating to those instances. We also request the Government to provide a copy of the 2018 Criminal Code amendments criminalizing criticism of the King, as well as information on the practical application of criminal provisions falling within the scope of Article 1(a) of the Convention. And lastly, we urge the Government to take steps to ensure that work required of prisoners is compatible with the stated objection of education and rehabilitation, and not a punitive measure. Thank you for your attention. We look forward to hearing the remaining comments.

Worker member, Cambodia – I am the President of the CLC and, on behalf of Cambodian workers, I would like to stress on the labour situation in Cambodia.



The Government of Cambodia has ratified 13 ILO Conventions including core labour standards in 1999. The Committee of Experts, as well as this Committee in 2018, conclude that Cambodia should bring its laws and practices into compliance with the Convention. No penalties involving forced labour or compulsory labour may be imposed in compliance with Article 1(a) of the Convention. As pointed out by the Committee of Experts again in their report, the penal sanction of forced and compulsory work under convicted criminal sentences is still provided for in section 68 of the Cambodian Act on Prisons. Expressing political views and opinions that oppose the political, social and economic systems in Cambodia is still not free without the risk of penal sanctions, contrary to Article 1(a) of the Convention.

Workers and trade unions are not free from the threat of penal sanctions when conducting and taking part in labour strikes and protests under Article 1(d) of the Convention.

Review of labour legislation: the Committee of Experts has asked the Government to ensure that the penalties under a number of provisions in domestic laws do not involve forced and compulsory labour. In the experience of the trade unions, the Criminal Code and other penal offences in our laws are often used by Government authorities, employers and strike-breakers to prosecute and convict us when we are conducting trade union activities, expressing public opinions and also conducting strikes.

In too many cases, the following provisions are used against workers and union leaders to sentence them to jail or put them under prolonged and non-transparent legal procedures for years without a trial. These include the Criminal Code: section 28 (instigation); sections 494 and 495 (incitement to commit felony); sections 217–218 (intentional violence); section 411 (intentional damages); sections 311 and 312 (defamation); section 424 (threats to destroy); section 78 (obstruction under the Act on Traffic); as well as section 11 (Act on prevention of the spread of COVID-19).

We are concerned that incitement charges under sections 494 and 495 are actively used to silence trade unionists and activists from publicly expressing and sharing their views and criticisms of Government policies and practices and to intimidate workers from continuously taking part in strikes and protests led by trade unions. We would not be able to perform our role, we would not be able to speak up and organize collective bargaining if these provisions can be broadly applied to criminalize our opinions and trade union actions.

We urge the Government to consult and review the broad scope and arbitrary application of these legal provisions with trade unions and the social partners, and to ensure that these provisions are not used to harass and penalize the free expression of political opinions, the free organization of trade union activities, labour strikes and protests.

Convictions and sentences for expressing opinions, organizing strikes and trade unions: we are deeply concerned at the arrests, detention, judicial harassment and conviction of members of independent trade unions, NGOs and association representatives, independent journalists, human rights defenders and social activists in Cambodia when exercising the right to express opinions and conducting strikes and labour protests.

In 2016, 46 workers of a bus company were dismissed for organizing a trade union. Federation union leaders and activists were charged with multiple criminal offences. Van Narong and Pel Voeun were given suspended sentences of imprisonment of six months for misdemeanour and malicious defamation. The case is still pending in the Appeal Court. Mr Ya Kuyny and Mr Ngim Bunthy were sentenced to two years in prison in 2018.



Mr Chan Rith, Mr Seb Thon and Mr Tep Sopha, leader and members of the Farmer Association for Peace and Development (FAPD), were sued in two separate cases by landowners and the Ministry of the Environment on charges of intentional violence in farmers' protests against land grabbing. Tep Sopha was sentenced to one year of imprisonment and completed his sentence in 2020.

Ms Tang Sakbuoy was sued by her employer for fabricated criminal offences after she and others formed a trade union. She was sentenced to 18 months in prison in 2020. The Court has upheld an arrest warrant against her.

Rong Chhun, President of the Cambodian Confederation of Unions (CCU), was convicted of incitement to commit felony and social unrest after he made public comments on the loss of land by farmers in border areas. He was sentenced to two years in prison in 2021.

Chhim Sithar and eight members of the LRSU were convicted of incitement to commit felony for leading strikes to protest against mass retrenchment and union-busting by a casino group. They were sentenced to between one-and-a-half and two years in prison in May 2023.

We urge the Government to drop all charges against trade union leaders, labour association leaders and activists for exercising the right to freedom of expression, freedom of organization and the right to strike and protest. We also urge the Government to expedite the resolution of the long-standing criminal cases concerning freedom of association with trade unionists. Of the 44 criminal cases submitted to the Government in 2018, 29 cases are still pending.

Employer member, Cambodia – I speak on behalf of the Cambodian Federation of Employers and Business Associations. First of all, we request that any issues that are beyond the scope of the discussions of the Convention, which is the main topic today, be removed from the record of proceedings. As there is a lot of information today, we are not prepared to respond to all of it. Let me start by giving you the context.

Cambodian Employers wish to draw the attention of the Committee to the content of this Cambodian case. Cambodia is holding national elections on 23 July this year, which is only a few weeks from now. Around this time, political election campaigns are being carried out intensely on the ground right now and political parties are campaigning to win voter support and competing to reach voters through both national and international platforms. We Cambodian Employers wish to reaffirm our adherence to the Conventions that Cambodia has ratified, and widespread support for compliance with the Conventions by the tripartite partners and other interested parties, including the Convention.

The matter brought before the Committee today refers to claims and events relating to activities by political parties and trade unions, respectively. We are not aware that in Cambodia in law and practice there is punishment for holding or expressing political views or views ideologically opposed to the established system or for participating in a lawful strike.

While taking the matter very seriously, we would respectfully ask the Committee of Experts to provide more concrete evidence of forced labour or compulsory labour so that these cases can be effectively addressed.

In Cambodia, insofar as the Labour Law provides for certain sanctions and punishments in the context of strikes, those sanctions are specific and limited to protecting non-striking workers from coercion or threats, protecting striking workers from unlawful sanctions by employers, and protecting striking workers from replacement beyond minimum service



arrangements. That stated, the Labour Law also provides that a strike must be peaceful. Committing acts of violence during a strike is considered serious misconduct that could be subject to punishment. Under Cambodia's legal system, the commission of violence or other crimes that can implicate the Criminal Code subjects the offender to criminal sanctions pursuant to law.

As the Committee of Experts has noted from the observations of the ITUC, the two individuals at issue were sentenced to imprisonment for the commission of crimes under the Criminal Code. As it appears, their sanctions result from the prosecution of crimes they committed, not from participation in a strike. The Committee of Experts notes the ITUC observation according to which the two individuals were sentenced after taking part in a protest. However, participation in a strike does not render any individual immune from prosecution for the commission of criminal acts or other violations of the law. Regarding the actual facts and circumstances of the two individuals, the Government has indicated that the individuals in question are not imprisoned, and that they are in fact actively employed. This would exclude that they are now subject to any form of forced or compulsory labour.

In conclusion, on behalf of Cambodian Employers, let me say that we are deeply concerned about the potential adverse impacts of continuing to consider allegations that do not have concrete evidence of breaches of the Convention on real lives and livelihoods in Cambodia. In our view, paying attention to such allegations without having grounds in fact or sharing concrete evidence places Cambodia at risk of being misperceived and wrongfully maligned as being involved in forced labour and modern slavery. The impact and loss can be devastating, not only for Cambodia's reputation, but also its ability to attract tourists, talent and investment, and in turn will harm Cambodia's workers, businesses and sustainable development.

Now, if there are situations with concrete evidence of forced labour, we certainly call on the Government to look into the issue to resolve these issues regarding forced labour and, if need be, request technical assistance from the ILO.

Government member, Sweden – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The candidate countries **Albania, Bosnia and Herzegovina, North Macedonia, Republic of Moldova, Montenegro**, the EFTA country **Norway**, members of the European Economic Area, align themselves with this statement.

In line with the EU Action Plan on Human Rights and Democracy of 2020, we are committed to the promotion, protection, respect and fulfilment of human rights, of which labour rights are an integral part, including the abolition of forced labour.

In this endeavour, we support the ILO in its indispensable role to develop, promote and supervise the application of international labour standards and of fundamental Conventions in particular.

The EU and its Member States have been committed development partners of Cambodia, including through the "Everything But Arms" (EBA) arrangement under the EU's Generalized Scheme of Preferences, granting duty-free and quota-free access to the EU market, resulting in sustained growth and job creation in past decades.

The trade benefits granted under the EBA arrangement are subject to the condition that Cambodia respects core international principles, enshrined in core UN and ILO Conventions. Due to serious and systematic violations of human rights, especially the right to political participation and fundamental freedom, as of August 2020, this preferential treatment has



been partially suspended. We have continuously expressed our deep concerns over political developments in the country.

We deeply regret the existence of provisions in various laws, such as the Act on Prisons of 2011, the Act on Political Parties as amended in 2017 and the Criminal Code of 2009 as amended in 2018, which provide scope for penal sanctions that may involve compulsory labour, and which the Cambodian authorities continue to use against members of opposition parties, activists and human rights defenders, as well as journalists and social media activists, and trade union members. We express our deep concern about the persistent violation of freedom of expression. We deplore the fact that people expressing dissent or criticism continue to be convicted and sentenced to penalties of imprisonment that may involve compulsory prison labour. No penalties that may involve compulsory labour should be imposed for the peaceful expression of political views or views opposed to the established system.

We note with concern the observations of the UN Human Rights Committee. We join the Committee of Experts and call on the Cambodian authorities to take immediate and effective measures to ensure that persons who express political views or views opposed to the established political, economic or social system are not punished with penal sanctions. We therefore urge the Cambodian authorities to restrict the scope of the provisions of the relevant laws to situations connected with the use of violence or incitement to violence by repealing sanctions involving compulsory labour to ensure that their application in practice does not lead to the violation of the Convention.

The next steps of the Cambodian authorities on stipulations of the draft Cybercrime Law, currently under preparation, and on the sub-decree on the National Internet Gateway, the implementation of which has been suspended, will be a litmus test of the willingness of the Cambodian authorities to engage and change their course of action.

In line with the Committee of Experts, we also urge the Cambodian authorities to take the necessary measures to ensure that the application of legislative provisions will not lead in practice to the imposition of sanctions that may involve forced labour on workers and trade union members for the mere fact of organizing or peacefully participating in strikes. We are worried about reports related to the arrests and prosecution of trade union members and leaders for participation in strikes. We join the call by the Committee of Experts on the Cambodian authorities to provide a copy of the court decision regarding the four leaders of the Workers Friendship Union Federation who were arrested and prosecuted following the organization of a strike.

In relation to forced labour in general, we are alarmed by the number of cases of human trafficking involving forced labour and their dramatic increase over the last two years. In this regard, we urge the authorities to step up their efforts to combat and prevent trafficking in persons in the country. We continue to request the Cambodian authorities to take the necessary measures to ensure the prosecution of these cases, to provide timely information on arrests and convictions, and to protect and assist victims of trafficking.

We also strongly encourage the Cambodian authorities to implement all the other recommendations arising from the ILO's direct contacts mission in the spring of 2022, to stop labour rights violations and embark on a constructive path of reform. The EU and its Member States will remain closely seized of the situation in Cambodia.



Government member, Switzerland – Switzerland reiterates the concerns raised last year, and in 2017, in this Committee in relation to the application by Cambodia of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Since 1999, Cambodia has appeared regularly on the list of cases examined by the Committee. Today, Switzerland expresses its concern at the use of the provisions of the Criminal Code for the systematic restriction of freedom of expression and freedom of association. It is essential for everyone, and particularly journalists, human rights defenders, political opponents and social media activists, to be able to express their views freely without the risk of reprisals.

Switzerland recalls that, in accordance with Article 1 of the Convention, the exercise of freedom of expression and opinion, as well as freedom of association and of assembly, must not be subject to arbitrary restrictions, nor lead to penalties involving the obligation to work.

Switzerland therefore firmly condemns the practices described by the Committee of Experts and the Special Rapporteur on Cambodia of the UN Human Rights Council intended to punish persons who express or peacefully demonstrate their opposition to the established political, social or economic system. It has noted the observations made and explanations provided by the Government of Cambodia and calls for the adoption of all the necessary measures to bring an end to these practices.

Worker member, Australia – On behalf of the Australian union movement, I register our deep concern over the situation of workers' rights in Cambodia, where criminal offences are broadly used by the Government to criminalize the normal activities of trade unionists, the free expression of opinions and the right to lead and participate in strikes.

The Committee of Experts observes that opposition political activists, journalists, human rights defenders and social media activists who express dissent or criticism of the authorities under the protected scope of this Convention are convicted and imprisoned obliging them to perform forced or compulsory work pursuant to section 68 of the Act on Prisons.

The conviction and sentencing of Mr Rong Chhun, President of the CCU in 2020, was made on the basis of the claims of lost land by farmers resulting from the work of the Joint Border Affairs Committee demarcating the border between Cambodia and Viet Nam during his visit to the area on 20 July 2020. On 30 July 2020, Mr Rong Chhun was arrested and detained pending a trial under charges of "incitement to commit a felony or cause social unrest" under sections 494 and 495 of the Criminal Code. Ms Sar Kanika, President of the Cambodian Informal Labour Association, and Mr Ton Nimol, member of the Cambodia Watchdog Council, who had joined protests calling for Rong Chhun's release, were both arrested on 7 August for posting Rong Chhun's statement on social media and charged under the same criminal offence and put under pretrial detention. On 18 August 2021, Rong Chhun was sentenced to 24 months in prison, and Sar Kanika and Ton Nimol were sentenced to 20 months. In November 2021, the Phnom Penh municipal court ruled on the appeal and suspended their sentences. They served 15 months in prison including pretrial detention.

The UN Special Rapporteur on the situation of human rights in Cambodia noted in 2021 that "the prison terms and heavy fines handed to these three activists are neither justified nor proportionate".

The Government continues to use imprisonment and the threat of penal sanctions to suppress dissent. Indeed, just this Friday, Prime Minister Hun Sen made an explicit public threat to reimprison Rong Chhun, who is now also Vice-President of the Candlelight Party, and his supporters if they protested against the Candlelight Party's disqualification.



We call on the Government to respect their obligations under the Convention by ceasing the criminalization of dissent and to immediately and unconditionally release individuals who have been imprisoned for exercising their right to freedom of expression and assembly, including union leader Chhim Sithar and her fellow unionists, who have just been sentenced two weeks ago targeted for exercising their rights to freedom of association.

Government member, United Kingdom of Great Britain and Northern Ireland – The United Kingdom commends the Royal Government of Cambodia for supporting the ILO's Better Factories Cambodia programme, which monitors and reports on working conditions in Cambodian garment factories, thereby helping factories improve working conditions according to national and international standards.

The United Kingdom also notes Cambodia's long-standing cooperation with the Office of the High Commissioner on Human Rights and its progress on economic, social and cultural rights. We applaud Cambodia for its response to the COVID-19 pandemic, particularly in terms of social protection and healthcare.

Acknowledging the economic progress that Cambodia has made over the past 20 years, the United Kingdom remains committed to working with Cambodia in its efforts to also advance civil and political rights through constructive dialogue

Strengthening human rights protections, such as freedom of speech, association and thought, would also support Cambodia's economic sector by encouraging innovation through the open sharing of ideas and information. Therefore, the United Kingdom regrets the sentencing of Chhim Sithar, leader of the LRSU, and eight other current and former union members on 25 May 2023.

The United Kingdom appeals to the Cambodian authorities to recall the fundamental importance of respect for freedom of association as one of the primary safeguards of peace and social justice, as was fully recognized by Cambodia when it voluntarily ratified ILO Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), over 20 years ago.

At the same time, the United Kingdom continues to monitor restrictions on civil and political space and is concerned about the ongoing restrictions on civil and political space.

We are disappointed that the Voice of Democracy, one of Cambodia's few independent media outlets, has been closed. The United Kingdom has publicly stated that a free press is essential to open and democratic societies. Freedom of expression is not measured by the number of media outlets a nation has; media outlets must be independent and balanced.

The United Kingdom also regrets the handling and outcome of the Kem Sokha case and his sentencing to 27 years of house arrest, as well as the decision of the Cambodian Electoral Commission to reject the Candlelight Party's election registration.

The United Kingdom calls on Cambodia to continue to engage in constructive dialogue and to implement the recommendations of the report.

Employer member, Thailand – I am making this statement on behalf of the **ASEAN Confederation of Employers (ACE)**. Freedom from forced or compulsory labour is a cornerstone of the decent work concept and we join Cambodia in reaffirming adherence and support for the abolition of forced labour.

Concerning the Cambodia case, we consider Cambodia has set out a strong and compelling case for its compliance, while also providing valuable contextual information and facts of the case and underscoring the importance of analysis of how the Convention is



applied, taking into account the different national realities and legal systems that exist in Cambodia. In this regard, we wish to emphasize and highlight the value and effectiveness of Cambodia's national systems in addressing important issues of interest. The systems we have established in Cambodia, including systems of social dialogue, whether formal or informal, tripartite or bipartite, are inherently context-sensitive, helping to promote consensus, build better employment relationships and advance industrial peace, which ultimately benefits workers, employers, economic and social development in Cambodia. In this respect, we urge this Committee to take into account the above factors and respect the existing internal system and practices implemented in Cambodia.

Worker member, Switzerland – The Committee of Experts has rightly again expressed its deep concerns over the continued use of the provisions of the national legislation, including the Criminal Code, to prosecute and convict persons who express views opposed to the authorities in Cambodia, or take part in strikes. There is evidence, since this case was examined in 2018, of an increasing number of convictions and penal sanctions involving the obligation of compulsory work against trade unionists and activists in breach of Article 1 of the Convention. For example, Ms Tang Sorkbouy and six other union founders were dismissed on 31 October 2018, after having created a union at her company and demanding the improvement of working conditions. Although their complaint at the Arbitration Council resulted successfully in an award to reinstate the workers in February 2020, the company filed an appeal against this decision and refused the reinstatement.

In June 2020, the company filed a lawsuit against Ms Tang Sorkbouy on charges of forgery and breach of trust after nine years of employment. She was tried in absentia and sentenced by the Phnom Penh court of first instance to two years and six months imprisonment and a high fine. She had never received the summons to attend the court, allegedly due to discrepancies in the postal registration address. An appeal by her lawyer to the court of next instance in October 2020 was unsuccessful. The sentence was reduced to 18 months. We are very concerned to note an increase in cases in which union activists could not be dissuaded from their commitment by persecution for their union activities, but face serious criminal charges which force them to withdraw from their engagement.

We urgently call upon the Government to take all the necessary measures to ensure that criminal charges are not used to intimidate, convict and imprison labour and union activists for expressing views and exercising their rights, which makes the national law allowing forced labour in prison applicable to them, in violation of the Convention.

Government member, Canada – Canada takes note of the Government of Cambodia's report and additional information provided earlier this week, which affirm that the freedom of citizens to express themselves peacefully and to engage in politics is guaranteed by Cambodia's national legislation.

The findings presented by the Committee of Experts, however, describe the continued use of the provisions of the national legislation to arrest, prosecute and convict persons who express political or dissenting views, including those of opposition political party members, human rights defenders and journalists, leading to penalties such as imprisonment, which involves compulsory prison labour in violation of the Convention. The increasing prevalence of these actions is of particular concern to Canada in the lead up to Cambodia's July 2023 national elections.

Canada strongly condemns the use of the national legislation to prosecute and convict political activists, journalists, human rights defenders and social media activists who express



dissent or criticism of the authorities. In line with the recommendations of the Committee of Experts, Canada urges the Government of Cambodia to:

- review and revise the Act on Political Parties as well as the Criminal Code, by clearly restricting the scope of these provisions in connection with the use of violence or incitement to violence, and by repealing sanctions involving compulsory labour, so as to ensure that their application in practice does not lead to the violation of the Convention.
- take the necessary measures to ensure that the application of legislative provisions will not lead in practice to the imposition of sanctions involving compulsory labour, such as compulsory prison labour, on workers for the mere fact of organizing or peacefully participating in strikes.

We sincerely hope that the Government's next report to the Committee of Experts will demonstrate positive developments.

Government member, Brunei Darussalam – I have the honour to deliver this statement on behalf of the **Member States of the Association of Southeast Asian Nations (ASEAN)**. We have taken note of the report of the Committee of Experts and the detail presented by the Royal Government of Cambodia.

We acknowledge and appreciate Cambodia's progress made in advancing labour rights and are reassured by the fact that forced or compulsory labour finds no room in Cambodia, as enshrined in the two core Conventions. Cambodia's strict prohibition of forced or compulsory labour which is upheld both in law and in practice is commendable.

We encourage the Royal Government of Cambodia to continue its endeavours towards the promotion of decent work, labour rights and improving working conditions. We also request the Committee to ensure a clear and impartial interpretation and application of the Conventions in question, thus eliminating any ambiguity that may lead to confusion between different labour Conventions.

Recognizing the critical role that social dialogue and tripartism play in fostering harmonious industrial relations, we encourage the Royal Government of Cambodia and its social partners to continue utilizing the social dialogue process at every level in order to promote the application of fundamental labour standards.

Interpretation from Chinese: **Government member, China** – We thank the representative of the Government of Cambodia for the detailed information. We have carefully read the report of the Committee of Experts. We note that the Government has earnestly fulfilled its obligations under the ratified Conventions and has made unrelenting efforts to this end. The Constitution clearly recognizes and protects human rights and Cambodia's labour laws comply with international labour standards. They expressly prohibit forced or compulsory labour. The Cambodian Government ensures that no penalties involving compulsory labour may be imposed on persons who express political views opposed to the Cambodian political system. The Government actively cooperates with the ILO and submits relevant materials in a timely manner, which demonstrates the Government's positive attitude of cooperation and dialogue. We appreciate this.

We believe that the consideration of the case should focus on Cambodia's compliance with the Convention, rather than interfering in a country's internal affairs, let alone politicizing technical issues. We call on this Committee to form a conclusion based on comprehensive and accurate facts and to objectively and fairly reflect the progress made by the Government in implementing the Convention, and finally to make a constructive decision



to avoid interfering in a country's sovereignty, legal system and internal affairs in a conclusion.

Government member, United States of America – We thank the Government of Cambodia for providing additional information to this Committee in response to the recent observations of the Committee of Experts. We note that the information provided relates to the use of several provisions of national legislation that allow for penalties of imprisonment and sanctions involving the obligation to work as a punishment for activities protected under the Convention.

Despite this information, we remain deeply concerned that workers, trade union leaders and other human rights defenders continue to be imprisoned and subjected to compulsory labour for exercising their fundamental principles and rights, including the right to strike. We note that the Committee of Experts deeply deplores the continued use of national legislation to arrest, prosecute and convict these individuals, leading to the imposition of penalties of imprisonment which involve compulsory prison labour.

We are also deeply concerned that nine members of the LRSU were convicted for incitement to commit a felony under sections 494 and 495 of the Cambodian Criminal Code on 25 May after engaging in a peaceful strike at a casino that began in December 2021, and pursuant to section 68 of the Act on Prisons of 2011, are subject while imprisoned to an obligation to work.

We urge the Government to take immediate action to implement the recent recommendations of the ILO supervisory bodies, prioritizing work in the following areas: first, ensure that no terms of imprisonment with punishments of forced labour are imposed for the peaceful exercise of trade union activities, such as participation in public and industrial strikes and protests, including in the case of the casino strike; and to that end, review and amend section 42 of the Act on Political Parties, as well as sections 445, 437 *bis*, 494, 495, 522 and 523 of the Criminal Code, to clearly restrict the scope of these provisions to apply only to situations connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour so as to ensure that their application in practice does not lead to the violation of the Convention.

We urge the Government of Cambodia to take all the necessary measures to address these long-standing issues, in compliance with the Convention. The United States remains committed to engaging with the Government to advance workers' rights in Cambodia.

Worker member, United Kingdom of Great Britain and Northern Ireland – I speak on behalf of the Workers of the United Kingdom with the support of the IndustriALL Global Union. The Convention is essential to prevent forced labour or compulsory labour as a means of repressing government critics and punishing trade unionists for having participated in strikes. We note that prison sentences in Cambodia, in most cases, involve forced labour. The threat of a prison sentence, therefore, is a threat of forced labour, and the use of that threat to curtail trade union activities remains a breach of the Convention.

This case was double-footnoted by the Committee in 2018, and the Government was urged to take measures in law and practice to ensure that no penalties involving forced labour or compulsory labour may be imposed. Despite that, on 11 December that year, six national trade union leaders were each sentenced to two-and-a-half-years suspended jail sentences for taking part in strikes demanding higher statutory minimum wages in 2013. They were prosecuted in 2014 on multiple charges of committing acts of violence, damage to property and traffic obstructions, later changed to instigation, which encompass a broader



scope under section 28 of the Criminal Code. These suspended sentences also included a collective fine of approximately US\$6,800, which effectively stopped them from engaging in labour strikes and protests. The appeal court eventually acquitted them on 28 May 2019.

Employers have pursued a similar pattern of judicial harassment, filing criminal lawsuits with criminal charges under sections 217, 218 and 411 of the Criminal Code for their involvement in wage strikes in the garment sector between 2013 and 2014. This has been a significant problem in the country's garment sector.

For example, two unionists were convicted of intentional violence with aggravating circumstances (sections 217 and 218 of the Criminal Code), after a 2013 strike in a garment company. They too were sentenced to a suspended prison sentence, in December 2018. The same month, nine trade unionists had their charges of intentional violence with aggravating circumstances dropped by the court following a 2014 strike. Two, however, received a suspended sentence, which they appealed in 2019.

Finally, again in December's flurry of punitive activity, seven trade unionists, including two from the Coalition of Cambodian Apparel Workers Democratic Unions (C.CAWDU) garment union, were charged with aggravating circumstances (section 411 of the Criminal Code) after supporting striking workers demanding better working conditions. They received another suspended sentence and a massive fine (US\$8.5 million). Again, given the flimsy nature of the accusations, the workers sought to appeal in 2019. These criminal sanctions provide for a penalty of imprisonment of between one and five years and were clearly used to convict trade unionists for their participation in strikes, something covered by Article 1(d) of the Convention. Even suspended sentences therefore serve to intimidate Cambodian workers and control their freedom to carry out their legitimate activities, including to participate in strikes, with the threat of compulsory work under section 68 of the Act. This is a clear breach of the Convention.

Worker member, Italy – I am speaking on behalf of Italian unions: the Italian General Confederation of Labour (CGIL), the Italian Confederation of Trade Unions (CISL) and the Italian Labour Union (UIL). Italian workers are concerned at the imprisonment of trade unionists and escalating judicial harassment against civil society activists who are defending the rights and interests of the communities they represent.

The Government of Cambodia is increasingly resorting to the use of penalties of imprisonment under the Criminal Code and other laws against trade unionists and activists in situations covered by Article 1 of the Convention. For example, Tep Sopha, a member of the Farmers Association for Peace and Development was convicted of criminal offences and obstruction of public officers in a lawsuit brought by the Ministry of the Environment because he was organizing farmers in a protest in Sihanoukville to dispute the designated conservation lands which are traditionally the homeland of these farmers. He was sent to prison for one year on 23 January 2019.

Seb Thon and ten other members of the organization were sued by a landowner for intentional damage and assaults during a protest by farmers against land grabbing in December 2019. He was given a suspended sentence of one year in prison and a fine. There has been no progress on his appeal to the court since 2020.

Following the prosecution of Rong Chhun, President of the CCU, in July 2020 on incitement charges for making a public statement on the loss of land by farmers, the Ministry of the Interior and the police authorities took action to arrest and charge ten civil society and youth activists under sections 494 and 495 of the Criminal Code. They were released from



detention in November 2021 on probation. In 2021, four activists from an environmental organization, Mother Nature, were arrested and charged for insulting the King and plotting. In November 2022, a forestry activist was sentenced to five years of imprisonment under section 97 of the Act on Forestry. In May 2023, land rights activists from the Coalition of Cambodian Farmer Community were arrested after their internal project planning workshop.

We urge the Government to drop all the pending charges and cease to use custodial penalties involving compulsory work and forced labour on trade unionists and activists who are simply exercising their fundamental rights and freedoms.

Observer, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) – I am speaking here today to raise the matter of the arbitrary arrest and detention of several members of our affiliate in Cambodia, the LRSU. The arrests included its President Chhim Sithar. The arrests were conducted following a peaceful strike in opposition to repeated acts of union-busting at their employer in Phnom Penh. They are being punished for participation in a strike, contrary to Article 1(d) of the Convention.

In January 2022, several UN Special Rapporteurs denounced their arrests, finding that “many of the arrests of the mostly women strikers were conducted in a violent way and appear to contravene the freedoms of association, assembly and expression”. The union activists were charged with so called “incitement to commit a felony” under sections 494 and 495 of the Cambodian Criminal Code. The previous ILO Director-General, Guy Ryder, had appealed to the Prime Minister of the country “to use his powers to ensure the immediate release from custody of all detained workers and the dropping of all criminal charges related to their trade union activity”.

Last month, a court found nine leaders of the LRSU guilty, including its President Chhim Sithar, who was sentenced to two years in prison, eight months of which she has already served. Five others were given sentences of one-and-a-half years, and three were given one-year suspended sentences. As the Committee of Experts has previously noted, penalties of imprisonment include the imposition of compulsory labour.

We condemn the imprisonment of our members for their trade union activity, and the complete lack of due process and the right to a fair trial to defend themselves against baseless charges. We echo the words of the Committee of Experts, which has found “that there has been no progress with regard to protecting freedom of expression in Cambodia” and “deeply deplores the continued use of the provisions of the national legislation”, including the Criminal Code, “to prosecute and convict persons who express their political views or views ideologically opposed to the established political, social or economic system, leading to penalties of imprisonment involving compulsory prison labour”.

We reiterate the conclusions of the Committee on Freedom of Association, which in March 2023 recalled “that no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike”, and request the Government to ensure that all charges brought against LRSU leaders and members for participating in a peaceful strike are dropped. We urge the Government of Cambodia to immediately release LRSU President Chhim Sithar and all the members of the LRSU who are in prison, and indeed to release all persons who are arbitrarily imprisoned.

Observer, International Transport Workers Federation (ITF) – Article 1(d) of the Convention explicitly prohibits recourse to sanctions involving any form of forced or compulsory labour as a punishment for having participated in strikes, that is sanctions



involving compulsory labour for the mere fact of organizing or participating in strikes. Yet, provisions of the Cambodian Criminal Code carrying such penalties are regularly used to target trade unionists taking lawful strike action.

Convictions under relevant provisions of the Criminal Code can lead to compulsory labour by virtue of section 68 of the Act on Prisons. This is not just about rehabilitation of prisoners. Section 71 of the Act on Prisons allows the Director of Prisons to enter into contracts with private parties to generate employment for the prison industry, handicraft and farming programmes, and to enter into contracts to sell the products from these programmes. Private entities can profit from compulsory prison labour. This in itself is a violation of Convention No. 29. The criminalization of strikes with the possibility of compulsory labour is exacerbated by the constant judicial harassment of trade unionists by employers and strike-breakers, and the ambiguous criminal justice process. Convictions carrying penalties of compulsory labour for participating in strikes also create an atmosphere of intimidation and fear prejudicial to freedom of association.

The Committee of Experts has highlighted the cases of transport workers Van Narong and Pel Voeun, who were convicted of criminal defamation pursuant to sections 311 and 312 of the Criminal Code and sentenced to six months in prison. It is important to understand the facts of this case to fully comprehend the matter. Following a 2015 strike by workers of a major bus company, two union leaders were detained after they were themselves attacked by members of a tuk-tuk and moto-taxi association. They were arrested on trumped-up charges of aggravated intentional violence and obstructing public officials under the Criminal Code but were later released. The matter did not end there. The bus company filed a lawsuit alleging the same offences against both of them and four leaders of the CLC, who were not even present during the protest. Other criminal lawsuits by the bus company, strike-breakers and counter-protestors ensued, involving a total of 46 trade unionists. Two of the trade unionists in question were Van Narong and Pel Voeun. Although the Government claims that the two are currently on bail pending appeal, this only offers them limited comfort, knowing that they may be convicted for crimes they did not commit which could result in compulsory prison labour.

We call on Cambodia to comply with Article 1(d) of the Convention and end the imposition of sanctions involving compulsory prison labour on workers participating in strikes.

Government representative – My delegation wishes to extend our appreciation to all speakers and delegates for their constructive interventions and insightful comments. We again wish to reaffirm Cambodia's unwavering commitment to honour the Convention in respect of the abolition of forced labour in our nation. Contrary to the allegations of other delegations, Cambodia always commits to the promotion and protection of human rights. Freedom of assembly, association and expression for individuals and civil societies are guaranteed in the Kingdom, as enshrined in the Constitution and other international instruments. As a country that steadfastly upholds the rule of law, strengthening the implementation of laws and regulations is fundamental to our good governance. Any attempts to mischaracterize law enforcement activities as political pressure would undermine the rule of law. As such, we are compelled to clarify that certain individuals, who were associated with strike activities, were apprehended not merely due to their involvement in illegal strikes, but rather that their acts caused substantial disturbance to public order and security, as well as infringing the right to life of others, particularly amid the COVID-19 pandemic. Currently, these cases are pending further legal proceedings before the courts.



We affirm that forced labour is entirely incompatible with our values and has no foothold in the Kingdom. To this day, there remains no substantiated evidence of compulsory prison labour being used as a punitive measure for individuals who merely expressed their political views or views opposed to the established system, or are involved in strikes in Cambodia. Accordingly, in the absence of evidence in respect of forced labour, we question the validity of our footnoted status. In fact, prison labour is primarily a rehabilitative process aimed at facilitating the reintegration of prisoners into society and the labour market. Under the Act on Prisons, “low-risk” convicted individuals possessing the requisite physical capabilities may be called upon to engage in work as part of the prison daily routine, or to perform tasks benefiting the community or participate in prison industry, prison handicraft, and the prison farming industry. Such employment is not assigned based on political opposition, human rights advocacy or journalistic activity, and safety measures are diligently implemented. However, we observe with regret that a handful of delegates have attempted to exploit and politicize this discussion in favour of a group of individuals who were prosecuted for a conspiracy to overthrow a legitimately elected government. In this case, we are therefore compelled to stress that such an offence goes beyond criminality; it is a direct affront against the people and the very essence of democracy. Indeed, a crime is a crime, and it cannot be justified for other aspirations. All charges are imposed in response to constitutional and criminal breaches, not political or fabricated motives.

As for the freedoms of expression and the press, they remain alive and dynamic in the Kingdom. The licence-revoked media outlet grossly breached the profession of journalism by engaging in spreading fake news. As such, the move against an unprofessional media outlet did not undermine the freedom of the vibrant press or freedom of expression in the Kingdom but contributes to the strengthening of the journalism profession. Indeed, it is no surprise that some delegates are exploring and exploiting all ways and means to put Cambodia on the international radar. A simple answer is because we will have general elections in July this year. They have no shame, even breaking rules and practices to demonize our Government. Certain issues, such as the dissolution of a political party, the disqualification of a political party to participate in the July elections and the licence-revoked media outlet are not covered by the agenda items today or the Convention. Therefore we remind delegates that politicization not only hinders productive dialogue, but also threatens the integrity and mandate of this Committee.

In closing, my delegation wishes to extend our heartfelt gratitude to the Committee for its observation, and to all ASEAN Member States, distinguished delegates, workers’ and employers’ representatives, and others for their invaluable interventions and support extended to Cambodia throughout this process.

Employer members – The Employer members thank the various speakers that took the floor and notably the Government of Cambodia for their interventions and the information they provided. We remind the Committee that the Convention is a fundamental Convention, which therefore requires special consideration by ILO Governments, workers and employers. Our position on this case is aligned with the recommendations of the Committee of Experts. The Employer members stand against any form of unlawful restriction on freedom of expression and connected fundamental rights. But we do reiterate our earlier point, which is that before making findings, we need to investigate all of the circumstances, and hence the call for more information on aspects such as the imprisonment of various people. With all of those things in mind, the Employer members recommend that the Government of Cambodia take immediate and effective measures:



- to ensure that persons who express political views, or views opposed to the established system, are not punished with sanctions including compulsory labour, contrary to Article 1(a) of the Convention, and that the application of legislative provisions does not lead in practice to the imposition of sanctions on workers for the mere fact of organizing, or peacefully participating in strikes contrary to Article 1(d) of the Convention;
- to review the wording of the relevant sections of the Criminal Code and the Act on Political Parties, by restricting the scope to situations involving the use of violence, or incitement to violence, or by repealing sanctions involving compulsory labour;
- to provide copies of the amendments to the 2018 Criminal Code, which criminalized criticism of the King, as well as information on the practical application of the relevant national provisions of the Criminal Code and Act on Political Parties;
- to provide a copy of the court decision regarding the arrest and prosecution of the four trade union leaders accused of having organized an illegal strike.

Finally, noting the lack of progress regarding the protection of freedom of expression and that no ILO technical assistance has yet been requested, we call on the Government once again to avail itself of technical assistance from the ILO to assist in implementing these recommendations. We count on the Government to provide the requested information by 1 September this year, and to adopt the measures indicated by this Committee in a timely manner.

Worker members – We regret the criticisms made concerning the independent and impartial choice of the Committee of Experts, in accordance with its mandate, to select the case of Cambodia for a double footnote on the basis of the objective criteria recalled in paragraph 144 of its report. The Committee of Experts also explains the reasons for the selection of the case as a double-footnoted case.

We have also heard attempts to justify the prosecution and imprisonment of trade unions with reference to provisions of the national Criminal Code. On this subject, the Workers' group wishes to insist on the caution that needs to be exercised by everyone when referring to national penal legislation to justify the prosecution and imprisonment of members of workers' and employers' organizations for the mere fact of having exercised their rights and civil liberties as set out in the Convention.

The violations of the Convention by the Government of Cambodia have already been discussed by the Committee in 2018. The more general context of flagrant violations of civil liberties, including trade union freedoms, has long given rise to deep-rooted concerns in the Workers' group.

We have noted during our discussion that the situation in the country has not improved, quite the contrary. We are unfortunately bound to repeat most of our recommendations to the Government of Cambodia. In 2018, Cambodia was already the subject of a double footnote, which further reinforces our concerns at the gravity of the situation.

More recently, in 2021, the Committee also examined the application by Cambodia of Convention No. 87. Following that examination, a direct contacts mission was organized in 2022. The problems examined on that occasion are closely related to the examination of compliance with the Convention by Cambodia and we call on the Government of Cambodia to give effect to the recommendations made by that mission.

The Government is today under an obligation to make a commitment to take all the necessary legislative measures to ensure that sentences involving compulsory labour are not



imposed with a view to silencing and censoring the peaceful expression of political opinions. The right of assembly is the means through which citizens can endeavour to ensure the dissemination and acceptance of their views and must therefore also be protected.

Moreover, Article 1(d) of the Convention prohibits the imposition of compulsory labour as a punishment for the organization of or peaceful participation in strikes. The Government must ensure that freedom of association can be exercised in a climate free from intimidation and violence. All persons who have been imprisoned for exercising their right to freedom of expression and of assembly must be released immediately and unconditionally. The prosecutions and convictions handed down must be abandoned. These matters are also the subject of a complaint to the Committee on Freedom of Association, which issued its report in March 2023. We call on the Government to give effect to the recommendations of the Committee on Freedom of Association.

Institutional reforms are also required to guarantee the independence and impartiality of the judiciary. Freedom of expression and of peaceful assembly, freedom of association and protection against arbitrary arrest must be guaranteed as a safeguard against the imposition of compulsory labour as a result of the exercise of these rights. That requires the firm commitment to engage in wide-ranging legislative reforms in relation to certain laws that are manifestly not in conformity with the Convention.

In particular, this will involve reviewing the following legislative provisions in order to bring them into full conformity with the requirements of the Convention:

- section 42 of the Act on Political Parties, as amended in 2017, under which various offences related to the administration or management of a political party which has been dissolved, or whose activities have been suspended by a court, or whose registration has been refused, are punishable by imprisonment of up to one year;
- sections 494 and 495 on incitement to disturb public security by speech, writing, images or any other audio-visual communication in public or to the public;
- section 522 on the publication of commentaries intended to unlawfully coerce judicial authorities;
- section 523 of the Criminal Code of 2009 on discrediting judicial decisions;
- sections 305 to 309 on public defamation and insult; and
- sections 445 and 437 *bis* of the Criminal Code relating to insult and criticism of the King.

Freedom of expression and of assembly, the right to collective action and the right not to be subject to forced or compulsory labour are extremely important matters for workers, as well as for the values of the ILO as a whole.

The Government must therefore work with the ILO to give full effect to the Convention. A double footnote means that the Committee of Experts is seriously concerned. The Worker members have referred in this respect to section 68 of the Act on Prisons, under which detainees deemed to be physically fit must be assigned to daily prison work, and have expressed opposition to the request for comments on the Act on Trade Unions and the Bill on the minimum wage to be removed from the record.

We invite the Government of Cambodia to avail itself of ILO technical assistance for the implementation of all these recommendations. In view of the gravity of the situation, we also call on the Government to accept a visit by a high-level tripartite mission.



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 deeply deplored the continued use of the provisions of the national legislation, including the Penal Code, to prosecute and convict persons who express their political views or views ideologically opposed to the established political, social or economic system, or to punish those who participate in strikes, leading to penalties of imprisonment involving compulsory prison labour.

The Committee expressed deep concern at the arrest and imprisonment of trade unionists and others for exercising their civil liberties and expressing different political views from that of the Government.

Taking into account the discussion, the Committee urges the Government to take effective and time-bound measures to:

- ensure that the right to hold or express political views or views ideologically opposed to the established political, social or economic system without the threat of penalties involving compulsory labour is fully respected;
- ensure that the application of legislative provisions do not contravene Article 1 of the Convention by the imposition of sanctions involving compulsory labour;
- repeal or amend relevant provisions of the Penal Code and the Act on Political Parties providing for and leading to penalties of compulsory labour, in consultation with the social partners, in order to bring them into conformity with the Convention;
- immediately and unconditionally release, quash convictions and drop all charges brought against individuals for having expressed political views or views ideologically opposed to the established political, social or economic system, who were punished for having participated in strikes;
- ensure access to effective judicial remedies for victims of compulsory labour in violation of the Convention;
- implement the recommendations related to the matters under the Convention made by the direct contacts mission that took place in March–April 2022 under Convention No. 87; and
- develop an action plan, in consultation with the social partners, to implement these recommendations without delay.

The Committee requests the Government to provide any relevant information requested by the Committee of Experts before 1 September 2023 together with detailed information on the measures taken to implement these recommendations.

The Committee invites the Government to avail itself of ILO technical assistance to effectively implement all of the Committee's recommendations.



Cameroon (ratification: 1970)

Employment Policy Convention, 1964 (No. 122)

Written information provided by the Government

Article 1 of the Convention. Implementation of an active employment policy. The Government has the honour of informing the Conference Committee that a national employment policy has already been developed, with the active participation of employers' and workers' organizations, and submitted to the competent authority for adoption. The Government will keep the Committee informed of any new developments in this regard. A copy of the policy will be provided once it has been adopted.

Article 1(3). Coordination of education policy with employment policy. The State has undertaken a number of initiatives to remedy the difficulties in aligning education policy with employment policy, with the aim of providing a skilled workforce for various employment sectors and reinforcing a technological culture. At the secondary school level during the 2021-22 academic year, technical secondary education was broadened with 11 new courses in 2 establishments, namely the Nsam technical college in Yaoundé and the Maroua technical college in the Far North. These new courses are in office automation, business computing, baking and pastry-making, meat processing, painting, stenotyping, ceramics and sculpture, textiles and dry cleaning, taxation and the tanning and leather industry. The secondary education authority has opted for a learning approach that alternates between theoretical teaching and practical experience in an enterprise or professional workshop. These courses have been chosen to meet the needs of the labour market and will enable the students trained to benefit from enhanced employability. At the tertiary level, the Government has established state universities in the ten regions of the national territory, including the University of Bertoua, established through Decree No. 2022/003 of 5 January 2022, and the University of Ebolowa established through Decree No. 2022/009 of 6 January 2022. These higher education institutions cover a number of vocational fields, including cinema and broadcasting, visual arts and art history, architecture and urban planning and aquaculture: aquatic systems management and fisheries management. In addition, several vocational training centres have been set up and accredited in the ten regions by the Ministry of Employment and Vocational Training. With regard to the consultation of social partners in the process of developing and implementing draft legislation and policies on education, the sectoral administrations concerned draw up this draft legislation and involve the relevant ministries and public administrations, as well as employers' and workers' organizations and any other stakeholders concerned. Examples include: the Inter-ministerial Committee on Employment Monitoring and the tripartite working group of the national action plan for youth employment (PANEJ), set up within the Ministry of Employment and Professional Training. The Decent Work Country Programme (DWCP) (2023–26), which is currently being finalized, was developed with the active participation of the tripartite constituents.

Informal economy: impact of the measures adopted for the transition from the informal to the formal economy. The Government draws the Committee's attention to the positive results of the action taken by the State to facilitate the transition from the informal to the formal economy, including: (i) the promotion of self-employment: According to statistics from the 2022 statistical yearbook of the Ministry of Small and Medium-sized Enterprises, Social Economy and Handicrafts (MINPMEESA), 15,591 enterprises were registered with the centre for the formal establishment of enterprises (CFCE) in 2021. The majority of these enterprises are sole traders operating in the services sector; (ii) better access to financing mechanisms:



With the move towards the formal economy, many small and medium-sized enterprises have benefited from financing from the State or international organizations. Examples of these enterprises can be found in the agriculture and livestock sector, which holds an important place in the country's growth and development forecasts. This sector has enjoyed support through the Programme to Promote Youth Agropastoral Entrepreneurship (PEA-youth), which has granted funding to more than 2,600 young people and created more than 10,000 jobs in six years; and (iii) the development of new economic niches, offering an abundance of job opportunities and promising cohesion (the green and digital economy). Under the steering committee for the Programme for the Promotion of Green Jobs, the Government has endeavoured to foster the promotion of green jobs in order to protect young people from unemployment. Cameroon has roughly a hundred microenterprises operating in sectors linked to the green economy, including reforestation, sanitation, sustainable agriculture, waste collection and recycling. As part of the implementation of the Programme for the Promotion of Green Jobs in Cameroon (PPEVC), some 51 women microentrepreneurs in Yaoundé II and Douala IV, victims of health crises, received a grant to scale up activities to promote this economy and create decent jobs in 2021. Other sectors, such as information and communications technology (ICT) and the digital economy, generate many jobs on a daily basis through major telecommunications companies such as Orange and MTN Cameroon, e-commerce and new business professions (*for example, community management, influencing and digital marketing*).

Article 2. Collection and use of employment data. Two bodies are responsible for collecting information on employment: the National Observatory for Employment and Vocational Training (ONEFOP) and the National Employment Fund (FNE). The ONEFOP carries out a number of activities that foster the provision of employment data: it produces employment and training reports, statistical yearbooks on the labour market and employment conjuncture notes, and conducts various specific studies, including studies on employment niches. As to the FNE, it has set up a number of programmes aimed at reducing unemployment. These include the Rural Employment Development Support Programme (PADER), which provides beneficiaries with training in farming methods, material and financial resources, as well as support in product management and sales; the Graduate Employment Programme (PED), a pre-employment internship programme designed to provide young graduates with practical experience (strengthening their CVs) so as to facilitate their integration into the production circuit; the Integration of Higher Education Graduates Support Programme (PRAIDES), in partnership with the Ministry of Higher Education, which aims to support the professional integration of higher education graduates; the FNE/PME Programme, which enjoys a special endowment from the Head of State and aims to promote youth self-employment and entrepreneurship, managed in partnership by the FNE and MINPMEESA; and Career Guidance in the Public Sector (OPP), an information programme on seeking employment in public institutions (sub-prefectures, town halls, chiefdoms, and so on) available to the public, particularly young people.

Article 3. Participation of the social partners in the development and implementation of employment policies. The Government is pleased to draw the Committee's attention to the fact that the social partners were consulted during the development of the national employment policy, as mentioned above. However, it has taken note of the Committee of Experts' recommendation to involve representatives of rural workers and informal economy workers in the next stages.



Discussion by the Committee

Chairperson – The next case on our agenda today is Cameroon on the Employment Policy Convention, 1964 (No. 122). I invite the Government representative of Cameroon to take the floor.

Government representative – Thank you for giving the Government of Cameroon, which has already submitted written information, the opportunity to address the Committee.

Cameroon ratified Convention No. 122 on 25 May 1970 and, since then, has brought its institutional, legislative and regulatory frameworks into line with the Convention's provisions. With regard to the institutional framework, through Decree No. 2004/320 of 8 December 2004, the Head of State created the Ministry of Employment and Vocational Training, whose many responsibilities include drawing up employment policy, protecting and promoting employment and providing guidance and placement services to the workforce. Operationally, the State has established structures to implement the national employment policy, such as the National Employment Fund, which is the State's main secular arm in promoting employment and is principally responsible for intermediation between jobseekers and employment-generating enterprises, and the Integrated Support Project for the Informal Economy, which specifically addresses the youth labour force in the informal economy.

In addition to these steps to promote employment, the Government has devised the national action plan for youth employment, whose main aims are: (i) to advocate for employment; (ii) to promote a macroeconomic framework for employment; (iii) to promote employment in rural areas; (iv) to promote the return and employment of young persons in the diaspora and (v) to ensure specific gender balance while protecting vulnerable groups' access to employment. All these measures, and a great many others, demonstrate clearly that while the national employment policy is in the process of being adopted in our country, the activities set out in the policy document are being implemented. With regard to legislation and regulations, Cameroon has promulgated the Vocational Training Act, as well as all the relevant implementing decrees. All this information has been submitted to the Committee of Experts and to this Committee in our previous correspondence.

Turning to the Committee of Experts' specific questions, in relation to Article 1 of Convention No. 122, it should be highlighted that, as noted by the Committee, the process of drawing up the national employment policy is at a very advanced stage, with the only remaining step being its official formalization. The draft was drawn up with the support of all actors in the labour market, and the text will be communicated to the Office once it is officially published.

Concerning Article 1 (3) of the Convention on the coordination of education policy with employment policy, as part of its work to align education and employment policy, the State has undertaken a number of initiatives to ensure that the workforce is qualified for different employment sectors. This coordination also improves students' prior knowledge of the labour market and allows enterprises' workforce needs to be identified to improve the composition and guidance of training curricula. To facilitate learning, the body responsible for secondary education has introduced alternating training, that is, training that alternates between theoretical education and practical experience in enterprises or professional workshops. These courses have been selected chosen to meet the needs of the labour market, in which students will be more competitive as a result. Regarding higher education, the Government has established state universities in the country's ten regions, including the University of Bertoua, established through Decree No. 2022/003 of 5 January 2022, and the University of Ebolowa, established through Decree No. 2022/009 of 6 January 2022. These



higher education institutions cover a number of vocational fields, including cinema and broadcasting, visual arts and art history, architecture and urban planning, aquaculture, aquatic systems management and fisheries management, and many more. Additionally, many vocational training centres of excellence have been created in a number of the country's regions.

With regard to the social partners' participation in the process of developing and implementing draft legislation and policies on education, the sectoral administrations concerned draw up this draft legislation and involve the relevant ministries and public administrations, as well as the most representative employers' and workers' organizations and any stakeholders concerned. By way of example, we could mention, once again, the Inter-ministerial Committee on Employment Monitoring; the tripartite working group of the national action plan for youth employment, set up by the Government; the programme for supporting self-employed workers and microenterprise; the programme for supporting returning migrants; the Urban Special Employment Programme and the Decent Work Country Programme, which is being finalized, to name but a few. It should be noted, nevertheless, that awareness will continue to be raised among all bodies of the importance of tripartism and prior consultation of the social partners on all labour matters, in line with the provisions of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

Turning to the informal economy, particularly the impact of the measures adopted as part of the transition from the informal to the formal economy, the Government wishes to draw the Committee's attention to the positive results of its action to facilitate that transition, particularly the promotion of self-employment. According to statistics from the 2022 statistical yearbook of the Ministry of Small and Medium-Sized Enterprises, Social Economy and Handicrafts, 15,591 businesses were registered with the centre for the formal establishment of enterprises in 2021. Most were sole traders operating in the services sector. Access to financing mechanisms has improved, and with the move towards the formal economy many small and medium-sized enterprises have benefited from financing from the State or international organizations. The agriculture and livestock farming sector, for example, holds an important place in the country's growth and development forecasts. This sector has benefited from support through the Programme to Promote Youth Agropastoral Entrepreneurship, which has granted funding to more than 2,600 young persons and created more than 10,000 jobs in six years. New economic niches that offer an abundance of job opportunities and promise cohesion – the green and digital economies – have also been developed.

With regard to Article 2 of the Convention on the collection and use of data on employment, there are two bodies responsible for collecting information on employment and for intermediation: the National Observatory for Employment and Vocational Training and the National Employment Fund. The Observatory carries out a number of activities that foster the provision of employment data: it produces employment and training reports, statistical yearbooks on the labour market and employment conjuncture notes and conducts various specific studies, including studies on employment niches. As to the Fund, it has set up a number of programmes aimed at reducing unemployment. These include the Rural Employment Development Support Programme, which provides beneficiaries with training in farming methods, material and financial resources, as well as support in product management and sales; the Graduate Employment Programme, a pre-employment internship programme designed to enable young graduates who lack practical experience to strengthen their CVs so as to facilitate their integration into the production circuit; the



Integration of Higher Education Graduates Support Programme; the Vulnerable Persons Integration and Reintegration Support Programme, aimed at all vulnerable persons; and, lastly, career guidance in the public sector.

Concerning Article 3 of the Convention on the participation of the social partners in the development and implementation of employment policies, the Government reiterates that all participants in the labour market were consulted during the drafting of the national employment policy. However, it has taken note of the Committee of Experts' recommendation to involve representatives of rural workers and informal economy workers in the next stages.

To conclude, the Government of Cameroon remains determined to implement the ILO Conventions. Cognizant that disregarding these instruments hinders the country's development, it has, since 2018, undertaken ongoing efforts to disseminate the ratified texts to all actors and administrations concerned for implementation, with the principal aim of raising the texts' profile. These efforts are continuing, and to that end, and has always been the case, we request technical support from the International Labour Office.

Worker members – We are, for the first time, discussing the application of Convention No. 122 by the Government of Cameroon. Convention No. 122 is aimed at stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment based on pursuing an active policy designed to promote full, productive and freely chosen employment. This is to ensure that there is work for all who are available for and seeking work, that such work is as productive as possible, that there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his or her skills and endowments in a job for which he or she is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.

Under Article 3 of the Convention, there is an obligation on governments to ensure that in the application of the Convention, representatives of the persons affected by the measures to be taken, and in particular representatives of employers and workers, are consulted concerning employment policies, with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for such policies.

The Worker members note that Cameroon ratified this Convention in 1970 and that the Committee of Experts made observations on the Government's application of this Convention in 2006, 2007, 2015, 2017 and 2022. The observations of the Committee of Experts in this report reveal major gaps in the Government's application of the Convention.

The Worker members note that the Government recently embarked on a process of structural reforms and macroeconomic policies, set out in its National Development Strategy 2020–30, with a focus on the rural sector, agriculture and the social economy. As part of the promotion of self-employment, the Government also adopted Framework Act No. 2019/004 governing the social economy in Cameroon. We further note that by virtue of Act No. 2018/010, the National Council for Vocational Guidance and Training was created, with a view to monitoring and evaluating the implementation of vocational training policy and strategies. The Act also stipulates that the State shall ensure the relevance, quality and continuous adaptation of vocational training to national economic and socio-cultural realities and to the international environment. While taking note of these laws and strategies, the Worker members regret, however, that the Government of Cameroon has not yet adopted a national employment policy which, as the Committee of Experts underlined, constitutes the main



requirement of the Convention. More specifically, we note that in May 2017, the strategic components of the national employment policy were developed with the technical and financial support of the ILO and approved by the inter-ministerial committee responsible for monitoring employment in Cameroon. However, six years later, the Government has taken no further steps to declare and pursue a national employment policy in line with the requirements of the Convention.

The Worker members recall that to comply with Convention No. 122, governments must demonstrate their commitment to full, productive and freely chosen employment by declaring and pursuing a national employment policy which should reflect a concerted and coherent vision of the country's employment objectives and set out specific means of achieving them. The absence of a declared national employment policy inevitably causes a lack of coherence and coordination in the various initiatives adopted by the Government. This is a key point emphasized by the Committee of Experts which raised the question of consistency in the organization of vocational training as part of national or regional planning, in order to overcome the difficulty of coordinating education and training policy with employment policy. In this regard, the Worker members take note of the Government's indication that it has created 11 new courses for technical vocational training and opened universities in 10 regions of the country. We welcome these initiatives. However, we must recall that without a national employment policy to set the course and ambitions, these stand-alone initiatives bear the risk of being disconnected, and they will not meet the objectives of the Convention. The Government must finalize the development of the national employment policy, in full consultation with the social partners, and start its implementation without delay. With reference to the Committee of Experts' point on the collection and use of data, we emphasize that the national employment policy and its implementation measures should be based on information and statistical data compiled regularly so as to allow for the monitoring of progress and policy evaluation.

Furthermore, the Worker members take particular note of the measures taken by the Government of Cameroon to provide facilitation and support to workers in the informal economy, including measures to facilitate the registration of enterprises with the creation of the Enterprise Creation Formality Centres; better access to financing mechanisms, including in the agricultural sector; and the development of new economic sectors like the green and digital economies. We particularly welcome the targeted efforts of the Government of Cameroon to facilitate the transition from the informal to the formal sector, especially in view of its overwhelming prevalence in the country's economy. The most recent ILO statistics indicate that the informal economy represents 50 per cent of gross domestic product (GDP) and employs nearly 90 per cent of the active population. The Worker members encourage the Government to continue and strengthen its efforts to create decent jobs and to provide adequate protection to workers in the informal economy. Such measures should be part of a broader approach and reflected in the national employment policy.

Additionally, the Government of Cameroon should adopt, in the framework of the national employment policy, measures and programmes to promote the participation of women and youth in the labour market, to reduce unemployment and to promote their long-term integration into the labour market.

Finally, the Worker members note a persistent deficit of social dialogue in the elaboration and implementation of programmes and strategies related to employment. For example, representative trade union organizations were not consulted on Framework Act No. 2019/004 governing the social economy, nor are they part of the National Council for Vocational Guidance and Training. There is also a lack of representativeness in the sectors of



activity and an absence of a forum for inter-union reflection. Social dialogue and respect for the role of employers' and workers' organizations gives meaning to the implementation of the obligations of this Convention. We must emphasize, as did the Committee of Experts in its comments, the importance of engaging in meaningful consultations with the social partners with respect to the development and implementation of a national employment policy. Very serious matters, including addressing youth unemployment, women's participation in the labour market, matters related to social and solidarity economy units, the identification of priority value chains and others, will have to be addressed with the support and guidance of the ILO. The Government should take measures to ensure the full participation and consultation of the social partners in employment policies in line with Article 3 of the Convention.

Employer members – The Employer members would like to thank the Government of Cameroon for the oral and written information presented on this case. The Committee is examining for the first time the application of Convention No. 122 by the Government of Cameroon, which ratified this governance Convention in 1970. The Committee of Experts provided observations five times in this case, in 2006, 2007, 2015, 2017 and 2022. In its latest observations, the Committee of Experts raised issues under five areas. The first one is the implementation of an active employment policy: Article 1 of the Convention requires a ratifying Member State to “declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment”. The Committee of Experts noted various pieces of legislation in the sphere of employment, especially regulating the social economy. The Committee of Experts also noted that, with the technical and financial assistance of the ILO, the Government had also developed strategic components of the national employment policy in May 2017, which were approved by the inter-ministerial committee responsible for monitoring employment in Cameroon. The Committee of Experts also noted a series of structural reforms and macroeconomic policies, set out in Cameroon's National Development Strategy 2030, which is reflected in Cameroon's development policy documents for the next ten years. Whilst noting the Government's efforts, the Committee of Experts called on the Government to demonstrate compliance with Article 1 of the Convention by declaring and pursuing a national employment policy for the promotion of employment and decent work. The Government has subsequently submitted information and confirmed here today that a draft national employment policy has indeed been developed, in consultation with its social partners. and it has been submitted to the competent authority for approval. The Government will also share a copy of the policy with the Committee of Experts after it has been approved. While acknowledging the Government's response that a national employment policy has been developed in consultation with its social partners, the Employer members wish to underscore the importance of the timeous submission of information to the Committee of Experts to enable a proper assessment of a government's compliance with its obligations under a ratified Convention. Accordingly, the Employer members would like to urge the Government to take the necessary measures to finalize a draft national employment policy and obtain the necessary approval from the relevant competent authority and share a copy thereof with the Office and the Committee of Experts once done.

With regard to the coordination of education and training policy with employment policy, the Government had previously highlighted Act No. 2018/010 of 11 July 2018 as part of its employment strategy. This Act provides for the creation of the National Council for Vocational Guidance and Training, which is responsible for monitoring and evaluating the implementation of vocational training policy and strategies, and the modalities of its application are established by eight signed regulatory texts. The Act provides that vocational



training is governed by the principles of tripartism between the State, the Employer and the Worker and obliges the State to ensure that vocational training meets the needs expressed by socio-occupational groups in order to minimize mismatch between training and employment. The Act also enjoins the State to ensure the relevance, quality and continuous adaptation of vocational training to national economic and socio-cultural realities, and to the international environment. In its subsequent response, the Government has highlighted several initiatives undertaken in the area of coordinating education and training policy with employment policy, as well as the participation of social partners in the process. Once again, the Employer members remind the Government of the importance of timeous submission of information to the Committee of Experts. The Employer members look forward to the assessment by the Committee of Experts of the information provided.

With respect to the informal economy, the Committee of Experts noted that the Government had implemented initiatives to reduce the size and expansion of the informal sector, including the establishment of Enterprise Creation Formality Centres and Approved Management Centres to limit or address barriers to entry into the formal sector. The Government information highlights growth in self-employment and small businesses, including in the areas of agriculture, green jobs and information and communication technology, with some 15,591 companies registered in the Enterprise Creation Formality Centres in 2021 according to statistical data from the Ministry of Small and Medium-sized Enterprises, Social Economy and Handicrafts.

With regard to the collection and use of data on employment, the Government was requested to specify the active employment policy measures adopted as a result of the establishment of the various bodies responsible for collecting information on employment, and to indicate to what extent and the manner in which labour market information is used as a basis for the establishment of the new employment policy. In this regard, the Employer members note the information provided by the Government, including on the National Observatory for Employment and Vocational Training and the National Employment Fund, two institutions that play a significant role in providing employment data. However, the Employer members once more urge the Government in future to provide the requested information timeously to enable assessment of compliance by the Committee of Experts.

Finally, with regard to the participation of the social partners in the development and implementation of employment policies, the Committee of Experts noted complaints about inadequate social partner participation, including the absence of trade unions in the National Council for Vocational Guidance and Training, lack of representativeness in the sectors of activity and the absence of a forum for inter-union reflection. Given the importance of an inclusive approach in the development and implementation of employment policies, the Committee of Experts again requested the Government to provide information on the participation of the social partners in the development and implementation of the national employment policy and to take all necessary measures to facilitate the consultation of representatives of workers, including rural and informal economy workers, in the development and implementation of employment policy. In its response, the Government states that social partners were consulted in the drafting of the national employment policy and undertakes to involve informal workers in future iterations of the policy. Once again, the Employer members underscore the importance of timeous submission of information to the Committee of Experts.

Worker member, Cameroon – Our continent and our country have a young, and growing, population; well-managed, that represents an opportunity, but ignored or managed haphazardly, it could constitute a challenge. Young persons need decent jobs to earn



legitimate incomes to meet their needs and those of their families, and to be useful to society as a whole through their participation and contribution to the national economy. We can see how some young persons react to the frustration and despondency caused by underemployment and unemployment. Many of them, under pressure from their families, embrace crime or turn to smugglers to help them leave their country, sometimes without considering the dangerous and deadly costs.

On the other side of the coin, the creation of remunerative employment would help our economy benefit from the energy, ideas, skills, knowledge and enthusiasm of young persons. For that reason, we have been tireless in demanding that our Government develop and implement an imaginative short-, medium- and long-term employment policy, underpinned by specific programmes. While it is positive that the Government heard our call for a policy, it, unfortunately, proceeded to draft it differently. We wonder whether that was a deliberate attempt to cause the policy to fail, or merely a smokescreen to give the impression that action was being taken when, in fact, it was not.

As the Committee of Experts quite rightly reported, trade unions were consulted on only part of the policy development process, despite our insistence. It is difficult to imagine how we could be involved in its implementation. Our insistence stemmed from a patriotic desire to contribute to the development of a broad, effective employment policy based on our knowledge of the realities of the labour market in Cameroon. To demonstrate our genuine concern and desire to be involved, we refrained from disrupting the establishment of the projects designed under the policy. Once the projects were decided upon, however, we asked for them to be submitted to the National Labour Advisory Commission so that we could share our opinions and suggestions. Unfortunately, the document was not approved or promoted by the offices of the Prime Minister or the President. Our Government's most paternalistic approach is problematic, useless and untenable.

Act No. 2018/010 of 11 July 2018 governing vocational training and Framework Act No. 2019/004 of 25 April 2019 governing the social economy in Cameroon have yet to be adopted by the National Labour Advisory Commission. Decree No. 2020/001 on the structuring and functioning of the network of social economy units must also be the subject of in-depth discussion by the appropriate advisory and legislative bodies. This failure to embrace consultation, consciously and graciously, runs counter to Cameroon's ratification of Convention No. 144.

In the same vein, the Confederation of Cameroon Trade Unions considers that our policy and employment programmes have well-funded skills and capacity-building components. We have insisted, and we will continue to insist, on the vital need for programmes relating to localization and beneficiaries to reach rural areas and disadvantaged households so that they may benefit. In that connection, we are excited at the ongoing process of developing an apprenticeship standard. It is also vital that social security nets are provided to improve access to, and completion of, skills and capacity-building programmes.

We are witnessing a steady increase in the rate of women's access to the labour market. An inclusive and enabling employment policy should consider women's fair participation by including ways and means to reduce and remove barriers to their effective participation in the labour market.

The COVID-19 pandemic increased the urgency with which our country must increase investment in knowledge, education and digital infrastructure. Internet and telecommunications density remains low in Cameroon and could benefit from deliberate, progressive improvement. Our employment policy must consider digitization. It is clear that



our Government will benefit from assistance in improving and implementing an effective, inclusive and collaborative national employment policy based on needs. The ILO must also ensure that the policy comes with clear, measurable results and includes monitoring and evaluation mechanisms.

Government member, Bolivarian Republic of Venezuela – The Government of the Bolivarian Republic of Venezuela thanks the Government of Cameroon for its presentation on compliance with the Convention. We have noted that the Government has solid structures for implementing the national employment policy, such as the National Employment Fund, the Integrated Support Project for the Informal Economy and the national action plan for youth employment, among others, which demonstrate that the Government is implementing sound policy in relation to the matter addressed by the Convention.

The Government of the Bolivarian Republic of Venezuela is pleased to note that the Committee of Experts, in its 2023 report, refers to, among other things, the strategic components of the national employment policy in Cameroon, developed with the technical and financial support of the ILO. We welcome Cameroon's adoption of the Vocational Training Act and the relevant implementing decrees, and the fact that, as reported by the Government, the development of the national employment policy benefited from the participation of the social partners and is at a very advanced stage, with only its official formalization remaining. It is also very positive that the Government of Cameroon is implementing measures to facilitate the transition from the informal to the formal economy, providing funding to small and medium-sized enterprises.

Lastly, the Government of the Bolivarian Republic of Venezuela trusts that this Committee's conclusions will be objective and balanced so that the Government of Cameroon may continue to make progress and strengthen compliance with the Convention, taking advantage of consultation with the social partners and ILO technical assistance, where necessary.

Worker member, United States of America – In an era where information is power, understanding the role of data and statistics in shaping effective employment policies is crucial for sustainable development and inclusive growth. The International Labour Organization has provided invaluable guidance through its Conventions and Recommendations. Two relevant ILO instruments in this context are Convention No. 122 and the Labour Statistics Convention, 1985 (No. 160).

Convention No. 122 emphasizes the importance of comprehensive and integrated employment policies that promote full, productive and freely chosen employment. It highlights the need for policies to be based on accurate and up-to-date data and analysis. This Convention recognizes that reliable data and statistics are the building blocks of effective employment policies, enabling governments, social partners and other stakeholders to identify labour market trends, assess challenges and devise targeted interventions.

Additionally, Convention No. 160 underscores the importance of high-quality labour statistics for informed policymaking. It emphasizes the need for countries to develop robust statistical systems that capture a wide range of labour-related information, including employment levels, unemployment rates, wages, working conditions and more. Such data enables policymakers to monitor progress, identify disparities and design evidence-based interventions to address labour market challenges.

In the specific context of Cameroon, harnessing the power of data and statistics is crucial for informed employment policy formulation. By prioritizing collection, analysis and



utilization of labour market data, Cameroon can effectively address the employment challenges it faces and promote decent work opportunities for all its citizens. Moreover, the importance of data and statistics in employment policy aligns with the United Nation's Sustainable Development Goals. Sustainable Development Goal 17, which focuses on partnerships for the Goals, emphasizes the significance of reliable, timely, and disaggregated data to support evidence-based decision-making.

In the United States, the labour movement has seen the importance of timely and accurate labour market data to inform not only government policy, but also our efforts to organize workers and raise standards in several sectors. For example, businesses and trade unions alike rely on the data produced by our Bureau of Labour Statistics, which includes several key indicators related to labour market activity, working conditions, price changes and productivity in the United States' economy. In addition, we applaud the Biden Administration's use of this data to make historic investments that have generated economic growth and the creation of good jobs across the country.

To conclude, we encourage the Government of Cameroon to follow the Committee of Experts' recommendation to take the necessary measures to finalize the development of the new data-driven national employment policy, in consultation with the social partners and relevant stakeholders.

Interpretation from Chinese: **Government member, China** – The Government of China thanks the Government representative for the introduction. We carefully read through the report of the Committee of Experts and note that the Government of Cameroon has provided additional information regarding this case. The Government is now actively formulating the employment policy, introducing a series of measures in the field of education, improving workers' skills, vigorously promoting the transition from the informal to the formal economy, actively collecting and using data on employment, and consulting with social partners in the formulation of employment policy. According to official statistics, there are 15,591 enterprises registered in the Enterprise Creation Formality Centres in 2021.

The Government of China is of the opinion that when discussing country cases, the Committee should pay full attention to the authoritative information provided by governments, take into account the basic national circumstances of Member States, extensively listen to the will of all stakeholders and come to a fair, convincing conclusion on the basis of a comprehensive and objective assessment. We support the Government of Cameroon in continuing to advance its work on the basis of full consultation with the social partners, and we encourage the ILO to provide necessary technical assistance to Cameroon in the formulation of employment and vocational education policies and collect employment data.

Worker member, Italy – The Committee of Experts noted the provisions of Act No. 2018/010, in particular Section 8(1) and (2), that vocational training is governed by the principles of tripartism between the State, the Employers and Workers. However, in its report, the Government did not indicate how the State ensures consistency in the organization of vocational training as part of national or regional planning to overcome the difficulty of coordinating the education and training policy with the employment policy.

In this era marked by rapid technological advancements and changing economic landscapes, it is imperative that we prioritize education and skills development as key drivers of sustainable and inclusive employment opportunities. The ILO Human Resources Development Convention, 1975 (No. 142), emphasizes the need to create opportunities for lifelong learning, ensuring that individuals have access to quality education and training



throughout their careers. The ILO Human Resources Development Recommendation, 2004 (No. 195), also underlines the importance of promoting skill formation and employability. Sustainable Development Goal 4 focuses explicitly on quality education, aiming to ensure inclusive and equitable education for all. Goal 8 emphasizes decent work and economic growth, highlighting the need to promote sustained, inclusive, and sustainable economic growth through productive employment and decent work for all. Education and skills development play a pivotal role in achieving the Sustainable Development Goals. By investing in education, we equip individuals with the necessary knowledge and competencies to adapt to the changing demands of the labour market. A well-educated and skilled workforce contributes to higher productivity, innovation and competitiveness, driving economic growth and development. Education and skills development also contribute to reducing inequalities by providing equal opportunities for all individuals, regardless of their background or circumstances. By ensuring access to quality education and training, we empower marginalized groups, including women, youth and persons with disabilities, to participate fully in the labour market. Moreover, education and skills development enhance individuals' employability and resilience in the face of technological advancements and automation. As industries evolve and job requirements change, continuous learning becomes essential. Equipping individuals with the ability to acquire new skills and adapt to emerging technologies ensures that they remain employable and can navigate labour market transitions successfully.

Effective employment policies should prioritize investment in public education and skills development at all levels, from early childhood education to lifelong learning opportunities. In collaboration with employers' and workers' organizations, and educational institutions, governments must create an enabling environment for education and skills development. This includes developing comprehensive national strategies, allocating sufficient resources and strengthening partnerships to promote relevant and high-quality education and training programmes. For this, employment policies should also foster closer collaboration between educational institutions and industries. Italian workers urge the Government of Cameroon to work with its social partners to design and implement national employment policies that promote education and skills development.

Government member, Algeria – The Government of Algeria welcomes the information provided by the Government representative of Cameroon relating to the comments concerning the application, in law and practice, of the Convention. The importance of active employment policies aimed at reducing structural unemployment, underemployment and labour market dysfunction, and increasing employment by facilitating transitions to formal employment in the labour market, should be highlighted. These policies also promote training and economic recovery and open up paths to the labour market for particularly vulnerable persons, especially young people, through occupational integration programmes. In this context, the Government of Algeria welcomes the continued willingness and commitment of the Government of Cameroon to, with ILO assistance, act constructively with a view to meeting its obligations under Convention No. 122. We take positive note of the Government's efforts which, for some years, have targeted economic diversification, and we encourage the development of sectors such as small and medium-sized enterprises, innovation and agriculture. Enterprises are the main creators of growth and jobs. We therefore welcome the Government's efforts to support enterprise creation, particularly through the Enterprise Creation Formality Centres and measures to support enterprise competitiveness, and also through the establishment of the National Council for Vocational Guidance and Training, responsible for monitoring and evaluating the implementation of vocational training policies and strategies, in line with labour market needs. These are



measures that will, in the medium-term, facilitate the development and adaptation of skills to labour market demands and foster the employability of jobseekers and workers. In addition, efforts have been made to improve the dissemination and accessibility of statistics and understanding of how the labour market works through the National Observatory for Employment and Vocational Training and the National Employment Fund.

The Government of Algeria recognizes and welcomes the progress made by Cameroon in reducing unemployment and promoting decent work. Coordination and consultation should now be improved to formalize the national employment policy with the most representative social partners and to ensure that economic and social challenges at the national and local levels are addressed coherently. We also wish to reiterate the need to address this individual case in a constructive, transparent, inclusive and objective spirit. To conclude, we hope that the ILO will continue to provide the necessary technical support to the Government of Cameroon and will take into account the challenges it faces.

Worker member, Kenya – It is noted from the Committee of Experts' report that the Government of Cameroon developed and adopted the following policies: (i) Framework Act No. 2019/004 of 25 April 2019 to promote self-employment, and a corresponding decree; (ii) the adoption, on 3 January 2020, of Decree No. 2020/0001 on the restructuring and functioning of the network of social economy units; (iii) the development of strategic components of the national employment policy with the technical and financial support of the ILO and approved by an inter-ministerial committee responsible for monitoring employment in Cameroon in May 2017; and (iv) a process of structural reforms and macroeconomic policies, as set out in Cameroon's National Development Strategy 2030. The Strategy is reflected in Cameroon's development policy documents for the ten years.

A reading of the above policies sounds good. However, the Committee of Experts noted that not much has been achieved in meeting the main requirement of the Convention, namely to declare and pursue a national employment policy for the promotion of employment and decent work. It is with no doubt, these policies are not delivering the goals of decent work. One of the reasons in the report is the lack of consultation by the Government. The trade unions stated in the report that they were not consulted in line with Convention No. 144. Another major reason why the Convention is not being fully addressed could be inadequate funding of the Ministry of Labour, which is charged with the enforcement of this Convention.

However, Cameroon ratified Convention No. 144 on 1 June 2018 and the Convention is in force. The Convention places an obligation on the Government to consult with its social parties in all matters of labour and employment as they affect their members. The failure to consult is a breach of this Convention, and this causes mistrust among the social partners. It does not matter how good a policy could be, it is bound to fail if there is no buy-in from the beneficiaries. This top-bottom approach has failed in most countries. I urge the Government of Cameroon to urgently consult with its social partners and relevant stakeholders with a view to finalizing the development of the new national employment policy. The Government of Cameroon has the option to borrow a leaf from our peers, like Kenya, by incorporating labour relations and issuing new legislation to ensure that issues of decent work, fair working conditions and social dialogue are addressed as fundamentals for workers in Cameroon. Finally, the country can also be assisted both financially and technically by the ILO to address the full implementation of the Convention.

Government member, Senegal – The Government of Senegal would like to thank the Government representative of Cameroon for her responses to the concerns expressed in the



report of the Committee of Experts. The Government of Senegal commends the efforts made by Cameroon to give full effect to the Convention, including: (i) the creation of a Ministry of Employment and Vocational Training; (ii) the creation of employment promotion bodies; (iii) the adoption of measures to facilitate the transition from the informal to the formal economy; and (iv) the collection and use of employment data.

While reaffirming its commitment to the ILO's universal ideals and objectives, and the need for all Member States to ensure compliance with the rights and obligations deriving from ratified Conventions, the Government of Senegal urges the Government of Cameroon to pursue the progress achieved and the significant means deployed to improve its national legislation and practice by means of consensus-based reforms that ensure economic and social stability. The Government of Senegal also invites the Government of Cameroon to strengthen its cooperation with the Office and, if needed, to request its technical assistance to give full effect to the provisions of the Convention.

Worker member, Uganda – I would like to emphasize the paramount importance of employment policy in the temporary world of work. I also wish to note the Committee of Experts' report that Cameroon needs to develop a national policy on employment, which should fulfil its obligations under the ILO Conventions.

Over the years, the ILO has formulated a set of Conventions and Recommendations that act as guiding principles for Member States to develop and implement effective employment policies. These instruments outline essential aspects of employment, including workers' rights, job creation, social protection and labour market governance. Employment policy plays a pivotal role in shaping labour markets, promoting decent work and achieving social and economic progress. It emphasizes a range of measures aimed at improving working conditions, enhancing job opportunities, reducing unemployment and addressing labour market disparities. A well-designed employment policy, therefore, has a framework and can enable countries to respond effectively to the challenges and opportunities as posed by globalization, technological advancements and evolving labour market dynamics.

ILO Conventions and Recommendations establish crucial principles for safeguarding workers' rights and promoting decent work. The core labour standards, including freedom of association, the right to collective bargaining, elimination of forced labour, abolition of child labour and non-discrimination in employment, serve as a foundation for inclusive and equitable employment policies. For instance, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ensure workers' freedom to form and join trade unions and also engage in collective bargaining.

Furthermore, the implementation of policies plays a pivotal role in stimulating job creation and sustainable economic growth. It should focus on promoting entrepreneurship, supporting small and medium-sized enterprises, and facilitating labour market transition. It also helps to address unemployment and underemployment; employment policies should include active labour market policies. These policies encompass measures such as skills development, training programmes, job placement services and income support during periods of unemployment. Comprehensive employment policies must incorporate social protection measures to ensure workers' well-being, income security and resilience in the face of economic shocks and risks. The Social Security (Minimum Standards) Convention, 1952 (No. 102), and the Social Protection Floors Recommendation, 2012 (No. 202), provide solid frameworks for establishing universal social protection systems that cover all workers, including those in the informal economy. Gender equality is also a crucial aspect that should



be prioritized within employment policies. The Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), emphasize the need to eliminate gender-based wage disparities and discrimination in employment. Additionally, the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), calls for gender-responsive employment policies in conflict-affected and post-conflict areas that recognize the unique challenges faced by women in such contexts.

Given the transitional nature of the labour market and the impact of globalization, international cooperation plays a crucial role in shaping the effective implementation of employment policies. Member States should, therefore, collaborate through sharing best practices, technical assistance and capacity-building initiatives to strengthen their employment policy frameworks. In conclusion, I want to strongly urge the Government of Cameroon to recognize the critical importance of employment policy in the world of work today and to work with its social partners as required by the Convention to establish an acceptable employment policy.

Government member, Burkina Faso – The Government of Cameroon is appearing before our Committee in relation to its application of Convention No. 122, a priority Convention that it ratified on 25 May 1970. Employment promotion is one of the four strategic objectives set out in the 2008 ILO Declaration on Social Justice for a Fair Globalization given its importance in combating poverty in our countries. Guaranteeing full, productive and freely chosen employment ensures the promotion of social justice, the cornerstone of the International Labour Organization. Our country remains strongly committed to the promotion of such social justice as a pillar of promoting decent work and will spare no effort in supporting any Member State to that end.

According to the information provided by the Government of Cameroon, effort has been made recently by the country's highest authorities to develop a national employment policy in consultation with the social partners, as provided for by the relevant provisions of the Convention. This national policy will be adopted by the competent bodies in the near future. The Government has also endeavoured to ensure consistency between this policy and education policy, in line with the spirit of the Convention. Furthermore, many initiatives and actions have been undertaken recently to ensure the transition from the informal to the formal economy and create a quality workforce with the aim of enhancing young persons' employability. It should be recognized that the coordination of a national employment policy with vocational training policy and education policy poses huge difficulties in countries like ours, which are dominated by the informal economy.

Nevertheless, in the light of the relevant information provided, the Government of Burkina Faso commends the effort made by Cameroon and strongly encourages it to pursue this momentum while taking into account the recommendations of the Committee of Experts. The Government of Burkina Faso therefore requests the International Labour Office to support the action already taken and invites other partners to support the different processes already under way. In the light of the above, our Committee must demonstrate understanding and objectivity when adopting its conclusions on this individual case.

Interpretation from Arabic: **Government member, Egypt** – I thank the Government of Cameroon for its efforts to implement the Convention and legislative reforms. The Government has developed a national employment policy with the participation of the social partners, and that policy has been submitted to the competent authorities for adoption. The Government has also worked to coordinate education policies and employment policies,



adopting initiatives to align the two to create a qualified workforce for the different sectors and to strengthen technological knowledge. With the backing of the Government, the competent authority for secondary education has introduced alternating training, where theoretical education is alternated with practical experience in enterprises or professional workshops to meet the needs of the labour market. The Government has also created state universities in the country's ten regions and established a programme to support higher education graduates, in cooperation with the Ministry of Higher Education, in order to promote their professional integration.

We welcome the measures taken by the Government of Cameroon that have led to positive results for the transition from the informal to the formal economy and to establish new economic sectors that offer employment opportunities in the green and digital economies. We encourage the Government to strengthen the creation of green jobs to protect young persons in Cameroon from unemployment under the relevant steering committee.

In conclusion, we welcome the efforts and initiatives undertaken by the Government of Cameroon to implement the provisions of the Convention, and we hope that the Committee will take the country's efforts into account.

Government member, Gabon – The Government of Gabon welcomes the responses of the Government of Cameroon to the Committee of Experts' observations on the official formalization of Cameroon's national employment policy, in line with the provisions of the Convention. Indeed, following the example of the Republic of Cameroon, Gabon ratified the Convention in October 2009. In 2017, it developed a national employment policy that was adopted by the Council of Ministers one year later, in April 2018. This national employment policy, drawn up in accordance with Article 1 of the Convention, was the result of a long process of consultation and social dialogue between the Government and the social partners, with the support of the International Labour Office. Based on the experience acquired during that process, therefore, and also given the effort made in that regard, we appreciate the ground already covered by the Government of Cameroon towards finalizing the development of its national employment policy.

To that end, Gabon's intervention aims to encourage the Republic of Cameroon to continue, and intensify, the many significant steps that it has already taken towards the official formalization of its policy. Convinced of the good faith and determination of the Government of Cameroon to conclude the process by means of the competent bodies' adoption of the document, which has already been validated by the tripartite constituents, I request the Committee to pay particular attention and show particular understanding when addressing this matter in Cameroon, including by considering the efforts made. The Government of Gabon therefore asks the International Labour Office and other development partners to provide multifaceted support to with a view to meeting the objectives relating to the national employment policy, in line with the provisions of the Convention.

Government representative – The Government of Cameroon wishes to express its deep gratitude to all the tripartite delegates for their constructive and contradictory statements and observations that have enriched today's discussion. As bestselling author Lisa Alther said: "the degree of a person's intelligence is directly reflected by the number of conflicting attitudes she can bring to bear on the same topic." We have taken note of all the contributions to this discussion, including those relating to completing the development of the national employment policy, submitting information to the Committee of Experts in a timely manner, inclusivity and many other aspects. The Government of Cameroon reaffirms



its commitment to giving effect, both in law and in practice, to the provisions of the Convention. We will take into consideration all the invaluable and useful observations and contributions made, as well as the encouragement received during this discussion, and we will work to bring our texts and laws into line with the provisions of the Convention.

Employer members – The Employer members thank the various speakers who took the floor and especially the representative of the Government of Cameroon for the interventions and the information they have provided. Taking into account the information submitted and today's debate, firstly, the Employer members would like to recommend that the Government of Cameroon keep the Committee of Experts updated on progress in the approval of the draft national employment policy and submit a copy of the policy to that Committee as soon as it has been approved by the competent authority; secondly, involve social partners and other stakeholders such as informal workers, in the development and implementation of future iterations of the national employment policy; thirdly, in future, ensure the timely submission of requested information to enable assessment by the Committee of Experts of the Government's compliance with the Convention. Finally, we urge the Government, if needed, to seek ILO technical assistance to facilitate its reporting obligations.

Worker members – The Worker members thank the Government of Cameroon for its comments and clarifications. We also thank all the speakers for their interventions. We take note of the strategies put in place by the Government to foster development and boost education and training. In view of the prevalence of the informal sector in the economy of the country, we welcome the Government's efforts to support workers in this sector and to facilitate the transition to the formal sector. However, we are bound to note that more needs to be done for the Government to be in compliance with the Convention. We recall that the Convention prescribes that each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment. Such a policy must be inclusive and comprehensive. It should be designed, adopted and implemented in correlation with other social and economic policies, taking full note of the situation of the labour market and the impact any such policy will make, including on job creation, employment stability and decent work. Unfortunately, since 2017, the Government has taken no steps to adopt and implement a comprehensive national employment policy as required by the Convention. In addition, we note that in elaborating these strategies, the Government did not fully consult with workers' representatives, as required by Article 3 of the Convention.

Therefore, the Worker members call on the Government to take measures to ensure that the national employment policy is finally adopted in full consultation with the social partners and without further delay. With reference to the Committee of Expert's comments, the policy should contain specific measures: (i) to facilitate the transition of workers from the informal to the formal sector to create decent jobs, especially for youth and women, and to provide adequate protection to all workers, including workers in the informal economy; (ii) to promote the participation of women and youth in the labour market, including by ensuring stable and secure employment to reduce unemployment for these categories and to promote their long-term integration into the labour market; and (iii) to ensure that education, training and skills policies are coordinated with the employment policy and that they facilitate the free choice of employment. The national employment policy and its implementation measures should also be based on information and statistical data, compiled regularly, so as to allow the Government, together with the social partners, to monitor progress and evaluate the policy. The Worker members invite the Government of Cameroon to avail itself of the technical assistance provided by the ILO. We also request the Government to accept an ILO technical advisory mission.



Conclusions by the Committee

The Committee noted the written and oral information provided by the Government.

The Committee took note of the Government's efforts to support the transition of workers from the informal economy to the formal economy and of the strategies put in place to foster development and boost education and training.

The Committee regretted that the Government took no steps since 2017 to adopt and implement a comprehensive national employment policy as required by the Convention.

Taking note of the discussion that followed, the Committee urges the Government, in full consultation with the social partners, to:

- scale up efforts to ensure that the national employment policy is adopted, without further delay;
- guarantee participation of social partners and other stakeholders in the development and implementation of future iterations of the national employment policy;
- take measures to facilitate the transition of workers from the informal to the formal sector and provide adequate protection to all workers;
- promote access to employment for women and youth to reduce unemployment for these categories and to promote their long-term integration into the labour market;
- ensure that education, training and skills policies are harmonized with employment policies and facilitate the free choice of employment; and
- ensure the regular collection of information and statistical data so as to allow the Government to monitor progress and evaluate policies' implementation.

The Committee invites the Government to avail itself of the technical assistance provided by the ILO.

The Committee further requests the Government to provide a report on the progress made regarding the above issues as well as a copy of the national policy once adopted, before 1 September 2023.

Government representative – The Government of the Republic of Cameroon thanks the Committee for its conclusions, which demonstrate its thorough consideration of this case, and, above all, for having taken into account both the information provided and the constructive discussion that followed. The Government duly notes the recommendations made and wishes to clarify that, as a State based on the rule of law, it undertakes to update, in cooperation with the social partners, its legislation and institutions in line with the provisions of the Convention, as stipulated in the conclusions that we have just heard.

The recommended assistance of the International Labour Office will be formalized, and we will approach the Office to make practical arrangements in that regard. You will agree, however, that providing information on the progress made and the adopted employment policy before 1 September 2023 seems unrealistic. We therefore request, although the conclusions have already been adopted, that the Committee use its discretion to grant us a reasonable deadline for the requested compliance, to which we are committed.



Costa Rica (ratification: 1966)

Employment Policy Convention, 1964 (No. 122)

Written information provided by the Government

The Government has given priority to the public policy to promote an appropriate ecosystem to facilitate the labour market integration of vulnerable persons (including women, young persons and persons with disabilities) and develop a better matching of occupational demand and the vocational and technical training of workers through the current National Development and Public Investment Plan (2023–26). The Government considers it essential to indicate that, for some years, Costa Rica has been developing a series of strategies and active labour market programmes with a view to having a positive impact. These efforts have resulted not only in specific programmes and legislative reforms, which have changed procedures for labour mediation, but have strengthened the relations that existed between labour market needs and the supply of institutional programmes.

In this regard, it would be baseless to claim that the Government has not made significant efforts in this field. Employment is one of the priority themes of the current Government and is part of the strategic agenda of the Ministry of Labour and Social Security (MTSS) and the National Training Institute (INA), among other public institutions, of which the ILO is one of the principal partners.

It should be noted that the ILO itself advised the Government to begin with the development of one of the central planks of its general policy, in order to build bridges and develop trust in participatory tripartite processes with a view to achieving more fluid progress in future years. In this respect, it should be noted that the Government is currently benefiting from technical assistance from the ILO Office for Central America, Haiti and the Dominican Republic, as recommended by the Committee of Experts in its 2023 report, for the design and development of the National Strategy of Employability and Human Skills.

It is noteworthy that Costa Rica has been included in the preliminary list of 40 cases before the Committee, even though the Committee of Experts has noted with interest the measures and action taken by Costa Rica within the framework of other Conventions, as indicated in the 2023 annual report. In this respect, attention should be drawn to the fact that the Committee of Experts has noted with interest the information and measures reported by the Government in relation to the Employment Service Convention, 1948 (No. 88). More specifically, the Committee of Experts noted with interest the adoption of the executive decree establishing the National Employment System (SNE) “to respond both to the dynamics of the labour market and to the needs of jobseekers or persons already in employment in order to retain their work or improve their conditions of work, giving priority to those in conditions of vulnerability”.

Aspects directly related to the Government’s strategic action in the field of employment

1. National Strategy of Employability and Human Skills: with the support of the ILO, this is being developed through a process of participation and consultation with the social partners, as it has been submitted to the Employment Council, which is of tripartite composition (the Executive, the private sector and trade unions) The purpose of the National Strategy of Employability and Human Skills is also to strengthen the governance of the SNE and the National Employment Agency (ANE), a platform which is an important landmark, as it has been built up from zero based on the Government’s conviction of the added value that



will be provided to the public employment system not only by reinforcing the employment service, but also by improving the employability of those who are already in work.

2. Consolidation of the SNE: this is built on a model that corresponds to the vision of the public employment system, by not only dealing with employment placement, but by converting it into a more robust system that provides more services and is broader in scope. And it is the outcome of an articulated, inter-institutional and participatory process responding to the need to align education with labour market requirements. The approach adopted allows the SNE to provide more focused services and facilitate the access of persons in any part of the country. Its establishment was based on social dialogue through a process involving the Executive, the private sector and the unions, which are members of the Employment Council, which is the body with the highest authority in the system. In operational terms, reference should be made to the ANE and employment units. The ANE is a technical and operational body, which is national in scope, public and free-of-charge, which organizes employment services, the network of employment units, the electronic information platform and other means of serving people and enterprises, and which harmonizes administration, processes, procedures and protocols in a single window. The ANE operates 24 hours a day through contact centres, which are a free public tool and connect people and enterprises with employment services, in accordance with the policies established by the Employment Council. As of May 2023, the ANE had concluded 45 cooperation agreements to improve the capacities of the offices and branches of the network of employment units with various municipal authorities and private bodies to facilitate the access of the population to the services provided through the SNE. These units not only register persons, but also activate the coordination of the programmatic supply of employment services so that services are provided to improve employability, as well as employment placement. Up to now, there are around 5,114 active enterprises registered, over 128,000 people have been placed in employment since the tool was established and over 19,000 jobseekers are registered.

3. Inclusion of the system of financing by results of the Labour Market Observatory and the coverage of migrant workers by employment services.

4. The Dual Education and Training Act: the Advisory Commission for the Promotion of Dual Technical and Vocational Education and Training (EFTP-Dual), in the Ministry of Public Education, is operational and brings together the various social partners involved in this new mode of education, namely: the MTSS, the INA, the Costa Rican Federation of Chambers and Associations of Private Enterprise (UCCAEP), the Association of Enterprises in Export Processing Zones of Costa Rica (Azofras), and unions in the education, cooperative and solidarist sectors. It is also important to indicate that, in April 2020, the General Regulations were published of Act No. 9728 on dual vocational and technical education and training, which specify even further the rules for participation in dual-training processes. Moreover, emphasis should be given to the EFTP-Dual in Costa Rica, which has various similarities with dual-training systems in other parts of the world, including the principle of alternance, training in enterprises, shared financing and social dialogue. However, one significant difference from other countries lies in the nature of the relationship between those engaged in training (in Costa Rica they are not called apprentices), educational centres and enterprises.

5. National Skills Framework: a nationally recognized structure, which sets standards for qualifications and the associated skills on the basis of a series of technical criteria set out in descriptors with a view to guiding training, classifying occupations and jobs and facilitating the mobility of people at the various levels, all in relation to labour market dynamics. Some of



the benefits of the articulation between training and labour market needs promoted by the National Skills Framework for Technical and Vocational Education and Training in Costa Rica (MNC-EFTP-CR) include:

- facilitating and clarifying the articulation of the education system, by setting qualification levels and establishment links between them;
- making it possible to create spaces for cooperation between the social partners in relation to technical and vocational education and training (TVET), namely: employers, training centres, public and private bodies and civil society;
- establishing parameters for training and the assessment of skills in relation to levels of qualification;
- providing employers with clarity on the competences associated with qualification levels, as provided by training centres;
- facilitating access to TVET by the population in terms of the skills they will acquire, the route to be followed to have access to training and employment opportunities;
- ensuring that the participation of enterprises and organizations in the development of qualification standards is representative at the sectoral level.

6. Implementation of the Act respecting export processing zones outside the Greater Metropolitan Area (GAM), No. 10234 of 2022, under which at least 11 initiatives have been developed so that enterprises can see opportunities for investment outside the GAM, such as: the inclusion of new categories for export processing zones (human health services, inputs and sustainable adventure parks); the strengthening of the single investment window to facilitate transactions; rules which urge the INA to promote programmes that correspond to the technical and occupational needs of enterprises; and the strengthening of formal employment. The generation of new jobs is key to the recovery of the labour market. The Act seeks to contribute to the generation of favourable conditions to increase investment that has a direct impact on competitiveness throughout the territory, economic growth and the generation of employment outside the GAM through reforms and certain additions to specific laws adapted to the real situation in these areas of the country. This series of reforms and additions will have a direct impact on the decisions taken by national and foreign enterprises which, in compliance with certain conditions pre-established by the regime for export processing zones, can invest in zones outside the GAM. All of the above is in line with the indications provided, and shows not only the existence of political will and multiple good practices at the national level that are deserving of recognition, but also that the Government of Costa Rica retains the conviction to continue taking action to ensure the well-being and quality of life of workers in Costa Rica, within the framework of participatory processes and dialogue with partners, without which it would not be possible to implement these Government efforts. The commitment of this Government includes the prioritization of strategic interventions in relation to economic, social, environmental and citizens' security challenges, which give rise to priorities such as the modernization of State institutions, economic recovery and a reduction in the cost of living, unemployment, poverty, inequality and regional differences, among others. Through an integrated and modern approach to public policies, these will be able to have a real impact on areas that lie within the scope of State governance with a view to stimulating action on these challenges, thereby achieving the well-being of the population of Costa Rica.



Discussion by the Committee

Chairperson – The first case on our agenda is Costa Rica on the Employment Policy Convention, 1964 (No. 122). I would like you to know that we have more than 17 delegates inscribed to take the floor and, consequently the reduction of time from 5 to 3 minutes will apply to the delegates. I now invite the Government representative of Costa Rica, the Vice-Minister of Labour, to take the floor.

Government representative – My first words will be to offer you fraternal greetings from the Minister of Labour, Andrés Romero Rodríguez. For reasons beyond his control, he has not been able to accept this invitation, but expresses his wishes for success to the Director-General for the launch of the Global Coalition for Social Justice initiative and for the productive work of our Committee.

On the basis of one of the principles that inspired the ILO Constitution, that is dialogue, Costa Rica succeeded in establishing the guarantees of social protection in its Political Charter over 80 years ago. As a result of this historical landmark, which regrettably continues to be no more than an aspiration for many peoples, the citizens of Costa Rica sealed a fundamental social pact setting out the highest values of solidarity and respect for the dignity of all persons. The country is globally recognized for this and other achievements, as well as its vocation of safeguarding human rights and being in the vanguard of their promotion.

Emulating the democratic tradition and honouring our international commitments, we are appearing in person on this occasion before the Committee to show in this forum the strategic action adopted by the State of Costa Rica in compliance with the Convention.

It is important to recall that, during the 2020s and up to the beginning of 2022, Costa Rica faced up to, with more than just diligence, the health crisis of the COVID-19 pandemic. Appropriate responses in the field of public health and the protection of life, as well as robust interventions in the field of social protection, enabled our law-abiding State to meet the challenge. We faced a challenge and democracy emerged with credit.

Nevertheless, within the context of the crisis of global dimensions as recognized by everyone, Costa Rica was not immune to the economic impact, which resulted in a significant loss of jobs, and more specifically the pandemic shock in the months of May, June and July in 2020, when the unemployment rate reached 24.4 per cent, with 557,000 unemployed persons. The process of the recomposition of the labour market has been showing a trend for employment recovery. Data from the Continuous Employment Survey of the National Statistics and Census Institute (INEC) show the recent trends on the labour market in Costa Rica.

In the first place, it is important to note the trend for unemployment to fall, with a decrease since the third quarter of 2020, reaching 9.7 per cent in the months of February, March and April in 2023, at 2.8 percentage points below the pre-pandemic level. Emphasis should be placed on the decrease in the number of unemployed persons at the national level, with 90,142 persons fewer, a figure that is lower than the same quarter prior to the pandemic. There has been a reduction in the percentage of persons in underemployment, for both men and women. Although the number of persons engaged in informal employment is under the levels prior to the pandemic, this unfortunately affects 40.7 per cent of the population.

Before the pandemic, the economy of Costa Rica was encountering difficulties in generating sufficient opportunities for the labour force. These were associated with the fact that the processes of economic, social and technological change have resulted in important



transformations on the internal labour market. The State was therefore confronted by the urgent challenge of providing workers with the skills and knowledge required for the fourth industrial revolution and of avoiding at all costs that our young population, and particularly women, are faced with the ignominy of exclusion from the labour market.

In the national context, as described, we draw the attention of the honourable members of the Committee to the manner in which the country has been taking progressive steps towards full compliance with the Convention through the adoption of specific measures with a view to the formulation and approval by the Higher Labour Council (CST) of an employment policy. This is our aspiration and our commitment.

Accordingly, it can be seen in the National Development and Public Investment Plan 2023–26 that employment is an urgent aspect of economic and social development, such that the reduction in unemployment, as indicated by a lower number of unemployed persons in respect of the total number of workers, is a national objective for this four-year period. The Committee should note that this provides evidence of the Government's commitment to including employment in strategic planning during this constitutional period, which is also part of the priority agenda of the MTSS, the INA and the other competent institutions, in which our strategic allies are undoubtedly employers' and workers' representatives, as well as the ILO Regional Office, which has its headquarters in San José in Costa Rica.

In the context of this progressive compliance, and as preparatory steps towards this objective, it should be noted that, in accordance with a recommendation made by the Committee of Experts in its 2023 report, ILO technical assistance is currently being received for the implementation of the National Strategy for Employment and Human Skills, which was unanimously approved by the National Employment Council, which is tripartite in composition, and adopted as one of its priorities. This shows that tripartite dialogue in democracies gives effect to the real objective for which we are meeting here today, that is the well-being of society as a whole.

This is how Costa Rica is making progress in the implementation of the National Strategy for Employment and Human Skills with its comprehensive perspective, basing its decisions on intersectoral alliances, outlining results with the focus on innovation and sustainability with a view to consolidating an active labour market policy which facilitates the links between supply and demand, thereby offering a response to the challenges referred to earlier.

Adopting a coherent approach, in this effort to ensure compliance with the Convention, the National Employment Programme was reformed by executive decree with a view to ensuring that interventions, through financial transfers, succeeded in achieving greater impact at the regional level and among beneficiaries, as an effective and appropriate response to the requirements of the productive sector. A new system of transfers was introduced which will help future workers in the process of integration, which is known as "active job search", which consists of a cash transfer to support the beneficiary with the costs involved in integration into the labour market, as well as through training financed by the State.

With a view to ensuring more dynamic employment services within the framework of the SNE, a start has also been made in drawing up a work plan establishing action, time schedules, responsibilities, deliverables and potential resources to be invested, both by the MTSS and the INA, including the integration of the *Empléate* programme and its information system with the www.ane.cr platform, which I invite you to visit.



The SNE not only demonstrates the determined culture of the State of Costa Rica to give effect to its commitments, but also responds to a development in the vision of the public employment system, under which it is not confined to employment placement, but is converted into a robust system with diversified services and greater coverage. Its creation has been based on social dialogue through a process involving the executive authorities, the private sector and trade unions, which the Government welcomes. The Employment Council gave tripartite approval to the Management Model and Guidance Manual within the context of the SNE, in which differentiated routes are set out for vulnerable population groups. Similarly, I wish to describe to this honourable Committee the recently adopted reforms to the laws and regulations of Costa Rica with a view to stimulating employability and creating new jobs, among which emphasis should be placed on: the reform of the Basic Act of the National Learning Institute, bringing it into line with the principles set out in the Human Resources Development Recommendation, 2005 (No. 195); the Act on Dual Technical Training and Education, which is an important landmark, as it was developed and consolidated with the active participation of the social partners, with both laws offering legal security to employers and promoting conditions for the development of human talent based on a market logic; the National Skills Framework, which includes technical careers through skills standards; and the Act respecting export processing zones outside the GAM, which promotes a climate for investment with an impact on competitiveness throughout the country, economic growth and employment generation in the areas where they are most needed. These measures are duly supported by their financing: for dual training grants, there is a budget of over 1,200 million Costa Rican Colones (CRC), which is equivalent to US\$2.2 million; similarly, with reference to the services of the ANE and the regional units, there is a budget of over CRC5,600 million, equivalent to over US\$10 million; with regard to vocational training and skills services, there is a budget of over CRC11,460, equivalent to US\$21million; and for the National Employment Programme, in its various forms, the budget is over CRC19,000 million, equivalent to over US\$35 million. We can convincingly assert that Costa Rica has taken firm and determined steps to offer more opportunities for labour market integration through the improvement of public services by providing them with financing. This is accompanied by macroeconomic policies to control inflation, which is today the lowest of all the countries of the OECD, and the implementation of policies to support entrepreneurship and to attract investment for the creation of decent quality employment, of which we are also informing the Committee.

These efforts made by Costa Rica have been recognized by the Committee of Experts, which has noted with interest the measures and action adopted within the framework of other Conventions, as indicated in its 2023 annual report, such as the Employment Service Convention, 1948 (No. 88), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159). We recognize that there are undoubtedly opportunities for improvement, and the present administration has the will and is ready to continue developing public policy initiatives in consultation, through dialogue and in agreement with the social partners. By way of conclusion concerning the progress made in giving effect to Convention No. 122, it is important for this honourable Committee to note the consistency of the State of Costa Rica in creating conditions through legal and administrative measures and public investment to raise the employability profile of our population, thereby promoting their labour market integration in an environment of peace and prosperity for everyone.

Employer members – We thank the Government for the oral and written information provided, of which we have taken full note. The Employer members place emphasis on the importance of States giving effect to the Convention. It is one of the four priority governance



Conventions of the ILO and was ratified by Costa Rica on 27 January 1966. By way of background, the Committee of Experts has made observations on the application of the Convention on four occasions, that is in 2013, 2104, 2018 and 2022. However, this is the first time that the case has been discussed by this Committee.

The Committee of Experts has commented on compliance with the Convention by the Government in relation to the following issues: first, information is not available on the impact of the measures adopted to achieve the objective of the Convention, including those adopted within the context of the National Strategy for Employment and Productive Development, in relation to which it reminded the Government that it could request ILO technical assistance. Second, consultations were not held with the social partners and the CST was not convened to engage in tripartite consultations on employment policies and programmes. Third, the labour market is characterized by low levels of employment and limited access to job opportunities for women and young persons, and it is also necessary to match education to labour market requirements.

It also noted that the Confederation of Workers Rerum Novarum (CTRN) had observed that existing employment problems had been aggravated by the COVID-19 pandemic, giving rise to an increase in unemployment and underemployment, and in poverty levels from 21 per cent in 2019 to 30.4 per cent in 2020 and in levels of extreme poverty from 5.8 to 11 per cent.

What is the statistical context of employment in the country, according to the available data?

The Employer members observe that the Committee of Experts noted the 2021 Yearbook of Statistics of the MTSS, which contains various types of data for between 2018 and 2021 on levels of open unemployment, youth employment through the so-called *Empléate* programme, and the labour market integration results through the SNE.

However, the Government, in the report of 24 May 2023 provided to the Committee of Experts, while updating various statistics, indicates, among other matters, that: first, the national formal employment percentage in 2022 was 56.7 per cent (as indicated, 2 percentage points below the established objective); and that, in the same year, the national economy grew by 4.2 per cent as a result of external demand associated with the recovery of tourism and exports of services; second, the active population in formal employment is tending to increase, as shown by the increase of around 23 per cent between the third quarter of 2020 and the third quarter of 2022; and third, the open unemployment rate in Costa Rica in 2022 was 12.2 per cent on average, according to the Continuous Employment Survey of the INEC. Finally, in relation to education during the 2019–22 period, the objective exceeded initial expectations with the provision of 4,241 grants, equivalent to 176.7 per cent of the initial objective.

What is the legal and regulatory context for employment in Costa Rica?

With a view to identifying the reasons for the social context affecting employment, it is important to also take into consideration the regulations that have been adopted recently, and in this regard, according to the information provided by the UCCAEP, since 2017, in Costa Rica work has been carried out on various texts, policies, guides and decrees to reduce unemployment, while endeavouring to narrow vocational training gaps, as shown by:

- (a) In 2017, a tripartite committee was established to review the adoption of the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).



- (b) On 3 December 2018, Act No. 9635 on the strengthening of public finances was adopted, adjusting the salaries and benefits of public officials, in a provision which went beyond the comments that had been made, and which is a provision that was subject to four hearings in the Constitutional Chamber of Costa Rica, which did not find any violations by the Act of any ILO Conventions.
- (c) In 2019, action was taken to regulate dual technical education and training in Costa Rica, which makes it possible to develop skilled resources, promote the labour market integration of vulnerable persons and groups, retain young persons in the education system for continued studies, while the EFTP-Dual was created in the Ministry of Public Education as an advisory body.
- (d) Moreover, in the CST, which is a tripartite body, and with ILO support, prior to the COVID-19 pandemic, work was being carried out on a tripartite agreement for the generation of decent employment in Costa Rica, which is awaiting approval.
- (e) Act No. 9738 was adopted regulating telework.
- (f) Through Decree No. 41776, the SNE, the Employment Council and the CST, which is tripartite, were also created.
- (g) The National Strategy on Employability and Human Skills was promoted with the technical support of the ILO.
- (h) Various bodies exist in education on the subjects of training, education and labour.
- (i) The National Technical and Vocational Education and Training System was created and transformed in 2022 by Decree No. 43481.
- (j) Act No. 9931 was adopted on the strengthening of vocation training for employability, social inclusion and productivity in light of the fourth industrial revolution and future employment.

In light of the above, the Employer members consider that, over and above the issues that may arise in relation to the scope of the various measures adopted, Costa Rica has an employment policy that is reflected in the legal provisions adopted, and in the data and indicators seeking a reduction in unemployment.

In any case, we must not forget that adequate dialogue on these types of policies is subject to the provisions of Article 3 of the Convention, which promotes the active participation of representatives of the persons affected, and of workers' and employers' representatives, so that, through their experience and views, they can contribute to structuring public employment policies through social dialogue.

We know that these processes of consultation and dialogue are not easy. They require the establishment of appropriate means of information for the organizations as a basis for the development of the exchange of information and views in order to achieve the best results, taking into account the positions of the social partners, before a final decision is adopted.

We are certain and convinced that the conditions exist for this purpose in Costa Rica as a means of ensuring the continued development of public employment policies within the framework of dialogue, and that there is a pre-disposition by employers through their chambers as the most representative organizations of employers in the country. By way of illustration, they promoted a reduction in the minimum basis for social security contributions with a view to achieving greater formality of employment in the country.



Within the framework of the situation as described, the Employer members consider it important for the national authorities of the Government to intensify their efforts to explore alternatives to improve dialogue and the exchange of information for all the partners, in relation to initiatives that it is already developing, and those that may be promoted in future in relation to employment policies and programmes, the inclusion of young persons in the labour market and gender equality in terms of opportunities for access to sources of employment, by seeking their adaptation and modernization in the context of the real labour situation of the country. Moreover, there is the real possibility of benefiting from ILO technical assistance in this respect.

Worker members - We thank the Government for the information provided. This is the first time for many years that we have examined a case concerning Costa Rica in this Committee. What has led us to do so is the need to assess the action taken by the Government, or rather the lack of action, for the proper application of the Convention in law and practice.

We must also recognize the significant numbers of workers trapped in the informal economy, and the manner in which the Government's failure to take action is aggravating their difficult situation. Costa Rica continues to suffer from alarming levels of poverty and unemployment. Despite economic growth and development, a considerable part of the active population continues to be marginalized and deprived of opportunities for stable employment and decent living conditions. At the centre of this problem is the omnipresence of unstable and insecure forms of employment and the informal economy, a cradle for the development of exploitation, vulnerability and lack of protection. In Costa Rica, an alarming number of people are forced to work in the informal sector, in jobs that lack legal protection and social security benefits. These workers suffer from very low and scarce wages, precarious or non-existing job security, and a deep-rooted lack of access to essential health and social protection. This situation was exacerbated by the COVID-19 pandemic. The data used by the MTSS in its recent report need to be relativized against the background of the relationship between employment creation and poverty.

Although the Government is claiming increases in employability, the inactivity rate rose from 39.7 to 41.7 per cent, compounded by the increase in extreme poverty. This means that the level of jobs is not higher, but in contrast the number of men and women workers has increased who are no longer seeking work and who are not therefore taken into account in these statistics. Over 1 million women are outside the labour market in the country, which is around double the number of men. According to the Committee of Experts, the Government has admitted that it does not have information on the impact of the measures adopted to achieve the objective of the Convention. In this context, the lack of action and the inertia of Costa Rica in addressing the problem of poverty and unemployment are in our view very clear and a matter of concern. It is clear that the authorities have not formulated or applied comprehensive policies that really address the deep-rooted causes of this socio-economic crisis. The lack of robust initiatives to formalize the informal economy, provide support structures and incentives for the transition to the formal sector, as set out in Recommendation No. 204, bear witness to the apathy of the Government towards its own citizens.

The Convention provides a crucial framework for guiding efforts to combat poverty and unemployment, particularly in relation to the informal economy. This Convention places emphasis on the vital importance of promoting full and productive employment, giving priority to decent work for all and encouraging employment creation. Regrettably, Government action has been inadequate in aligning its policies and practices with the



principles set out in the Convention. It has shown a flagrant lack of concern for the well-being and subsistence of its citizens, ignoring the urgent need for comprehensive employment policies.

In its comments on the Convention, the Committee of Experts refers to Act No. 9635 on strengthening public finances, which entered into force on 3 December 2018. The application of this Act imposed significant restrictions on collective bargaining in the public sector, by limiting in practice the budgets of State institutions. This made it necessary to reduce the funding for workers' wages and benefits in the public sector, which has led to cases in which collective agreements have been abolished or not applied. Wages in public bodies have been frozen indefinitely, thereby worsening an already serious situation. Moreover, in March 2023, the Framework Act on public employment entered into force, which impedes the possibility of increasing the wages of the various groups of public employees, irrespective of annual inflation rates. Wage negotiations through collective bargaining are specifically prohibited. Both laws have very significant implications for workers' rights, stable and secure jobs and the general well-being of society. By placing severe limitations on collective bargaining and eroding labour rights, the laws are undermining the Government's ability to reactivate the economy, create decent jobs and give effect to the principles set out in the Convention.

Finally, the Government admits that it did not consult the social partners on employment policies and programmes during the period covered by the report, which presupposes a violation of Article 3 of the Convention. In conclusion, we cannot ignore the gravity of the current situation. The lack of action by the Government to address poverty and unemployment in Costa Rica is a series failure in its duties and a violation of the Convention.

Employer member, Costa Rica – As the representative of the employers of Costa Rica, I wish to indicate that the Federation of Chambers, as the umbrella organization, will focus solely and exclusively on the specific points covered by the Convention for which the country was convened before this honourable Committee, that is Convention No. 122.

As a sector that is respectful of our national legislation and the treaties and Conventions ratified by the country, we cannot and will not refer to matters that have not been raised by the Committee of Experts. We are bound to point out that there are instruments and the corresponding channels through which the arguments touched upon relating to the context of our country can be addressed at the appropriate time. Allowing the examination of situations that are not strictly related to the Convention gives room for the polarization of the discussion of this instrument and, in any case, creates an unhealthy precedent for future discussions. We cannot allow confusion between the standards under examination and the underlying political issues of each country.

In the first place, I would like to indicate that employers in Costa Rica are a positive and active sector, which seeks by all means to ensure that the policies which we promote have positive and overall impacts on our society. Legal certainty and respect for existing institutions are what we seek at all times as part of our commitment to democracy, with its system of checks and balances.

In view of the above, and taking into consideration the observations made by the Committee of Experts, I wish to point out the following. The Articles of the Convention on which the Committee of Experts has commented are the first and the third. The first provides that each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment. And the third provides that representatives of the persons affected by the measures to be taken in relation to the



employment policy shall be consulted, and in particular representatives of employers and workers, with a view to taking fully into account their experience and views.

It should be noted that, in the case of Costa Rica, action has been taken for many years in relation to these themes of employment and employability, and it is a characteristic of our country that most subjects are worked on in a tripartite manner, through social dialogue, which is constantly promoted by the ILO. On this basis, employers have been proactive in the various types of national action that have been taken in relation to employment-related subjects which, in most cases, and in accordance with the customs of our country, are undertaken in a tripartite manner in accordance with Article 3 of the Convention.

It is noteworthy that, among the comments of the Committee of Experts, the Government is requested to indicate whether, in the consultations in the country on the application of ILO Recommendation No. 204, there were representatives of rural areas and of the informal economy. In this regard, Costa Rica was the first country in the world to work on the application of that Recommendation through tripartite social dialogue, in recognition that informality functions according to a logic of the denial of fundamental rights at work, that it was undermining the basis of our system of social protection and that it facilitates unfair competition. Moreover, through a simple search, including on the ILO's own web page, there is a list of the trade union confederations of Costa Rica, the great majority of which have branches for workers in the rural areas of the country, and our federation, as the employers' organization that is most representative of employers at the national level, also ensures the representation of rural areas. Accordingly, we do not understand this comment. From the viewpoint of employers in Costa Rica, represented by the Federation of Chambers, we are able to refer to national efforts on the subjects of employment and employability including, following ten years of discussions, the adoption in 2019 of the Act on Dual Technical Training and Education, on which the consultation process included tripartite dialogue at the legislative level.

Dual education became a public policy tool for access to a model of education which can generate the necessary experience to find decent employment, for which reason it forms part of a series of measures to achieve quality education, training principally focused on work for young people, and a successful transition to the world of work. The same year, the Act on teleworking and its regulations were adopted which, as they had been approved prior to the COVID-19 pandemic, made it possible to maintain many decent jobs during the pandemic and to cope with the lockdowns, as it was essential to have regulations that were capable of responding to the situation at that time. The CST and the Occupational Health Council, both of which are tripartite bodies, developed guidance for the implementation of teleworking in enterprises and the Guide on occupational health and the prevention of risks in relation to teleworking.

In 2019, the Decree on the development of the SNE was adopted with the objective of defining and establishing a logical system of governance for employment services in the country. In addition, the system includes an Employment Council, which is tripartite in composition and is the public policy body which articulates the services associated with the system.

During the period of the COVID-19 pandemic, various types of action were taken in support of employment, such as regulations on the suspension of labour contracts, which was already permitted by the labour legislation, the adoption of the Act on the reduction of the working day with a view to avoiding the need to dismiss workers, and the establishment of health protocols to protect the health of workers, among other measures.



In 2021, the Act was adopted on the strengthening of vocational training for employability, social inclusion and productivity to address the fourth industrial revolution and future employment trends, which reformed the Basic Act of the INA. The Act approved key conditions for the improvement of the training and skills improvement services provided by the INA and the National Training System. In 2022 and 2023, the current Government took the initiative of working in a tripartite context on a National Strategy for Employment and Human Skills, with the cooperation and support of the ILO.

In relation to education, which has a direct effect on employment issues, our country has various dialogue bodies, including the National Council of Technical and Vocational Education and Training, the Interinstitutional Commission of the Implementation of the National Skills Framework, and the Board of Direction of the INA, which is also a tripartite body.

Finally, I would like to indicate that efforts are being made by employers to participate in the processes for the development of a new comprehensive migration policy by the Directorate for Migration and Foreign Nationals, with the support of the International Organization for Migration (IOM).

I do not wish to finish my intervention without first making a comment that concerns all of us who are present here today. It was only two months ago that the end of the COVID-19 pandemic was declared at the international level. And we cannot ignore the fact that today many countries are suffering from the consequences of the pandemic, including our own. During the pandemic, there were many serious effects at the economic level, many enterprises had to close, people lost their jobs and had no source of income, which resulted in significant increases in levels of unemployment and poverty in Costa Rica and throughout the world. The employers requested the Government on many occasions to take measures to promote economic recovery and, through social dialogue, various initiatives were taken to maintain jobs for as long as possible, clearly taking into account the health of workers. As a country that is still suffering from the onslaught of the COVID-19 pandemic, Costa Rica has made significant efforts in relation to employment and employability, seeking the well-being of the working population and the productivity and competitiveness of private enterprises, which are made up of 97 per cent of micro-, small and medium-sized enterprises, which generate 87 per cent of the employment in my country.

For these reasons, the Federation of Chambers considers that our country is in compliance with the provisions of the Convention under examination and that the State, under various administrations and through social dialogue, has worked on multiple initiatives and national efforts to improve the employment situation. Moreover, in its 2023 annual report, the Committee of Experts has noted with interest the action taken by the country in relation to various Conventions, such as Conventions Nos 88, 111 and 159, all of which are related to employment. And yet, for reasons that we do not understand, it is this case that has been taken up here.

Let me conclude by indicating that the Federation of Chambers has social dialogue in its DNA. We are aware of the dictum that, to go further, we need to go forward together. To the Worker representatives, as we have traditionally done, we hold out our hand to continue building together a country that is more prosperous and inclusive. And we make a final call to the Government of the Republic, as has always been the case in life in Costa Rica, to continue promoting and strengthening spaces for social dialogue through the necessary policies so that in Costa Rica no one is left behind and so that, through decent work, we can create inclusion and equity for our society.



Worker member, Costa Rica – On behalf of the women and men workers of Costa Rica, I am addressing this honourable Committee to give our views on compliance with the Convention in our country, in accordance with the comments made by the Committee of Experts. We totally disagree with the arguments put forward by the Government on compliance with the comments of the Committee of Experts. According to the prestigious academic report on the state of the nation (2022), which is highly respected in Costa Rica, it has been many years since there was a national employment policy focusing on gender, youth and the unskilled. In its last report on the Convention, the Government did not provide data on compliance, and now that it has been placed on the short list, it sent the Committee a few days before the Conference, on 24 May, a document providing updated information on action to give effect to the comments of the Committee of Experts. We were not aware of this last-minute document and, as a result, we were not able to provide a relevant contribution from the trade unions, which reflects the Government's lack of consideration and disdain for consultation and tripartite machinery, and we are not able here to say everything we would like on the subject. The document provides indicators of progress, based on indicators of unemployment, poverty, the increase in the GDP and other data, which do not in practice prove the implementation and development of an employment policy in accordance with Article 1 of the Convention, but tend more to show up patent shortcomings in its implementation.

There is no national employment policy or plan formulated through tripartite consultation or that is in the process of being implemented. Moreover, since the end of last year, production trends have been returning to their characteristic behaviour in the pre-pandemic years, that is a dual economy, with moderate growth and the generation of few opportunities for formal work. For this reason, the data used by the Ministry in its recent report needs to be seen in strongly relative terms with regard to the relation between employment creation and poverty. While the Government claims that there has been an increase in employability, the inactivity rate rose from 39.7 to 41.7 per cent, in addition to the increase in extreme poverty.

According to a report analysing the labour market and poverty in Costa Rica, prepared in 2022 and 2023 by the Economic Investigation Institute of the University of Costa Rica, the country is confronted by an increase in extreme poverty, which has increased from 6 per cent in 2022 to 8 per cent in February 2023. It is calculated that 265,528 workers are living in total poverty, according to the data published by the INEC for International Workers' Day 2023. Some 20.9 per cent of employees work more than 48 hours a week and 15.1 per cent do not earn the minimum wage. Of these, 50.8 per cent are not paid for overtime hours and 27.7 per cent are not insured against employment risks, according to the Continuous Employment Survey for the fourth quarter of 2022. In the agricultural sector, 12,000 jobs have been lost for agricultural and skilled agricultural workers. According to the INEC Continuous Employment Survey, undertaken between February and April 2023, a total of 586,000 workers are not covered by social security, which is equivalent to over one quarter of employed persons in the country, or 28.4 per cent. Although in April the unemployment rate fell from 11 to 10.6 per cent, that is related to the significant number of persons who have stopped seeking employment, as in the first quarter of 2023 there were 2.10 million active persons, whereas the figure was 2.20 million in October 2022. Women make up the majority of those who have left the labour force over the past year (114,000 of the 196,000 persons who ceased to seek work), when comparing the data from the Continuous Employment Survey for the three-month period from February to April 2023 with the same period in 2022. Over a million women are outside the labour market in the country (1,167,547), which is



around twice the number of men (664,547), and makes a total of 1,832,094 persons out of a population of 5,180,000.

Combined with poverty and the lack of work opportunities, one of the principal problems of the country is the growing income inequality and social inequality, and there have been no public policy responses to reverse this situation. Over the space of one generation, Costa Rica went from being one of the most equitable societies in Latin America to one of the most inequitable and unequal countries in the world. The Government's report appears to ignore the fact that working conditions, wage policies and employment relations are inherent to and interlinked with employment and income policies, or should be. The National Productive Employment Strategy is a theoretical plan to the formulation of which the ILO Office in San José contributed with the previous Government, and it is now used as a point of reference in discussions, but no specific action is being taken and it is not being implemented. Several of the programmes described in bureaucratic terms by the Government are old, have not produced significant changes and do not form part of a national employment plan. There is no correlation whatsoever between employment policies and formalization policies, which have not been implemented either. In export processing zones, there are no unions or collective agreements, and therefore there is no sectoral tripartism. The Government is putting forward a Bill to intensify working hours, with precarious working time arrangements of 12 hours a day over 4 days, without overtime pay, thereby making the labour force as cheap as possible. The argument is being used that in practice in export processing zones there are 12-hour working days without overtime pay, which is not legal and it is therefore necessary to regularize and legalize them through the Bill, which is contrary to the Hours of Work (Industry) Convention, 1919 (No.1). According to the ILO resolution concerning the third recurrent discussion on employment (June 2022): "Social dialogue, including collective bargaining and tripartite cooperation, contributes to the creation of decent jobs". It is therefore noteworthy that the Government is ignoring or overlooking the link between collective bargaining and employment policy and working conditions, as well as industrial relations deriving from the legal framework of employment policy.

With reference to the observation by the Committee of Experts, there are two laws which severely restrict the possibility of collective bargaining, and practically eliminate it, as well as trade union rights: the Act on strengthening public finances, which has restricted collective bargaining in the public sector, limiting the budget of State institutions and making it necessary to lower and remove wage components and bonuses, eliminating collective agreements or leaving them without effect, as well as freezing wages in the public sector indefinitely; and the Framework Act on public employment, which runs counter to the ILO resolution referred to above, which sets out the principle of supporting "the role of the public sector as a significant employer and provider of quality public services." This Act is closely related to the former and endangers the exercise of trade union rights and collective bargaining through restrictions that are contrary to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), as well as preventing wage increases for public sector workers by consolidating the indefinite wage freeze. Wage negotiations are explicitly prohibited, among other aspects of the employment relationship, thereby voiding collective bargaining of its content.

With regard to tripartite consultation, effect has not been given to the comment relating to Article 3 of the Convention, nor has participation by trade unions been offered in any of the stages of action on policies relating to employment and the labour market. The existing



tripartite bodies at the national level are stalled and are absolutely ineffective. The Decent Work Country Programme has not been renewed or taken on board by the Government, even though one of its priorities is the promotion of employment and decent work. The major deficit in the world of work in Costa Rica is the absence of social dialogue and tripartism. According to the prestigious report on the state of the nation (2022), the current social and political situation in the country is characterized by the normalization of measures that are contrary to human development following the progressive abandonment of the social contract in Costa Rica. Unilateralism is becoming consolidated in an alarming manner in Costa Rica. For this reason, we need strong action by the ILO and its supervisory bodies.

Government member, Colombia – I am speaking on behalf of a significant majority of Latin American and Caribbean countries, which wish to refer to the inclusion of Costa Rica in the list of countries to be examined by the Committee.

We welcome the information provided by the Government representative, which has provided information to the delegates and the Committee, from which it may be noted that: Costa Rica has been developing for some years a series of active labour market strategies and programmes with the objective of having a positive effect on the working population, with particular emphasis on the vulnerable population, including women and young persons, through the creation of active labour market programmes, as well as a change of focus in the form of the provision of employment mediation with a view to strengthening the links that are required between the needs of the market and the supply of institutional programmes.

We are aware that the country has given priority to the integration into the labour market of vulnerable categories or persons and the promotion of the matching of labour demand and technical and vocational training for workers. In this regard, the country has been making efforts in the area covered by the Convention. Examples of these efforts indicated by the Government include the consolidation of the SNE, based on social dialogue, the creation of the ANE, which is a public instrument that matches workers and enterprises, and the Act on dual training.

Finally, the Government's indication should be emphasized that it is currently receiving technical assistance from the ILO Office for Central America, Haiti and the Dominican Republic, as recommended by the Committee of Experts in its 2023 report, for the formulation and development of the National Strategy for Employability and Human Skills.

We trust that the Government will continue taking action to ensure well-being and quality of life through social dialogue with the social partners.

Finally, we urge the ILO to continue providing technical cooperation to Costa Rica.

Employer member, Guatemala – The Convention provides that Member States shall declare and pursue an active policy designed to promote full, productive and freely chosen employment with a view to stimulating economic growth and development, raising levels of living, meeting labour requirements and overcoming unemployment and underemployment.

As we have already heard from the Government, I note in this particular case that national efforts have been made to improve the national employment situation and the current Government is only just commencing its work in relation to employment, which is being carried out through the means and corresponding bodies, with the promotion of appropriate reforms and provisions.

It is important to point out that the Government has given priority to the public policy designed to promote an appropriate ecosystem to facilitate the labour market integration of



vulnerable persons and the technical and vocational training of workers, through the current National Development and Public Investment Plan.

In addition to the efforts that the country has been making since 2019, work has progressed with the social partners on a series of instruments, policies, guides and decrees with a view to helping to reduce the levels of national unemployment, overcome gaps in vocational training and reduce informality.

Among these efforts, reference may be made to an Act which regulates dual technical education and training, which is necessary to adapt to the needs of the labour market, which requires labour focused on technical skills and in the forefront of technological development, thereby offering labour market integration for persons and groups that are vulnerable or at social risk. It is a public policy tool for access to an educational model that can generate the necessary experience for subsequent integration into formal employment.

The Act on teleworking was also adopted and helped to retain many jobs during the COVID-19 pandemic.

For all these reasons, it appears to us that today's examination of this case by this supervisory body is not related to a failure to comply with the Convention, but is more a case of progress by the State of Costa Rica.

Worker member, Singapore – Let me start by saying that it is very disheartening to observe that the Government has yet to develop concrete policies that effectively tackle the lack of jobs and bridge the gap between economic growth and employment generation.

Costa Rica's failure to establish a national policy aimed at generating more and higher quality jobs is a cause for concern, necessitating a comprehensive range of policy interventions. In addition, the Government's omission of tripartite consultations for the formulation and implementation of employment policies is disappointing.

A critical aspect to consider is the connection between employment policies and formalization strategies, which ensure investment in expanding basic social protection. Recommendation No. 204 serves as a foundation for progressive formalization, leading to sustainable and equitable growth. Regrettably, the Government appears to have taken no action to comply with this Recommendation.

While the Government's report alludes to programmes for micro- and small enterprises, benefiting about 200 SMEs, the impact of these initiatives on the overall universe of existing SMEs is negligible. Significantly, the Government has failed to mention the exact numbers of jobs created through all these programmes.

On the contrary, the Government's proposal to increase taxes on SMEs by up to 30 per cent would likely result in the exodus of a vast majority of small companies, consequently exacerbating informality and unemployment.

Moreover, the Government's support for the dual education modality is flawed and exploitative, as apprentices lack social security, rights and fair wages. It is concerning that the Advisory Commission for Dual Education consists of 11 members, with only 1 representing workers.

Lastly, I would like to draw your attention to a recent report by the UN Special Rapporteur on contemporary forms of slavery, which highlights serious cases of modern slavery in Costa Rica. These cases include the banana and pineapple sectors, the security sector, the retail sector, domestic service, construction, and even State activities, which run counter to the provisions of the Convention.



The United Nations Special Rapporteur offers important recommendations to the Government, emphasizing the need to improve labour inspection through the allocation of sufficient resources, both human and financial, as well as granting additional powers, such as on-the-spot sanctions.

In conclusion, I urge the Government to address all these shortcomings promptly, taking into account the urgency of implementing effective employment policies and rectifying all the prevailing issues.

Employer member, Argentina – The Republic of Costa Rica has been included on the list of cases submitted for examination by this Committee for alleged failures of implementation or violations of Articles 1 and 3 of the Convention. The Government has indicated that it duly implemented the so-called Bicentennial National Plan for Development and Public Investment. This programme envisages the adoption of measures to strengthen the productive capacity of the country and promote employment. We recall that the Committee of Experts has noted that the current challenges include the need to align education with labour market requirements since, although the efforts made by the Government are recognized, the 2018 National Enterprise Survey showed that there were a high number of vacancies due to the lack of the required skills among job applicants. The study provided by the Government also shows women and young people still have lower activity rates and have limited access to employment opportunities due to their lack of experience and training in non-traditional branches (such as science, technology and engineering). This is a very important issue for employers, as it is not possible to strengthen the productive capacity of a country without improving the employability and vocational training of workers. The Government has indicated that a public policy has been developed with a view to giving priority to the labour market integration of vulnerable persons (women, youth, persons with disabilities) and that priority has been given to technical and vocational training through the National Plan for the Development of Public Investment which, according to the Government's report, has been a priority issue. Indeed, the ILO provided technical assistance, as suggested by the Committee of Experts.

When reviewing Articles 1 and 3 of the Convention, it can be seen that the first Article indicates that each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment. The objective of the Convention is to stimulate economic growth and development, with a view to raising the levels of living of workers, meeting the labour requirements of enterprises and endeavouring to resolve the problems of unemployment and underemployment. However, the active policy has to be drawn up in consultation with the representatives of workers' and employers' organizations, which are those affected by the measures to be taken, and such policies have to be subject to tripartite consultation. Despite the fact that the measures developed can always be improved, it is not clear that the Government has not made significant efforts in this regard. On this subject, it is worth recalling that it is the ILO that has supported the Government in developing practical policies and measures to build bridges and trust in the participatory and tripartite process. We believe that the Government has shown that there is the political will to continue promoting employment policies and action to improve employability.

Worker member, Argentina – We are examining the case of Costa Rica in relation to the failure to give effect to the Convention which, as we know, has been identified by the Governing Body as one of the four priority Conventions in view of its importance for the operation of the system of international labour standards. It is a governance Convention, as indicated in the ILO Declaration on Social Justice for a Fair Globalization, and its provisions



are of the greatest relevance to the creation of decent work, the priority goal of this Organization.

As indicated in the report of the Committee of Experts, the achievement of these objectives is limited in Costa Rica, as the report indicates that, without prejudice to the economic plans referred to by the Government to remedy the situation, there are no indicators or data showing that any results have been achieved.

Although the lack of compliance with the Convention relates to the absence of policies for the creation of genuine quality employment, the report makes special reference to the situation with regard to public employment. In this regard, the Committee of Experts notes the adoption of Act No. 9635 to strengthen public finances, which provides for the adjustment of the wages and benefits of public employees, in violation, as indicated by the Workers, of Conventions Nos 87 and 98, as it provides that issues that have an impact on the national budget, such as wages, cannot be the subject of negotiations. There is accordingly no collective bargaining in the public sector, wages are frozen by the Act on public finances and, at the same time, the Framework Act on public employment explicitly prohibits collective bargaining on wages.

The Committee of Experts had made comments previously in this regard, in its 2020 observation, as indicated in the report, and emphasized that workers in the public sector "shall enjoy the right to collective bargaining, including with respect to wages, and that [...] there are mechanisms through which compliance with budgetary limitations can be reconciled with the recognition of the right to collective bargaining."

The fact that it is impossible to engage in collective bargaining in the public sector inevitably affects compliance with the Convention, as social dialogue between the parties to determine fair wages and adequate conditions of work is a fundamental tool that contributes to the creation of decent and quality employment. It is for this purpose that compliance with the Convention requires the promotion of active employment policies and the consequential subjective right of workers in the country to obtain decent work, which is essential for the reduction of poverty and inequality.

As this is not reflected in the current situation, it must be addressed in light of the seriousness of the case.

Employer member, Colombia – According to the information provided by the Government, Costa Rica has made noteworthy efforts to provide an effective response, with the respective tripartite consultation, to employment requirements.

It is important to emphasize that in Costa Rica there are two bodies covering the world of work which operate in a tripartite manner. I am referring to the CST and the Employment Council. Both, in relation to labour, have given priority to the adoption of measures that we consider appropriate. For the Government, it is of great importance for these bodies to benefit from the participation of the most representative employers' and workers' organizations. And accordingly, I would like to focus on certain measures on which emphasis should be placed and in relation to which Costa Rica is making progress.

On the one hand, with ILO technical assistance, Costa Rica is making progress in its National Strategy for Employability and Human Skills. Under this Strategy, the social partners participate in the design and implementation of solutions to improve conditions of employment. Similarly, the SNE, for which strategic direction is provided by the tripartite Employment Council, has operational bodies to promote positive dynamics in the labour market. The Government has allocated resources to consolidate the Labour Market



Observatory as a tool that is necessary for the understanding and transformation of the structural causes of employment problems. Based on acceptance that one of these causes is related to the skills required in Costa Rica, there is an Advisory Commission to Promote Dual Technical and Vocational Education and Training, which has the purpose of evaluating the relevance of the skills demanded on the labour market. This is only a small sample of some of the measures that are being taken forward in the right direction by tripartism in Costa Rica.

On the other hand, I would like to emphasize that, in relation to unemployment and informality in Costa Rica, although their levels are a matter of concern, with figures of 11 and 43 per cent, respectively, in the first quarter of 2023, it is clear that many positive steps are being taken. The informality rate in Costa Rica, which is 42.9 per cent, is below the regional average, which is around 50 per cent. The unemployment rate has fallen by 2.3 percentage points in comparison with the same period last year, leading to the recuperation of over 240,000 jobs. It is also worth underlining with regard to the composition of employment in Costa Rica that 75 per cent of workers are employees, which is an atypically positive indicator in comparison with other countries in the region.

Finally, it is clear that the best employment policies are policies that improve productivity, industrialization and economic growth. It is also clear that the structural problems of unemployment and informality in Costa Rica, as in most of Latin America, require long-term solutions, and we cannot therefore expect short-term solutions in such a complex context.

Worker member, Uruguay – As has been said, it is necessary to relativize some of the data used by the Ministry of Labour in its late report, for which no consultations were held, which was sent to the Committee of Experts. It should also be noted that the Government refers to the link between employment creation and poverty, even though extreme poverty has increased. It is not therefore fanciful to address the subject of poverty in this discussion, nor does it remove the focus from the central issue that we are here to examine.

Although the economy has returned to levels of production that prevailed prior to the pandemic, it has done so with a lower demand for employment. The insufficient level of job opportunities has meant that income poverty has remained at historically high levels. In July 2020, 26.2 per cent of households were below the poverty line and 7 per cent were in extreme poverty, therefore giving an indicator of 23 per cent in 2021, with official estimates for 2022 which place it at 23 per cent, although with 15,934 new households in this situation.

Reports prepared by the University of Costa Rica indicate that the country is facing an increase in extreme poverty. As already noted, today 8 out of every 100 citizens of Costa Rica are in this socio-economic category and are not able to meet their basic food needs. This increase has meant that 32,000 households and 103,000 people have been added to the population suffering from poverty in the country.

In view of this situation, we urge the Government to launch genuine social dialogue for the development of an employment policy with decent work that contributes, among other aspects, to reversing this serious situation of poverty experienced by the country.

Employer member, Chile – With reference to the case of Costa Rica, it is surprising that it has been selected among the cases to be examined by the Committee. However, as it is under examination, it is important to emphasize that it is a case of progress in view of the many initiatives for the active promotion of formal and protected employment.

In particular, since 2019, Costa Rica has been working on a series of measures, policies, guides and decrees to reduce unemployment, close gaps in vocational training and reduce



informality. And the only remaining shortcoming on which the country needs to keep making progress, as indicated by the Committee of Experts, is to have more and better statistical information as a basis for assessing the impact of the employment creation measures that have been adopted. But this cannot obscure the enormous efforts made by the Government through various measures to improve employability in Costa Rica, many of which have benefited from ILO assistance.

In recent months, the MTSS has been working on a National Strategy for Employability and Human Skills in Costa Rica with ILO technical support, which has been submitted to the partners in the Employment Council, a body with tripartite representation. This Strategy must also be approved by the CST, which is another tripartite body with decision-making powers.

Time is short in this intervention to enumerate and provide details of the many public efforts with tripartite participation that have been undertaken to promote formal and protected employment. But this is a very good opportunity to recognize the many efforts made and to outline Costa Rica as a case of progress that should be taken into account as an example.

Worker member, Spain – The Committee of Experts notes in its report the observations made by the trade unions on the Convention in 2017 and 2021. That coincided with the period during which Costa Rica experienced an enormous deterioration at the socio-economic, political and also democratic levels.

As indicated by reports, such as the report on the state of the nation, the country has lacked for many years a general national employment policy. Even the reports provided by the Government to the Committee of Experts reveal serious problems in relation to access to employment, with special emphasis on the difficulties faced by women and young persons.

With reference to the situation of women workers, women account for the majority of those who have been excluded from the labour force over the past year. Over 1 million women are outside the labour market, which is around double the number of men. The net labour force participation rate of women is 26 percentage points lower than that of men, and they account for 54 per cent of the unemployed, even though they represent less than 40 per cent of employment. This picture of clear segregation of women workers bears witness to the absence of and need for an employment policy without discrimination of any type, as required by Articles 1 and 2 of the Convention.

Employment policy is rightly a key instrument and, in addition to complying with Convention No. 122, it also has to be in line with other ILO Conventions, some of which are fundamental. We therefore consider that the Committee must take into consideration the issues raised by the workers of Costa Rica to the effect that one of the basic initiatives with an impact on employment, the Act of 2019 on the strengthening of public finances, was adopted despite the fact that it is contrary to various ILO Conventions, including Conventions Nos 87 and 98. This important statement is supported, as indicated by the Committee of Experts, by a technical memorandum prepared by the ILO.

Moreover, the Committee of Experts itself refers to its 2020 observation on the application of Convention No. 98, in which it trusts that the guarantees of Convention No. 98 will be taken fully into account in the Bill on public employment.

The Government endeavours to justify the implementation of the National Strategy for Employment and the Development of Production, in the same way as its employment policy, but has not even provided the Committee with information on its results, just as it has not



provided information on the impact of other initiatives that are supposedly in favour of employment.

I will conclude by saying that the situation in Costa Rica demonstrates the urgent need for the Government to develop an employment policy in accordance with the Convention. That is, an employment policy based on consultation with workers' representatives, with their cooperation in its formulation and counting on their support for its implementation.

Employer member, Mexico – In the first place, we wish to place emphasis on the effort made by the Government to give effect to the Convention, Article 1 of which provides that, with a view to overcoming unemployment and underemployment, an active policy designed to promote full, productive and freely chosen employment shall be pursued as a major goal.

Under the so-called *Plan Rescate 2014–18*, one of the three pillars for recovery in Costa Rica was economic growth and the creation of more and better jobs, including through the reduction of poverty and inequality. On 27 May 2014, the Council of the Government of Costa Rica took the decision to establish the employment policy as a strategic institutional objective of the State of Costa Rica to combat poverty and inequality, and entrusted the MTSS with drawing up the policy.

In view of the above, we consider that there are insufficient reasons for placing the Republic of Costa Rica on the list of cases to be examined by the Committee.

It is also noteworthy in this case that the Committee of Experts has included comments on Conventions Nos 87 and 98, even though the issues are totally separate from employment promotion.

In this light, there is clearly no basis for extending the alleged violation of one Convention to other Conventions, particularly since, if there were issues relating to freedom of association, the right to organize and collective bargaining, they would merit special treatment, which has not been done in the present case.

As a result of the COVID-19 pandemic, which was experienced at the global level, it is evident that all countries in the world felt the impact on their economies, and consequently all countries are in the recovery phase. Nevertheless, we are sure that, in view of the efforts made by Costa Rica to give effect to the Convention, the unemployment curve will begin to diminish, to the benefit of the population.

Employer member, Honduras – The objective of this Convention is to ensure that Member States declare and pursue policies to promote decent employment with a view to meeting the needs of the labour force, in order to overcome the problems of unemployment and underemployment. Accordingly, in accordance with the requirements of the Convention, the Government has given priority to a public policy intended to develop an adequate ecosystem to facilitate the labour market integration of vulnerable people, based on a better matching of the demand for labour and the technical and vocational training of workers through the National Plan for Development and Public investment (2023–26).

It is very noteworthy that the Government has been found not to be in compliance with the Convention, when it has repeatedly provided full details in its reports of the efforts made and the various types of action that have been taken through the creation of instruments, policies, decrees and guides, among other measures, with priority being given to reducing the incidence of unemployment at the national level, remedying the gaps in vocational training and reducing informality. We therefore consider that the comments made by the Committee of Experts in its report lack coherence in their interpretation, as the Government



and the constituents have demonstrated the political will to take action for the adoption of appropriate reforms and standards in the SNE.

In light of the above, we are confident of the commitments and progress that has been prioritized by the Government in labour matters, and we therefore consider that, instead of being brought before the Committee, there should be recognition of the progress achieved by the Government within the context of the Convention. We remain firmly convinced that it will continue to take action to ensure the well-being and living standards of workers in Costa Rica, within the framework of the participatory processes and tripartite dialogue in the country.

Observer, Confederation of University Workers of the Americans (CONTUA) – It is not often that we deal with the case of Costa Rica in this Committee, as it is a country that has historically been in compliance with international labour standards, and in our region it has always been a reference in relation to the promotion of human rights. And yet, despite its history, in recent years there has been an enormous reversal of social protection in Costa Rica, and since the present Government took office, regressive measures have been adopted which are severely affecting workers. The most severe attack has been on public sector workers, who are to be covered by a new Act on public employment, which removes the benefits of all the collective labour agreements that have been concluded in the various State bodies, unifies administrative careers in a single scale managed unilaterally by the Ministry of Planning and freezes salaries in a single scale known as the global wage, which reduces the salaries of workers whose rates are above those set out in the central scale.

Years of collective bargaining and the development of professional careers, for example in the health and education sectors, have been removed at a stroke. This is no accident, as unionization in Costa Rica is essentially concentrated in the public services, and the Government is undertaking a strong campaign against trade unions and union members, which started with the absolute prohibition in certain cases, and abusive restrictions in others, of the exercise of the right to strike in public services, and is now continuing with the denial of collective bargaining. What is coming is frightening, with draft legislation to intensify the working day up to 12 hours, greater precarity of employment and the reduction in the cost of labour as much as possible. The projects and programmes announced here by the Government are isolated measures which are not getting through to the people. Dual education is precarious, without rights, wages or social security. Interventionism in collective industrial relations is seen clearly in the public universities. The Government is refusing to approve collective agreements. The Framework Act on public employment, combined with the Act on fiscal matters, is in violation of the independence of universities, a historic achievement by the people of Costa Rica and an essential bulwark in the defence of the social rule of law in the country.

Urgent action is needed by the ILO in Costa Rica to collaborate in good faith with employers and workers, who are desirous of defending decent work in all its dimensions, combined with respect for human, social, economic and cultural rights. We need to slow down the retrogression and work to recover the path of social dialogue and the principles set out in the Convention.

Government representative – It is important to reiterate in this second intervention in this session that, over the past five years, Costa Rica has made progress in the implementation of policies and programmes that seek to contribute to inclusive economic growth and the well-being of everyone, based on a human rights approach.



The reduction of economic, social, regional, gender and other gaps has been the objective of our active labour market policies, social protection policies and differentiated strategies for specific population groups. Their implementation and results have been influenced and conditioned by a context, as I indicated earlier, of the improvement of public finances and the COVID-19 pandemic.

I also wish to place special emphasis on the fact that the Committee of Experts has noted with interest the measures adopted by Costa Rica within the framework of other Conventions, including Convention No. 88, in relation to which it noted: “The Committee notes with interest the adoption of Decree No. 41776 [...] establishing the National Employment System (SNE) [...] to respond both to the dynamics of the labour market and to the needs of jobseekers or persons already in employment in order to retain their work or improve their conditions of work, giving priority to those in conditions of vulnerability.”

The Committee of Experts has also noted with interest the information provided by the Government in relation to Convention No. 111, emphasizing that “discrimination on the grounds of health status has been prohibited with the adoption of [...] the overall reform of the General Act on HIV/AIDS, which amends section 404 of the Labour Code”, as well as “affirmative action in support of persons of African descent, which establishes measures to promote access for the population of African descent to employment and education”.

Finally, it noted with interest “the numerous measures implemented with a view to facilitating the labour market integration of persons with disabilities” within the framework of action to give effect to Convention No. 159.

With reference to persons with disabilities, it should be noted that Executive Decree No. 41761 of 2019 created the National Commission for the Employability and Work of Persons with Disabilities (CNETPcD) as a body to influence national employability and entrepreneurship processes, through the adoption of technical and political strategies for the effective inclusion and retention of persons with disabilities in the public and private sectors.

The Commission is of tripartite composition, with representation of the Government, the productive sector and civil society, through organizations for persons with disabilities. During a sitting held on 30 May, the Biennial Work Plan of the Commission on labour market integration was unanimously approved. And now I also have to make reference to Act No. 8862, which reserves at least 5 per cent of vacancies in the centralized and decentralized public sector, as well as in public non-State bodies and public autonomous enterprises.

The MTSS, as the institution responsible for the constant and explicit follow-up of the Act, has deployed a strategic plan to accelerate action so that public institutions comply with the employment integration commitment in accordance with the procedures set out by law. At present, there are around 882 persons with disabilities who have entered the ranks of the public sector in Costa Rica through the reserved 5 per cent quota.

My colleagues in the Department for Equality of Opportunities for Persons with Disabilities (DIOPCD) of the National Social Security Department of the MTSS are leading at the institutional and interinstitutional levels the formulation of public policies for equal treatment and equality of opportunities for persons with disabilities in social and labour matters with a view to promoting their labour market inclusion, protecting their labour and human rights and promoting decent quality work for them.

I should refer to the support of the National Support Programme for Poverty and Social Mobility (PRONAMYPE), which from its origins was established as an executive arm for public policies to combat unemployment, which is one of the main sources of inequality in the world



of work. The Social Solidarity Economy Department of the MTSS manages this programme, which is an instrument to support individual and collaborative associative enterprises.

Its contribution to society is directed towards promoting social mobility through alternative sources of income for persons and their families through the creation of opportunities for the generation of self-employment through productive projects, also known as micro-initiatives.

I cannot fail to refer to other specific measures to ensure the elimination of discrimination in relation to women and employment, which it is essential to include in this review: (1) the special emphasis placed by the National Labour Inspection Department (DNI) on the subject of women's rights through the programme of inspections focusing on gender, which has led to the identification of different treatment and inequalities between women and men in the field of work in such areas as remuneration, sexual harassment, labour harassment, the segregation of occupations on the basis of traditional gender roles; (2) the increase in demand for the *Empléate* programme through its Strategic Alliance for Bilingualism, which has in most cases assisted women; and (3) the results achieved through the provision of the temporary unconditional subsidy in response to employment assignments as a result of the restrictions and the crisis caused by COVID-19, known as the *Bono Proteger* (protection voucher), of which 52.4 per cent of beneficiaries were women.

We are also working on the implementation in practice of the national agenda for paid domestic work, which will be an essential tool to combat informality and will particularly benefit migrant women, who are those who basically work in the domestic sector in Costa Rica. This is a requirement that we are currently addressing with ILO assistance.

All of the above is in harmony with the information provided previously and shows not only the existence of the political will and many good practices, which can all be improved, of course, but also that the Government retains the conviction to continue taking action to ensure the well-being and quality of life of workers in Costa Rica, within the framework of participatory process and dialogue with the social partners, without which it would undoubtedly not be possible to give effect to this Government action.

It is important for the Committee to understand the consistency and will of the State of Costa Rica to create the legal, administrative and investment conditions to raise the employability profile of the population, which has been and will continue to be our constant endeavour.

Similarly, the Government is determined and committed to creating the macroeconomic conditions, as I indicated previously, for national and international investment capital to find the best environment possible in a region that is constantly becoming more competitive and in an environment with very serious migration challenges.

In this regard, we welcome the opportunity to explain in this Committee some of the action that we are taking and that Costa Rica is desirous of extending and harmonizing relations with all parties with a view to continuing the tradition in Costa Rica of sincere tripartite dialogue with the objective of achieving better living standards for our population.

Chairperson – Thank you Vice-Minister and your delegation for participating in the work of the Committee, and of course we take note of the commitment of the Government in staying engaged with the Committee, as well as the social partners.

Worker members – We thank the Government for its comments, and we also thank all the other speakers for their interventions.



We wish to recall, in the first place, that the list of cases examined by this Committee is a result of consensus between Employers and Workers, and that Costa Rica has therefore correctly been included in the list of cases to be examined by the Committee. As we indicated in our first intervention, Costa Rica continues to suffer from very high levels of poverty and unemployment. Despite the arguments made in favour of economic growth and development, as in many countries in our region, we find that in Costa Rica a considerable proportion of the population continues to be marginalized and denied opportunities for stable employment. For this reason, this is not a case of progress.

In light of these considerations, Costa Rica must review its policies and programmes with a view to promoting investment in the creation of decent, stable and lasting employment and in reducing poverty. Moreover, taking into account the characteristics and composition of employment in the country, it is clear that specific measures need to be adopted to open up channels for the formalization of the informal economy, in accordance with Convention No. 122 and Recommendation No. 204. In the context of the post-pandemic recovery, employment policies must address in particular the needs of workers who were or are still severely affected by the pandemic and its consequences. Employment policies must be comprehensive, as isolated programmes and measures that do not reach people are ineffective and insufficient. Employment policies need to address the major inequalities on the labour market which have a major effect on women, as we have explained in detail. Greater efforts are needed to achieve greater equality of opportunity in terms of access to employment, as well as equality of treatment in conditions of work. All of these measures will have to be supported by a robust system for the collection and analysis of statistical data, especially on the situation and current trends of the active population, employment, unemployment and underemployment throughout the country. The Government must repeal the Act to strengthen public finances and the Framework Act on public employment, as neither of them are in compliance with the requirements of Convention No. 122, nor with those of Conventions Nos 87 and 98. Costa Rica needs to re-establish, at the basic level, all the social dialogue procedures and embark upon effective and genuine consultations with the social partners, particularly to discuss any legislation that has an impact on employment generation. Tripartite processes must be activated at the national level. In view of the above, for all the reasons given by the Worker members, Costa Rica is not a case of progress. Finally, we call on the Government to accept a direct contacts mission.

Employer members – We thank the Government for the further information and clarifications provided, as well as for the contributions from all those who took part in the discussion. As Employer members, it is for us to recall that, in definitive, as a consequence of the effects of the COVID-19 pandemic, we are all faced with the task, governments, employers, workers, each from their position and in accordance with their views, of seeking the adoption of policies and strategies for the recovery of the economies of each country, and as a consequence, the sources of employment that have been substantially affected throughout the world.

The concern that we have outlined must not only respond to the needs and real situation in each country, but must also take into consideration aspects that are also essential, such as: the formalization of employment; the inclusion of young persons in sources of work; gender equity in the application of these policies; the generation of channels and alternatives for technical and vocational skills; the reduction of wage gaps; non-discrimination; the labour market integration of persons with disabilities; and the promotion, insofar as possible, of what in this Organization are described as green jobs. These are all objectives that are not easy to achieve, but they must provide the motivation for all of us;



they are aspects that have been considered by all the partners in Costa Rica, and on which there is full predisposition among employers in the country. While we have heard the concerns of the Workers regarding the manner in which other Conventions are applied, it is important to focus our efforts and to limit the discussion to the Convention that is under examination here, that is Convention No. 122, in respect of which it has been seen that there has been significant progress in Costa Rica through the many programmes that have been developed and which, as with everything, can of course be improved and updated as a function of the social situation in the country. Within this framework, with a view to avoiding unnecessary susceptibilities, and so that the progress made in terms of laws and regulations, and the reasons for the action taken, which have also been described today, it is of vital importance for there to be adequate discussion with all the partners on employment plans and policies. Appropriate information must be provided to both workers' and employers' organizations so that, through social dialogue, everyone can contribute to this effort through their experience, views and interests, in accordance with Article 3 of the Convention, which precisely seeks a dynamic of collaboration.

In light of the above, having noted the explanations provided by the Government during this meeting and, as indicated and reiterated, recalling that it has employment policies, the Employer members recommend the Government: first, to intensify efforts to improve the process of dialogue and information for all actors on the employment policies and programmes that are being developed and those that may be developed in future, all within the framework of the Convention, ensuring the continuity of tripartite social dialogue, which has been undertaken as the principal means of resolving the employment problems of the country; and, second, to avail itself of the technical support that it is already receiving from the ILO, which is nothing new for Costa Rica, for certain programmes, with a view to improving the process described above, and to update information on the results achieved through the implementation of its employment plans and programmes.

The Committee's conclusions

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

The Committee regretted that the Government had failed to establish and implement a comprehensive national policy designed to promote full, productive and freely chosen employment in full consultation with the social partners.

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

- **adopt a comprehensive national employment policy to promote the creation of full, productive and freely chosen employment opportunities in line with the Convention;**
- **intensify efforts to strengthen social dialogue and include the social partners on the initiatives already developed as well as those that may be implemented in the future, notably on employment policies and programmes, incorporation of young people in the labour market as well as promotion of gender equality and equal opportunities in access to employment;**
- **provide information on the impact of the measures adopted to achieve the objectives of the Convention, including those adopted under the National Strategy for Employment and Productive Development (ENDEP) and the Bicentennial National Development and Public Investment Plan (PNDIP) 2019–22;**



- take measures to ensure that the Act on strengthening public finances fully complies with the Convention and does not infringe on fundamental principles and rights at work;
- indicate the manner in which representatives of workers' and employers' organizations have been consulted, as well as representatives of the parties involved in the design, development, implementation, monitoring and revision of the active labour market measures adopted, including the Act on strengthening public finances;
- ensure tripartite consultation on the development of employment policies and programmes by creating a national tripartite council.

The Committee requests the Government to provide the Committee of Experts with full and complete information on the above issues before 1 September 2023.

Government representative – The conclusions read out today in this room for the case of Costa Rica tarnish the work of this Committee. It is a matter of concern that they demonstrate a lack of objective and rigorous analysis of the full information provided.

The conclusions request information on old employment initiatives, from five years ago. With this inexplicable slippage in time, they disregard and ignore the current situation on the labour market, as well as all of the action duly reported to this Committee and described in this room.

What is missing is a technical examination based on in-depth reflection into the essence of the provisions of Convention No. 122, but which has gone beyond that scope by including aspects such as the Act on the strengthening of public finances. As a consequence, and this Committee should note, there is a danger of legal insecurity, which is a risk for an effective culture of compliance.

Nevertheless, Costa Rica wishes to confirm once again its firm and determined commitment to taking all available public policy action for employment for all persons, and particularly to promote national development through constructive and good faith dialogue guided by democratic principles.



El Salvador (ratification: 1995)

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

Discussion by the Committee

Government representative (Minister of Labour and Social Welfare) – From El Salvador, I send a fraternal greeting of solidarity to the whole of the working class throughout the world. As a founder country, we respect the ILO's international Conventions and its supervisory mechanisms, such as the present Committee. We are convinced of the fundamental role that they play in achieving decent work and the construction of peace in the world.

Nevertheless, I wish to express my concern, disquiet and indignation that this supervisory body is being used today for political reasons. We are one of the Governments invited to provide information to the Committee, following negotiations with little transparency, imbued with misgivings and secrecy, far distant from the values promoted by

this institution, in practices that call into question the leadership of the ILO, its honour, credibility and the transparency of its supervisory mechanisms.

It is strange that many of the cases of serious violations of labour rights are not even aired in this forum, and it raises the question of whether this is in response to the political or geopolitical manipulation of cases. Those who negotiate the cases need to search their consciences that, while they are engaging in political attacks on countries such as ours, in other latitudes there are trade unionists who are being murdered, tortured and silenced for defending their rights or those of the great majority of persons.

May I make some reflections on the working methods of the Committee. It is to be supposed that the selection of cases corresponds to criteria of geographical balance and the seriousness of the cases.

With regard to geographical balance, the Central American subregion represents fewer than 1 per cent of the world population, but has 17 per cent of the cases under discussion. Demonstrating a clear lack of proportion, it would appear that the majority of the problems of the world are in this small subregion.

In relation to the seriousness of the situation, why are certain countries included in which there are violations of fundamental Conventions, where there is abundant evidence of the damage that is being wrought, not only against labour and union rights, but also against human rights, through labour exploitation, forced labour, child labour, discrimination, the murder of trade union leaders, unjustified detentions, among other practices. It should be noted in passing that these countries are not even included in the first negotiations or the final negotiation.

Why are countries not included where there has been a disproportionate use of the police to put down workers' protests against labour reforms implemented without consultation?

On the other hand, we see countries with controversial cases relating to the violation of labour rights in which there have even been attempts to corrupt some of the leadership of the workers at the global level in order to obtain favourable opinions and to clean their image at the international level.

We see countries with cases of serious violations of the rights of indigenous peoples, which have not been called upon to answer for their acts as a result of their lobbying power, for which we are used as petty change in the negotiation process. And there is a hegemonic country, in which there are serious and well-known discriminatory acts and the violation of the rights of migrant workers, and yet it is a country that we have never yet seen called upon to answer for its acts, and it is certainly one of the major sources of financing for the Organization.

We would not like to think that the proportion of financial contributions could be an excuse for not being called upon for examination, while countries with lower economic potential are more likely to be selected in this group. For this reason, the negotiation of the list of cases has to be carried out transparently.

We would feel proud as a country to come before this Committee and present our situation, and to provide any reports deemed appropriate to all the Organization's supervisory mechanisms, if the serious violations of fundamental Conventions were resolved in these major economic powers.



El Salvador is a small country with an honourable people which is redefining its future under the leadership of President Nayib Bukele. We have begun rebuilding our dignity, and this involves seeking our own identity and determination, without interference by other Governments. This creates resentment and discomfort in one of the most powerful States, which for many years determined the direction taken by our country.

In order to make progress in El Salvador, we have had to free ourselves from the power structures which were dominating our society, and these structures have lost their power of influence, which means that they are fighting to recuperate the privileges from which they benefited for decades.

Our Government has taken the firm decision to protect the lives of people, courageously standing up to criminality, one of the main problems which most afflicted our society. A security plan has been implemented which has had outstanding success, based on two priorities. On the one hand, the criminal and terrorist organizations which for decades brought pain and grief to our families have been neutralized and, on the other, investments are being made in education, health, the prevention of violence and the construction of a culture of peace.

As with any public policy there are winners and losers, and what we need to seek is the maximum social benefits for the great majority. And there are two types of reactions to this. On the one hand, there is broad and generalized support by the population which now has time to breathe and to hope, while, on the other, there is a small group who consider that the measures adopted are not sound. They mainly consist of those for whom insecurity was a business. And during these debates, what is clear is that we are rescuing generations of boys and girls from the claws of delinquency, and now they no longer dream of being a member of a gang, but of being a doctor, engineer, architect or teacher.

This opportunity to dream of a better future is something that we have long craved. The economic and social measures adopted by right-wing governments, in which the cabinet members came from the National Business Association (ANEP), left the country drowning in despair, poverty and exclusion. All while they profited and became rich.

I wish to emphasize that we are continuing to promote tripartite social dialogue in our country, for which reason we have institutionalized the National Prize for Decent Work and the Prize for Collective Bargaining, which seek to recognize good practices by enterprises in compliance with the national and international legal framework governing labour matters, and to promote good relations between workers and employers.

I wish to emphasize that, in accordance with the conclusions of this Committee, the Higher Labour Council (CST) was set up in 2021 and has held meetings, including more frequently than required by its rules. The operation of the CST was noted by the high-level tripartite mission that visited El Salvador, with broad participation by all the social partners. The mission was invited and accepted in the plenary of the CST.

Moreover, in accordance with the conclusions of the high-level mission and the conclusions of this Committee, the Government has submitted various Conventions, Protocols, Recommendations and reports for consultation with the CST.

In a paper issued on 19 May 2022, three international ILO Conventions and seven Recommendations were submitted to the CST for tripartite consultation.



In a paper issued on 1 September 2022, 17 ILO Conventions and one Protocol were submitted to the CST for tripartite consultation. In a paper issued on 13 March 2023, 13 reports on ILO Conventions were submitted to the CST for tripartite consultation.

All of these consultations were carried out with workers' and employers' representatives, and in the latter case through the President of the ANEP, Agustín Martínez, in his capacity as Vice-President of the CST. It should be emphasized that up to now there has been no response from the ANEP, although replies have been received from the workers. Due to the lack of a response from the ANEP, it has not been possible to make progress in the process of the ratification of other more important Conventions and to advance on other subjects.

Last year this Committee indicated in its conclusions, surprisingly and at the bidding of the ANEP, that it "regretted" that five ILO Conventions had been ratified without consulting the most representative employers' organization. As a result, we proceeded to consult the ANEP on international labour standards, but we have not received any reply to the communications sent up to now. This is clear evidence that the ANEP is not seeking to be consulted or is not interested in tripartite social dialogue.

It is well demonstrated that its motives are eminently political so as to be able to play the role of victim in this forum, making use of this supervisory mechanism for its own ends.

Nevertheless, these consultation processes bear witness to the intense activity of the CST as a consultation body on international labour standards. All of the above has been indicated to the corresponding ILO bodies, but in addition we have today provided physical documents to this Committee in support of the indications provided above.

Moreover, the Government is open to hearing proposals from the social partners, just as it has been requested by workers' representatives to submit a series of proposals on labour issues, which have been heeded with the establishment of a dialogue forum in which workers presented their projects, such as the increase in the minimum wage, the ratification of Conventions and proposals for the reform of the Labour Code, including on matters such as the extension of the validity of trade union credentials, on which we are working together.

The ANEP complains repeatedly of not being recognized, which is unfounded, as its President is the Vice-President of the CST representing employers. Employers are also represented on the bipartite and tripartite bodies in the country, and it is paradoxical that the ANEP has objected to bipartite bodies becoming tripartite, for which reason we do not understand the coherence of its complaint to this supervisory body.

Furthermore, within the framework of tripartite social dialogue, I can report that, as part of the commitments made by the State to improving the dignity of the working class, a new Act has been adopted on pensions, offering equity and justice to workers, which involved withdrawing certain privileges accorded to major entrepreneurs, which were costly for workers. The Act created a forum in the El Salvador Pensions Institute with tripartite composition (Government, workers and employers) for the administration and management of decisions in relation to the social insurance system in El Salvador, as a mechanism that had long been denied to all the social partners.

I wish to recall that the objective of the Convention, as indicated in Article 2(1), is that each Member of the ILO which ratifies the Convention undertakes to operate procedures which ensure effective consultations, with respect to matters concerning the activities of the ILO, between representatives of the Government, employers and workers.



Moreover, these matters are set out and defined clearly in Article 5(1) of the Convention, and include: (a) the agenda of the International Labour Conference; (b) the submission of ILO Conventions and Recommendations; (c) the re-examination of unratified Conventions; (d) the submission of reports on Conventions; and (e) the denunciation of ratified Conventions.

In the specific light of the Convention, and reviewing the recommendations made by the Committee last year, in which it called on El Salvador to repeal 23 legislative decrees, I raise the question of the legal basis for establishing such a conclusion, the provisions of the Convention that establish such power, and the methods of work of the Committee which require the repeal of national laws. We believe that this conclusion runs counter to the principles of non-interference, autonomy and the free determination of countries.

As I come almost to the end of my intervention, I reiterate my call to the leaders of the ILO to seek transparency and maintain these supervisory mechanisms outside the reach of political influences. The workers of the world must be protected and these mechanisms have been created for this purpose, for which reason it is necessary to engage in a process of profound reflection.

Finally, I reaffirm that our commitment to the values and principles of the ILO is unshakeable and we will continue working resolutely to strengthen tripartite social dialogue and decent work in El Salvador.

Worker members – This is the eighth consecutive occasion on which we have examined the case of El Salvador in the Committee, and the sixth consecutive time for the application of Convention No. 144. At the last session, we noted some progress made by the Government. We welcomed the fact that the CST had started operating again after many years of paralysis.

Moreover, we noted the ratification of various ILO Conventions which have entered into force this June in response to demands by our fraternal unions in El Salvador. We welcome the clarification by the Government that the social partners were consulted before the ratification of the Conventions.

The Government also accepted the visit of a high-level tripartite mission in May 2022. The mission made important recommendations, which had received tripartite agreement. Despite these undoubted steps forward, we cannot fail to indicate, as we did last year, that there remain certain challenges in relation to the application of the Convention.

First, we must repeat the indications that we have made on other occasions that legal obstacles persist which prevent trade unions from participating in tripartite bodies and even from freely exercising their rights to freedom of association and collective bargaining. In particular, these include the obligation set out in the Labour Code which requires workers' organizations to renew the composition of their executive bodies every 12 months. This requirement constitutes a form of interference in the operation of trade unions. It should be recalled that Article 3 of the Convention provides that representatives shall be freely chosen and that the public authorities shall refrain from any interference which restricts or impedes the legitimate exercise of this right. As indicated by the Committee of Experts, the Government must adopt the necessary measures without delay to repeal the legal requirement for trade unions to request the renewal of their legal status every 12 months.

Moreover, we have been informed that the Government has recently introduced the payment of fees for the alleged services provided by the Ministry of Labour, including the provision of credentials to unions. This measure amounts to an additional obstacle in a process that was already in itself very onerous.



We also note that for organizations representing employers the period of renewal of their credentials is more reasonable, as it is a period of over two years.

We take careful note that the Government claims to have initiated a process of reflection to propose reforms to the Labour Code with a view to facilitating and accelerating procedures for the provision of credentials.

We also note the decision by the Ministry of Labour to establish a Trade Union Office in the General Directorate of Labour with a view to the provision of legal assistance to trade union representatives. We urge the Government to guarantee that this measure makes a specific contribution to full compliance with the Convention.

However, this latter measure is not a solution to the problem and therefore we are bound once again to urge the Government to repeal this legal requirement so as to be in full compliance with the provisions of the Convention.

We previously recognized the positive steps taken by the Government to restore the operation of the CST. However, we hear that the plenary of the CST has not met since the conclusions were adopted by this Committee last year and that there have not been meetings of its executive board since then.

This is a worrying indication, as the tripartite consultation promoted by the CST will ensure a more balanced approach to the decisions taken by the Government by taking into consideration the interests and concerns of all the parties involved.

In particular, the CST plays an essential role in the implementation of the recommendations of both the tripartite mission undertaken in 2022 and the conclusions adopted by this Committee.

One of these points is precisely the formulation and development of a road map agreed with the social partners for the application of all the recommendations made by the tripartite mission.

Finally, the Government must cease all acts of harassment, interference and hostility towards workers' and employers' organizations. The role of the Government is to facilitate and provide a platform for effective dialogue between the social partners, without exercising undue influence or control over their participation.

All of these considerations imply that, despite the significant progress achieved and assessed in the report, the Government is still not in full compliance with the requirements of the Convention.

Employer members – I wish to thank the Minister for the information provided to the Committee today, although we have to say that we do not agree with the content of several of his comments.

We regret today that the Employer delegate of the ANEP is not accredited to this Committee, by virtue of the decisions taken by the Government, and that therefore he will be in this gathering as a representative of the International Organisation of Employers (IOE).

I would therefore like to start by referring to this case, which involves Convention No. 144, and to emphasize our concern as employers' representatives that it is the sixth successive occasion on which the same matter has arisen in relation to an issue which fundamentally remains practically the same and which, moreover, has deteriorated in certain respects.



We recall with concern that the Committee of Experts has been making comments since 2013, only interrupted in 2020, along the same lines on the grounds of the failure of El Salvador to comply with Convention No. 144 in law and practice, despite the fact that it is a governance Convention that is highly relevant to the ILO, and that it is continuing to fail to give effect to it in view of the erratic use of the CST, Government interference in the administration and operation of the ANEP, which is the most representative organization of employers, attacks against its representatives and serious deficiencies in the functioning of social dialogue and tripartite consultation, as well as delays in issuing credentials for members of workers' organizations.

I will now provide specific information as evidence. The failure to comply with the Convention is very serious in the view of the Employers' group, particularly in light of its links with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which is fundamental for this Organization. That is why we qualify this case as serious and urgent.

First, the reactivation and functioning of the CST and deficiencies in tripartite consultations. In the first place, we recall that the CST was established on a temporary basis in 2019, but more as a symbol than for any other purpose, as we saw last year. Subsequently, following the interruption for the pandemic and the post-pandemic, the Government once again re-established the CST in December 2021. The information provided by the Government suggests that progress is being made in social dialogue with the election of the representatives of workers, employers and the Government. The Government adds that the CST has since held five meetings, and ten of its executive board (which has met more frequently than set out in the rules), which served for the development of a tripartite strategy for the creation of decent work and benefited from the technical assistance of the ILO Regional Office.

However, it should be emphasized that the ILO undertook a direct contacts mission in May 2022. Although the mission noted that the CST had started to operate once again, both the ITUC and the IOE indicate anomalies in its operation which are not in compliance with the terms of the Convention. For example, following the end of the ILO mission, the CST has not met again. The only session that was convened did not have the necessary quorum as the President did not attend, nor the deputy. Furthermore, the Government made the commitment to the mission to hold consultations in the CST on the ratification of five Conventions, which did not happen.

This is having consequences for the processes of labour law reform in El Salvador, as neither the CST nor the social partners are being consulted. Proof of this is provided by the fact that, prior to the approval in two weeks of five ILO Conventions submitted to the National Assembly in May 2022, no consultations were held with the ANEP as the most representative employers' organization, thereby showing clear disdain for social dialogue and tripartite consultation and being in violation of both national law and the provisions of the Convention. This was documented when we examined the case last year.

Although there is no question concerning the sovereign will of the Legislative Assembly of El Salvador, we consider it to be very serious that the Government disdains Article 5 of the Convention, without prejudice to the fact that appropriate compliance with treaties can only be achieved when exhaustive analyses have been undertaken of the implications in law and practice of the transposition of an international standard into internal law, on the basis of consultation with the most representative groups of employers and workers.



With reference to the road map that this Committee called for last year, we note that the CST has not met on this subject, nor has there been any consultation on the tripartite formulation of responses for the application of the recommendations made by the mission.

Second, Government interference. Since the IOE indicated that Government interference is continuing through the harassment of the ANEP and its member associations, on every occasion that representatives have to be elected for any institution, reference is made in the observation to the case of the El Salvador Vocational Training Institute (INSAFORP) as an example of interference and weakening, as well as a series of other examples in which employers' representatives have not been elected: the Maritime Port Authority (AMP), the International Centre for Fairs and Conventions (CIFCO); the Independent Executive Committee for Ports (CAPA); the Salvadorean Tourism Corporation (CORSATUR); the Salvadorean Environmental Fund (FONAES) and the National Fund for Public Housing (FONAVIPO).

Between April and July 2022, the Government proceeded to the election of employers' representatives on the National Minimum Wage Council, for which the organizations affiliated to the ANEP put forward candidates. However, over four months following the elections, those elected have not taken their oaths.

The Government claims that it is working in a harmonious, professional and technical tripartite manner. Nevertheless, the case of the greatest and most serious interference has been the reform of 23 laws, under which employers' representatives no longer elect their representatives to the executive boards of the 23 tripartite and joint bodies covered by these laws. This power has been transferred to the President of the Republic, who not only elects employers' representatives, but also has the discretionary and arbitrary power to remove employers' directors from the executive boards of these 23 institutions.

Finally, I wish to indicate that the Ministry of Labour recently announced that it would not be inviting the ANEP to the Conference on the grounds that the ANEP had worked to have El Salvador included on the short list for this Committee. This cannot be left to the arbitrary decision of the Government, as it is an obligation assumed by the State as a Member of this Organization and through ratification of the Convention. Moreover, the situation has also been used to create pressure on certain employer delegates to leave the ANEP umbrella organization.

This situation that we are denouncing is extremely serious and, in addition to being in violation of the Convention, is also in violation of Convention No. 87, as explained.

Finally, we share the observations made by workers' representatives concerning the obstacles faced by trade union members, authorities and federations in obtaining the credentials required every year in an appropriate and flexible manner, which also amounts to undue interference in trade union activities in El Salvador.

Worker member, El Salvador – I wish to refer to freedom of association in the country where, although there are clearly significant challenges, we now have a forum for the strengthening of the trade union movement, the promotion of collective bargaining and decent work, and to reduce the stigmatization of trade unions, which has been inherited from right-wing governments.

With reference to tripartite consultation, I wish to indicate that, as representatives of workers, we are fully represented on tripartite bodies, and we have elected our representatives without interference by the State, as we have asserted our independence



and autonomy. We have won spaces for dialogue and we have been heard in relation to the development of public policies that are of benefit to our people.

For example, the recent pension reform took into consideration the proposals made by workers, and a new tripartite body has been created in the El Salvador Pensions Institute for the governance of the social insurance system with the participation of workers and employers, in accordance with the Social Security (Minimum Standards) Convention, 1952 (No. 102), which has recently been ratified. In the past, workers did not have access to influencing the administration of pensions, which was the exclusive domain of private enterprise.

Over the past three years, the trade union movement has grown by 65 new unions and four workers' federations. Moreover, 58 collective contracts have been concluded, 35 in the private sector, 11 in autonomous institutions and 12 in the public sector.

We also recognize that progress has been made in reducing the delay in issuing credentials, and many unions have made use of the advice provided by the trade union office which was created in 2022 in the Ministry of Labour, substantially reducing the waiting time to obtain our credentials.

As a trade union movement, we have made a series of proposals to the Government on labour matters. Through the establishment of technical committees in the Ministry of Labour, these proposals are aimed at increasing the minimum wage, the ratification of Conventions, unemployment insurance and the reform of the Labour Code, in which we have called for the validity of trade union credentials to be extended to three years. This would undoubtedly amount to substantive progress, and we therefore call on the Government to forward this reform to the national Congress as soon as possible.

As workers' representatives, we have also participated actively in the CST, both in the meetings that have been held, and in the consultation processes that have been undertaken with our representatives in relation to the submission of Conventions and the preparation of reports on Conventions, which we have reviewed and discussed, and provided comments and proposals through the worker Vice-President of the CST.

Certain organizations have claimed today that freedom of association does not exist in El Salvador. It should be recalled that, for many years, under the right-wing governments, the trade union movement was attacked, reduced and stigmatized. They privatized the national bank, the pensions system, telecommunications, energy distribution, and they banded together with gangs and criminal groups and did many other things that they shared, and never engaged in tripartite consultation on any of them.

They even attempted to privatize health and education, and the only things that prevented such privatization were the marches and the struggle by the authentic trade union movement, in the face of repression and violence by the Government of the time, in which many trade union companions lost their lives.

As a representative of trade unions, I wish to give my assessment of the ANEP, the institution that made the complaint to this Committee. My country was for decades sullied and corrupted by the power structures, which took over the State and its institutions for their own benefit. These power structures were always in line with the ANEP.

(Point of order.)

Employer members – I believe that the intervention that is being made is going beyond the objective of today's discussion and is outside the limits of our dialogue, particular as it



has identified, commented upon and described an organization using its name, which is not what we came here to discuss today. I therefore call for the discussion to be brought back to the purpose of our meeting and, of course, that any reference identifying the employers' organization in question is removed from the record.

Worker member, El Salvador – It was such that it was a political platform to put forward presidential candidates and, as is public knowledge, one of the former Presidents is now imprisoned for serious crimes of corruption and embezzlement of the State. It is for this reason that, as workers, we view with indignation the hypocritical attitude of claiming to be the victim of a system when for years they have harmed the rights of millions of workers.

For 20 years, the ANEP governed through its political party, ARENA. At that time, the ILO did not register problems of tripartite social dialogue in El Salvador, not because there was genuine tripartite social dialogue, but because it was the ANEP that decided everything and because it corrupted false trade union representatives, offering them privileges provided that supported its interests, without concern for the burden visited upon the working class. It should be added in passing that some of the false trade unionists have been engaged in extortion against enterprises and continue to defend the ANEP, including within these walls.

It is for that reason that, in view of the loss of these privileges, they are making use of the ILO supervisory mechanisms to raise issues that are solely political, under the false argument of social dialogue and democracy. And they never engaged in dialogue, they just imposed their will.

Now that they cannot impose anything, and have lost the role of telling the Government what it has to do, they consider themselves to be injured and prejudiced. During their governments, when they were repressing and killing trade unionists, when they adopted hundreds of laws for their own benefit without consultation, they never came to the ILO with complaints, and they even blocked the access of the genuine trade union movement to the mechanisms of the Organization.

They are including the country in the list of individual cases for a subject on which progress is being made at the national level, while our brother trade unionists in other countries are harassed, murdered and disappeared. We believe that those are the cases that should be discussed in this Committee. In this regard, I also wish to refer to the manner in which the countries are chosen which are called before the Committee.

It appears to me that there is a lack of transparency in the process of negotiation and that to ensure objectivity and impartiality in the decisions taken by the Committee it is necessary for the representatives of each country to participate, because the views of the genuine representatives of workers have not been taken into account. Moreover, the meetings are not even public, and it is not known where and when negotiations are held on the countries included on the short list. We cannot deny that there are interests of powerful countries, which are making use of these procedures as mechanisms for exerting geopolitical pressure, as is the case of the imperial power.

We have many challenges to face in our country, which we have to confront, and the trade union movement in El Salvador is committed to making progress towards a society that is more just and equitable.

Third, we welcome the fact that there is freedom of enterprise in the country, with the promotion of private investment, which can be seen in the large number of new enterprises created, which is a fundamental pillar for the generation of decent employment and national development.



However, we regret the scarce recognition given to the information provided by the genuine trade union movement in the country, and instead the opinions of a minuscule group of pseudo-trade unionists who are still linked to the ANEP are taken as the general view.

Finally, we call on the Government not to take a backwards step in the public policies that are being implemented, not to give in to ANEP pressure, which would be tantamount to reducing the influence of the authentic and genuine trade union movement, and not to go back on the protection policies for millions of workers in El Salvador.

(Point of order.)

Employer members – I wish to record that the Employers totally reject anything said that involves any assessment of the ANEP as being outside the mandate of the Committee and we therefore want any reference made to the ANEP by the speaker to be kept out of the record. We came here with an objective on the agenda which is to discuss compliance, or possibly the lack of compliance with the Convention, and we are open and ready to enter into dialogue in this respect. We also call for effect to be given to the demand made by the Employers' group.

Government member, Sweden – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The candidate countries **Bosnia and Herzegovina, North Macedonia, Republic of Moldova, Montenegro** and **Serbia**, and the European Free Trade Association (EFTA) country, **Norway**, Member of the European Economic Area (EEA), align themselves with this statement.

The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights. We actively promote the universal ratification and implementation of the fundamental international labour standards. We support the ILO in its indispensable role to develop, promote and supervise the effective implementation of ratified international labour standards and of fundamental Conventions in particular. We firmly believe that compliance with ILO Conventions is essential for social and economic stability and that an environment conducive to dialogue, consultation and trust between employers, workers and governments is the basis for solid and sustainable growth and inclusive societies.

The EU and its Member States stand with the people of El Salvador and we are committed to strengthening our cooperation through political and trade ties as well as our important cooperation portfolio. The EU-Central America Political Dialogue and Cooperation Agreement (PDCA) and the provisional application of the trade pillar of the EU-Central America Association Agreement provide a framework for further developing our partnership, including through cooperation on trade, sustainable development and the effective implementation, in law and practice, of the fundamental ILO Conventions. Furthermore, we are currently discussing the establishment of a Memorandum of Understanding on Bilateral Consultations that will allow for intensifying our bilateral engagement and dialogue with El Salvador.

Last year, the EU welcomed the steps taken by the Government towards compliance with the Convention, including the re-establishment of the Higher Labour Council for the biennium 2021–2023 and the creation of a tripartite technical commission to operationalize the Council agenda. However, we take note with concern of the ITUC and IOE observations regarding the complexity of the current administrative process for designating employers' and workers' representatives, the numbers of empty seats on the body hindering the



representativeness of the Higher Labour Council, the legal obstacles and complex process of appointment and the inactivity of the Council itself.

We are deeply concerned by the human rights' situation in the country, not least by the new allegations of acts of interference and harassment against and marginalization of activities of employers' and workers' organizations, including on social networks. We regret that 23 decrees adopted in 2021 prevent employers' organizations from electing their representatives in 23 tripartite and joint bodies and we call on the Government to repeal them. The obligation on trade unions to request renewal of their legal status every 12 months should also be repealed.

We sadly take note of the steps backwards that have been taken with regard to the expectations of past years, namely that social dialogue and tripartite consultations would become fully functional in the country. We note that the case has already been discussed at the last five sessions of the Committee, including as a serious case in 2017.

We urge the Government to take the necessary measures to ensure the effective and immediate operation of the Higher Labour Council and other tripartite entities, respecting the independence of the social partners, including in the appointment of their representatives.

We reiterate the Committee of Experts' call urging the Government to fully respect the autonomy of the employers' and workers' organizations, both in law and in practice. We call on the Government to implement essential measures to ensure without delay the repeal of any legal provisions that allow for any interference in the autonomy of these organizations, in conformity with the instruments ratified by the country. This also includes that the Government takes the necessary measures to guarantee the prompt delivery of credentials for all organizations.

We echo the Committee of Experts' urgent call for the Government to provide detailed and updated information on the content and outcome of tripartite consultations, including within the Higher Labour Council. We expect the Government to comply with these reporting obligations.

We recall the importance of ILO technical assistance in facilitating compliance with all ratified ILO Conventions and the promotion of tripartism. We also emphasize that the extent and content of such assistance should be defined through social dialogue, for example within the framework of the Higher Labour Council.

We expect to see progress in achieving full and sustained compliance with the Convention as soon as possible, given the long-standing issues and the crucial importance of well-functioning social dialogue. In this regard, we recall that the Government should elaborate, in a tripartite manner, a road map to implement, without delay, the recommendations formulated by the ILO high-level tripartite mission, as requested by this Committee last year.

The EU and its Member States remain committed to joint constructive engagement with El Salvador with the aim of strengthening the Government's capacity to address the issues raised in the Committee of Experts' report.

(Point of order.)

Government representative – I believe that this is the best way for all those present to be able to have the opportunity of putting forward their views. It is precisely the action that has just been taken by the employers' representative, which is the essence, as illustrated on



this occasion, of not wishing to allow freedom of expression by the genuine working class. I only ask that everyone can intervene in a normal and calm environment, that we let everything proceed normally with the meeting and that we allow the free participation of all representatives.

Government member, Colombia, speaking on behalf of a substantial majority of countries of Latin America and the Caribbean – We appreciate the hindsight offered by the Government, through the Minister of Labour and Social Welfare, Rolando Castro, concerning compliance with the Convention.

We have been informed of the significant progress made in El Salvador in promoting tripartite social dialogue. As provided in section 11 of the Statute of the CST, it has to meet at least twice a year in ordinary plenary session and each occasion that it is convened by the President or upon the application of one of the Vice-Presidents, who in this case are the social partners.

In 2022, as indicated by the Government, the CST held five meetings, during which important subjects were discussed, such as the Act on growing together for the comprehensive protection of infants, children and young persons, which was submitted for discussion in the CST and received proposals from both workers and employers, and finally entered into force in January 2023.

A tripartite technical committee was set up for the examination of the Bill and the formulation in consultation of the National Strategy for the Generation of Decent Employment. We note the Government's indication that the committee was also given the task of following up the submission of international Conventions, Protocols and Recommendation, and accordingly, as required in the submission process, three ILO Conventions and seven Recommendations were submitted for consultation.

We note that in May 2022 a high-level tripartite mission chaired by the Mexican delegation visited El Salvador and was able to verify the functioning of this body. It is also important to emphasize that legally constituted tripartite institutions in El Salvador are in operation and meet regularly, which is an illustration of respect for tripartite social dialogue.

All of this is in contrast with the inclusion of El Salvador once again in the list of 24 countries called upon to provide information to the Committee. We therefore welcome the commitment of the Government to the application of the Convention and we encourage the ILO to continue providing technical cooperation to the Government and to all the tripartite constituents.

Employer member, Colombia – In the first place, it is important to bear in mind that this is the sixth time that the application of the Convention has been examined by the Committee. In 2022, the Committee adopted a series of conclusions, although regrettably the Government has not given effect to any of them. In this regard, I wish to refer to two fundamental aspects of the case.

In Article 2, the Convention refers to the commitment to hold effective consultations and is based on the principle of social dialogue, which is an essential tool for the development of joint proposals by workers, employers and the Government with a view to promoting growth, peace and general well-being.

It is therefore a matter of concern that, despite these reiterated calls by the ILO supervisory mechanisms, the CST has continued to be inactive since May 2022, thereby denying tripartite social dialogue with the most representative organizations.



We reiterate that it is of the greatest importance for consultations to be held in good faith and trust and for employers and workers to be allowed to express their views, analysis and proposals with a view to achieving genuine consensus and making progress in seeking improvements in industrial relations through social dialogue.

Secondly, with reference workers' and employers' representatives, it is necessary to recall that they have to be elected freely and be represented on an equal footing, in accordance with Conventions Nos 87 and 144, in Article 3. The Committee of Experts has indicated on repeated occasions that it is the responsibility of workers' and employers' organizations to establish the conditions for the election of their leaders and that the authorities should refrain from any undue interference in the exercise of this right.

For these reasons, we note with concern that the Government, on the one hand, continues to disregard the ANEP as the most representative organization of employers in El Salvador and, on the other, has not accredited the employers selected by the ANEP to participate in this Conference. This is in complete disregard for the spirit of the ILO Constitution and denies the right of the most representative employers' organization to appoint its delegates. This violation forms part of an environment in El Salvador that is opposed to freedoms, and in particular freedom of association.

In conclusion, we request the Government, in compliance with and respect for the Convention, to recognize the ANEP as the most representative organization of employers, to reactivate the CST as soon as possible to advance with tripartite social dialogue and to engage in effective consultations on matters relating to the ILO and all issues regarding labour and social policies in the country.

Government member, Panama – The fundamental ILO process of promoting peace in the world through a spirit of collaboration with a view to protecting labour rights is based on tripartite social dialogue.

Within the context of the discussion of this individual case, we recall that the objective of the Convention, ratified by El Salvador in 1995, is tripartite consultation on matters concerning the activities of the ILO, which are set out in Articles 2 and 5. Let us therefore consider in this respect the commitment of El Salvador to the supervisory bodies of this Organization as set out in the report of the high-level tripartite mission which visited the country in 2022 as a follow-up to the conclusions adopted by this Committee.

According to the information provided, the high-level mission was invited and received by the plenary of the CST in El Salvador and noted its establishment and operation, while making certain recommendations on progress to be made in the development of tripartite social dialogue.

In light of the information reported, we recognize that the establishment of the CST in itself constitutes important progress, as it had not been in operation in El Salvador for many years.

We also note the communications sent by the Government to workers and employers concerning the submission for tripartite consultation of: 20 ILO Conventions, seven Recommendations and a Protocol, as well as 13 reports on Conventions, which were submitted to the Vice-Presidents of the CST, taking into account its substantial workload and in line with the recommendations of this Committee and the provisions of the Convention.

Panama has a long history of tripartite social dialogue. At the present time, we are in the process of setting up the Higher Labour Council. It is therefore important to note that, if the



objective of consultations is limited to international labour standards, not all the issues that arise in each country have to be submitted for tripartite consultation, but only those relating to the world of work, without disregarding the important value placed on social dialogue in our countries.

We therefore encourage the tripartite partners in El Salvador to go forward on the road of dialogue, and we urge the social partners to provide their response to the consultations undertaken by the Government for the promotion of social peace and social, labour and economic well-being.

Employer member, Honduras – We are currently reviewing a governance Convention of our Organization, in respect of which the Government has failed to give effect to the provisions of the Convention, to the detriment of social dialogue and the most representative organization of employers in the country, the ANEP.

It will be recalled that the Government issued 23 laws removing the ANEP from representation of the same number of bipartite and tripartite dialogue bodies, even though this Committee had issued its observations and conclusions calling for the repeal of the laws and due respect for the employers' organization, which has not happened up to now. Moreover, the Government has been appointing employers' representatives directly, leaving aside employers' organizations. The road map for the re-establishment of dialogue and tripartite consultation was not drawn up on a tripartite basis.

Attacks are continuing on the leaders and organizations affiliated to the ANEP with a view to exerting pressure on the organization and its members to give up their positions, especially those with work or contracts with the State. This is unacceptable and must not be tolerated by this Organization.

In its desire to disregard and with clear contempt for the representative organization of El Salvador, the Government accredited an employer representative for this Conference who had not been proposed by the ANEP and without listening to the views of the ANEP, as part of its attack on employers in El Salvador and in violation of the Convention and the ILO Constitution.

We wish to emphasize the clear contradiction in the documents provided by the Government, as it first recognizes that the ANEP is the most representative organization of employers and then removes its rights of consultation and representation, and in so doing ignores the provisions of ILO Conventions Nos. 87 and 144.

Worker member, Argentina – I am speaking to you on behalf of the three Argentinian trade union confederations. In this case, the IOE is denouncing the Government for alleged violations of Conventions Nos 87 and 144.

While this case is being examined in the light of Convention No 144, the connection with Convention No. 87 made by the IOE is fitting because there cannot be tripartite consultation mechanisms for the application of international labour standards without the organizations that represent employers and workers. In this regard, we remind the IOE that Convention No. 87 is not limited to the right to organize, but also covers the principle and exercise of freedom of association which, although it is not explicitly set out, includes the right to strike. The right to strike is essential to freedom of association, just as the right to organize is essential to tripartite consultation under Convention No. 144.



In addition, the IOE and ANEP make a series of claims denouncing the failure of the Government to implement the Convention, which do not reflect what is really happening in El Salvador, which is surely why they wish to remain anonymous.

While the IOE and ANEP report the lack of social dialogue in El Salvador, the ANEP regularly participates in five social dialogue forums, and notably presides over one of them, namely the Vocational Training Institute.

With respect to the CST, five plenary meetings and ten meetings of its executive board have been held, in accordance with section 11 of its Statute, which sets out that it must hold at least two meetings a year. ANEP participated in those meetings.

When the CST was established (2021–2023), the workers' and employers' representatives were elected freely and independently, in accordance with section 4 of its Statute.

The CST is operational and, in a tripartite manner, addresses issues within its competence, such as the agreement to, through tripartism, develop a strategy to generate decent work.

Nevertheless, and in the light of the workers' claims, we request the Government to adopt without delay the road map requested by the Conference relating to the delivery of credentials. We welcome the establishment of the Trade Union Office that provides legal assistance to representatives to streamline the processes for the delivery credentials, the extension of their period of validity and the reform of the Labour Code.

Thus, the Government is making efforts with regard to the obligation under the Convention, convoking and promoting forums for consultation and dialogue, ensuring the enjoyment of freedom of association for workers' and employers' representatives in accordance with Conventions Nos 87 and 144.

Government member, Dominican Republic: We welcome the efforts the Government is making through the Ministry of Labour, which has shown its firm commitment to strengthening the implementation of the standards being discussed in this forum. We welcome the progress indicated by the Government, which shows that the main intention is the commitment to find solutions to any event brought to light by the social partners in this country.

In addition, it is hopeful to know that the Government is showing a keen interest in enforcing labour legislation and the ILO's international labour standards. We invite El Salvador to continue these good practices and encourage it to enhance the work that is under way.

Employer member, Costa Rica – The employers of Costa Rica note with deep concern the case of the violation of the Convention by the Government, as it is a matter that has been under discussion for several years – concerning an ILO governance Convention.

These types of Conventions are priority, given their importance in the functioning of the international labour standards system. A society that does not permit social dialogue and that does not ensure, at the domestic level of the country, the free and independent participation of workers and employers, is not a full democracy and will not achieve equitable employment conditions, decent working conditions, occupational safety and health, and development for the benefit of all.

The purpose of the participation of various social partners on the boards, committees and other bodies in the autonomous and decentralized institutions of the State is to



contribute to national development through social oversight and increased transparency, thereby enriching the discussions and proposed solutions.

Disregarding the role of ANEP and forcing its members to give up their membership by annulling routine and special authorizations which are administered in public offices, such as permits for construction, export and import, and health certificates, among others, are coercive and abusive practices that violate freedom of association.

In order for there to be social dialogue and tripartism, solid and independent workers' and employers' organizations must exist, with technical capacity, access to the necessary information, political will and the commitment of all the parties concerned, in compliance with the fundamental rights of freedom of association and collective bargaining.

We reiterate our observation from previous discussions concerning the bad precedent at the international level represented by the interference of the authorities of El Salvador in the processes for the appointment of representatives to public tripartite and joint bodies. Nor can we overlook the terrible situation that arose this year, where the Government did not communicate or authorize ANEP to appoint the employer delegate who would participate in this Conference.

We urge the Government to respect the provisions of the Convention it has ratified on the understanding that, in accordance with its own Constitution, the Convention has the status of law and, where its conflicts with other laws, it prevails over them.

It is important that the most representative organization of employers in El Salvador, the ANEP, is allowed to participate in the respective social dialogue forums to strengthen democracy and fight against authoritarianism, to the benefit of national development.

Worker member, Peru – With reference to the case being discussed, we wish to focus on the legal obstacle constituted by section 203 of the Labour Code, which makes it mandatory to renew the appointment of executive boards every year or the equivalent of every 12 months. It should be noted that employers' organizations have a longer time period for the renewal of their executive boards, which is every two years.

This requirement, which to date has not been amended, constitutes an interference in the freedom of workers' organizations to draw up their constitutions and elect their representatives in full freedom, that is, the power to establish the term of office of their executive boards. With this rule, the Government is failing to comply with the provisions of Article 3 of ILO Convention No. 87.

Although the amendment of the Labour Code is being discussed, due to the implications of section 203, the Government's measures must be immediate because as long as the executive boards are not active or are not renewed in time, the trade unions remain without leaders and their leaders are without trade union rights, due to the delay in the delivery of credentials. In addition to this act of interference, the Government has now introduced the payment of fees for services reportedly provided by the Ministry of Labour, including the delivery of credentials to trade union organizations. This measure represents an additional obstacle in an already very onerous process. In our view, this process should be free of charge.

Both the period of validity and the procedure for the delivery of credentials mean that the representation of workers in the CST has been made complicated, which prevents its proper functioning.



To this end, as a matter of urgency, the Government should streamline and facilitate the procedure for the appointment of workers' representatives, and reform the provision of the Labour Code that provides for the annual renewal of trade union executive boards.

Government member, Guatemala – We appreciate the information shared by the Minister of Labour and Social Welfare of El Salvador regarding the implementation of Convention. We encourage the parties to spare no effort to ensure the continued operation of the CST. Our own experience allows us to note that these spaces for privileged dialogue facilitate tripartite consensus-building, a foundational pillar of this Organization. We endorse the request by the Government to the Office for the continued provision of technical cooperation, where needed.

Employer member, Plurinational State of Bolivia – The discussion of the implementation of the Convention in El Salvador is not new because in reality, since 2017 over the previous five sessions, the Committee has been discussing precisely this case, which is directly related to a governance Convention.

Thus, we should be concerned about the fact that, despite the observations made in all of the previous sessions, the Government authorities still continue to fail to implement the essential element of tripartite consultation, and particularly that they are systematically disregarding the representation of the ANEP, as the most representative organization of employers in El Salvador.

In this regard, it should be recalled that, as has been the tradition in this house, social dialogue and the capacity to develop tripartism have always been promoted as a way of seeking comprehensive solutions to the different problems and legitimate interests of all stakeholders, both the employers' and workers' groups.

In this context, it is unreasonable that the participation has been disregarded of any groups, whether employers or workers, in essential decision-making regarding labour relations, such as the approval of ILO Conventions or Labour Code reforms. Direct interference by the Government in the institutional life of workers' and employers' organizations is also unacceptable. This represents a direct breach of the right of self-determination of these organizations, as in this context ANEP's legitimacy as the most representative organization of employers in El Salvador cannot be disregarded. This institution is being subjected to abuse through political pressure on its members, who clearly should not be overlooked, which is an outright violation of the right to freedom of association, to which they are entitled.

Based on the foregoing, the Government authorities must be called upon, as a matter of urgency, to comply with all the observations made by this Committee and to urgently request ILO technical assistance for the full restoration of social dialogue within the framework of the Convention.

Employer member, Mexico – The employers' delegation of Mexico expresses its deep concern at the development and conduct of the Government of El Salvador. It should be noted and emphasized that this case has been discussed on several occasions, as already mentioned, the last time in 2022. It should also be emphasized that the Committee of Experts has issued nine observations since 2013, the latest in 2022.

It should be noted that global human rights reports in 2023 indicate that the Government and its allies, the Legislative Assembly, have systematically dismantled the system of democratic checks and balances. In addition, in May this year, Reporters without



Borders indicated that the Government applies a special system to limit constitutional guarantees, such as the confidentiality of private correspondence.

While the Committee noted the high-level tripartite mission accepted by the Government, which took place in May 2022, it is also true that, regrettably in El Salvador that five ILO Conventions have been ratified without consultation with the most representative employers' organizations.

In the same vein, we note with deep concern the continuation of multiple acts of interference by the authorities in the appointment of employers' representatives to public tripartite and joint bodies. We therefore call for the Committee's conclusions to once again request the Government to:

- refrain from any aggression and from interfering in the establishment and activities of employers' and workers' organizations, in particular the ANEP;
- ensure the effective operation of the CST and other tripartite entities, respecting the full autonomy of the most representative employers' organizations and guaranteeing through social dialogue their full functioning without any interference;
- refrain from unilaterally appointing employers' representatives for tripartite consultations and institutions, and develop, in full consultation with the social partners, the procedures for the appointment of those representatives;
- develop a time-bound road map to implement without delay all the recommendations made by the ILO high-level tripartite mission.

In our view, the reactivation of the CST is undoubtedly one of the important objectives that should appear in the conclusions, in order that. With respect to the road map that has been requested, it is noted that to date all the decisions taken by the Government to the detriment of employers' organizations in El Salvador have not been subject to tripartite discussion or consultation.

Observer, International Organisation of Employers (IOE) – It is to be regretted that the Government is once again being evaluated for non-compliance with the Convention. According to the indications in the report of the Committee of Experts, social dialogue has deteriorated in El Salvador. Effect has not in fact been given to any of the conclusions adopted by this Committee in 2022, nor to the recommendations of the 2022 high-level tripartite mission.

Let me explain on the basis of facts. First, the CST has continued to be inactive since 5 May 2022, when the tripartite mission came to an end, and it has not met since that date to review any Conventions. In practice, 11 days later the Government ratified five Conventions without consultation and without having convened any sessions of the CST.

Second, the Government is refusing to recognize the ANEP as the most representative organization of employers in El Salvador. One illustration is the absence of consultation with the ANEP for the nomination of the Employer delegates to this Conference. Nor was the ANEP consulted on the appointment of the employer representative to the Pensions Institute.

Third, the 23 laws have not been repealed which remove the power of employers to nominate representatives for tripartite and joint public bodies, thereby denying social dialogue. As a result, the Government is continuing to make these appointments, as was the case for the Social Housing Fund, while two years have passed without nominating employer



representatives to the El Salvador Social Security Institute and the Minimum Wage Council has not met since September 2022.

Fourth, interference and attacks against the ANEP have continued. However, in El Salvador, it is still possible to return to the path of tripartite social dialogue. The ANEP reiterates the proposal made last year of developing on a tripartite basis a road map with the objective not only of giving effect to the conclusions and recommendations of the ILO supervisory bodies, but also of creating an environment of trust to attract more investment and generate more and better jobs.

The benefits of tripartite social dialogue must be tangible, including the greater well-being of families in El Salvador, and we therefore call on the Government to develop, on a tripartite basis and with ILO technical assistance, a road map for the benefit of the citizens of El Salvador.

Observer, Public Services International (PSI) – I am making this intervention on behalf of PSI and its four affiliates in El Salvador. This is a case in which, as indicated in the report of the Committee of Experts, cases of “interference” by the public authorities are alleged in the appointment of employers’ representatives on tripartite and joint public bodies. Without intending to minimize these allegations, we believe that it is also necessary to take into account the context and situation of labour rights as a whole.

El Salvador has ratified a significant number of ILO Conventions, including nine of the ten fundamental Conventions and all the governance Conventions. Moreover, last year, the Government deposited five new ratifications.

We are also aware that the CST, on 1 September 2022, requested the view of the social partners who are represented here on the ratification of 18 other Conventions, in accordance with article 19 of the ILO Constitution, the list of which also includes the Maritime Labour Convention, 2006 (No. 187). With the ratification of this Convention, El Salvador will have ratified all of the fundamental Conventions over a short period. We believe that this is positive and gives grounds for satisfaction. After all, the ILO adopts international standards which then have to be respected and applied.

It therefore appears somewhat contradictory to us and even paradoxical that this Committee has regretted, as it did last year, that five ILO Conventions have been ratified by a Member State, when it would be right to encourage and commend those that do so and which submit to the supervisory mechanisms. This is much more than what has been done by the Member State to which we have generously offered the presidency of this Conference, which has only ratified six Conventions and where, among other matters, there are not even workers’ organizations.

We have heard the word “terrible” with reference to the designation of the Employer delegate of El Salvador to the Conference, who was not designated by the most representative employers’ organization. Please allow me to differ. Terrible denotes, for example, war, violence and the persecution of innocent people because of differences of views, or the enslavement of children to make greater profits. In El Salvador, the representatives of workers and employers are not persecuted, imprisoned, deported or murdered solely because they belong to an organization that represents and protects the rights of its members.

We therefore consider that it is necessary to be more scrupulous and coherent in the selection of individual cases, of which there are only 24 each session of the Conference, so as



to be able to address situations of serious non-compliance which merit the work and efforts of this Committee.

Observer, International Organisation of Employers (IOE) – It is very common in this distinguished Committee to deal with cases related to violations of the provisions of the Convention. Intimidating, threatening, bypassing and ignoring the role of the most representative organizations of both employers and workers is a common form of behaviour by Governments that do not believe in either the principles or the fundamental rights of the ILO, nor in the value of tripartism nor, much less, the value of social dialogue.

The lack of respect for and interference in the independence of representative and independent employers' organizations, and I repeat representative and independent, and in this case the ANEP, has been a constant practice of a Government, that of El Salvador, which is known on the international scene for its attitude of confrontation, and indeed aggressivity, towards those with dissident or critical views. I wish to recall that the former President of the ANEP is currently in exile and, contrary to what was said by the previous speaker, the persecution and intimidation of representative organizations does exist. The objective is clear, namely to weaken the organization, in this case the employers' organization, and all organizations that defend legitimate interests, but which are not necessarily aligned with the interests of the Government.

Our comments on this case are not new, as it is the sixth occasion on which we have discussed it in this Committee, but what is new is the level of intimidation and the degree of oppression experienced in the country. Freedom of association and expression have never been so endangered in El Salvador, along with the rule of law.

The affiliates of the ANEP and their enterprises are threatened if they decide to continue their membership of the organization. The ANEP is not invited to participate in tripartite bodies. Its leaders, as I have said, are the victims of direct or indirect pressure, or the Government, and this is nothing new for a Government of this type, assigns representative functions to organizations that are close to it or to individual employers. This is very standard behaviour for Governments that do not believe in social dialogue or tripartism.

The Minister who has just spoken admits on social media to not having accredited the ANEP for this Conference. I invite all the participants in this discussion to read the tweet posted by the Minister a few days before the session opened, which speaks for itself. This attitude of discrediting those who are critical is well known among the various international organizations of which the Government is critical and which it confronts in a notorious and very aggressive manner.

We agree with the representative of the Workers' group in our concern at the lack of progress. Despite the tripartite mission that visited the country last year and the road map that was agreed upon, the Government is continuing to ignore its duties as an ILO constituent and in this case the duties deriving from the Convention.

We do not come here for the pleasure, but in hope, and we urge the Government to follow the path of respect for dialogue, in the first place, and then towards representative employers' organizations and unions. If it does not do so, you may be sure that we, as the most representative global organization of employers, will use all the means available to us to ensure that the Government complies with its obligation to give effect in law and practice to the requirements that it has assumed voluntarily through its ratification of the Convention.

Government representative – I would like to begin by responding to certain issues raised, especially by the Employer members, who indicated that the CST started to function in



2021, paraphrasing exactly what was said, and that there are “anomalies in its functioning”, which were the actual words used by the representative of the employers.

He is reaffirming clearly and categorically that the CST is functioning. Even if there are some anomalies, irregularities or procedures that have to be improved, every process can be improved over time. But there is clear acceptance that the CST is functioning and therefore that this issue has nothing to do with the application of the Convention in our country, as we are in full development.

The other issue that was raised is the need to open tripartite involvement so that the ANEP can participate in the FONAES, the Maritime Port Authority and the International Centre for Fairs and Conventions (CIFCO). I wish to clarify and I must insist that the representative of employers at the international level has not been correctly informed: these are not tripartite bodies, they are bipartite, and only the ANEP and the Government participated in them for decades.

We understand that the transversal basis of the Convention is tripartite social dialogue, and yet these are bodies in which there is only bipartism. In our case, all the tripartite bodies that we have in the country are functioning, absolutely all of them.

The other issue concerns the documentation that we provided, and here are the documents that we are providing physically today in this meeting in which we can see the seals of the ANEP indicating that it received the documents in due time, received the information and was taken into account, but the ANEP did not reply.

We are talking about last year, as well as this year and on other occasions. We had a proposal, put forward by workers’ representatives, to ratify another five Conventions on 1 May in commemoration of International Workers’ Day. We could not proceed with the ratification of additional Conventions because the ANEP did not reply and has not replied up to now, and we have the documentation here to prove this, and for this reason we do not understand why this issue has been raised with regard to the Convention.

With regard to the issue of the two-year time period accorded to employer representatives and the one year to the trade union movement, this is the best historical illustration that there has not been due balance and even-handedness in the treatment of workers in general terms. There was no type of balance in the treatment of the two sectors. This was determined during the period when the ANEP managed the ARENA party and adopted legislation which favoured it with a two-year period, to the prejudice of the workers. But when they call on me to take immediate action to change the time limit and extend the period of validity of the credentials of trade union leaders, I cannot go ahead unless I have agreement through tripartite social dialogue. We already have a forum established in which the trade union movement is proposing the extension of the time period to two or three years, and I will respect the wishes of the trade union movement. I will respect the will of tripartite social dialogue, in accordance with the Convention, to ensure the amendment of the Labour Code in the coming days, when we will propose to the trade union movement that the period of validity of their credentials must be much longer.

Similarly, we have established a specific office so that procedures that previously lasted five, three, four or even up to eight months, now take a week. We are issuing the credentials for the trade union movement in eight days through an office which provides guidance to the trade union movement. It is one of the institutions that is most interested in strengthening the trade union movement, giving priority to tripartite social dialogue, which is our political will with all the actors and sectors of society. Now, as certain employers’ organizations have



come out publicly indicating that they are no longer affiliated with the ANEP, these are internal matters that can arise and we cannot intervene in any way in this regard, either for them to go or to remain, because these are decisions that are the responsibility of each and every actor in the world of employers.

All workers today, including at the level of the trade union movement, are seeing this event, they all have links and they can see what is happening. What is most important is to ensure that the people and society are duly informed. All the unions in El Salvador are watching directly what is happening in the ILO, and this is painful, because only two social partners, and in this case two representatives, determine the make up of the preliminary and other lists, behind the backs of the genuine working class, behind the backs of the people who give them legitimacy, because a trade union leader, irrespective of whether the office held is at the national or international level, is the genuine spokesperson of the views of the working class. But, taking up a position and engaging in negotiations that are not transparent, unclear and not in line with public opinion, and doing so behind the backs of the working class, is a very complex situation for representatives at the international level, who come to an agreement, it is not known where, to determine who is included or not on the list.

We have taken upon ourselves the task of reviewing the preliminary list, and there were around six countries included in relation to fundamental Conventions, which is where the restrictions on the freedom of the trade union movement can be seen, with violations of various international fundamental, governance and technical Conventions, but which are not included on the list, or are included on the list. It is paradoxical, and history will be the judge.

And, as founders of the ILO, we urge the ILO's leaders, because we believe sincerely in the ILO, because we trust the genuine leadership of the ILO, that they have to be more transparent and determine established criteria on how these lists are drawn up and defined. Because it is being done behind the backs of the working class. One of the fundamental aspects that has been demonstrated in this international forum is the manner in which the employers of El Salvador and their international representatives are acting.

There were two interventions by employer representatives to try and silence the genuine voice of the working class. All we have done in El Salvador is to democratize the country, opening up institutions, playing the role of the State, which is precisely to ensure balance between the social partners, but under equal conditions, which have never previously existed in the country.

The ANEP is one of the institutions that has enjoyed enormous privileges in the country, and on many occasions even took over the State apparatus, as demonstrated by the fact that the principal platform used even by presidential candidates was the employers' organization. They have every right to be able to express their views and take political action, but party politics are one thing, while another is access to any elected position, which is the right of everyone, but not taking advantage of employers' organizations. With the greatest of goodwill, with respect for ILO institutions, and aware of the leadership of the ILO, we have to guarantee and strengthen it every day.

We are totally willing to take on all the recommendations that are necessary and we will give effect to all recommendations.

It is a country that belongs to all the citizens of El Salvador, without distinction. We are the Government and we are bound to support and give our backing to all organizations of all types, irrespective of whether they criticize or judge us.



A Government has to be criticized, has to accept critical views. These are the basis of democracy, and we are therefore totally open. But what we consider to be wrong is to encourage lies, misrepresenting the real situation of a country at the international level, and solely to recover the privileges that were historically theirs through their use of the apparatus of the State.

President Bukele has now made it clear that the apparatus of the State is for the whole of the people of El Salvador under equal conditions. Employers will always be represented and workers will also always enjoy equal conditions. The arm of the State must ensure clear rules for everyone, with guarantees and oversight for everyone, under equality of conditions.

We have insisted to the ANEP that the bipartite bodies, which number around 20 or 30, in which only the ANEP and the Government participate, that we should open them to become tripartite, but it opposes and continues to oppose this.

In conclusion, as the people of El Salvador, as the representative of the State on behalf of President Nayib Bukele, we consider that the ILO is the instrument that guarantees the elementary rights of the whole of society throughout the planet, and we must ensure its strengthening with every day that goes by.

I believe that, as the ILO, we will have to review the procedures for inclusion on the list. Sometimes, the Worker spokesperson says things that are different from what is felt and said by workers in a country.

We believe that negotiation is valid in every part of the world, but it has to be transparent negotiation, negotiation that not only guarantees legality, because the two of them determine who is on the list, but must also benefit from legitimacy, based on the genuine views of the working class that they claim to represent.

This is my conclusion, and we will be unshakeable in our support for the principles of ILO standards. We will comply with absolutely everything and we are fully ready as a Government to continue receiving recommendations from any ILO body.

Employer members – We have listened carefully to all the interventions made during the present discussion, and particularly to the intervention by the representative of the Government of El Salvador.

We wish to indicate that, in our view, it is fully established that there are various tripartite bodies that are not functioning in El Salvador, including the CST and the Minimum Wage Council, while the tripartite mechanisms are not functioning in the National Housing Fund, where it was the Government that appointed the employer representatives, nor the Social Security Institute, where employer representatives have not been nominated.

Accordingly, in our view, it is clear that the words of the Government representative, Mr Castro, do not correspond to any intention by the Government of El Salvador to give effect to the requirements of the Convention which, as we are well aware, is intended to promote governability and the proper functioning of industrial relations at the national level.

The facts described show disregard for the appropriate application in law and practice of all the provisions of the Convention, which was ratified voluntarily by El Salvador. And all that despite the conclusions adopted by this Committee in 2017, 2018, 2019, 2021 and 2022; despite the eight observations published by the Committee of Experts; despite the numerous urgent interventions that the ANEP and the IOE have requested from the ILO; despite ILO technical assistance and the offers made in the high-level tripartite mission which recently visited the country.



The situation of failure to comply with the Convention in El Salvador is continuous, serious and urgent for employers' representatives. We have dealt in this Committee over the past few days with cases of Governments which have dissolved by administrative decision the most representative organizations in those States. We do not wish to be doomsayers and suggest that something similar could happen in El Salvador.

In this regard, employers' representatives and employers, in their belief in social dialogue, in the functionality of tripartite consultation, and that it cannot be merely a face-saving exercise, we will urge the Government with our best will, and despite prolonged non-compliance, to refrain from interfering in the establishment of both workers' and employers' organizations and to facilitate compliance with national and international law, voluntarily ratified by El Salvador, and to ensure their due representation by issuing the corresponding credentials in an appropriate and flexible manner.

The Government of El Salvador should cease attacking and discrediting the ANEP, which is the most representative employers' organization, and its leaders.

The Government should draw up, in consultation with the most representative organizations of employers and workers, clear, objective, predictable and legally binding rules for the real and constant reactivation and full functioning of the CST.

The Government of El Salvador should reactivate without delay effective consultation in the CST, once again with clear, objective and predictable rules, as well as the functioning of the other tripartite bodies, respecting the autonomy of the most representative organizations of workers and employers through social dialogue, with a view to guaranteeing their full operation without any interference.

The Government of El Salvador must understand that the appointment by the President of the Republic of employer delegates is not in accordance with the procedures required by the ILO's fundamental labour Conventions, which have been ratified voluntarily by El Salvador.

Moreover, in consultation with the social partners, it must take all the necessary measures without delay to amend the 23 decrees adopted on 3 June 2021 so that they are in compliance with the guarantees set out in the ILO Conventions ratified by El Salvador.

Of course, much of this may be difficult to do in isolation, and so we therefore suggest that it continues to avail itself of ILO technical assistance.

It should provide the Committee of Experts with a detailed report on the application of the Convention in law and practice before its next session this year.

We call for a new direct contacts mission to ascertain the true operation of tripartism in El Salvador and, in view of its seriousness and the continued non-compliance, for the inclusion of this case in a special paragraph of the Committee's report.

Worker members – El Salvador has taken certain steps in some cases to re-establish tripartite social dialogue. We have been informed that recently the trade unions, including those affiliated to IndustriALL, have proposed an action agenda to promote various matters of interest to workers, such as the reform of the Labour Code, and that it contains a proposal, in accordance with the commitment given, to increase the period of validity of trade union credentials in El Salvador. It is important that this reform guarantees and improves the right to organize freely and establishes collective bargaining as a principle of basic law.

Nevertheless, there are still certain problems for the achievement of full compliance with the Convention.



We previously noted that the CST had been re-established and was functioning. It is important for our group that the CST does not remain inactive, or that its functioning is activated.

Moreover, the Government needs to find an appropriate solution to the unreasonable obstacles and rules that exist for the delivery of credentials to trade unions.

We are therefore bound to reiterate some of the same requests that we made to the Government last year. With one reservation before we set out our three requests.

In the first place, it is necessary to respect the methods of our Committee, to which the Government above all has referred, and we consider that this is not the occasion to discuss the matter. However, we also recognize that the intensity of the discussions in this case shows the pertinence of having discussed it in this Committee. We therefore believe that it is important to listen to us and to have been able to respond, as El Salvador is on the list.

There are three measures that we consider that the Workers' group can contribute. In the first place, the Government should ensure that the CST is fully operational and can hold plenary meetings, particularly regarding decisions that relate to both labour legislation and any public policy that has an impact on the social partners.

Second, El Salvador should draw up a road map with firm timelines, in consultation with the social partners, with a view to the application without delay of the recommendations made by the ILO high-level tripartite mission and the conclusions of our Committee.

Third, and perhaps most importantly, is the adoption without delay of the necessary measures to repeal the legal requirement, to modify the legal requirement, for the renewal of the legal status of trade unions every twelve months.

In more general terms, we call on the Government to give full effect to the recommendations of the tripartite mission.

With a view to the supervision of all these elements, we request the Government to report to the Committee of Experts at its next session, and we also suggest that it continues to avail itself of ILO technical assistance.

And finally, I inform the Government that this group maintains permanent communications not only for the purposes of information, but also support and action in solidarity with compliance with the labour rights of women and men workers in our countries. We are proud to know and to feel that we represent everybody and that, accordingly, although there may be some differences, our representation is genuine.

The Committee's conclusions

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

The Committee noted the allegations of serious and repeated violations of the Convention by the Government.

The Committee noted with deep concern the multiple allegations of interference by the authorities in the appointment of employers' and workers' representatives in public tripartite and joint bodies.

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



- immediately cease all acts of violence, threats, persecution, stigmatization, intimidation or any other form of aggression against individuals or organizations in connection with both the exercise of legitimate trade union activities and the activities of employers' organizations, and adopt measures to ensure that such acts are not repeated, in particular for the National Business Association (ANEP) and its members;
- refrain from any interference in the exercise of freedom of association of employers and workers, including in the constitution of workers' and employers' organizations;
- put a stop to the delays in issuing the credentials of workers' and employers' organizations, including for ANEP, in line with their right to representation;
- ensure that all workers' and employers' organizations, including ANEP, enjoy the rights and freedoms under the Convention and are fully included in tripartite consultation and social dialogue;
- reactivate, without delay, the full operation of the Higher Labour Council (CST) and other tripartite bodies as well as ensure the development and adoption, in consultation with social partners, of clear, objective, predictable and legally binding rules to ensure their effective and independent functioning, without any external interference;
- take without delay all necessary measures to repeal the legal obligation on trade unions to request renewal of their legal status every 12 months;
- amend the 23 decrees adopted on 3 June 2021 to ensure that employers' organizations are able to exercise their right to freely elect their representatives without any external interference; and
- develop a time-bound road map to implement without delay all the recommendations made by the 2022 ILO high-level tripartite mission and the Committee's recommendations.

The Committee requests the Government to accept a direct contact mission to ensure full compliance with the Convention.

The Committee further requests the Government to submit a detailed report on the implementation of the Convention in law and practice, including information on the content and outcome of tripartite consultations, to the Committee of Experts by 1 September 2023.

Government representative – On behalf of the delegation of El Salvador, I take note of the conclusions indicated by this Committee. I take advantage of the occasion to recall that El Salvador respects the supervisory bodies of this Organization.

However, we regret that the Committee has not taken into account the written and oral information that we have provided on various occasions, responding officially to the Committee of Experts. We deeply regret that, in its conclusions, the Committee has not recognized any indication of progress in El Salvador. We note with surprise that the Committee is once again calling for the repeal of the 23 decrees.

During the discussion of the case, a question was raised for the Committee in light of the provisions of Convention No. 144. What is the legal basis for this conclusion? What Articles of Convention No. 144 establish this power? What are the methods of work of this



Committee that establish the obligation to repeal or require countries to change laws that are not related to international labour standards? These questions were also raised with the Committee of Experts in our communication, although no reply was received. We call for it to be acknowledged that, during and after the discussion of the case, we have not received a reply to this question. Nevertheless, the conclusions have been adopted.

We regret that our views and the information provided have been disregarded without giving reasons. The conclusions do not appear to respond to the discussion or the information provided, but are just a product of their negotiation. This is something that we think must be the subject of necessary and urgent reflection.

Nevertheless, we reaffirm our commitment to the principles and values of the ILO, which is unshakeable, and for which reason we will continue working to achieve decent work, giving priority to social dialogue with all partners and actors, for which we welcome the valuable cooperation and technical assistance of the ILO.

Gabon (ratification: 2014)

Maritime Labour Convention, 2006, as amended (MLC, 2006)

Written information provided by the Government

The Government of Gabon reiterates its readiness and willingness to provide the first report due on the Maritime Labour Convention, 2006, as amended (MLC, 2006). In this regard, it states that the delay in drafting the report is due mainly to two factors: the legal procedure for the ratification of the Convention and the lack of awareness of the Convention among Gabon's professionals in the maritime sector. Consequently, the Government is required to comply with the internal procedure in force for the ratification of international conventions – a procedure that was not followed for the deposit of the instrument of ratification of the MLC, 2006, in 2014 – but also to make up for the inadequacy and even the absence of information to enable it to produce the first report due.

To this end, the Government requests the technical and financial assistance of the Office in order to ensure the dissemination of the Convention among the sector's professionals, strengthen the technical capacities of the officials, labour administration and merchant marine responsible for preparing the said report, and strengthen the capacities of the officials responsible for the implementation and monitoring of the Convention, particularly the inspectors and controllers in the maritime sector.

The Government reaffirms its commitment to ILO standards, including all the standards supervisory bodies, and undertakes to provide any useful information to enable the follow-up to the Committee's recommendations. Lastly, the Government emphasizes that, thanks to the participation of two of its officials in a training course organized in the first half of 2023 by the International Training Centre of the ILO in Turin, with a view to strengthening the capacity of constituents to prepare reports on the implementation of MLC, 2006, and despite the official period having passed for the submission of reports under article 22 of the Constitution to the Committee of Experts, the Government assures the Committee of the submission of the first report on the implementation by Gabon of the MLC, 2006. It also requests the Committee to afford it the possibility of providing additional information at a later date.



Discussion by the Committee

Chairperson – We now turn to the first case on our agenda, and that is Gabon on the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006).

Government representative – Following Gabon's inclusion on the definitive list of individual cases submitted for examination by the Committee for failure to send the first report following ratification of the MLC, 2006, in 2014, I would like to thank you for the opportunity you are giving my country's delegation to provide updated and detailed information on the actions and measures taken at the national level to give effect to the provisions of the Convention.

Before continuing my statement, I am pleased to present the compliments of my country to the Committee of Experts for the important work it has continuously carried out since its establishment in monitoring the implementation of international labour standards.

The Government of Gabon reaffirms its commitment to respect its obligations with regard to reporting on ratified and non-ratified Conventions, as provided for by articles 19 and 22 of the ILO Constitution, including the maritime Convention, on which the first report has been sent to the Office, albeit belatedly.

The discussion with my country's Government regarding the delay in sending the first report on the implementation of the MLC, 2006, allows me the opportunity to provide a brief history of the situation to give detailed and specific information to the Committee members on the reasons for the delay. To recall, the Minister of Foreign Affairs of Gabon signed the instrument of ratification on 29 March 2011, which was transmitted to the ILO via the Permanent Mission of Gabon in Geneva on 27 April 2011. However, the ILO was unable to register the ratification, as it did not include the mandatory declaration concerning the applicable social security branches. On 25 September 2014, the ILO received the missing declaration and therefore, for the ILO, the ratification could be registered that same day, that is, 25 September 2014.

However, for the Government of Gabon, the internal procedures relating to the ratification of international instruments in accordance with its Constitution had to be observed to give effect to the ratification procedure. Thus, between 2014 and 2019 (so for five years), different legal interpretations persisted between the experts of the two parties on whether the ratification of the MLC, 2006, was effective, which led to the impossibility of drafting a report on this instrument. Fortunately, at a joint meeting in the margins of the International Labour Conference in 2019, the two parties agreed that the ratification of the MLC, 2006, by Gabon should definitively be considered effective, even though the regularization should continue of internal mechanisms relating to the ratification procedures for international standards.

From 2019 to 2022, further difficulties arose with the dissolution of the National Assembly (one of the main chambers of Parliament), the outbreak of the COVID-19 pandemic, a lack of communication around the instrument meaning that those involved were unaware of it, insufficient capacity in the administrations responsible for preparing the first report on the MLC, 2006, and the absence of consistent technical assistance, owing in particular to the transfer of the standards specialist in the Yaoundé office in Cameroon, without an immediate replacement.

In light of the foregoing, the delay observed in the submission of the first report by Gabon on the application of the MLC, 2006, is accounted for by a combination of the above factors.



For example, the lack of awareness of the instrument in question by a significant number of the actors in the maritime sector, the insufficient capacities of the administrations responsible for drafting the report and the lack of dissemination since its ratification have been real obstacles, as the information requested of those involved on a daily basis – the seafarers – has never been available, thus making it difficult to submit the first report due to a lack of substantial information. Beyond these explanations, we are aware that, by ratifying the MLC, 2006, Gabon is bound by its obligations, as a coastal, flag and port State, to grant seafarers access to decent work. The MLC, 2006, therefore applies to seafarers.

In this regard, we note that, irrespective of the lack of awareness of this instrument by the main actors involved, it should be mentioned that this sector is fortunately covered by a robust legislation in accordance with the requirements of the MLC, 2006. For example, at the legal level and with regard to the requirements of the MLC, 2006, the application of the provisions of Regulation No. 08/12-UEAC-088-CM-23, issuing the Community Merchant Shipping Code, is mentioned among the documents which must be carried on board ships flying the Gabonese flag and foreign ships operating in Gabonese territorial waters. In addition, it should be mentioned that through its accession to the Code of the Central African Economic and Monetary Community (CEMAC), the parties acknowledge their contribution to the improvement of safety of ships and property at sea, and safety of human lives on board ships, in order to give full effect to the provisions of this Code.

Further, prior to the accession of Gabon to the MLC, 2006, Gabon applied both Act No. 10/63 of 12 January 1963 issuing the Merchant Shipping Code of Gabon and the CEMAC Community Code to deal with questions relating to seafarers. Under Act No. 1/63, the provisions of the Community Code are applicable to all ships registered in Gabon, and all naval authorities and crew on board. Act No. 10/63 establishes no restriction as to which ships are exempt from its application. With regard to social security, for example, section 98 of Act No. 10/63 provides that “seafarers shall be cared for at the shipowner’s expense if they are injured in the service of the ship or fall ill while on board. In the event of death, funeral expenses are incurred by the shipowner.” We are nonetheless committed to taking specific measures to give fuller effect to the provisions of the Convention, for the well-being of the seafarers.

Among the measures taken to give effect to the MLC, 2006, to ensure the drafting of reports and the follow-up to its implementation, we have undertaken to strengthen the capacities of the officials in charge of this case. We therefore take this opportunity provided to us to thank the ILO for its assistance, which enabled certain personnel from the ministry responsible for labour and transport to participate in online training organized by the International Training Centre in Turin with a view to building their capacities in 2020 and 2021.

More recently, in the first half of 2023, two public officials, one from the merchant shipping administration and the other from the labour administration, have been following the sessions of the Training Centre in Turin on the presentation of reports. The results of that training have enabled us to transmit the first report on the implementation of the MLC, 2006, to the ILO.

With respect to the difficulties that my Government encountered when drafting this first report, we request ILO technical and financial assistance with a view to supporting us in the effective and regular submission of reports in accordance with the provisions of article 22 of the ILO Constitution, strengthening the technical capacities of the personnel of the labour and transport administrations so that the reports on the instrument in question are provided



on a regular basis, and leveraging the support for the monitoring and implementation of the Convention.

In view of the foregoing, I would like to reiterate the commitment of my country's Government to continue to provide on a regular basis all of the reports, as has generally been the case but also, and above all, to take measures in order to effectively implement international labour standards in general and the MLC, 2006, in particular, for the benefit of our workers.

Worker members – This is the third time that this Committee examines the application of a Convention by Gabon. This is also just the second time we are examining the application of the MLC, 2006.

As the Committee of Experts highlighted in a dedicated section of the General Report, seafarers around the world faced tremendous challenges during the COVID-19 pandemic. Hundreds of thousands of seafarers were stranded away from home for many months. Many were not paid; many were refused medical treatment and the rates of abandonment climbed to never-before-seen levels. In this regard, the Committee of Experts has indicated that it is precisely at times of crisis that the protective coverage of the MLC, 2006, assumes its full significance and needs to be most scrupulously applied. Indeed, the MLC, 2006, is a pioneering instrument designed to confront the many issues faced by workers in the most globalized of sectors – the shipping industry. The MLC, 2006, is unique in that it truly reflects the reality of the shipping industry and uses original approaches to gain widespread ratification. To date, 103 Member States responsible for regulating conditions for seafarers on more than 96.6 per cent of the world's gross tonnage of ships have ratified the Convention. This is truly remarkable. However, ratification is just the first step – effective implementation is critical.

This needs to be the starting point for our discussion of Gabon's application of the Convention in law and practice. Gabon ratified the MLC, 2006, in 2014 and has also accepted the amendments adopted by the International Labour Conference in 2016 and 2018. While we do not know the number of seafarers working in the Gabonese merchant marine, from the public data available, we understand that there are around 146 ships that fly the Gabonese flag, which are made up of crude oil tankers, chemical or oil products tankers and general cargo ships. It has been reported that in terms of percentage growth, the Gabonese flag is now the fastest growing in the world. It is therefore extremely concerning that the Government has still not sent its first report on the MLC, 2006, to the Committee of Experts, six years after it was due. As the Committee of Experts has highlighted, the provisions of the Convention are mainly implemented through a Regulation of the CEMAC issuing the Community Merchant Shipping Code of 22 July 2012, which is directly applicable to Gabon and is one of the documents that must be carried on board ships flying the Gabonese flag and foreign ships operating in Gabonese territorial waters.

We note positively that section 1 of the Labour Code does not exclude seafarers from its scope of application. However, we are unable to say whether Gabonese unions and shipowners were consulted in the ratification process or in relation to any determinations made under the Convention. The Government needs to clarify this as a matter of priority.

We also note that, in accordance with Standard A4.5(2) and (10), the Government has specified the following branches of social security: old-age benefit, employment injury benefit, family benefit, invalidity benefit and survivors' benefit. However, without an Article 22 report, we do not have information regarding steps taken in accordance with Regulation 4.5, paragraph 2 of the Convention, to extend protection to other branches. Therefore, it is with



regret that we note that the Committee of Experts was unable to make any observations on the application of several provisions of the Convention due to the Government's failure to respond.

Despite the many innovative features of the MLC, 2006, including an elaborate inspection regime by port States, the usual oversight role taken by the Committee of Experts in reviewing Member States' national implementation of the Convention remains a critical and essential part of effective application.

We recall that the very essence of the ILO supervisory system is the dialogue between its constituents at the national and international levels. This dialogue is based on information provided on the application of Conventions in law and practice. Failure to submit reports, comments or replies severely undermines the supervisory system and the very functioning of the ILO. The Government must, as a matter of urgency, seek ILO technical assistance to ensure that it complies with its reporting obligations.

Ships of ratifying Member States, including Gabonese-flagged vessels, are required to carry a Maritime Labour Certificate and a Declaration of Maritime Labour Compliance (DMLC) on board. The DMLC must not only "identify the national requirements embodying the relevant provisions of this Convention by providing a reference to the relevant national legal provisions", but also provide "to the extent necessary, concise information on the main content of the national requirements". Flag States are also expected to ensure that national laws and regulations implementing the Convention's standards are respected on smaller ships, including those that do not go on international voyages that are not covered by the certification system. This provision is especially important in the Gabonese context as a major coastal State and its reliance on maritime transport. Also, without adequate national implementation of the Convention, it is unclear how Gabonese port State inspectors can carry out effective ship inspections in line with the MLC, 2006.

It is evident that the need for the proper transposition of international labour standards at the national level is even more important when it comes to the MLC, 2006. It is therefore imperative that the Government urgently put in place a process to ensure the adequate national implementation of the Convention in consultation with the social partners.

Finally, although the MLC, 2006, is a technical Convention, the life and wellbeing of the world's 1.6 million seafarers depend on its proper application. Indeed, the MLC, 2006, sets out seafarers' rights to decent conditions of work on pretty much every aspect of their working and living conditions including minimum wage, employment agreements, hours of work and social security. The Convention also provides that every foreign ship calling, in the normal course of its business or for operational reasons, into the port of an ILO Member State may be the subject of inspection in accordance with paragraph 4 of Article V for the purpose of reviewing compliance with the Convention. Therefore, it is no surprise that the application of this Convention has significantly improved the lives of the world's seafarers – a group of workers who are often out of sight, out of mind.

The MLC, 2006, is a vital instrument for the world's seafarers. This Committee needs to send a strong message that its effective implementation requires ratifying Member States to comply with their obligations, including those related to reporting and national implementation. We urge the Government to comply with its reporting obligations and submit its first report to the Committee of Experts before its next session.

Employer members – The Employer members thank the Government of Gabon for the written and oral information provided. We take note of Gabon's expressed intent to rectify



the issue under consideration. This case concerns Gabon's compliance with the MLC, 2006. The MLC, 2006, is the product of five years of tripartite work by governments, seafarers trade unions as well as shipowners. Not only is it a landmark legal instrument for the ILO, but it also plays a crucial role in safeguarding seafarers' working conditions and welfare and contributes to sustainable shipping based on a level playing field. The MLC, 2006, represents one of the most up-to-date and dynamic ILO legal instruments: it has been amended four times since the adoption, and two more ratifications added up to an already long list this year.

It is therefore of the outmost importance that this legal instrument is not undermined. Gabon has ratified all fundamental Conventions except the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), as well as 41 other ILO Conventions. In particular, Gabon's ratification of the MLC, 2006, dates back to September 2014.

It is not the first time the Committee of Experts has raised concerns regarding Gabon's compliance with its commitments under the MLC, 2006. The Committee of Experts has provided three observations since 2020, which were repeated twice due to the Government's failure to submit its first report, despite an urgent appeal was made. This is however, the first time the case is discussed in this Committee. The Employer members also take note that Gabon has asked for technical and financial assistance for the implementation of this Convention. There are two main issues in this case, namely:

- the timely reporting on the implementation of the MLC, 2006, by Gabon.
- the adoption of measures implementing, both in law and practice, the obligations set forth under the MLC, 2006, to secure the right of all seafarers to decent employment.

On the first issue, the Employer members regret that the Government of Gabon has not submitted its first report on the implementation of MLC, 2006, for four consecutive years. We would like to highlight that, with ratification of any legal instrument, come legal obligations. In particular, according to article 22 of the ILO constitution, not only does ratification of ILO Conventions entail compliance with the substantial obligations set forth therein, but also with procedural ones, notably obligations to report on the implementation of the ratified Conventions both in law and practice. In this regard, submitting timely and detailed first reports is of vital importance as it represents the precondition for the effective functioning of the supervisory system that this Committee embodies. The Employer members highlight that States should not ratify comprehensive ILO Conventions, such as the MLC, 2006, unless the ratifying States are assured that they have the ability to implement the Conventions' obligations, and the capacity to report on its application in law and practice.

The Employer members further take note of the information provided by the Government on this matter, notably that the failure to submit the first report is due, first, to the legal procedure leading to the ratification of the Convention and, second, to the lack of knowledge of the Convention among Gabonese maritime professionals.

We also appreciate the effort undertaken by the Government to fill such gaps, including taking part in ILO training courses. Stressing that failure to report strongly impacts on the proper functioning and work of this Committee, we call on the Government to fill this reporting gap and send its first report on the application of the MLC, 2006, without any further delay. We take note of the Government's request for financial and technical assistance from the Office, and we request it to avail itself of such assistance as soon as possible to be able to fulfil its reporting obligations.



On the second issue, the Employer members take note that the provisions of the Convention are mainly implemented through a Regulation of the Central African Economic and Monetary Community issuing the Community Merchant Shipping Code of 22 July 2012, which is directly applicable to Gabon. We further take note that section 1 of the Labour Code does not exclude seafarers from its scope of application. With this in mind, the Employer members request the Government to adopt without delay the necessary measures to implement the Convention, taking into account the matters raised in the request addressed directly to the Government by the Committee of Experts. In this regard, the Employer members remind the Government that it may avail itself of the technical assistance of the Office. Based on the information provided by the Government of Gabon, the Employer members trust that the Government will make all the necessary efforts to comply with its obligations.

Government member, Cameroon – It is a real pleasure for me to take the floor on behalf of the Government of Cameroon.

Turning to the item on the agenda, the Government of Cameroon wishes to thank the Government of Gabon for the preliminary information submitted to our Committee, first oral information, as we have just heard, on the implementation in law and practice of the MLC, 2006. It is clear from all this information that Gabon has spared no effort to comply with the constitutional obligations under the ratification of the MLC, 2006. We therefore encourage the Government of Gabon, in its capacity as flag State and port State, to continue with all the steps it has taken to comply with the those obligations. Stanislaw Jerzy once said “ignorance of the law does not exempt from liability”. In light of this quote, the Government of Cameroon welcomes the commitment of the Government of Gabon to respect its constitutional obligations.

In the same vein, while thanking the Office which, through the International Training Centre in Turin, has strengthened the capacity of Gabonese officials to draft reports, we support the request for technical and financial assistance made by the Government of Gabon. We request the Office to respond favourably to this request, in order to assist the Government in disseminating the Convention among professionals in the sector concerned, while strengthening the technical capacities of all the tripartite constituents in charge of preparing the report required, and monitoring and implementing the Convention. To conclude, the Government of Cameroon encourages Gabon to leverage the expertise requested of the Office, to thereby comply with all its constitutional obligations.

Worker member, Eswatini – I take the floor on behalf of the workers of the Kingdom of Eswatini. The Worker delegates of the Commonwealth countries align themselves with this statement. At the outset, we congratulate the Government of Gabon for having taken the necessary steps to ratify the MLC, 2006, in 2014. The necessary implication of the ratification is that Gabon should give complete effect to the provisions of the Convention in order to secure the right of all seafarers to decent employment as dictated by Article I of the Convention, which includes the periodic reporting on its application.

The failure of the Government to report on the application of the Convention is of great concern to us. We want to remind the Government of Gabon that it is in breach of its obligation under the ILO Constitution, which provides in Articles 22 and 23 that: “each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request. ... Each Member shall communicate to the representative



organizations recognized for the purpose of Article 3 copies of the information and reports communicated to the Director-General in pursuance of Articles 19 and 22."

Gabon must consult the social partners on the development and compilation of these reports and any other reforms designed to give effect to the application of the MLC, 2006, in the framework of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), to which it is already a party. In this respect, we urge the Government of Gabon in consultation with the stakeholders to, without further delay, submit the report as requested by the Committee of Experts and put in place necessary measures including through legislative reforms for the full implementation of the Convention.

Worker member, Australia – I am speaking on behalf of the Australian Unions and the Commonwealth Trade Union Group. We would like to raise examples of good practices of countries implementing the MLC, 2006. I would like to provide the example of my country, Australia, in this regard. The Australian Maritime Safety Authority (AMSA) is the competent authority responsible for the regulation of the Convention and its requirements in Australia. As Australia is a large user of international ships and only has a small domestic shipping fleet, its port State control function is the key mechanism through which it implements the MLC, 2006, in practice in Australia. AMSA ensures compliance with the conditions under the MLC, 2006, and the welfare of seafarers by processing all MLC, 2006, complaints in relation to vessels in or coming into Australian ports; conducting port and flag State control inspection of vessels coming into Australian ports; ensuring registered Australian vessels are certified in accordance with the MLC, 2006; and taking a leading role in supporting the Australian Seafarers' Welfare Council (ASWC), which promotes seafarer welfare services in Australian ports to support and protect seafarers. The International Transport Workers' Federation (ITF) and its Australian affiliated unions are members of the ASWC. Within Australia, all foreign flag vessels are subject to port State inspections detailed in regulation 5.2 of the Convention, irrespective of whether their flag State has ratified the Convention. Where the flag State has not ratified the MLC, 2006, such vessels must be able to provide documentary evidence of compliance with its regulations and standards. Seafarers have a right to make a complaint to MSA regarding breaches of the requirements of the MLC, 2006. Marine Order 11 provides that a seafarer may report such a breach to AMSA to facilitate a prompt and practical means of redress.

AMSA works closely with the shipping inspectorate of the ITF in the implementation of its port State control functions and maintains a memorandum of understanding with the Fair Work Ombudsman to help ensure compliance with the seafarer's labour rights under the MLC, 2006. The majority of complaints received by AMSA are related to conditions of employment, Title 2 of the MLC, 2006. This includes seafarer employment agreements, wages, hours of work and rest, entitlement to leave, repatriation, seafarer compensation, crewing levels and career development. AMSA actively follows up complaints and seeks a resolution. Some are referred back to the flag State, many are resolved on the ship, but a significant number result in deficiency notices being issued, which are followed up to ensure deficiencies are rectified.

The AMSA inspections include an examination of seafarer employment agreements to ensure they reference a collective bargaining agreement, to ensure the seafarers wages and entitlements are specified and that seafarers are being repatriated to their home port at the expiry of the contracted duration of employment. AMSA provides occupational health and safety inspectorate functions for Australian seafarers and applies the same principles to international seafarers under the MLC, 2006. AMSA has a strong risk-based ship safety inspection programme to address ship deficiencies that are hazards to safe work and require



rectification before a ship can leave port and works closely with the Maritime Union of Australia dockworkers occupational safety and health (OSH) representative to ensure onboard OSH issues are resolved. Regarding skills development, AMSA consistently checks on seafarers' occupational certificates to ensure seafarers are qualified and certified to safely perform functions on ships and be able to respond to emergencies at sea.

Observer, International Transport Workers' Federation (ITF) – As stated by the Worker spokesperson, this is only the second time in the history of this Committee that we are examining the application of the MLC, 2006, in law and practice.

It took over five years of international tripartite consultation to develop an instrument designed to achieve near universal ratification. We managed to embed in international law strong labour standards for seafarers and a unique enforcement mechanism in an industry that is notorious for poor employment practices, including abandonment and forced labour.

Despite the Convention's innovations and the role of the Special Tripartite Committee of the MLC, 2006, the review of national implementation of the MLC, 2006, by the Committee of Experts, and indeed this Committee, remains fundamental to its proper application in law and practice. Therefore, it is very disappointing that the Government of Gabon has not submitted a first report on the MLC, 2006, six years after the original deadline. It is also concerning that there appear to be limited national implementation measures almost a decade after ratification. Nevertheless, we have already heard this morning some information on national provisions that is encouraging. Indeed, the Committee of Experts has noted that provisions of the Convention are mainly implemented through a Regulation of the Central African Economic and Monetary Community and certainly we would like to learn more about national implementation. We would note that a serious failure to report is not only a procedural issue, but something that can have an adverse impact on seafarers working on board Gabonese-flagged vessels and seafarers that call at its ports every year.

Since 2021, the ITF's maritime inspectorate has inspected 14 different currently Gabonese-flagged vessels. They have identified several problem types reported on the vessels, including abandonment (once), breach of contract (ten instances), international standards non-compliance (twice), medical concerns (twice) and owed wages (once), among others. Regarding flag State and port State inspections, however, it is unclear whether there are any national procedures that would ensure effective enforcement. We would need to see details in the Article 22 report. We are heartened by the Government's request for ILO technical assistance and its stated commitment to furnish the Committee of Experts with the first Article 22 report. In addition to training at the International Training Centre of the ILO in Turin, the Office of course has an excellent suite of guidelines, FAQs and literature on the MLC, 2006. Peer learning on best practice is also a major part of "getting it right" when it comes to the MLC, 2006. And of course, global unions and shipowner groups will also be happy to assist the Gabonese Government. Finally, we trust that the Government will indeed transmit the report to the Committee of Experts before its next session.

Government representative – On behalf of my Government, I thank the various speakers for their rich contributions to this debate. As highlighted in my first intervention, Gabon is committed to continuing to cooperate with the ILO supervisory bodies by providing all reports on a regular basis, as has generally been the case.

In the course of this year, the Government had 16 reports on ratified Conventions to provide to the ILO. Of these 16, 15 were transmitted to the Office, which demonstrates my country's commitment and willingness to uphold its international obligations. Only the first



report concerning the MLC, 2006, for reasons evoked earlier, and for which we are before the Committee this morning, was not provided within the prescribed time limits.

With respect to effective implementation, the Government will progressively take the necessary measures for the interests of seafarers. Hence why it is taking this opportunity to request ILO assistance to give effect to certain concerns raised by the speakers. We will also draw on the good practices that have been shared in this room.

Employer members – We thank the various speakers who took the floor, and most notably the Government of Gabon. Once again, the Employer members wish to highlight the essential duty of any ratifying State to implement ratified legal instruments both in law and practice. We reiterate that the MLC, 2006, provides for fundamental international legal standards in the maritime sector – an industry that has been subjected to ILO standards for a long period of time.

The Employer members repeat that first reports are vital to provide the basis to start a timely dialogue between the Committee of Experts and the ILO Member States on the application of a ratified Convention.

In light of the above, we request the Government of Gabon to:

- fill the serious reporting gap and send its first report on the application of the MLC, 2006, without any further delay;
- take all the necessary measures to ensure it complies in law and practice with the MLC, 2006;
- provide full information regarding the application in law and in practice of the MLC, 2006, in Gabon, notably:
 - (i) a copy of any legislative texts or other regulatory instruments, once adopted;
 - (ii) full information on the implementation of the Convention;
 - (iii) updated statistics on the number of seafarers who are nationals or residents of Gabon or who work on ships that fly the Gabonese flag.

Finally, the Employer members request the Government to avail itself of the technical assistance of the Office for the implementation of the above-mentioned recommendations.

Worker members – We thank the Government of Gabon for its comments, including provisions of national laws implementing certain elements of the Convention. We also thank the speakers who took the floor for their contributions to the discussion.

As we have heard today, the effective application of the MLC, 2006, requires thorough national implementation in consultation with the social partners. To this end, the Government must meaningfully engage with the social partners without delay.

We note that the Convention seeks to be firm on rights and flexible on implementation, meaning that the MLC, 2006, sets out the basic rights of seafarers to decent work, but leaves a large measure of flexibility to ratifying countries as to how they will implement these standards for decent work in their national laws. This flexibility should allow the Government to implement the Convention as relevant to its shipping sector. Of course, any such flexibility must be exercised in consultation with the social partners, with any determinations that are made reported to the ILO.

We also recall the importance of Article III of the Convention on fundamental principles and rights at work. The governments must satisfy themselves that the provisions of their



national legislation respect fundamental rights, in the context of the MLC, 2006, and report to the Committee of Experts accordingly.

We support the Government's request for ILO technical assistance and hope that this can be arranged before the next Conference. We are also encouraged by the Government's indication that two of its officials recently participated in a training course organized by the Training Centre in Turin with a view to building the capacity of constituents in the preparation of reports on the implementation of the MLC, 2006. We trust that the Government will also assist maritime trade union representatives to attend similar training sessions. As we have heard from our benches today, there are also some great examples of effective implementation of the MLC, 2006, in law and practice – peer learning is a critical part of the process.

We further expect the Government to submit its report on the MLC, 2006, to the Committee of Experts before its next session. Should a declaration of acceptance of the amendments to the Convention that have not already been accepted be submitted shortly, the report should also take these into account. In this regard, we note that the report form for the MLC, 2006, has helpfully been modified to take into account the amendments to the Code of the Convention.

Finally, it was also once again suggested that governments should conduct an analysis before ratification. We want to assure everyone, as we have previously done in the Committee that to our knowledge no government proceeds with ratification lightly, including in relation to technical Conventions. It is often the result of a long process that includes social dialogue with constituents at the national level with the assistance of the ILO when requested. The Office remains available to continue to provide technical assistance to support the implementation of the obligations. We ask the Government to take advantage of this.

Chairperson – I wish to inform the Committee members that the Government of Gabon sent the first report on the application of the MLC, 2006, which was received by the Office yesterday. With this, we conclude the discussion on this case.

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 insisted on the need to effectively apply the Maritime Labour Convention, 2006 as amended (MLC, 2006) at the national level, and to ensure that the Government meets its obligations to regularly report within the prescribed time limits.

Taking into account the discussion, the Committee urges the Government to:

- **take all necessary measures to ensure it complies in law and practice with the Convention, in consultation with the social partners;**
- **provide full information to the Committee of Experts regarding the application of the Convention in law and practice, including:**
 - (i) **a copy of all legislative texts or other regulatory instruments, once adopted;**
 - (ii) **updated statistics on the number of seafarers who are nationals or residents of Gabon, or who work on board ships flying the Gabonese flag.**



The Committee urges the Government to provide the information mentioned before 1 September 2023.

The Committee also requests the Government to request ILO technical assistance for the implementation of the above recommendations.

Government representative – The Government of the Republic of Gabon wishes to thank the Committee for the important work carried out before and during its appearance before it.

With a view to providing information relating to the difficulties encountered in transmitting its first report on the MLC, 2006, the Government notes the conclusions and recommendations of the Committee aimed at enabling it to better fulfil its constitutional obligations in the future, and reaffirms its readiness and willingness to cooperate with all of the ILO supervisory bodies within the framework of the implementation and monitoring of ratified and non-ratified Conventions in this area, and in accordance with its commitment to multilateralism.

In cooperation with the social partners in the maritime sector, the Government is committed to providing the additional information requested within the time limits indicated by the Committee. It also undertakes to request the technical assistance to support and realize its efforts to give effect to the provisions of the MLC, 2006, in order to ensure more effective protection of seafarers.

Guatemala (ratification: 1952)

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

Written information provided by the Government

Trade union rights and civil liberties

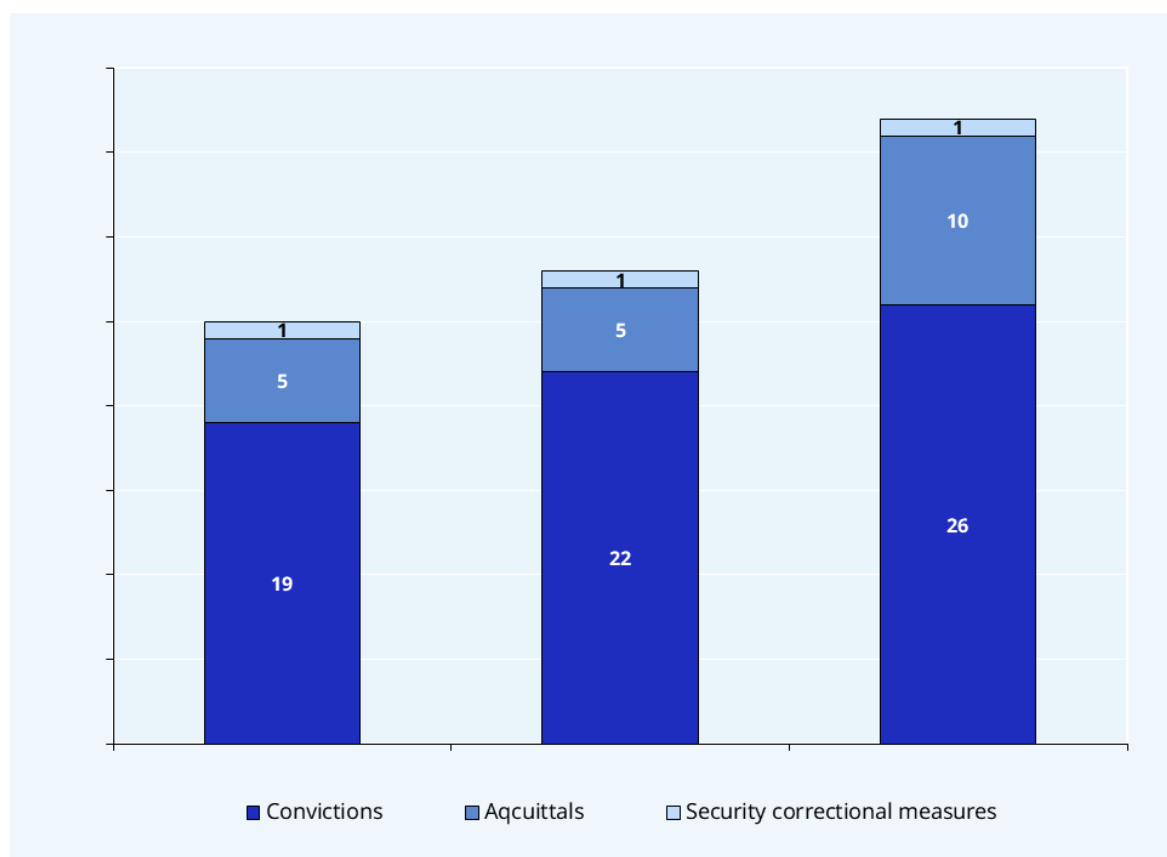
1. Work done at the institutional level. In order to achieve an effective investigation into acts of violence against trade union leaders and members, the Office of the Public Prosecutor has been addressing specific applications for prosecution to the competent courts, in order to secure penalties for the instigators and perpetrators of acts causing the deaths of trade union leaders and members, taking Instruction No. 1-2015, part of the comprehensive case management system (GIC), as the starting point for the investigation. As can be seen in table 1 below, the Government shows that it has made systematic, ongoing progress year-on-year in obtaining rulings in cases relating to the deaths of trade union leaders and members which have been reported to the ILO, with reference to key indicator No. 1 of the road map for the Convention. Moreover, the trade union sector has been given priority in the policy against criminal activity, with the opening of a Section Prosecution Office which addresses relevant matters, its focus strengthened by a budget enabling procedural outcomes which are timely, objective, relevant and based on the rule of law.



► **Rulings obtained and reported to the Committee of Experts on the Application of Conventions and Recommendations at the ILO (2020, 2021, 2022 and 2023)**

	2020	July 2021–June 2022	2023 (up to Feb.)
Convictions	19	22	26
Acquittals	5	5	10
Security and correctional measures	1	1	1
Total	25	28	37

Source: International Affairs Unit based on information presented in the report on Convention No. 87 for 2020, 2021, 2022 and 2023.



2. *Coordination on matters of security.* The Office of the Public Prosecutor is responsible for preparatory procedures and directs the National Civil Police in its investigatory role, while the National Civil Police has the task of investigating incidents which are automatically liable to incur punishment and prosecution, preventing these from giving rise to subsequent consequences, and identifying individual suspects, among other things. Accordingly, staff of the Ministry of the Interior provide security for trade unionists, in the form of perimeter or personal protection measures, depending on the respective risk assessment which is carried out quickly (in not more than a week). The security measures can be requested by the Office of the Public Prosecutor, the injured party, the Human Rights Procurator's Office, and the Ministry of the Interior. For 2023, all cases handled by the unit for the protection of trade unionists have been at the request of the Office of the Public Prosecutor and so all of them involve an investigation process. While the respective risk assessment is being undertaken before the relevant security measures are provided, the Ministry of the Interior provides the

trade unionist with the respective preventive measure. In this way, rapid, effective and appropriate protection is provided to trade union leaders and members who are at risk, with the aim of preventing any further acts of anti-union violence. The Government points out that on the subject of security, the Ministry of the Interior is running canteens for the National Civil Police, with six of them operating in the capital city. This is to prevent any trade union leader or member to whom a security officer has been assigned from incurring any expense.

3. *Trade union technical round tables involving the Office of the Public Prosecutor and the trade unions; unit for the analysis of attacks against trade union leaders and members at the Ministry of the Interior, and the trade unions.* Since early 2023, the Office of the Public Prosecutor has promoted dialogue forums with the trade unions, taking account of the schedules of the workers' representatives, and they have agreed a date for addressing specific issues relating to their interests. Otherwise, bilateral dialogue forums have been implemented between the Attorney General and staff, and the head of the Section Prosecution Office and representatives of the trade unions to address subjects of interest to them. Furthermore, from late 2022 to the present time, dialogue has been opened with the workers' representatives with a view to amending Ministerial Decision 288-2022, in order to cater to the workers' needs with greater clarity and focus (see [GB.346/INS/10](#), Part III, paragraph 15(1), on combating anti-union violence).

4. The Government reiterates its sadness and deep regret at the 98 cases of death recorded in **2022**. The Office of the Public Prosecutor has provided details of the outcome and/or current status of the cases, as follows:

No. of cases	Status of each case
26	Judgments handed down (26 convictions, 10 acquittals and 1 security measure).
7	8 arrest warrants issued.
3	Scheduled for 2023; some with a date set for the public hearing and at the intermediate stage; three cases not previously brought to court.
46	"Section 327 closure" procedure: With regard to one case also before the Committee on Freedom of Association (Case No. 2609), the Office of the Public Prosecutor indicates contempt of court by security guards who did not note the entry of vehicles; and on 9 May 2023 proceedings for concealment were opened, with a change of status from "section 327 closure" to "investigation".
10	Under investigation (two are being examined by the Special Prosecutor's Office against Impunity (FECI)).
6	Termination of criminal proceedings (two cases are also covered by the "section 327 closure" procedure).
98	Total number of cases reported to the ILO.

With regard to this group of 98 cases, the Government informed the Committee on Freedom of Association in relation to Case No. 2609 that the National Tripartite Committee on Labour Relations and Freedom of Association (CNTRLLS) formally delivered to the Attorney General a copy of the recommendations of the Committee on Freedom of Association regarding Case No. 2609, contained in its 391st Report (October–November 2019), so that with due account taken of these recommendations a solution would be found to the cases of merit. Furthermore, a request was made to formalize the trade union technical round table with an instrument emanating from the Attorney-General with a view to achieving legal certainty. In this regard, the outcome of the 35 cases referred to by the Committee on



Freedom of Association and the CNTRLLS are incorporated into the list in point 4 of this document, and the trade union technical round tables are active and have the participation of the workers, according to the dates supplied by them.

Procedural aspects. The Government states that the Office of the Public Prosecutor, in follow-up to the commitments made during special meeting No. 1-2023 of the CNTRLLS held on 29 March 2023, invited the representatives of the sectors within the National Tripartite Committee to a meeting on 31 May 2023, at which it provided information on procedural aspects and indicated generally the grounds for the prosecution decision reached on the cases and the judicial consequences, stating that the status of these cases can change from “section 327 closure” to “investigation” (as in a specific case concerning the death in 2007 of a member of SITRABI, the status changing during May 2023). The Government emphasizes once again that the cases can be reopened at any time and that regarding the decision to apply the outcome of “section 327 closure” to the 46 cases, this was not a unilateral judicial decision; rather, the cases were submitted to an in-depth investigation involving full working days and analysis of each of the cases. Moreover, the 46 “section 327 closure” cases included three cases processed under the “Coatepeque phenomenon” heading, regarding the numerous procedures carried out by the Office of the Public Prosecutor (275 procedures for the 3 cases), the exhaustive analysis of each case – with long working days effected by high-level coordination teams from the Office of the Public Prosecutor –, and these were handled in compliance with Instruction No. 1-2015, with no anti-union motives found in any of these three cases.

- (a) *Procedure of closure under section 327 of the Code of Criminal Procedure (CPP) of Guatemala.* The closure procedure is used: (i) when it has not been possible to determine specifically the person who is accused of committing the crime, even though appropriate investigations have been carried out; or (ii) in the event of contempt of court. No judicial authorization is required and it does not result in case law. The investigation must be resumed if new elements emerge which make it possible to identify the accused or the accused has been arrested.

The Office of the Public Prosecutor created the procedure of closure through Instruction No. 04-2005. The investigating entity is obliged to use the necessary resources to ensure a successful criminal prosecution, and where this cannot be done owing to **material impossibility** (a combination of legal or physical circumstances which makes it impossible to deliver a judgment on its own terms), it is necessary to regulate the appropriate use of the closure procedure. This is based on the principles of: (i) efficacy (ensuring that action is taken in accordance with the obligation to guarantee the exercise of the fundamental rights to be protected); (ii) legality (prosecutors must fulfil the criteria established by section 327 of the CPP in order to close the files dealing with criminal actions); and (iii) recognition of the victims (the Office of the Public Prosecutor is obliged to provide victims with the necessary means to assert their rights within the judicial process. Accordingly, prosecutors must notify victims in writing of the decision to close the case. This is without prejudice to notifying the parties established in the process ordered by section 327 of the CPP).

According to Instruction No. 04-2005, the closure procedure must be applied in accordance with section 327 of the CPP, taking account of: (i) identification of the accused; (ii) the previous steps taken in relation to the “section 327 closure” procedure in general and specific proceedings concerning crimes against life and crimes against life involving the use of firearms; and (iii) when the victim expressly declines to support the investigation, prosecutors must seek to obtain information by any other means,



especially when the crimes are of social importance or have a serious social impact. Prosecutors must also coordinate with the Office for the Care of Victims in order to meet the victims to provide them with support and gather information on their interests to see whether it would be possible to obtain their support during the investigation.

- (b) *Termination of criminal prosecution.* Under the CPP, a prosecution is terminated by the competent court on account of: the death of the accused; amnesty; the statute of limitations; payment of the maximum fine; the end of the trial period where a suspension of criminal proceedings has not been revoked; the revocation of individual action status in cases involving private action offences; the withdrawal of the complaint at the request of a party in cases involving private action offences; the death of the injured party in cases involving private action offences, though the action already initiated by the injured party can be pursued by that person's heirs or successors, except in cases specified by the Penal Code. The statute of limitations runs, is suspended or is interrupted separately for each of the parties to the offence, unless otherwise expressly provided for.

Application of the Convention in practice

5. *Public registration of trade unions.* The Government, through the Ministry of Labour and Social Welfare, reports that it has issued Ministerial Decision No. 214-2023 on the procedure for issuing union identification cards to active members of the administrative structure of trade union organizations. The objective of this is to regulate the procedure in a clear and simple way, free of charge, in order to provide workers with badges that they can use to identify themselves before the relevant entities, in order to freely exercise their union rights. As the public registration of trade unions, the approval of collective agreements on working conditions and the campaign on freedom of association and collective bargaining are key indicators of the road map for Convention No. 87, the Subcommittee on the Implementation of the Road Map has addressed them at two sessions in 2023, with the participation of officials from the Labour Directorate, the General Secretariat and the Technical and Legal Advisory Council. Here there has been interactive tripartite dialogue on the following topics: legal grounds, procedural actions, previous actions, notifications and challenges still needing to be addressed. Lastly, in addition to the efforts made by the Government on the freedom of association campaign, the Attorney General is proposing an initiative to work towards compliance with key indicator 7 of the road map of the Convention.

6. *Reinstatements.* Regarding the space for dialogue with workers, the President of the Chamber for the Protection of Rights and Preliminary Hearings continues to hold bilateral meetings with representatives of the workers on the concerns raised.

7. *Approval of collective bargaining agreements on working conditions.* In accordance with key indicator 9 of the road map, the Government of Guatemala, through the Ministry of Labour and Social Welfare, states that in the institutional context of Guatemala, the approval of collective bargaining agreements is understood to entail an examination of their legal validity in form and substance. Among the main issues that have been observed in the public sector in Guatemala is the examination of collective bargaining agreements on working conditions. Through this experience we have observed that if the Government, as the competent authority on these matters, conducts an adequate examination for the approval of collective bargaining agreements in the public sector, it will help to prevent situations such as the one highlighted by the Committee on Freedom of Association. To this end, it was decided that the approval process should involve as much as possible the examination of the laws currently in force. Even though the negotiating and signatory parties are public



authorities and organizations of public employees or workers are inevitably considered to be aware of the laws in force which regulate the agreements they negotiate and sign, a certain knowledge gap remains which results in clauses that cannot be duly validated from a legal perspective.

This means that the examination of the legal or juridical validity of a collective bargaining agreement on working conditions should include an examination which covers at least the following elements: (a) recognition that article 106 of the National Constitution establishes collective bargaining as a constitutionally desirable means for improving the minimum social rights of workers, in this case workers in the public sector; and that, to this end, the promotion and protection of this fundamental right are established as an objective of the State; (b) within the framework of the full exercise of the fundamental right to collective bargaining, the signatory parties are considered to have complete freedom to negotiate employment and working conditions, as established in the Collective Bargaining Convention, 1981 (No. 154); however, this freedom is subject to the obligation on the parties to respect the law and public order in the negotiation process, in accordance with the 2013 General Survey of the Committee of Experts concerning labour relations and collective bargaining in the public service, in observance of the fact that collective bargaining must always be carried out in the manner prescribed by law; and (c) this basic condition of legality applies particularly in the public sector where public authorities, as employers, may negotiate agreements as long as the content agreed upon falls within the legal competence conferred on them as public officials under the Guatemalan Constitution.

The Government reiterates its unwavering commitment to intensifying its inter-institutional and state efforts to comply with the Convention.

Discussion by the Committee

Chairperson – I invite the Government representative of Guatemala, the Minister of Labour and Social Welfare, to take the floor.

Government representative (Minister of Labour and Social Welfare) – I am grateful for this opportunity for the Government of Guatemala, accompanied on this occasion by representatives of the judges of the Supreme Court and the Constitutional Court, as well as high-ranking representatives of the Public Prosecutor's Office and the Ministry of the Interior, to be able to provide information on the action taken by the Government of Guatemala in relation to the observations made by the Committee of Experts concerning the Convention, as it has done repeatedly in the Committee on Freedom of Association and the Governing Body in their various sessions regarding the decisions reached between 2018 and 2020, in which the Government was urged, in conjunction with the social partners in Guatemala and with ILO technical assistance, to continue making every effort and devoting the necessary resources to achieve a sustainable and full application of the provisions of the road map. The Government noted with satisfaction the three-year ILO technical assistance and cooperation programme, aimed at enhancing Government efforts to ensure compliance with the Convention. Guatemala has honoured its international commitments with its own budget, plus the financial assistance from the ILO, through its own funds and other programmes since 2022, in its third year of implementation. The Government also noted the information provided by the Office in document GB.346/INS/10, in particular the priority actions identified during the joint mission of the ILO, the International Organisation of Employers (IOE) and the ITUC. Allow me therefore to reiterate that Guatemala continues to provide information and emphasizes that it has made significant progress on the implementation of the road map and on the points which were raised by the joint mission and adopted by the National



Tripartite Committee on Labour Relations and Freedom of Association. Those points include the following:

- (1) A significant increase in the institutional budget of the Special Prosecutor's Office at the Public Prosecutor's Office dealing with crimes committed against trade union leaders and members, which we deeply regret. In addition, an increase in the budget for security measures for the workers' sector adopted by the Ministry of the Interior, and the opening of a Pluripersonal Court of Penal Resolution dealing with offences of non-compliance in labour-related matters, as part of the judiciary initiative, with some US\$3 million allocated to this area. As a result of the above, with regard to the 26 cases submitted by the Public Prosecutor's Office and resolved by the judiciary, convictions stand at 80.77 per cent and acquittals at 19.23 per cent.
- (2) By comparison with the years 2016–22, crime rates have decreased in Guatemala. However, the Ministry of the Interior has established a forum for dialogue at the highest level in order to address the subject of attacks against trade union leaders and members, also regulated by a ministerial decision. There are established risk assessment procedures for the provision of security measures for trade unionists. Institutional efforts have been made to provide speedy and effective protection to all trade union leaders and members in situations of risk, preventing any fresh acts of anti-union violence from being committed. Moreover, the Government of Guatemala has established canteens for officers of the National Civil Police, which prevents trade unionists receiving protection from the above-mentioned Ministry from incurring any expense.
- (3) With regard to legislative issues, the Government complied as stated by the joint mission by bringing legislative proposals before the legislature within the time frames indicated in the joint mission last year.

Nevertheless, we are facing challenges regarding fulfilment of our obligations and the effective application of the Convention with regard to standards-related issues. In March 2023, we asked the ILO for technical assistance so that we can support this esteemed organization in examining the legislative proposals, and we hope that the response from the Office will be in the affirmative, as it always has been in the past. We are now supported with funds from the EU through the assistance and cooperation programme which has been in force since September 2022. For this we are very grateful; the combination of this and the Government's efforts yields greater certainty that we will achieve the goals to which we have committed.

- (4) With regard to the application of the Convention in practice, we are grateful for ILO support and technical assistance with regard to the public registration of trade unions. The Government would like to point out that major progress has been achieved in the awareness-raising campaign on freedom of association and collective bargaining, providing posters in 18 priority departments of Guatemala, which initially were supposed to bear the logos of the most representative employers' and workers' organizations. However, with regard to the comments made by the workers, publicity regarding the awareness-raising campaign has only involved the Government logo. It should be noted that the information on the awareness-raising campaign concerning freedom of association has been shared with the Subcommittee on the Implementation of the Road Map, which forms part of the National Tripartite Committee. I emphasize that at the meeting of 31 May 2023 the workers welcomed the initiative of the Attorney-General of the Republic of Guatemala to conduct an awareness-raising campaign on



freedom of association, where their support was requested to ensure its implementation. Once again I stress the fact that our greatest strength has been and still is tripartite dialogue within the National Tripartite Committee, a forum which has been attended by the Attorney-General. And now I give the floor to the Secretary against Corruption from the Public Prosecutor's Office so that he can provide further details on this matter.

Another Government representative – With regard to the urgency of investigating all acts of violence against trade union leaders and members, in order to apportion responsibilities and punish both the instigators and perpetrators of such acts, taking full account of the investigations and the trade union activities of the victims, the Public Prosecutor's Office of Guatemala would point out that in 2017 there were 64 municipal prosecutors' offices. At present, through the appropriate use of the budget, there is now coverage in 340 municipalities throughout Guatemala. In other words, this is 100 per cent national coverage, providing effective access to the justice system for all Guatemalan citizens in their own communities. This means that in cases where trade union leaders and members are affected, the Public Prosecutor's Office can take the necessary action to address the complaints, via the implementation of a comprehensive case system which deals with new cases in 24, 48 or 72 hours.

With a view to obtaining immediate and vital results concerning the presentation of prosecution requests to the competent court in a timely fashion, the Public Prosecutor's Office recently obtained ISO 9001-2015 certification in 273 of the 340 municipal prosecution offices, and is in the process of certifying all the prosecution offices at the national level.

Here I must point out that given the importance of the subject and in compliance with the obligations of the State of Guatemala, since 2019 there has been a Special Prosecutor's Office dealing with crimes against judicial officials and trade unionists. This is in the process of being certified under the same quality standard, and this aims to provide a differentiated response in accordance with the needs of the trade unions. It is a response to the phenomenon of crime.

As regards the long-standing cases, these have been examined in depth and in line with prosecution instructions in order to provide a response and reduce prosecution delays.

It is important to reiterate that the Public Prosecutor's Office is an autonomous auxiliary entity of the judiciary and that the whole Public Prosecutor's Office, representing the public authorities with regard to investigation and criminal prosecution, is a fundamental pillar in the construction of the State of law, which guarantees compliance with the law, due process and respect for human rights. Hence, if it did not fulfil its legal function, such an omission would imply impunity.

The civic right to file a complaint can never be limited or restricted, and the cases of complaints filed by trade union leaders and members in Guatemala receive special treatment, on the basis of Instruction No. 1-2015 for the effective investigation and criminal prosecution of crimes committed against unionized workers, other labour rights defenders and trade unionists, which is issued by the Public Prosecutor's Office. The Instruction underlines the importance of working together with the trade unions for the provision of vital information concerning the complaints filed, in which the victims are trade unionists. I reiterate that these are addressed and investigated objectively, impartially and scientifically. Convictions or acquittals handed down under Guatemalan law are not the only forms of settling or responding to complaints.



Recalling the proposals and principles of the United Nations (UN) Charter, there is a need for respect for due process, for each case to move forward in accordance with the law, so that when the judicial ruling is issued, this is what determines with legal certainty the action of the State of Guatemala with regard to the principle of legality. In this context the Attorney-General, accompanied by her technical team, of which I am honoured to be a member, have participated in three meetings of the National Tripartite Committee. We have also held bilateral meetings with representatives of the unions in order to explain the legal concepts or formalities, criteria for application, legal consequences, methodology and grounds, such as the exemplification of cases.

Furthermore, those who wish to make statements in support of the cases have been invited to file supporting complaints or to appear in person in the various procedures so as to participate and express views in the cases, as provided for by law.

I should reiterate that this dialogue forum has been implemented exclusively with the workers. In addition, at the request of the employers and Government within the National Tripartite Committee, an extraordinary meeting was held on 29 March 2023, with a tripartite follow-up meeting held on 31 May 2023, in order to explain the legal concepts and consequences in the cases concerning the deaths of trade union leaders and members.

The closure procedure under section 327 of the Code of Criminal Procedure (CPP), as explained in the documents sent to this Committee, applies when it has not been possible to identify individual suspects or if there has been contempt of court on their part. In other words, the suspect has not appeared voluntarily in court or cannot be located. This does not mean that the case is closed definitively, since that could only result from dismissal of the case. Closure under section 327 means that if elements emerge giving grounds for a prosecution request to be filed with the competent court by the prosecution service or on the basis of an individual initiative, the processing of the case in question can continue. Such a situation has already arisen in the Section Prosecution Office which deals with crimes against trade unionists in returning to the stage of bringing charges when cases already contain sufficient elements to enable a judgment to be handed down. In this regard, the Public Prosecutor's Office bases this decision on Instruction No. 4-2005 regulating the use of the closure procedure at the Public Prosecutor's Office.

In the cases denounced for the deaths of trade union leaders and members examined by the Public Prosecutor's Office, it has not been established that these occurred as a result of anti-union motives or the exercise of trade union activity. However, the Public Prosecutor's Office reiterates its unlimited commitment to fulfilling its constitutional duty and continuing to intensify institutional efforts to ensure that cases in which trade unionists are the victims are resolved as quickly as possible, independently of cases at the investigation stage or waiting for an arrest warrant to be enforced.

I re-emphasize that the administration of the Public Prosecutor's Office has an open door policy. The national constituents are therefore invited to maintain an interactive dialogue with the autonomous institutions and state agencies in order to obtain effective justice for all.

Worker members – I would like to pay tribute to brother Carlos Mancilla who passed away in February. He tirelessly represented Guatemalan unions at national, regional, and international level, particularly in the ILO. May we carry forward his vision ensuring that workers' voices are heard, and their rights are protected.



Few cases have required as much supervision from this House as that of Guatemala. Indeed, this is the 14th time in 20 years that this Committee has heard a case concerning either freedom of association or collective bargaining. While we appreciate that the ILO has spared no effort to address the many serious and persistent violations in the country, through the supervisory system, through technical capacity-building, including the continued financial and political involvement of several governments, through the involvement of the tripartite constituents and so on, it is tragic that so little progress has been made despite so much effort.

In addition to the ILO, the Inter-American Court of Human Rights in a recent case recognized that Guatemala failed to respect freedom of association, including the right to strike. And the UN Human Rights Council, in the report of the last periodic review, in April 2023, raised concerns about violence against trade unionists and impunity for the crimes. But no matter how clear the calls have been, they have not been heard.

Today, the ILO Memorandum of Understanding and road map, developed after a complaint to establish a Commission of Inquiry, remain largely dead letters, with little improvements. In September 2022, an ILO–International Trade Union Confederation (ITUC)–International Organisation of Employers (IOE) mission visited Guatemala out of concern for the lack of meaningful action on the road map, and a one-year priority plan was adopted in order to focus the Government on the most pressing issues. Unfortunately, those issues have not been completed. For example, violence and impunity remain a very serious problem despite constant demands on the Government to address this urgency. Just ten months ago, 45-year-old Hugo Eduardo Gamero González, disputes secretary of the National Port Workers' Union (SINEPORT), was murdered. He is only the most recent of the over 100 trade unionists who have been murdered since 2005.

For years, these brutal attacks have gone unanswered. Instead of launching thorough investigations, we hear the Government now dismissing them as mere consequences of a generalized climate of insecurity in the country. This stance downplays the gravity of the situation, further exposing trade unionists to violence and death in the course of their work.

By refusing to acknowledge the specific targeting of trade union leaders and allowing a culture of impunity for perpetrators, the Government effectively condones these acts of violence and perpetuates a culture of impunity.

Anti-union dismissals in the public and private sector are routine and remain a serious problem. The few reinstatement orders which are granted are appealed for years, meaning there is no effective remedy or dissuasive sanction to address anti-union discrimination.

We acknowledge that the Government established three specialized courts to address the crime of non-compliance with labour and social security resolutions and expect that these courts will bring about meaningful results, including speedy and effective justice for anti-union discrimination cases, in line with the Convention.

Other obstacles also persist, including regarding the registration of trade unions. Unions continue to report that employers often challenge the registration of new unions or appeal registration decisions. There are also several cases in which the trade union registrar of the Ministry of Labour rejects or seriously delays the updating of the list of union members. This impedes the exercise of the rights protected under the Convention resulting in low union density.

With regard to the legislative reforms that the Committee of Experts has requested for many years, there still is no progress. In 2018, there was a tripartite agreement on some of



the reforms requested. However, these reforms languished for years. In late 2022, following the ILO-IOE-ITUC joint mission, the Government submitted the bill to Congress for its attention, but the lack of any meaningful effort to seek its passage has meant that the bill has not moved and has no prospects of being adopted before the June 2023 elections. To date, no efforts have been made to address the matter of sectoral unions and the modalities of sectoral collective bargaining. With this, there are no possibilities for negotiating above the enterprise level.

Regarding the media campaign, there has been no real commitment by the Government to advance an effective, forceful, and convincing national campaign to reverse union stigmatization and instead promote the free exercise of unionization and eradicate violence against our comrades.

Finally, the efforts that have been made to create opportunities for dialogue with the support of the ILO are not actually leading to results due to an apparent lack of real political will for systemic change.

The Worker members share the Committee of Experts' statement – and I quote – “expressing its concern at the persistence in law and practice of serious violations of the Convention”. The Committee is also right to note, regarding the priority plan, that it is “vitaly important that the expectations generated by the identification of such actions translate into tangible progress.” Clearly, the Government has not met these expectations and we are deeply concerned that the comments of the Government here today give us little hope of tangible progress anytime soon.

Employer members – This is a matter which we have been addressing for a long time. In 2012, a complaint was filed under article 26 of the ILO Constitution and was closed in 2018.

Furthermore, in the course of the follow-up evaluation, in 2013 the Governing Body approved a Memorandum of Understanding at the highest level. In 2014, the outlines of a road map were approved. In 2015, nine key indicators for follow-up of the road map were specifically incorporated. In 2017, a tripartite agreement was reached on four of the six legislative issues. In 2018, the National Tripartite Committee on Labour Relations and Freedom of Association was established, a very important element, through which additional national agreements were adopted, leading to the creation of three subcommittees which are discussing various aspects, including the international matters with which we are occupied here.

At the closure of the complaint it was finally agreed, from 2020, to have a programme of technical assistance and, in particular the Governing Body requested follow-up action in relation to this programme with evaluation of the indicators established in the road map. We consider that there has been compliance with this since reports and attachments in this regard have been presented.

Furthermore, a joint ILO-IOE-ITUC mission took place in September 2022 to follow up on the technical cooperation provided by the ILO and in which, in conjunction with the National Tripartite Committee, a series of priority actions were identified to give a fresh boost to this process.

We would like it to be placed on record that Guatemala has followed up on the commitments made with regard to the various ILO bodies.

Firstly, we would like to thank the Government for sending the requested reports, which describe the action taken to reduce the violence which is such a concern for us, in particular



regarding the 98 cases involving deaths submitted in the last nearly 20 years, including 2022. I would like to make this clear, because there are times when this figure is understood as applying to this year or last year. There are 26 cases which have yielded convictions, ten resulting in acquittals and one resulting in a security measure, reflected in the follow-up indicator for matters related to the Convention. We are also grateful for the reports on the action taken by the Government with regard to the National Congress for aligning the legislation in the form which was pledged. There is also the new registration of 29 trade union organizations and the increase in the budget to reinforce investigation and judicial bodies which aim to ensure that the exercise of trade union freedoms and rights in the country are protected in law and in practice.

However, we Employer members categorically repudiate all the acts of violence which have been reported and we deeply regret the deaths which have been reported. Let us hope that all efforts made to investigate and punish the threats and acts of violence cited in the report will lead to genuine change in the prevailing situation. In this regard, and without swerving from our position, we are bound to recognize that in recent years fatalities have decreased in practice, which should encourage the Government to continue working along the path which has been defined.

We observe that the technical assistance and the action taken by the state institutions in Guatemala have not been in vain, and although we would like to see more and better results, we are bound to recognize that progress has been made with regard to the investigation and punishment of crimes against trade unionists and we would hope that this will be extended to the rest of society.

It is also important to bear in mind that although many forms of violence have continued in Guatemala, the national Government has taken various forms of action in line with its commitments, and the participation and commitments of the National Tripartite Committee, and has implemented various policies. Moreover, as we have said on other occasions, regrettably this form of violence does not exclusively involve trade union leaders; most citizens in Guatemala are exposed to it too.

This is not a justification; it is a reality which we cannot conceal. We are dealing with a social phenomenon with its own origin and nature and it still needs to be addressed.

Although – and I stress – this circumstance in no way justifies any acts of violence, we should also not lose sight of the widespread situation of violence since this constitutes an important element of judgement as regards the findings of this Committee.

Under these conditions, let us vote for the Government to continue adopting decisive and effective measures for promoting a climate of non-violence in the country.

I have heard that a representative of the workers said that another UN organization had identified violations of the principle of freedom of association and the right to strike. We would like to recall the position of the Employers, namely that the subject of strike action is not a matter related to the Convention and that this should be addressed in accordance with the legislation in force in each country.

Having made this clarification, we also note, with regard to protection for trade unionists, that this has been reinforced, as already explained by the Government representatives, and all follow-up action related to this has been recorded in the reports.



The Committee of Experts indicated in its comments that, indeed, the Government of Guatemala submitted the Bill on labour matters to the National Congress in timely fashion and in line with agreements.

In this regard, nobody is convinced, obviously, that this Bill has been passed, but we are face to face with the Government and on the basis of the autonomy of the National Congress, we hope that, in line with its internal procedures, this Bill will be debated and, if appropriate, approved. This is so important and corresponds to one of the commitments taken by the Government, and we understand that it has fulfilled them. If only action can be taken to speed things up!

With regard to social dialogue, we can see that the National Tripartite Committee is functioning as established by the road map. We observe that there is a set of conditions and we do regret that not all rulings issued by the judiciary have determined responsibility. But, as we have already said on many occasions, we do not agree with the opinion of the Committee of Experts that any ruling that acquits a suspect signifies a denial of justice.

The justice system involves implementing processes which correspond to the information available and in this case determining responsibility on the part of whoever is concerned. It seems to me that this has been taken into account by the Government so far, with the support of all actions taken in a highly relevant manner with ILO assistance.

I observe that the Government, which is truly facing a situation which we all condemn and feel concern about, has given evidence of interest in accepting all the mechanisms which have been suggested to it. Here we often witness denial of the facts, refusal of support and assistance, and denial of the truth. From our perspective, we are encouraged to see that the Government is maintaining the intention of doing all that is necessary to quell the violence and regrettable acts referred to by the report.

Worker member, Guatemala – This is in memory of our comrade, the recently deceased Mr Carlos Mancilla.

Several years after implementation of the road map began, the overall balance is that none of the commitments made by the Government has been fulfilled. Anti-union policies in Guatemala have intensified. Acts of repression, violence and persecution against trade unionists and the destruction of trade unions are constant. Blacklists and articles in the social media continue to be produced by people linked to certain private sectors which foment hate, including its ultimate expression in the form of murders of our trade unionist comrades. One of the most recent cases of murder was that of Mr Hugo Eduardo Gamero González, disputes secretary of the National Port Workers' Union (SINEPORT), in Santo de Castilla, Puerto Barrios, Izabal, which the Committee of Experts referred to in its 2022 report.

We have received complaints from our men and women comrades regarding the actions of prosecutors and/or units of the Public Prosecutor's Office in the provinces, in which in almost all cases when attacks against trade unionists are denounced they do not examine them, even though this is one of the key objectives of Instruction No. 1-2015, with analysis of the context at the time of the attacks needing to be taken into account.

These facts were reported to the unit at the Public Prosecutor's Office which investigates attacks on trade unionists. We are waiting for the corresponding reply. In the end, the more than 100 cases of attacks on, and murders of, our trade union comrades which have been documented and reported to this Committee have not been resolved. Nor has a regulatory and institutional framework for the protection of workers against the crimes committed been constructed, much less any progress made in something as simple as the implementation of



awareness-raising campaigns regarding the right to freedom of association and collective bargaining at the national level. What could be the reasons for the ministerial authorities not honouring their commitments?

Although it is true that the National Tripartite Committee on Labour Relations and Freedom of Association has been established, it meets without any clear objectives or time frames; we continue to be highly critical. Other matters of tripartite interest should be addressed and discussed and agreement reached on them in the above-mentioned body but in practice this does not happen. Here are two examples of this shortcoming. For 2023, the executive authority, at the behest of the Ministry of Labour, approved wages differentiated by region without having exhausted the procedure of the National Tripartite Committee, and the same things happened with the implementing regulations for the application of the Part-Time Work Convention, 1994 (No. 175). As we have reported on countless occasions, these cases end up undermining the workers, especially in urban and rural areas with major pockets of poverty and extreme poverty, with the associated implications. It should be recalled that this important body was established with the tripartite approval and support of the ILO, it being recognized by a Ministerial Decision, with the undertaking that it would be duly underpinned by a decree-law.

There is also the issue of the establishment of industry trade unions, which corresponds to long-standing observations of the Committee of Experts. These are another two examples of non-compliance. The road map does not give evidence of progress; on the contrary, there have been attacks on trade unions, trade unionists and in particular collective bargaining. Another example: regarding the administrative process for the approval of collective agreements, the criteria applied have been made more stringent to the point of undermining such agreements, even though the employers and workers have confirmed their wish to validate the agreements. The Ministry of Labour sent a note, dated 1 June 2023, reporting on the mechanism that governs the administrative processing of the approval of collective agreements in the public sector, even though everyone knows that these criteria are the ones which they have been applying for over two years.

This subject is constantly subject to questioning by the trade unions, on account of the adverse implications for the workers in general. Moreover, it violates concepts of the Constitution, which enshrines collective bargaining as a means for improving the minimum social rights of men and women workers. The Ministry of Labour as chief guarantor of labour standards has become the main obstacle to the positive development of the very processes of negotiation and the right to organize. So there are serious steps backwards, especially regarding freedom of association and collective bargaining, in total collusion with the employers.

On the contrary, there are other proposals for labour legislation which are regressive for the workers and ultimately for the country, where there has not been due consultation with the unions at the time they were being prepared. For example, reforms of the Penal Code have been proposed aimed at including provisions which penalize collective bargaining and criminalize trade union activity and administration.

On the other hand, the judiciary has prepared the proposal for the Code of Labour and Social Security Procedure, which even reveals major backward steps with regard to the current labour legislation. Also being processed and under discussion is a law which criminalizes social and trade union protests. We are in a situation of total defencelessness.

Lastly, it should also be noted that in a few days our country will be electing new national authorities, which will take up office in January 2024. The general socio-political



environment is totally uncertain for the workers and the outlook is particularly grim for the Guatemalan trade union movement. We have serious doubts as to whether the new governing authorities will assume the responsibility for implementing the road map. Faced with this complex scenario, we continue to insist that there is an urgent need to decide on the immediate setting up of a commission of inquiry for Guatemala.

Employer member, Guatemala – Firstly, we would like to express our heartfelt condolences to the workers, and especially Mr Francisco Mendoza, Mr Julio Coj and Mr Luis López, regarding the death of Mr Carlos Mancilla, a recognized trade unionist, a personal friend and a fighter for the workers' cause, who was frequently present at this Conference.

As mentioned by the Workers' spokesperson, his decease is without any doubt an enormous loss for the international workers, for our comrades in Guatemala and for all of us who had the good fortune to share the tripartite forums with him, and to whom we owe the commitment to continue working for a country which has more justice and opportunities for all.

As I have done frequently, I would like to start by referring to the support and patience which the Conference Committee and the Office have shown to Guatemala in recent years. As chairperson of the National Tripartite Committee on Labour Relations and Freedom of Association, I would also like to thank the Government of my country and the workers for their participation in, and support for, the aforementioned Committee.

I would like to reiterate the importance of the road map launched in 2014 and the absolute commitment of the sector that I present to implementing it.

I would also reiterate the commitment of the employers' sector to support all complaints made by the workers in the context of the road map, on the basis of the law, the rejection of any form of violence and our solidarity with the victims.

I do categorically reject the accusation levelled at the employers of promoting hatred and violence. These assertions appear to be unfounded. Not only are they arbitrary, they also do not correspond to the spirit of respect which should characterize tripartite relations.

Even though there certainly remains a lot to be done on the implementation of the road map, we cannot and should not fail to recognize the progress which has been made.

Firstly, the very institution of the National Tripartite Committee and the opportunity for social dialogue which it gives us. This is a forum of inestimable value which also calls for willpower and courage on the part of the parties to reach compromises, recognize challenges and demand results but also to recognize progress made. We can do more but we need the will to do so, to participate and to take advantage of the opportunity given us.

For example, we are inspired to see the work ethic of the subcommittees, with commitment, effort and openness to agreement which, alas, we have not been able to match within the National Tripartite Committee. I must also refer to the readiness of the government institutions to honour the commitments of the road map. These include the following.

In the Supreme Court and the Constitutional Court: the establishment of a Pluripersonal Court of Penal Resolution for offences of non-compliance in labour matters and the clear support of the Constitutional Court through participation in tripartite meetings and its openness to attending to the workers.



At the Ministry of Labour and Social Welfare: the reactivation of the Tripartite Advisory Board on Labour Inspection and the submission of a Bill to the National Congress institutionalizing the National Tripartite Committee.

At the Public Prosecutor's Office: the establishment of a special prosecution section and a significant increase in the institutional budget for dealing with crimes against trade union leaders and members. In addition, the Ministry of the Interior has increased the budget for the provision of security for workers. The Special Prosecutor's Office dealing with crimes against judicial officials and trade unionists has been strengthened through ongoing training on international labour standards and dissemination of Instruction No. 1-2015 of the Public Prosecutor's Office concerning the handling of complaints of anti-union violence.

Note should also be taken of the openness and willingness of the Attorney-General to meet at least three times this year with the National Tripartite Committee, and the instructions to her team to hold as many meetings as requested by the workers to address certain cases.

As regards complaints of violence against trade union leaders and members: there is absolute consensus on condemning any form of violence. We reiterate our solidarity with, and unconditional support for, the victims and the workers in general; they define the contribution we can make.

Having said this, I think we should note that the first of the 98 cases referred to above dates from 2004, which gives an idea of the complexity of the investigations into events that occurred nearly 20 years ago. I repeat: no death can be justified. Justice must be sought and these events are categorically repudiated by us.

In these 98 cases, there have been 37 judgments handed down, of which 26 are convictions. As already mentioned, there are 46 cases in which the investigation process has been exhausted and closure measures have been adopted, but this in no way prevents the reopening of the cases concerned in the event of new evidence coming to light.

It also seems to me that, with such a sensitive subject as this, we cannot merely deal in absolute numbers accumulated; we must also analyse the trends. In recent years, the murder rate decreased from around 48 per 100,000 inhabitants to less than 20 per 100,000 inhabitants last year. In that situation, in the situation facing all Guatemalans, it should be noted that regarding the 98 cases reported since 2004, we can only express our regret and reiterate our absolute repudiation of any act of violence, and we also note that there have only been two cases involving deaths in the last two years.

Are these results acceptable? Of course not. We still have so much progress to make.

Every single life is important and we must all work together to protect the integrity of each individual and indicate our absolute rejection of any acts of intimidation. Here the workers have, and will continue to have, our solidarity and support.

My message today is that we should continue to work together in social dialogue but without clinging to a past from which we must move on, always demanding social justice. At the same time we must recognize the enormous challenges which we still face. We also urge you strongly to recognize and not deny the progress that we have made. I do not deny, I accept, that much remains to be done but we are on the right path.

We succeeded in signing the road map in 2014 and so I invite you to reflect.

Before 2014, did we have an established forum for social dialogue?



Before 2014, did we have a Special Prosecutor's Office dealing with crimes against trade unionists?

Before 2014, did we have a special court dealing with non-compliance in labour matters in order to enforce reinstatement orders?

Before 2014, did we have the opening and exposure of the highest judicial institutions to address trade union concerns?

Before 2014, did we have three meetings in the last eight months with the Attorney-General and the offer to hold all meetings necessary with the trade unions to provide any explanations requested in each of the cases?

In a country where almost 90 per cent of murders go unpunished, can we say to these persons that we have not obtained justice but that they do not have a Special Prosecutor's Office devoted to resolving these cases and that, having obtained 37 judgments in 98 cases, this does not signify some modest progress in the justice system?

Even though the judicial resolution and the conviction of the perpetrators is important beyond any doubt, should we not recognize that since 2004 there has been a significant reduction in acts of anti-union violence?

Clearly, we all want results but it is pointless, it is neither fair nor constructive to fail to recognize the progress that has been achieved. Where results exist, it is not about recognizing them only when they are the results we want. The right to demand results also requires a commitment to decisive, ongoing participation and the political will to do so.

We are perhaps moving very slowly but we are continuing to take steps. The Employer members will remain at the table fully willing to move forward and support all sectors on the path which we still have to take.

I will finish by referring to the responsibility that we owe to our sectors, to our country and to all Guatemalans. We are obliged – I repeat, obliged – to understand each other and seek better opportunities for further action.

Government administrations pass, and in January 2024 we will have a new Government, but the workers' and employers' sectors remain.

For my part and for the sector that I represent, I offer our full readiness to fulfil this responsibility with the sole request that we do not stop moving forward together with decisiveness and willpower to implement not only the road map but also the agreements that our country so badly needs. It is our responsibility and obligation to do so and we cannot stop working towards this end.

Government member, Sweden – I speak on behalf of the **European Union (EU) and its Member States**. The **candidate countries Bosnia and Herzegovina, North Macedonia, Republic of Moldova, Montenegro**, and the EFTA country **Norway**, Member of the European Economic Area, align themselves with this statement. The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights such as the right to organize and freedom of association. We actively promote the universal ratification and implementation of the fundamental international labour standards. We support the ILO in its indispensable role to develop, promote and supervise the application of ratified international labour standards and of fundamental Conventions in particular.



We wish to recall the commitment undertaken by Guatemala under the trade and sustainable development chapter of the EU-Central America Association Agreement to effectively implement in law and in practice the fundamental ILO Conventions. The EU and its Member States continue to follow the situation in Guatemala very closely. We reiterate our deep concern about the human rights situation, including labour rights, and note a persistent lack of progress on reforms. We fully echo the Committee of Experts' deep concern about the allegations of a new case of murder and other acts of anti-union violence committed in 2022, the persistence of a high degree of impunity and weak protection measures. We welcome the Government's intention to continue the implementation of the road map adopted in October 2013. However, we stress that intensified efforts are needed to fully implement the road map in consultation with the social partners and in accordance with the series of priority actions identified by the joint mission of the ILO, IOE and ITUC undertaken in September 2022. It is of the utmost importance that further efforts translate into tangible progress in the application of the Convention.

The EU and its Member States condemn the persistent and serious acts of general violence, the violence against trade union leaders and members, including murders and physical aggression, and the culture of impunity that prevails. We call on the Government to investigate all acts of violence against trade union leaders and members with the aim of determining responsibility and punishing both the perpetrators and the instigators of these acts, taking the victims' trade union activities fully into consideration in the investigations.

In line with the Committee of Experts, we continue to note with concern difficulties in clearing up long-standing murder cases and other acts of anti-union violence. It is regrettable that the majority of the murders of trade unionists have not yet resulted in convictions and that limited information on identification and punishment of the instigators has been provided. We urge the Government to strengthen the prevention, protection and response mechanisms in respect of threats and attacks against trade union officials and activists. In the event of failure, this situation is likely to continue, if not to become worse.

Despite numerous calls from the Conference Committee, the Government has yet not introduced the necessary amendments to several sections of the Labour Code and Penal Code to secure the application of the Convention. We note with concern the continued challenges related to the process of trade union registration, criteria for engaging as a trade union leader, obstacles to the right to strike and limitations to the freedom of association in the public sector.

We again urge the Government to adopt, without delay, the reforms that were submitted by tripartite consensus to the Congress of the Republic and to make progress in the revision of the legislation relating to sectoral trade unions and the conditions for strike ballots.

The EU and its Member States will continue to follow and analyse the situation and remain committed to our close cooperation and partnership with Guatemala in the fulfilment of all its obligations under ILO Conventions, with a specific focus on fundamental Conventions such as this Convention.

The EU reaffirms its commitment to continue cooperating with Guatemala through the ongoing EU-financed technical assistance programme, which is implemented by the ILO. Close cooperation will continue with the ILO and the national tripartite constituents to achieve the objectives of this technical assistance programme.



Government member, Colombia, speaking on behalf of a significant majority of Latin American and Caribbean countries – We are grateful for the information that the Government of Guatemala has kindly submitted today to this Committee on the application of the Convention. We recall that the Guatemalan Government is required to submit information on this same Convention to the Governing Body at its October/November sessions for the three-year duration of the technical cooperation programme entitled “Strengthening of the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards”, for which funding was requested in accordance with the decision adopted in October/November 2020 (GB.340/INS/10).

We acknowledge the Guatemalan Government’s call, made during the presentation of the first and second annual reports on the implementation of this programme, to other donors to make financial and technical contributions to strengthen national resources and efforts for the implementation of the technical cooperation programme. The actions referred to today before this Committee have been financed with the Guatemalan Government’s own funds and with funds allocated by the Office from other programmes.

A significant majority of Latin American and Caribbean countries recognize the commitment of the Guatemalan constituents to strengthen the processes of negotiating and reaching agreements within the National Tripartite Committee and its subcommittees, prioritizing social dialogue and respect for international labour standards.

We encourage the authorities of the three branches of the State of Guatemala to continue their efforts, commitments and progress in relation to the road map, to consolidate social dialogue, to continue the work carried out so far by the National Tripartite Committee and to ensure the observance of the Convention.

A significant majority of countries in Latin America and the Caribbean note that the Government of Guatemala is again being examined in several areas of this Organization’s standards supervisory system. The simultaneous application of mechanisms to deal with the same allegations concerning one country could weaken the functioning of the ILO supervisory bodies.

Employer member, Colombia – First of all, the Employers’ group strongly rejects all acts of anti-union violence. We deeply regret the deaths reported in the cases under discussion. In this regard, it is important to note that, starting in 2020, it was agreed that Guatemala would have a technical assistance programme to support follow-up on the road map.

Indeed, this technical assistance has borne fruit, and although it is always desirable to have better results and more resources, it is undoubtedly clear that there have been achievements in terms of investigation and punishment in the cases of murders of trade unionists. These achievements have been translated into strategies for the prevention of further criminal conduct of an anti-union nature.

Secondly, the Committee of Experts refers to impunity with respect to resolution and convictions in the cases analysed in Guatemala. With regard to this issue, we consider that the Committee should not consider that justice only operates when convictions are secured; forms of justice also include dismissal, preclusion, closure of the investigation and acquittal, if this can be understood as the guarantee that citizens have of obtaining reasonable and timely responses from independent authorities in relation to allegations made.

Hence, we look favourably upon the improvements made regarding investigations, trials and arrest warrants by the Public Prosecutor’s Office and the judiciary. We stress that the



Guatemalan judicial bodies are autonomous and independent and today have greater capacity and technical knowledge than in previous years. It is these bodies, and not the Government or the employers, which have carried out the relevant investigations, which have concluded that some cases correspond to other forms and dynamics of violence.

Thirdly, on social dialogue in Guatemala, with the support of the ILO, tripartite dialogue has been developed further. Tripartism has been consolidated through the holding of ongoing meetings of the National Tripartite Committee on Labour Relations and Freedom of Association, as well as in different departments of the Public Prosecutor's Office. Representatives of trade unions and employers' organizations participate in these forums on a continuing basis.

It should also be noted that the Government recently submitted to the legislature a standards reform Bill that had undergone consultation with the social partners in order to bring the legislation into line with international standards.

Accordingly, we consider that the Government cannot guarantee, at least not in such a short time, results that do not depend on the executive branch but rather on a democratic, autonomous and independent body such as the National Congress of Guatemala.

Lastly, we invite the Government, workers and employers to continue along the path of social dialogue and negotiation, which is, in the end, the path to reconciliation.

Worker member, Colombia – Anti-union violence in Guatemala has persisted over the years and, according to the latest reports, this situation has worsened significantly, as evidenced by the recent murder of comrade Mr Hugo Eduardo Gamero González, who served as disputes secretary of the workers' union in a port enterprise, as stated in the report of the Committee of Experts in 2022.

This murder adds to the more than 100 cases of fellow Guatemalan trade unionists who have been victims of anti-union violations that have gone unpunished.

In its report, the Committee of Experts requested the Government to investigate, without delay, all acts of violence against trade union leaders in the exercise of their activities, as well as to provide effective protection to trade union leaders at risk.

However, despite the Government's reports on the progress in the prosecutions of the murders of our comrades, on the significant increase in the budget of the Special Prosecutor's Office dealing with these crimes and on the protection programme, the truth is that these measures have not been sufficient to guarantee the due exercise of the right to freedom of association.

In this regard, it is worth highlighting that the Committee of Experts recalled in its report on the principle of freedom of association in relation to this case that "trade union rights can only be exercised in a climate that is free from violence, pressure or threats of any kind against trade unionists, and that it is for governments to ensure that this principle is respected."

We therefore urge the Guatemalan Government to comply with this mandate, guaranteeing the free exercise of the right to freedom of association and resolving via the competent authorities the murders, both long ago and more recent, of trade union leaders who have been victims of acts of violence, so that there is effective justice for their families and the Guatemalan trade union movement.



In this context, and in the interest of preventing any further acts of anti-union violence, we urge the Government to provide adequate protection to all trade union leaders and give fresh momentum to implementing the road map adopted in 2013.

Employer member, Honduras – We are once again surprised that this year Guatemala is once again being called for examination under the Convention, since, as is well known in this room, a technical assistance programme was established in 2020 for this country and the Governing Body requested follow-up to this technical assistance programme and an evaluation of the indicators in the road map.

Without prejudice to the above, we can state that: (1) we regret the widespread violence in Guatemala, as it causes suffering for all Guatemalans, but we have seen progress in the progressive and sustainable intervention of the Public Prosecutor's Office for the investigation and punishment of the deaths that have been reported; (2) we have seen progress in the implementation of the road map thanks to social dialogue and tripartism, but it is important to point out again that all sectors must participate to ensure the progress and the success of the roadmap; and (3) we have seen progress in the discussions on legislative reform, which takes time and a lot of discussion, but we consider that it is on the right track and therefore we urge the sectors to maintain social dialogue to achieve the approval of this legislation with the support of the ILO.

We call on all sectors to continue with faith and hope, and with the support of the ILO, to make effective progress on the road map and sustain tripartite social dialogue in order to maintain social peace in Guatemala. All we ask of this Committee is to support the sectors in order to achieve the objectives of the road map, which received tripartite approval.

Worker member, Peru – We see in the case of Guatemala a very serious situation, which trade union leaders have been reporting for years without their country's authorities finding an effective solution and which has now been reiterated to this Committee by members of the trade union delegation from that country.

Justice delayed is justice denied. The Government's unwillingness to guarantee the safety and lives of trade unionists, whose human rights to life and to the free exercise of freedom of association are being violated, is a cause for concern. All the signs suggest that crimes and threats against the lives of trade unionists continue without timely action by the State through its institutions of protection. Attempts on the lives of trade union leaders in Guatemala, without effective action by the Government, are a serious violation of the Convention and of the Universal Declaration of Human Rights itself.

Impunity is a hard blow to the ranks of unionized workers, who begin to perceive that exercising the right to freedom of association will put their lives at permanent risk, and this affects the very performance of the trade union function to take action for the benefit of the working class. We also consider these facts to be serious because, despite the countless occasions on which the ILO supervisory bodies have denounced these crimes and the lack of timely action, their conclusions and recommendations have not been taken into account.

With elections due to take place in a few days in Guatemala and new authorities taking office, we urge the Committee to send an official communication announcing the visit of a commission of inquiry which the trade union delegation has called for and which we support.

Government member, Switzerland – Switzerland is concerned about the climate of violence and repression against trade unionists in Guatemala. The threats and acts of violence to which the representatives of workers' organizations are subjected constitute serious violations of the fundamental rights recognized under the Convention. Switzerland



condemns these acts and recalls that workers must be able to exercise their trade union rights without their physical or mental integrity being harmed. Switzerland has taken note of the increase in the budget allocated to the Special Prosecutor's Office dealing with crimes against judicial officials and trade unionists. We wish to stress the importance of access to independent justice, free of any restrictions.

Switzerland also recalls that workers must be able to form associations freely, without this process being hindered. In this respect, we urge the Guatemalan Government to take the necessary measures to fully guarantee the right to freedom of association.

The Government of Switzerland takes note of the information provided by Guatemala, in particular the strengthening of prevention and protection measures against anti-union violence and the increase in investigations and judicial decisions on cases relating to the deaths of trade union representatives. We encourage the Government of Guatemala to continue and strengthen its efforts to guarantee the safety of trade unionists in the exercise of their rights. Switzerland expresses the hope that the priority actions identified by the joint mission of the ILO, IOE and ITUC will be implemented by the Government in order to ensure the application of the Convention in law and in practice.

Employer member, Costa Rica – On this occasion, we consider it important to support and highlight the appropriate steps that the Government of Guatemala, in the framework of social dialogue, has taken.

As we have previously indicated, we know that this tool has successful results leading to the resolution of labour, social and economic issues. Guatemala has managed to find practical and real solutions to the problems it faces, while following the suggestions of the ILO Committee of Experts and Governing Body.

We highlight the legislative actions that the Government of Guatemala has promoted throughout recent years, such as, first, the request of the National Tripartite Committee for the establishment of such a forum by law, which should be considered a significant achievement. Second, there has been follow-up to the recommendation of the joint ILO-IOE-ITUC mission. Third, the strengthening of this tripartite body through a national law, thereby making it a forum for dialogue that works to promote compliance with international commitments, guarantees its sustainability over time, and affords it legal certainty. This Tripartite Committee is, in turn, composed of three subcommittees that have made great progress in this area: the Subcommittee on the Implementation of the Road Map, the Subcommittee on Mediation and Dispute Settlement, and the Subcommittee on Legislation and Labour Policy. Fourth, the discussions being held on the legislative reform concerning branch trade unions and sectoral bargaining, in accordance with the tripartite agreements of March and August 2018, taking account of the provisions set out in the Convention and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). This is the information the Government has been providing in line with the request made.

It is with these types of actions that the social partners, through social dialogue and with ILO technical assistance, hope to align national and international legislation, and strengthen the institutional framework of the National Tripartite Committee on Labour Relations and Freedom of Association.

We highlight the advances made in the legislative reform, as they are positive, provide legal certainty to all parties and have the backing of the sectors. We know that making changes to the legal system, particularly where this involves laws, is a slow process requiring significant dialogue, proposals, agreements and solutions for the greater good. It is



nonetheless better to do it slowly and properly, since creating laws aimed only at seeking a quick and easy solution to extremely delicate problems creates the risk of developing standards that have no practical application.

We urge the Government of Guatemala to pursue all the actions it has been taking until now in good faith and with clear will, accompanied by one of the most important tools for making real sustainable progress: social dialogue.

Government member, Canada – Freedom of association, as understood and envisaged in the Convention, may only be effectively exercised in a climate free from all forms of violence, intimidation or threats.

It is incumbent on governments to ensure respect of this principle. However, for over 15 years, the Committee of Experts, the Governing Body and the Conference Committee have examined allegations of serious acts of violence against Guatemalan trade union leaders, including allegations of their murders.

While thanking the Government of Guatemala for the new information provided to the Committee, we nevertheless wish to recall that all acts of violence against leaders of trade unions and associations must be properly investigated and, where relevant, the perpetrators of these acts must be penalized, in order to bring an end to the climate of impunity in Guatemala and to ensure real protection of workers and their representatives.

Canada appreciates the results of the joint mission led by the ILO, IOE and ITUC, with a view to the follow-up to the road map adopted by the Government of Guatemala in 2013. Canada notes that this mission has given fresh momentum to the road map, including with regard to the labour law reform that the Committee of Experts has been recommending for over ten years.

While recognizing the efforts of the Guatemalan Government and the social partners over recent years, it is nonetheless clear that much work remains to be done, particularly to end impunity and violence against trade union leaders.

Canada requests the Government of Guatemala to prioritize and continue to work towards effective protection of all trade union leaders and workers in a situation of risk, in order to prevent all anti-union acts of violence, to work towards tangible progress concerning the revision of the legislation on sectoral trade unions and conditions to vote for a strike, and, lastly, to work on launching campaigns to raise awareness of the right to freedom of association, developed in consultation with the social partners.

Canada also calls for effective protection of trade union leaders and strongly encourages the Government of Guatemala to intensify its efforts to bring to justice the perpetrators of crimes against trade union leaders as soon as possible, and in accordance with the principles of the rule of law.

We strongly encourage the Government of Guatemala to continue to work closely with the ILO and to request its technical assistance when needed.

Worker member, Bolivarian Republic of Venezuela – We have received and noted the information from the Worker delegate of Guatemala on the observations presented by the whole autonomous group of workers of this country on the repeated failure to implement the road map and the tripartite agreement signed by the Government of Guatemala, and the employers' and workers' sectors, on Conventions Nos 87, 98 and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).



In this regard, the workers' delegation of the Bolivarian Socialist Workers' Confederation (CBST) of the Bolivarian Republic of Venezuela would like to request that the ILO accelerate its actions to continue with the technical assistance and cooperation programme and make progress with the road map. It is important to mention that, despite the efforts made by the Office, since the tripartite agreement was signed, the events that led to its establishment have increased exponentially. There have been over 100 murders of trade union leaders which have not been resolved by the Guatemalan authorities. Threats to trade union leaders and certain members of the National Tripartite Committee have also risen. The workers of the Bolivarian Republic of Venezuela express their solidarity with the workers of Guatemala and request the ILO's decisive action through a commission of inquiry to put an end to this serious situation.

Government member, United States of America – This is the Conference Committee's second time discussing the Government of Guatemala's compliance with the Convention since closure of the long-standing article 26 complaint at the November 2018 Governing Body. We thank the Government for providing additional information to this Committee in response to the Committee of Experts' recent observations and last year's discussion.

The Government reports on various measures it has taken to address long-standing issues and recommendations, particularly efforts to implement the 2013 road map, the March 2018 tripartite agreement, and the follow-up to the September 2022 tripartite joint mission to the country.

We note that the Government reports a significant increase in the budget allotted to the Office of the Special Prosecutor for Crimes against Judicial Officials and Trade Unionists, continued coordination with the Public Prosecutor's Office to provide protective measures to trade unionists at risk, and the roll out of improved procedures for issuing union credentials. We welcome these measures as initial, partial steps.

At the same time, we remain deeply troubled by the lack of progress on key issues and recommendations. We note that the Committee of Experts expresses concern regarding the persistence in law and practice of serious violations of the Convention. The Committee of Experts regrets that, since 2005, it has been examining allegations of serious acts of violence against trade union leaders and members, including numerous murders and situations of impunity.

The Committee of Experts also notes lack of progress in legislative amendments needed to remove obstacles to workers' right to strike, facilitate the establishment of sectoral trade unions, and allow non-Guatemalan workers to be elected trade union leaders, among others.

We call on the Government to fully implement all outstanding recommendations from the various ILO supervisory bodies. To that end, we urge immediate and effective action to: improve investigative processes and increase prosecutions of those responsible for acts of violence and murder against trade unionists; recognize threats, intimidation, and harassment against trade unionists as acts of violence; create a safe, enabling environment that allows all workers to freely exercise their rights, including strengthening of mechanisms to protect workers' rights; adopt legislation to bring its laws in line with international labour standards on freedom of association and the right to collective bargaining, including by institutionalizing the National Tripartite Committee, and to give effect to the decision on the right to strike reached by tripartite consensus; continue to improve the system for registering trade unions and collective bargaining agreements; and ensure that remedies following anti-union dismissals or retaliation are enforced without delay.



This will require the Government to provide the labour inspectorate with additional resources to effectively operate in all regions of the country, particularly in the agriculture and maquila sectors, where labour law violations related to freedom of association and the right to collective bargaining persist.

The United States of America remains deeply committed to working with the Government to advance internationally recognized workers' rights in Guatemala, including through the joint Department of Labor and the Ministry of Labour and Social Welfare (MTPS) work plan, as well as through Department of Labor funded projects to help improve labour law enforcement. We also urge the Government to continue working in close cooperation with the ILO, social partners, and other relevant partners.

Employer member, Plurinational State of Bolivia – Since 2000, this Committee has been repeatedly discussing the case of Guatemala for failure to implement the Convention. In such circumstances, it goes without saying that it is totally unacceptable that such murders can occur. Of course, those responsible for these criminal acts must be penalized with the full force of the law.

However, it is also clear that such a sensitive situation must lead to a comprehensive policy to prevent any form of crime that not only involves establishing the number of convictions brought but also addressing the origins of the problem by determining the root causes of these acts. In this regard, there are indicators showing that Guatemala has made significant progress in the adoption of measures aimed at affording greater protection to trade union leaders. For example, specialized bodies are in place for the protection of trade union leaders, not only at the level of the prosecution service for investigative purposes, but also for prevention and protection through the Ministry of the Interior. Such measures are not common in other countries but we understand that they were developed in Guatemala precisely to respond to the need to advance in the fight against criminal acts against union leaders.

We must be aware that, although it would be ideal, there is no magic formula to end crime in general from one day to the next. It is rather the result of a process that, for the most part, spans a long period of time in order to raise the awareness of the whole population.

I am sure that we all want Guatemala to achieve all the objectives that have been set in this regard. We must therefore encourage the Guatemalan authorities and all those involved to continue to make progress in the fight against all the criminal acts that gave rise to the repeated observations on the application of the Convention.

Worker member, Spain – I am also speaking on behalf of the Netherlands Trade Union Confederation and the Trades Union Congress of the United Kingdom.

Guatemala, regrettably, has become a recurrent case before this Committee in recent decades. As all parties have mentioned here, the murder of trade unionists represents the peak of an anti-union sentiment in Guatemala that is rooted in the absence of freedom of association. As set out in the report of the Committee of Experts, in addition to violence and high levels of impunity, the violation of freedom of association in Guatemala takes many forms, and I will focus on just one: the lack of compliance with reinstatement orders.

Last year's joint mission of the ILO, IOE and ITUC confirmed the existence of a combination of legal, institutional and practical factors that hinder the proper functioning of the justice system in respect of anti-union discrimination in general and the enforcement of reinstatement orders in particular.



After discussing the Guatemala case last year, the Committee of Experts was emphatic in its response to the verified anti-union situation in the country, not only deploring and regretting the violence and impunity, but also requesting the Government of Guatemala to adopt measures to “ensure that judicial decisions of reinstatement in employment following anti-union dismissals are enforced without delay”. Nevertheless, the situation in Guatemala has not improved, and there are even workers who have yet to be reinstated in their jobs almost five years after the order was issued. The failure to comply with judicial reinstatement orders is a practice seen in both the private and public sectors, particularly in local government.

I wish to recall that reinstatement forms part of the road map submitted by the Government of Guatemala following consultation with the social partners under the auspices of the ILO.

Specifically, point 7 of the road map states that “it is important and urgent that the rulings of the labour courts are observed and executed”, and the steps contained in the road map include verification of compliance with court rulings by the Reinstatement Verification Unit, with a deadline of 60 days. Those 60 days have passed; in reality, approximately 4,000 days have passed.

Trade unionists in Guatemala, who live with violence and impunity on a daily basis, have demonstrated admirable commitment to seeking solutions to ensure compliance with the Convention. Regrettably, however, the Guatemalan Government’s lack of commitment to complying with and executing reinstatement orders is clear.

We therefore ask the Committee to urge the Government of Guatemala, in the strongest terms, to comply with the provisions of the Convention.

Lastly, I would like to recall that the last time we had the opportunity to talk to our friend and colleague Mr Carlos Mancilla, he told us about the threats made against him and his family. Let us honour his memory and live by his example.

Government member, Dominican Republic – We welcome the Government’s efforts to comply with the Convention as described today by the representative of the Public Prosecutor’s Office, and we urge it to continue to redouble its efforts until it achieves full implementation of the Convention.

Worker member, Republic of Korea – Guatemala and the Republic of Korea have celebrated 60 years of diplomatic relations last year. Guatemala is the largest market for Korean goods in Central America and the textile industry accounts for around 80 per cent of South Korea’s investment in Guatemala. Around 150 textile and garment factories are owned by Koreans. But it is precisely this sector that has seen some of the most serious violations against workers and trade unionists. In 2015, the Korean Federation of Trade Unions (KCTU) and the Korean human rights NGOs jointly conducted field research on human rights and trade union rights violations in Guatemala. At that time, numerous violations were reported including non-payment of wages or paying below the minimum wage, non-payment of social security contributions after deducting from workers, being forced to work for long hours and poor sanitary conditions. In some cases, owners have closed down their factories and reopened under different names and have carried out massive dismissals as a means of evading their legal responsibilities to their workers. However, as seen in the Committee of Experts’ report, these violations of law and infringements of workers’ rights are really persistent until today, including in Korean-owned garment factories. In April of this year, when 300 workers in a Korean-owned factory tried to organize a union, the management



began an anti-union campaign and witch-hunt to find the workers who spoke up about their issue to form a union. In another factory, where 40 union members and leaders were fired in 2013 but still not reinstated, the management refused to sign a collective bargaining agreement despite an arbitration court ruling ordering the company to finalize or implement the agreement. Another example is when the workers formed a new union in 2022, and the company refused to grant union leave even though it is guaranteed under the law. The result is that, as it has been extensively reported by the Committee of Experts, the unionization rate in the sector is below 1 per cent and only one collective agreement covering the maquila sector has been known in recent years. The Government must, without delay, fulfil its commitment to the International Labour Organization and cease all obstacles to the exercise of trade union rights and collective bargaining in the maquila sector and to intensify initiatives for the effective promotion of these rights.

Employer member, Panama – As stated by the Minister of the Republic of Guatemala, we have been addressing this matter for some time, and it is therefore a follow-up case in which significant progress has been made that we must acknowledge. In that regard, the Government has clearly expressed its regret at the deaths caused by widespread violence in the country. That widespread violence has not only affected trade unionists but also employers and the general population.

In the midst of that situation, we have witnessed continuing and sustained progress in the investigation of reported cases, as described by the Public Prosecutor's Office. As a result of those investigations, the Public Prosecutor's Office handed down 25 judgments in 2020, 28 in 2021 and 37 between 2022 and February 2023. It is important to note that Guatemala is a State based on the rule of law where all persons are subject to the Constitution and the law. The Public Prosecutor's Office is therefore free to investigate all cases in the country.

Similarly, judicial proceedings have taken place according to the principle of due process, with all parties enjoying evidentiary and adversarial freedom and equality. All rulings have been based on the principles of judicial independence, meaning that they have been handed down by a competent court, based on evidence and the law. We are sure that the Committee of Experts does not wish the executive to influence cases under investigation by the Public Prosecutor's Office, nor the judiciary to render judgments in favour or against. That would violate the principle of the separation of the powers, which is a fundamental part of the rule of law and life in society.

Through the presence here of representatives of the Public Prosecutor's Office, the Supreme Court and the Constitutional Court, the Government has demonstrated that it has made significant advances, and so this is a case of progress which should be reflected in the conclusions.

Worker member, Botswana – I speak on behalf of the workers of Botswana and the Commonwealth Trade Union Group aligns to this statement. According to the ITUC Global Rights Index, the climate of violence against trade unionists has earned Guatemala the infamous distinction of being the most dangerous country in the world for trade unionists. The repercussions of Guatemala's climate of violence against trade unionists extend far beyond its borders. Indeed, the world is watching, and the international community is well aware of the atrocities taking place in Guatemala. Even in Botswana, a country situated thousands of kilometres away, the plight of Guatemalan trade unionists has not gone unnoticed. The news of violence, intimidation, and the denial of basic workers' rights reverberates throughout the global community, reminding us of the urgency to address this



pressing issue. It is a climate where, expressing dissent, advocating for better conditions of work, and fighting for the rights of workers can lead to harassment, threats, and often death.

Furthermore, we must highlight Guatemala's reiterated violations of the Convention. Every year we hear of serious violations indicated by the Committee of Experts and the Committee. By targeting trade unionists and subjecting them to violence, Guatemala flagrantly disregards the principles enshrined in the Convention. It is not only a breach of its obligations under international law but also a betrayal of the workers who strive for a fair and just society. We call upon the Guatemalan Government to take immediate and effective measures to protect trade unionists, to investigate and prosecute those who are responsible for violence and intimidation, and to create an environment where workers' rights can be exercised without fear. Finally, the Government must fulfil its commitment to fully implement the ILO road map by introducing safeguards and mechanisms that protect the rights of workers, promote dialogue, and foster a culture of respect for trade unions.

Worker member, United States of America – Once again, this Committee is discussing Guatemala's ongoing and egregious failure to comply with the Convention. Despite decades of engagement by the ILO's supervisory mechanisms, technical assistance projects and bilateral engagement by several Member States, Guatemalans continue to place their lives and livelihoods at risk for supporting trade unions. In August 2022, 45-year-old Hugo Eduardo Gamero González, disputes secretary of the National Port Workers' Union (SINEPORT), was assassinated in a targeted shooting. As has been noted, he is only the latest of over 100 trade unionists to have been murdered since 2005. Beyond the issue of violence, the Government of Guatemala has still not adopted the legislative reforms identified by the Committee of Experts to address barriers to the formation of sectoral trade unions and to guarantee the right of public sector workers to strike.

In addition, anti-union dismissals in the public and private sector remain a serious problem. In the rare cases where judicial orders for re-instatement are retained, they are routinely ignored by employers without consequence. We welcome the renewed focus on completing the established road map that came out of the 2022 ILO-IOE-ITUC joint mission. However, we also caution that over the past 20 years we have seen successive Guatemalan governments commit to a number of road maps and action plans that ultimately went unfulfilled. Therefore, the onus must squarely be on the Government to demonstrate why this time it will be different. In conclusion, we urge this Committee to adopt strong conclusions and recommendations requiring the Government to demonstrate tangible progress and guaranteeing workers the right to freedom of association in Guatemala.

Observer, Public Services International (PSI) – I am speaking on behalf of PSI and the seven Guatemalan public service trade union organizations affiliated to PSI. The case of Guatemala is, as noted by other speakers, a recurrent case in this Committee and has prompted discussion of serious violations of freedom and human rights. We recall that those violations have not been duly addressed or resolved by the various governments of Guatemala in recent years.

On the contrary, since the International Commission against Impunity in Guatemala was expelled from the country on 3 December 2019, there has been a regression, and it has been an even greater uphill struggle for the working class and the Guatemalan people in general. Extreme poverty and migration are exacerbated by persecution of independent media that report on corruption and the reality on the ground, and against the few judges and prosecutors who have dared to hand down sentences against persons who sow terror and believe themselves to be the masters of the country.



In recent years all the leaders of the organizations affiliated to PSI have reported threats, harassment, dismissals, the arbitrary cancellation of collective agreements, media campaigns against them and – when all that failed to work – fabricated criminal proceedings intended to dismantle their organizations and intimidate workers who fight for their rights and report corruption.

The various governments have never complied, and have never intended to comply, with the road map given to them by the ILO in order to disband the Commission of Inquiry. Although at the time we celebrated the Organization's boldness in seeking alternative mechanisms to facilitate compliance with ILO Conventions, today we regret the wasted time and, above all, having trusted social partners who played us for fools.

In our view, that road map is dead. Let us give it a proper burial at this session, trusting that at the upcoming meetings of the Governing Body, the Commission of Inquiry may be reactivated in order to investigate the serious violations of freedom of association and human rights occurring in Guatemala.

Government representatives, we cannot be mere observers when it comes to the most precious legal asset there is – life – and we must ensure freedom of association and, obviously, the decent work that is guaranteed and supported by the ILO.

Government representative – Taking the floor again, I wish to say that I have listened with attention and interest to the statements made by the representatives of the Governments, Employers and Workers. I am grateful for the comments which recognize the progress made by the Government. I wish to emphasize that we understand your concerns, we deeply regret the deaths of the trade union leaders and members, and we agree on the importance of ensuring respect for trade union rights in law and in practice.

Hence we have provided and maintained a proactive tripartite social dialogue. As a member who shares responsibility for implementation of the road map and taking account of the comments of the Committee of Experts relating to the Convention, we have been firm and constant in intensifying our efforts to act with determination in the actions that enable progress to be made regarding observance of the Convention, in particular concerning trade union rights and civil liberties, legislative issues and the application of the Convention in practice.

Aware of the fact that we are still facing challenges to conclude the actions that are still pending relating to the road map for the Convention, we trust that these will be accomplished, and to that end it will be essential to continue building on the basis of dialogue. We also trust that the state institutions, in accordance with the legislation, will continue with actions that enable the ongoing achievement of the tangible results required, within the time frames indicated by the joint mission and set out in document GB.346/INS/10 concerning identified priority actions for the time ahead, always subject to the provisions of law.

Achieving these is made possible by support from the social partners and from the ILO, to which we reiterate the request for technical assistance under the technical cooperation programme entitled "Strengthening the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards". This would enable a successful conclusion to the requests adopted by the Governing Body in November 2022.



May I remind my fellow constituents that we are respecting the points defined by the joint mission during its visit to our country in September 2022, and also its time frame for the whole of the current year, as long as technical assistance is forthcoming.

The Government has focused its technical and financial efforts on areas related to: (1) entering trade unions in the public registry of trade unions, which is done in strict accordance with the law and as indicated by the Committee of Experts in its observations. An ongoing dialogue has been maintained with the sectors in the context of the Subcommittee on the Implementation of the Road Map, which forms part of the National Tripartite Committee. It should be noted that the Ministry of Labour has maintained confidentiality with regard to persons who are union members, in order to prevent the risk of inclusion of the unions in any list indicating their union activity; and (2) strengthening the Public Prosecutor's Office with training on Instruction No. 1-2015 throughout Guatemala in order to raise prosecutors' awareness of its objectives, and also processing complaints received in the provinces in order to launch initial investigations and respond to the situation on the ground with the criminal prosecution process, based on the presence of branches of the Public Prosecutor's Office throughout the country.

We recognize and reaffirm that there is a need to focus tripartite efforts on a national approach with a strategic path in the medium and long term, going beyond the short term, as has been discussed in the ILO supervisory bodies, to enable sustainable results to be achieved in line with the situation in the country, bearing in mind that the processes of generating confidence and the results thereof may take more time than we would like. However, we reiterate our commitment to continuing our efforts to face the challenges ahead of us, placing the focus on the tripartite approach, respecting the role of each constituent, and reiterating that the Government will continue to intensify its efforts until its commitments have been fulfilled.

Guatemala is making efforts to maintain constructive relations with the social partners and to keep the joint mission informed through meetings and written information on the progress and implementation of our immediate and ongoing actions. This is to ensure compliance and to give evidence of our dedication and commitment with regard to the Convention, on which the constant progress has been indicated to the National Tripartite Committee, pointing out that although we are moving forward at the speed dictated by the legislation and the national situation, we are moving and we are on the right track.

Whether or not there is agreement with the progress demonstrated and even though there are value judgements from each sector on the progress shown, we must consider the importance of recognition of the constructive role played by the National Tripartite Committee, which in itself is an achievement, with the support of the International Organisation of Employers, the International Trade Union Confederation and the ILO, in all these processes.

We underline the need to continue building confidence to consolidate genuine social dialogue in our country accompanied by constant demonstrations of political will, taking account of the observations of the Committee of Experts on the Convention, as well as evaluation of the road map through the key indicators and the points referred to by the joint mission adopted by the Governing Body at its 346th Session (November 2022). Information was given to the ILO Governing Body and this will continue under the technical cooperation and assistance programme, a measure adopted at the 340th Session of the Governing Body (November 2020).



I reiterate emphatically that Guatemala is respectful of labour rights, and underline that the utmost efforts are being made to meet the stated international obligations. Guatemala focuses on ensuring that challenging, innovative proposals and consensus are achieved to offer solutions to the needs and concerns of the Guatemalan people in the world of work.

Beyond any shadow of doubt, we must recognize the importance of continuing with social dialogue and show humility in asking for help where necessary, as we have been doing. In this regard, we reiterate our firm hope that those countries that see fit can join us and make a financial contribution to the technical cooperation and assistance programme adopted since November 2020, and that thanks to the EU funds, granted as from September 2022, the existing and ongoing efforts made by the Government will be assisted.

In this context, may I once again reiterate the request for technical assistance made by the Government after 7 March 2023, in relation to the points indicated in the legislative reforms which have been referred to so much here, and specifically with regard to strengthening the National Tripartite Committee, on which we are still awaiting a favourable response.

All that remains for me to do is to encourage my fellow constituents to resolve the issues concerning labour relations and freedom of association, to continue developing high-level dialogue forums in this context, and to encouraging the countries making interventions in this esteemed forum to support us by continuing to engage in constructive dialogue combined with the results that we continue to demonstrate to the ILO Governing Body in the context of the technical cooperation programme in relation to which the actions indicated by the joint mission are carried out.

Before concluding, with the aim of focusing and centring the discussion, Guatemala requests that the Committee's conclusions make an exclusive reference to the matters relating to Convention No. 87 with respect to our country and that they do not refer to different matters mentioned in this session by the Worker members.

Lastly, reiterating that Guatemala has demonstrated and will continue to demonstrate achievements with dedication, responsibility and effort to ensure fulfilment of the commitments made vis-à-vis the ILO, focusing our efforts, willpower and dedication to continue a mature dialogue, honouring the memory, dedication and laudable work of Carlos Mancilla, who was a driving force behind the road map, a chairperson of the National Tripartite Committee, and a firm believer in dialogue and tripartism.

Employer members – It is undeniable that we are dealing with a process of improvement which has been demonstrated throughout the various interventions and the reports provided by the Government. We are very grateful for the Government's detailed description of the actions which it has taken, in particular its interest in continuing with this technical assistance, following the road map and maintaining effective tripartite dialogue. This is the true way towards improving any situation and condition that arises – continuing to act constructively, strengthening dialogue, and making use of the technical cooperation and assistance referred to, not to put forward punitive proposals which, frankly, will not achieve anything. There have been one or two proposals to take more drastic measures – a commission of inquiry –, but the question is: for what purpose? We are, precisely, in the middle of a proposed solution to the issues which have arisen. The task of a commission of inquiry, as we all know, is to investigate the facts and propose solutions, which is what has been proposed: we are in the process, we are on the way.



I would ask you to consider this proposal which seems the Government has put forward to continue constructively on the path we are on. Of course it is a source of concern that there are still situations involving threats and widespread violence. Rapid and effective action is needed to eliminate this and strengthen investigations and the resolution of issues which are pending, in order to generate protection for trade union leaders and members. On no account can we accept conditions that generate the kind of circumstances which have been described and reported by the Government itself – but I insist that we are on the way. Legislative changes need to be speeded up. We understand that this is a process which takes time, in all countries of the world. If only the Government could impinge on the autonomy of the legislature and get it to give priority to this subject! We also think that greater visibility should be given to the proposed awareness-raising campaign on freedom of association to which the Government has committed. It should be ensured that there is no stigmatization of any of the components of the collective bargaining equation, namely the unions, their leaders and the employers. This condition must be clear. Fresh efforts will be required. I would like to insist on one point: in its statement the EU, in referring to the observance of the Convention, once again raised the issue of the right to strike. We the employers would like to reiterate our position: that the Convention does not refer to the right to strike, we do not accept these matters being raised in the discussions or in the conclusions when we are speaking about the Convention because each country adopts its own regulatory provisions in this regard.

That is all from us. We hope that the conclusions will be constructive and will enable us to continue making progress in this process of improvement which, it is clear, is not as rapid or prompt as we would hope, but it is clear that we are moving ahead and are in a better position than we were yesterday.

Worker members – The reaction of the Government to the interventions in this room speaks for itself. The steps taken by the Government are far too little and too late. As a result, workers in Guatemala continue to be denied, in law and in practice, their right to freedom of association. No one can deny that Guatemala remains among the most dangerous countries in which to be a trade unionist, with many having paid with their lives merely for carrying out lawful union activity. Arrests and prosecutions for these murders remain a rarity. Anti-union dismissals continue with impunity and the labour justice system has been incapable of providing a remedy. And the labour law in many respects restricts the right of workers and unions to carry out their activities, including to bargain collectively or to strike.

Repeated governments have made promises and received a lot of support and technical assistance to fix these problems but without results. It has now been 11 years since the submission of an article 26 complaint concerning systemic violations of Conventions Nos 87 and 98 by Guatemala at the 2012 International Labour Conference and nearly 10 years since the adoption of the Memorandum of Understanding and the road map, which were adopted by the Governing Body in October 2013. Sadly, as the Committee of Experts' report indicates, little has changed. The Government has failed to implement the road map, leaving the great majority of issues unaddressed. The subset of priority issues identified last September remains incomplete. There is no evidence of systemic and sustainable reforms in law or labour administration. We have heard from the Government that it is going to archive some 46 cases because those cases are old. This is deeply concerning. We urge the Government to continue to investigate these cases so as to ensure justice for the victims and for their families.

The Worker members call on the Government with, of course, the support and commitment of the workers' and employers' representatives at all levels: to fully implement



the road map adopted on 17 October 2013, in consultation with the social partners, without any further delay; to investigate without delay all acts and threats of violence against trade union leaders and members, including Hugo Eduardo Gamero González, with a view to identifying and understanding the root causes of violence, taking into account their trade union activities as a motive, determining responsibilities, and punishing the perpetrators, including the instigators and perpetrators; to provide rapid and effective protection to all trade union leaders and members who are under threat by increasing the budget for such programmes and to ensure that protected individuals do not personally have to bear any costs arising from those schemes; to adopt the agreed amendments to eliminate the various legislative obstacles to the full exercise of freedom of association; to develop legislation to allow for the formation of trade unions at the sectoral level; to approve draft law 5508 to provide a legal foundation to the National Tripartite Committee on freedom of association; and, in consultation with the social partners, to ensure the efficient registration of trade unions, including the implementation of the electronic tool designed by the ILO; to ensure that judicial decisions of reinstatement in employment following anti-union dismissals are enforced without delay, including implementing any recommendations from the comprehensive technical diagnosis of the challenges in terms of reinstatement prepared by the ILO; to increase the visibility of the awareness-raising campaign on freedom of association in the media and ensure that there is no stigmatization of trade unions or their leaders or of collective agreements.

We call on the Government to accept a high-level tripartite mission. Given the seriousness and persistence of the violations and continued imminent danger to life faced by trade unionists and the failure of the Government to take any concrete and meaningful measures to urgently address the situation, the Worker members request a special paragraph for this case.

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 noted with deep concern the persistence of allegations of murders of trade unionists and other acts of anti-union violence as well as the general situation of impunity that prevails in the country.

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

- **take immediate measures to address the general situation of violence and intimidation, put an end to acts of violence and threat thereof against trade union leaders and members;**
- **fully implement the road map adopted on 17 October 2013 without further delay as well as any recommendations prepared by the ILO;**
- **investigate without delay all acts and threats of violence against trade union leaders and members to determine responsibilities, punish the perpetrators and identify the root causes of violence;**
- **provide rapid and effective protection to all trade union leaders and members who are under threat by increasing the budget for such programmes and ensure that protected individuals do not personally have to bear any costs arising from those schemes;**



- take measures to adopt without delay the agreed amendments to eliminate legislative obstacles to the full exercise of freedom of association and develop legislation to allow for the formation of trade unions at the sectoral level; ensure the efficient registration of trade unions, including the implementation of the electronic tool designed by the ILO; and
- increase the visibility of the awareness-raising campaign on freedom of association in the media and ensure that there is no stigmatization of trade unions, their leaders and collective agreements.

Government representative (Minister of Labour and Social Welfare) – Guatemala carefully notes the Committee’s conclusions and the importance of continuing to work in a coordinated manner, adopting effective measures for the full application of the principles of freedom of association and the right to organize, with the firm hope that we will continue building through social dialogue with the constituents of the National Tripartite Committee on Labour Relations and Freedom of Association.

I would like to point out that it is the Public Prosecutor’s Office which has the obligation to prosecute crimes against life with respect to all Guatemalan citizens, without any discrimination whatsoever. Accordingly, it will continue to support and participate in the National Tripartite Committee and work with the trade unions, in order to achieve an objective resolution of the acts and threats of violence against trade union leaders and members, as it has been doing with its open-door approach.

As previously stated, I recognize that perhaps we are not moving as quickly as everyone would like but the undeniable reality is that we are moving and we are on the right path. We therefore trust that at some point in the future the progress made by the Government of Guatemala and the fact that we have been constant in demonstrating our commitment to the application of Convention No. 87 will be recognized. Beyond any doubt, we will continue building trust and intensifying the efforts needed to achieve the full application of the Convention, relying here on ILO support in the form of technical assistance and cooperation.

Guinea-Bissau (ratification: 1977)

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)

Discussion by the Committee

Chairperson – Let us start our discussion with the case of Guinea-Bissau on the application of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26). I invite the Government representative of Guinea-Bissau, the Director-General of Labour, to take the floor.

Interpretation from Portuguese: **Government representative** – It is a great honour for me to speak to you as the representative of the Government of Guinea-Bissau. Thank you for giving me the opportunity to express Guinea-Bissau’s gratitude to the ILO.

One of the objectives of the United Nations (UN) 2030 Agenda for Sustainable Development which Guinea-Bissau endorses is sustainable economic growth, with full, productive and decent employment for all. To achieve sustainable development, economic growth must go hand in hand with the promotion of decent work. Unfortunately, all over the world, there are cases of forced labour, in particular child labour, as well as situations of precarious work, in particular for immigrants.



Employment is not always stable or decent, quite the contrary. Employment often takes place in poverty. Decent work presupposes the creation of equal opportunities for men, women, young persons and persons living with disabilities. So that they can fulfil themselves in productive work with fair pay, with the possibility for them and their families to be protected, and to have prospects for personal development, they must have the freedom to express their concerns and aspirations. Today, it is true that we cannot promote strong, durable and inclusive economic growth if we do not work on improving the labour situation and the living conditions of our workers, and if we do not provide them with subsistence guarantees, in particular when they lack resources or are unable to work.

The Government of Guinea-Bissau is fully committed to promoting decent work. We are one of the signatory States of the Cotonou Agreement on trade and labour standards for productive, secure, high-quality and inclusive employment in order to create conducive conditions for better economic growth in the country. From this perspective we have implemented a large number of projects. We are implementing the economic and social policies adopted by our Government, which aim to create equal, dignified opportunities for the whole active population in order to combat child labour and create fair conditions of pay. Moreover, the country is focusing on a whole set of measures to be adopted.

With regard to international labour standards, the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), is one of the milestones that we have recorded. We are also planning to ratify other Conventions.

A new Labour Code was adopted in 2021 and promulgated by the President of the Republic in 2022, with ILO support. All reports for Guinea-Bissau for 2021–22 have been submitted. They were presented within the deadlines and we also caught up where there had been delays. Furthermore, we recently held a tripartite workshop in which we addressed the subject of international labour standards.

With regard to the minimum wage, in 2021 we set up a multidisciplinary commission composed of trade union representatives with the particular mandate to identify issues relating to inflation and the minimum wage. This commission has been unable to meet, but we have taken a number of measures through the reform of the Labour Code in the context of which we have established rules for fixing the minimum wage. This is a priority for the Government of Guinea-Bissau. It is about fixing a minimum wage for the private sector, a minimum wage which has not been updated since 1988 and which was fixed in the old currency. We are talking about a wage of about one euro at that time. And now Guinea-Bissau is asking the ILO to provide the necessary technical assistance to determine a minimum wage in conformity with the Convention. This is one of our Government's priorities. It is true that we have technical and financial limitations because, in order to fix a minimum wage, a study has to be conducted. Moreover, a multidisciplinary working group needs to be set up again, composed of representatives of the Government, the employers, the workers and civil society, in which all issues relating to the minimum wage can be discussed. Guinea-Bissau has established a council on social cooperation in which, precisely, this kind of subject can be discussed. The Standing Council on Social Cooperation is chaired by the Prime Minister. Other ministers who have social portfolios also form part of the Council, as do representatives of the employers and workers. Civil society is also represented. Indeed, it might be the appropriate forum for discussing the minimum wage since the fact that we have not yet fixed any minimum wage creates precarious conditions and divergences, meaning that the employer has some room to manoeuvre in evaluating the performance and value of employees' work. We are aware of these problems. We are also aware that we cannot get there on our own. The Government of Guinea-Bissau therefore requests ILO



support once again. The ILO should identify Guinea-Bissau as a priority country, or a country of prime need, if you like, so that we can fix a minimum wage, as we have done in the context of other projects supported by the ILO. In this regard, the Decent Work Country Programme (DWCP) is being undermined because we lack resources. We lack possibilities to preserve the dignity of the workers, even though that is something that means a lot to us.

In Guinea-Bissau, we fully endorse the values of the ILO. We have a work agenda which comprises a number of activities on which we wish to make progress, for the protection of workers, in particular wage protection in both the public and private sectors. Regarding the public sector, we have fixed a minimum wage of 50,000 CFA francs. So a minimum wage does exist in the public service since there are indicators which enable us to determine it.

But we still need support from the ILO, especially with regard to training and the acquisition of skills for the trade unions and the representatives of the employers. In fact, we need a reliable analysis of the value of the work done by the workers of Guinea-Bissau. We also need to draw up indicators, and in this way we will also be able to fix a minimum wage for the private sector.

With regard to supporting the acquisition and development of skills, I repeat that we need help. We have conducted a study, or rather we need to conduct a study, to have a clear understanding of the economic environment of our country and a better understanding of how to fix wages so as to guarantee decent work and decent wages for our workers.

Employer members – The Employer members thank the Government of Guinea-Bissau for the information provided. This case involves the application in law and practice of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), in Guinea-Bissau. The Convention is a technical Convention, adopted in 1928 with an interim status. The Convention remains one of the most widely ratified ILO Conventions, with 105 ratifications. Guinea-Bissau has ratified 32 Conventions, including seven out of the ten ILO fundamental Conventions. In particular, this Convention was ratified by Guinea-Bissau after the State gained its independence. Ratification dates to February 1977. On the contrary, Guinea-Bissau has not ratified the Minimum Wage Fixing Convention, 1970 (No. 131), which has a more extensive scope of application.

This is the first time the case is discussed by the Committee. However, we note that the Committee of Experts has delivered observations on Guinea-Bissau's implementation of the Convention in 2019, repeated in 2020, 2021 and 2022.

The main obligation under the Convention is to establish and maintain machinery for fixing minimum wages for workers employed in certain trades or parts of trades in which no arrangements exist for the effective regulation of wages and wages are exceptionally low. According to Article 2, Members which have ratified this Convention shall be free to decide in which trades or parts of trades the minimum wage fixing machinery referred to in Article 1 shall be applied. According to Article 3(2)(1), representatives of the employers and workers concerned, including representatives of their respective organizations, if any, shall be consulted before the minimum wage fixing machinery is applied in a sector or part of a sector. Under Article 3(2)(2), the employers and workers concerned shall be associated in the operation of the minimum wage fixing machinery. Under Article 3(2)(3), minimum rates of wages which have been fixed shall be binding on the employers and workers concerned.

We note that the Committee of Experts' basis for its observation on Guinea-Bissau and the Convention is that, despite repeated observations, Guinea-Bissau has not provided any information on the operation of the minimum wage fixing machinery. Based on the



information presented to the Committee of Experts, the minimum wage in the private sector is fixed by Decree No. 17/88 of 4 April 1988. The legal basis for the 1988 Decree is the General Labour Act of Guinea-Bissau, Act. No. 2 of 1986. The Labour Code of 1986, sections 110 and 114, provide a legal basis for fixing a minimum wage by decree.

From the information provided by the Government, the Employer members take note that the 2011 report indicated that a study on setting national minimum wages was being finalized. The Employer members also take note of the information provided by the Government regarding the new Labour Code adopted by the Peoples' National Assembly in July 2021. Under the new Labour Code, sections 153 and 154, the minimum wage shall be payable to all workers, including rural workers, without distinction based on sex or any other grounds, in an amount fixed annually by the Government, after consultation with the social partners.

The Employer members note that the Government of Guinea-Bissau – despite the observations from the Committee of Experts over the years – has not provided any information as to when machinery for fixing minimum wages in accordance with Articles 2 and 3 of the Convention will be in place. Publicly available sources indicate that the country has a fixed minimum wage for employees operating in the civil service. However, the most recent Decree fixing minimum wages for the private sector is now more than 30 years old and seems clearly outdated.

The Employer members take note of the new Labour Code adopted by Parliament in 2021 and promulgated in July 2022. Following the Government's request for ILO technical assistance to raise awareness of the content of the new Labour Code, a one-week tripartite workshop was organized in November 2022 for this purpose. ILO technical assistance has also been provided in 2023, and a joint mission by the ILO and the Economic Community of West African States is set to take place in the second half of 2023. The Employer members are confident that these various means of assistance will contribute positively to addressing the issues in this case.

The Employer members are well aware of the instability in Guinea-Bissau in recent years but would also stress the impact caused by food prices being driven up. The Employer members take note of the proposal of 2021 on a multidisciplinary commission, set up after consultation with the workers' and employers' representative organizations. The Employer members refer to the Committee of Expert's invitation to the Government to provide information, in particular on the commission's composition and functioning.

To conclude, the Employer members invite the Government to consider the following. Firstly, the Employer members ask the Government to continue working with the most representative employers' and workers' organizations, as well as the ILO through its technical assistance, to ensure that the minimum wage fixing machinery is in accordance with Articles 2 and 3 of the Convention. Secondly, the Employer members ask the Government to provide information, in line with Article 5 of the Convention, on the trades or parts of trades in which the minimum wage fixing machinery has been applied, indicating the methods as well as the results of the application of the machinery, and on the approximate numbers of workers covered

Worker members – This is the first time that the Committee examines the application of Convention No. 26, by the Government of Guinea-Bissau. We note that Guinea-Bissau ratified the Convention in 1977 and that the Committee of Experts has issued four consecutive observations since 2019 showing increasing concern at the stagnation of minimum wages in the country and the failure of the Government to remedy the situation. The main concerns



raised by the Committee of Experts pertain to the long overdue readjustment of the minimum wage in the private sector and the failure of the Government to properly operate minimum wage fixing machinery in consultation with the representative organizations of employers and workers.

In Guinea-Bissau, the latest decree fixing the minimum wage was adopted in 1988. For the past 35 years, the minimum wage for the private sector has stagnated at 29,000 CFA francs, which is US\$48 per month. For reference, the cost of a basic food basket is around 14,000 CFA francs, and that is US\$23. In the public sector, the minimum wage was last raised in 2018 to 50,000 CFA francs (US\$82). However, significant implementation gaps persist as the Government and public authorities have accrued wage arrears of up to nine months and still have not made good on their many commitments to clear the debt and pay outstanding wages. The situation is simply untenable for workers as they face rising costs of living and inflation. Nearly 70 per cent of the population of the country live below the poverty line and on 28 January 2021 the Government further aggravated the cost-of-living situation by increasing taxes on goods and services by more than 100 per cent. The price of most basic commodities sharply rose to unaffordable levels.

Despite the repeated calls of the Committee of Experts since 1989 to date, the Government of Guinea-Bissau has not conducted the promised study on the readjustment of the national minimum wage in the private sector. In its 2021 report, the Government referred to a Prime Minister's Ordinance of 9 June 2021, which established a multidisciplinary commission including trade union representatives to conduct an analysis of the current level of inflation and to propose a national minimum wage. In 2022, the Government failed to report any new information in this regard. We are bound to note that two years after the setting up of this commission, the Government has yet to take any steps to seek its recommendations and to finally raise the minimum wages in the country. We express our deep concern at the failure of the Government to comply with the requirements of the Convention and to set up effective machinery for minimum wage fixing, and at the lack of political willingness to ensure adequate living wages for workers.

We recall that pursuant to Article 1 of the Convention, Member States undertake to create or maintain machinery whereby minimum rates of wages can be fixed. The Government's persistent failure to readjust wages has serious implications for the private sector workers in Guinea-Bissau. Even during the COVID-19 pandemic, workers of Guinea-Bissau received no financial assistance from the Government to mitigate the economic hardships caused by the pandemic. At the time, the National Union of Workers of Guinea-Bissau (UNTG-CS) tried to engage the Government but faced refusal from the Government to negotiate. In response, the union called for strikes demanding a living wage. The Government responded by resorting to violence, beatings of demonstrators and issuing of death threats. We deplore that the Government of Guinea-Bissau has shown only disregard for social dialogue and tripartite consultations and lately has engaged in outright interference with workers' genuine representation, contrary to the spirit and purpose of Article 2 of the Convention.

Freedom of association and protection for genuine workers' and employers' organizations are fundamental to meet obligations under the Convention. Regrettably, we report to this Committee that, on 4 May 2023, the offices of the UNTG-CS were attacked and forcibly taken over by individuals under the control and direction of the Government with the goal of replacing the democratically elected union leadership, including Júlio António Mendonça, with pro-government leadership. The perpetrators of this takeover hoped to then clone the union, in order to engage in cosmetic negotiations with the Government in a self-



serving manner. This undermines genuine representation of workers' interests and removes all meaning from the obligation to consult with workers' and employers' organizations under the Convention. There can be no genuine consultation with representatives who have not been freely chosen by workers and employers respectively.

We are deeply concerned by the recent hostility and attacks of the Government against the independent umbrella trade union organization of the country, especially given the Government's stated intention to ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), shortly. We recall that, under Article 3(2)(1) of Convention No. 26, the employers and workers concerned shall be associated in the operation of the minimum wage fixing machinery. Since 1988, the minimum wage has not been reviewed and when workers pressed by the increasing cost of living and inflation exercised their right to strike to demand a change, the Government decided to basically take over the leadership of the union. In view of the time elapsed since the last review of the minimum wage, the discrepancy between the rising cost of living and the low levels of the minimum wage and the attacks on the genuine trade union leadership of the most representative umbrella trade union organization, we call on the Government of Guinea-Bissau to take the necessary measures to readjust the minimum wage for the private and public sectors without any further delay, in consultation with the genuine leadership of the UNTG-CS. To that end, the Government must immediately cease its attacks against the UNTG-CS and ensure that the union's offices are returned to the leadership and that they can operate in their offices in safety

Worker member, Botswana – Please note that the Commonwealth Trade Union Group (CTUG) and the Southern Africa Trade Union Coordination Council (SATUCC) align themselves with this statement. The Committee of Experts has recalled that the last time the Government of Guinea-Bissau fixed an updated minimum wage for the private sector was in 1988, some 35 years ago. This has continued in violation of applicable laws and despite the proposals put forth by the President of the Republic in 2021 during his Ordinance. The Committee of Experts has repeatedly requested information from the Government to no avail.

We reiterate our recognition of the fact that “[m]inimum wage fixing should constitute one element in a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families.” This means that the setting of a minimum wage by a country, though not effective as a stand-alone, is an important component necessary for ensuring that workers receive equal wages for work of equal value which accords them dignity and safeguards their welfare and well-being. Evidently, failure to design and implement robust minimum wages machinery puts workers at risk, undermines effective implementation and encourages informality.

It is important that we keep recognizing the adverse effects of insufficient implementation of the agreed minimum wages on workers, their families and their jobs since there is an established link between wages and mental health. I repeat, there is an established link between wages and mental health.

During the past three years, the triple crisis adversely triggered and exacerbated inflation with dire consequences for wage earners. It is periods such as this that one expects responsible and responsive governments to consider economic and social protection measures and adoption of suitable minimum wages, among other measures.

To close, achievement of a just and equitable distribution of the fruits of progress to all is possible in Guinea-Bissau. However, this is dependent on regular, consistent review and fixing of minimum wages to ensure achievement of equal pay for work of equal value, and it



also depends on protection of labour rights. This will also reduce inequality within and among African countries as espoused by the Sustainable Development Goals (SDGs). We call on the Government of Guinea-Bissau to effectively deploy the tripartite structures in line with the Committee of Experts' request, and fix an updated minimum wage for the private sector.

Worker member, Uruguay – Firstly, we note with deep regret that the authorities of Guinea-Bissau have not taken account of what the Committee of Experts has requested. It is an extremely serious matter that the minimum wage in the private sector has not been adjusted since 1988 and that also, as has been said here, there are other problems, particularly in the public sector and in education, which go beyond the discussion that we are having in the Conference Committee today. Just as serious is the fact that there are ILO Member States which, having ratified the Convention which obliges them to establish or maintain machinery for fixing wages for men and women workers, they are subsequently unwilling to comply with the standards of this Organization. The Declaration of Philadelphia incorporated the guarantee of an adequate living wage and considered that this is one of the relevant elements when ensuring a just share of the fruits of progress to all workers. Thus, the purpose of a minimum living wage, by definition, is to provide wage protection to guarantee income enabling workers to live with dignity and to meet their living needs through the sale of their labour.

It is essential that the Government adopts the necessary measures that make it possible to establish updated minimum wages for the private sector as part of its policies to combat inequality and poverty, as well as gender gaps, through the promotion of collective bargaining and full compliance with the Convention. We welcome the proposals put forward by the Government in this Committee and also what has been shared by the Employers. Indeed, we would like the machinery, the forms and the construction of agreements and consensus to be found which will make it possible not only to comply with the provisions of the Convention but also to contribute towards changing a situation which is having a harsh impact on men and women workers in Guinea-Bissau.

Interpretation from Portuguese: **Worker member, Portugal** – The Workers' Commissions of Spain (CCOO) align themselves with this statement. The Committee of Experts confirms that it has been many years since there has been any improvement in the minimum wage. The representative organizations presented proposals for an increase and in 2019 a Memorandum of Understanding on increasing the minimum wage in a commission was abolished by the Government.

We know that the situation of the workers in Guinea-Bissau is getting worse every day, with very low wages and no fixing of minimum wages – a vital element for a fair distribution of wealth and for eradicating poverty.

The increase in the cost of basic goods and the cost of living in general means that the workers' proposals are being ignored and there is a lack of dialogue. The UNTG is promoting protests, demonstrations and strikes with the purpose of having their claims for an increase in the minimum wage taken into consideration.

As a result, there are attacks against demonstrators, they are beaten up, union premises are invaded, and the activity of the trade union leaders is prohibited. However, we know that the trade union leaders must be able to freely choose their activities and their officers, and enjoy freedom of action and activity in defence of their interests. Even so, these rights to freedom of association are under attack. Apart from the fact that no minimum wage has been fixed, the right to strike and the right to freedom of association are being challenged. We therefore appeal for freedom of association and the right to strike to be guaranteed for



the UNTG, led by Júlio Mendonça, so that they can address the problems of the Guinean workers.

Interpretation from Portuguese: **Another Worker member, Portugal** – In my statement on behalf of the Confederation of Trade Unions of the Portuguese-Speaking Countries (CSPLP), I would like to draw attention to the importance of data and reports. The Labour Statistics Convention, 1985 (No. 160), underlines the importance of the quality of the production of statistics in order to make informed policy decisions, emphasizing the need for countries to be able to study and implement robust statistical systems that cover a whole spectrum of information on the world of work, including employment levels, unemployment rates, wages and conditions of work, among others. These are data which enable policymakers to monitor progress, identify disparities and design action to be taken in relation to the labour market on the basis of empirical evidence.

How can claims be made to support the UN 2030 Agenda for Sustainable Development if there is no recourse to quality statistical data? How can the social partners perform their role if they do not have updated, reliable statistics?

We understand that the process of data collection, its analysis and dissemination can entail difficulties, but it is extremely important to involve the social partners in the decision-making process, while it is also important that there is respect for the autonomy of the social partners, who on no account can be influenced in their activity.

We urge the Government to draw up quality statistical information and to present reports regularly so that public policies and programmes can be designed and implemented to promote productive employment for all with equal opportunities, thereby creating the conditions for fairer, more inclusive economic development which leaves nobody behind.

Worker member, Nigeria – I represent the Trade Union Congress of Nigeria and the ITUC. I wish to state that Article 1 of the Convention is explicit that a national minimum wage be put in place where no arrangement exists for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low. The notion contained in this Article applies to the current situation in Guinea-Bissau, with a very high informal economy and private sector workers without a regulated minimum wage. We all know that a minimum wage is a wage anchor to help prevent salaries from falling below a certain level. It can also serve as a voice for union workers and seek to protect vulnerable workers.

Equally important is Article 2 of the Convention, which talks about consultation with the workers' and employers' organizations in the development and conclusion of the minimum wage. The Convention also prescribes that the consultation must be done under conducive arrangements. Sadly, in Guinea-Bissau the Government is openly facilitating and supervising the disruption and forceful takeover of the UNTG-CS, the country's only national trade union centre. In May, a group of faceless people were supported by the police to take over the office premises of the UNTG-CS in a coup-like manner. To further confirm, the executive actively supported this illegal and criminal action. The President received the leaders of this faceless group in an official photo session at the President's office.

It is therefore impossible to have a sincere and fruitful consultation under such conditions. We have it on firm and credible authority, such as that of ITUC-Africa, that the legitimate and recognized leadership of the UNTG-CS is the one led by comrade Júlio António Mendonça as Secretary-General.

ITUC-Africa, which visited Guinea-Bissau from 17 to 19 May 2023, can confirm that the duly elected and legitimate group is led by comrade Mendonça, which was also confirmed by



the employers' federation of that country, which they also visited. Therefore, this Committee must call on the Government of Guinea-Bissau to do the needful by ensuring that the legitimate and democratic leadership of the UNTG-CS led by Júlio António Mendonça is recognized, and work with the process of setting up national minimum wage fixing machinery without further delay.

Article 4(1) of this Convention also prescribes that, with regard to the minimum wage fixing machinery to be established, each Member State must take the necessary measures, by way of a system of supervision and sanctions, to ensure that the employers and workers concerned are informed of the minimum wage rates in force and that wages are not paid at less than these rates in cases where they are applicable.

We note that Guinea-Bissau currently needs supervision and sanction provisions in the national minimum-wage development process. The non-existence of these provisions partly accounts for the reasons behind the prevalence of non-compliance with the existing minimum wage, which needs to be reviewed upward immediately. Where there are no supervision and sanctions, impunity and disregard for human dignity prevails. Sanctions must be swift, smart and decisive to enhance compliance. Sanctions must not be seen as a slap on the wrist and a light-weight prescription.

Finally, Article 5 prescribes the annual reporting of the application of this Convention to the ILO. The ILO Constitution and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) corroborate that reporting to the ILO must be done in full and genuine consultation with social partners, as a product of social dialogue. In a situation where a government is openly compromising and undermining this process, through interference with the administration and the officials of the organization of social partners, such a government would be most unlikely to include social partners in the reporting process.

We ask this honourable Committee to walk with Guinea-Bissau through the provisions of the necessary support to improve the viability of the national minimum wage fixing machinery.

Interpretation from Portuguese: Worker member, Brazil – In recent years we have noted the information from the Committee of Experts regarding Guinea-Bissau and the Convention. What is striking is the Committee of Experts' indication that since Decree No. 17/88 fixed the value of the minimum wage, it has never been updated, which is an unprecedented situation.

Sections 153 and 154 of the new Labour Code provide that the minimum wage must cover all workers – including rural workers, without any distinction on the basis of sex or any other grounds – and that the Government must fix this increase after holding consultations with the social partners. This, precisely, has not been happening for most workers in Guinea-Bissau since 1988, with the exception of those in the public administration. The Committee of Experts, in its 2021 report, indicates that between 2012 and 2017 the minimum wage did increase in the public sector as a result of the Government's measures. However, this implies that for all other workers the minimum wage remains unchanged.

In its current report, the Committee of Experts notes with regret that the Government does not provide information on adjusting the minimum wage. If we reflect for a moment that, according to the Minimum Wage Fixing Convention, 1970 (No. 131), the fixing of minimum wages, especially in developing countries, means that States must take account of the needs of workers and their families, what can we say about the living and working conditions of those who have not had that wage adjustment for 35 years? Recently, the



authentic trade unions were evicted from their premises, resulting in major difficulties in negotiating wages, and this is creating worse conditions of work and obstructing the union leadership's freedom of association and freedom to conduct its activities.

It therefore seems obvious to emphasize that we cannot speak of dignified and decent work in the country and that this case is extremely serious. Hence we urge the Government to provide information on wage conditions in relation to living conditions and to rectify this situation as a matter of urgency, and to guarantee full freedom of association in the country.

Worker member, New Zealand – I note in the Committee of Experts' report that minimum wages in Guinea-Bissau for the private sector were last reviewed in 1988, some 35 years ago. I am really alarmed by the Government's failure to periodically review its workers' minimum wages.

I would like to share with you some measures taken by my Government and its social partners to improve New Zealand's minimum wages. New Zealand introduced fair pay agreement legislation last October and this applies to all or any industry or occupational group. This law was the product of tripartite negotiations between the social partners in a working party that ultimately led to this new law. The bargaining brings together nominated representatives of employers and unions and, under certain circumstances, a determination may fix the terms of the agreement. At the conclusion of bargaining, the fair pay agreement becomes secondary legislation, and enforceable as such. The fair pay agreement is an additional set of rules that does not detract from the individual or collective agreements that apply to workers and their employers in enterprises but addresses the needs of occupations or industries by the businesses and workers engaged in those occupations or industries.

While in its early stages, this Law has generated a number of initiations to bargain by unions and three of these have been validated and approved by our Government agency for bargaining to begin.

I want to refer to one of these, which has been initiated and approved to cover security guards in an occupation-based fair pay agreement. This has the support of not only the 1,200 guards who signed up to initiate the fair pay agreement but also the primary body representing employers, the New Zealand Security Association.

The two key bargaining parties, E tū Union and the New Zealand Security Association, have agreed that pay rates, training, and health and safety are the three priorities for a new occupation-based collective agreement. This reflects the common interest of both parties to see an industry standard in security that supports quality jobs, stability of the workforce, and a better environment for business. Businesses benefit because fair pay agreements stop the race to the bottom inherent in the contracting for services. That drives down terms and conditions of employment for workers and ultimately benefits no one.

This new step of introducing fair pay agreements to improve collective bargaining and labour standards for occupations and industries was not without controversy, but it is clear as seen in the security example, that the new Law has employers and unions collaborating for the benefit of the industry as a whole. This has the potential to create a new, progressive and collaborative era of industrial relations in a country where this has not been the norm.

I would encourage the Government of Guinea-Bissau to see New Zealand as an example of a new and positive model of tripartism in employment relations where setting standards through statutory minimum wage rates, supplemented by regulated industry bargaining, such as our secondary legislation of fair pay agreements, is an option that benefits all the social partners, businesses and the economy.



Interpretation from Portuguese: **Observer, International Trade Union Confederation (ITUC)** – I would like to thank the African Regional Organisation of the International Trade Union Confederation (ITUC–Africa), the ITUC as a whole, the ILO management and specifically the Bureau for Workers’ Activities (ACTRAV) for all they have done for the workers in Guinea-Bissau. Today is a special day for my trade union organization, the UNTG, and especially for the workers who were martyrs for the homeland of Amílcar Cabral and great combatants for its freedom.

The subject that I have the pleasure to address is the situation regarding the application of the Convention, which provides for the national minimum wage and was ratified in 1977, three years after our independence. In 1988, the authorities established the national minimum wage, via Decree No. 17/88 of 4 April 1988, at 15,000 Guinean pesos, about 230 CFA francs.

It is important to emphasize that the minimum wage has not been updated for workers in the private sector. It is also important to note that unionization in the private sector is very low, even now, especially because of the severe crackdown on the exercise of freedom of association and the practice of collective bargaining.

In 1997, our country joined the West African Economic and Monetary Union (WAEMU) and adopted the CFA franc as its currency, nine years after adopting the minimum wage of GAF15,000 Guinean pesos. This has remained unchanged, and workers in the private sector still feel abandoned in the face of rampant inflation and the cost of living.

In 2016, our organization, the UNTG-CS, began to reform its leadership and in December 2017 the “transformation of the union paradigm” took place in the leadership of our federation. We elected new leaders, we began a campaign to gain labour rights and defend the legitimate interests of the workers with various demands. Our federation managed to convince the Government of that time to adjust wages in the public service so that public sector officials would receive a minimum wage of 50,000 CFA francs, compared to the previous 29,000 CFA francs. Various governments promised to determine a new national minimum wage and hence to promote a review of Decree No. 17/88, which was already obsolete, and thereby reduce the suffering of private sector workers, but the Government never kept its promise. We are concerned and sad at the suffering and difficulties faced by the workers of Guinea-Bissau. As legitimate representatives empowered by the votes given to us by the workers, we feel obliged to take action with them in the strategic sphere and increase the pressure on successive Governments so that the obligation to determine the national minimum wage is fulfilled and the undertaking made by the State as a result of ratifying the Convention in 1977 is taken into account.

When a Government passes legislation to fix a monthly allowance for the President of the Republic of 50,000,000 CFA francs and a daily entitlement to 650,000 CFA francs for foreign travel, what really strikes us is that the Government does not think of the suffering of the workers or of the people. Today, a 50-kilo sack of rice, a basic foodstuff, costs 50 per cent of the public service minimum wage. Worst of all, the Government approves all kinds of benefits, subsidies and advantages for its representatives, but it is more difficult for the workers and for the people.

During the COVID-19 pandemic, everybody faced a financial crisis, especially the workers and the enterprises. This resulted in the loss of thousands of jobs, and the Government, instead of giving support and subsidies to the enterprises affected, imposed additional taxes, introduced a democratic tax, and increased prices for subsistence products for the population. Today there is an urgent need to restructure the national minimum wage in view



of the serious socio-economic situation faced by the communities and the workers. Clearly it is necessary to establish minimum wage fixing machinery and we ask this Committee to put pressure on the Government to ensure the effective application of the Convention.

Interpretation from Portuguese: Government representative – I would like to reiterate that although Guinea-Bissau has ratified Convention No. 26, we have not yet been able to update the minimum wage because of political and institutional issues facing the country.

With regard to social dialogue, Guinea-Bissau has made a lot of progress. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), has just been ratified. The ratification process for this Convention had been going on for 30 years. Finally we have been able to move forward and deposit the instrument of ratification with the ILO. This shows the Government's commitment, and the fact that we want to breathe fresh life into our relations with the workers and the enterprises, and also enhance dignity for the workers.

Guinea-Bissau is a responsible State. From the time that we ratify a Convention, we feel the responsibility for implementing the Convention in question. We are aware of this and we are taking measures through social dialogue.

With regard to fixing the national minimum wage, this is a subject of frequent active discussion within the Government, and we also discuss it with the social partners through consultations. As Director-General of Labour, I myself have convened meetings with representatives of the unions, in particular the UNTG. We met each other and we indicated that the Government wished to move forward with regard to (the) application of the Convention.

We have begun to define a path towards fixing a minimum wage. Meetings have also taken place with representatives of the employers. All these meetings have made it possible to define activities which will enable us to take measures with ILO technical assistance. Perhaps we will also be able to count on other ILO Member States for financial support, because we need financial resources to carry out this reform.

Guinea-Bissau is a developing country. It is a country which has to face many limitations and restrictions which hold us back in our work. We have listened carefully to the social partners, we have listened carefully to the unions. We take them seriously and we know that, if we do not listen to our social partners, we will be unable to take any decisions since it is they who convey the workers' situation. We will not be able to meet the needs of the workers if we do not listen to them.

With regard to determining the minimum wage, meetings have taken place. We showed that we wished to continue moving forward. It is true that the minimum wage as currently defined dates back to 1988. But a political and social analysis of the country is needed to understand clearly why this whole process has stagnated. Even so, in the last three years we have taken measures and shown the Government's commitment. One example of that is the reform of the Labour Code. We had a general labour law which went back 30 years and which need(s) to be updated to better reflect what is happening in the world of work. The Government took the initiative and worked for the adoption of the new Labour Code. This is clear evidence of our commitment and investment. We care about our workers, since the Government itself is composed of workers.

We have plans to ratify other Conventions. We wish to establish dignified and decent work, in particular through the ratification of Conventions and through fixing the minimum wage, which clearly constitutes a guarantee for the workers. We reiterate once again that we



would like Guinea-Bissau to have priority status for obtaining technical assistance from the ILO, so that we can move forward and achieve conformity with the Convention.

I would like to say to you that Guinea-Bissau is a small country. Our population is not large and most workers are in the public sector. The State is the biggest employer in Guinea-Bissau and that is why we have focused on workers in that sector. We need to understand better how the enterprises operate before fixing a minimum wage in the private sector. There is a need to understand our situation clearly. Fixing the minimum wage in Guinea-Bissau presupposes a rigorous study. It is not enough for the Government to fix the amount of the minimum wage for the private sector. There is a need for general consultations which are open and comprehensive, as was the case when we discussed the Labour Code. It was a very inclusive discussion. The ILO provided support at the time we were drawing up our Labour Code. And at that time we gave thought to the minimum wage, since a section of the Labour Code stipulates the manner in which the minimum wage should be fixed. This work must be done now for determining the minimum wage in the private sector. The Government of Guinea-Bissau is fully committed to this, and the workers and employers of Guinea-Bissau must help us too. But we need technical and financial assistance.

We are fully open to any kinds of assistance that you might be able to offer us to enable us to come into line with the Convention because the fact that there is no minimum wage in the private sector also creates obstacles in other areas, such as social security. It creates problems in that workers live increasingly in precarious conditions. The employers are now relatively free to fix their wages, which also increases the risk of precarious situations. So a study would be needed to fix the minimum wage in the private sector and perhaps the minimum wage in the public service should be used as a reference point.

As regards tripartite social dialogue, this is in our interests, and we have shown this clearly since we have established the Standing Council on Social Cooperation. This demonstrates clearly that we are fully invested in social dialogue. Meetings are convened according to needs that emerge in our country. There are many challenges, but we have a lot of willpower, and the determination of the Government of Guinea-Bissau is unwavering.

We thank the ILO for its solidarity with our country. The ILO has already seen that we are worthy of confidence since we have adopted measures. Our approach is one of total commitment, and our interests are at stake. We have made progress with our legislation, we have engaged more fully with the ILO by fulfilling our reporting obligations, by implementing activities for combating child labour, by developing the DWCP. This commitment is also reflected in our wish to ratify the fundamental Conventions on occupational safety and health. These elements all show that the welfare of the workers in Guinea-Bissau is very important to us because if we failed to attach value to work, we would be going nowhere.

Chairperson – Thank you very much to you and your delegation for participating in the work of this Committee, and for sharing detailed information and your perspective.

Worker members – We thank the Government of Guinea-Bissau for the information it provided. We reiterate our concern regarding the persistent failure of the Government to comply with the requirements of the Convention to set up effective machinery for minimum wage fixing and to readjust the minimum wage levels so as to ensure an adequate living wage for its population. In a(the) context of rising costs of living and inflation, minimum wage levels have remained shockingly low in Guinea-Bissau and do not allow workers to provide for their needs and the needs of their families.



We recall the importance of regularly readjusting minimum wage rates so as to guarantee workers a decent standard of living. If rates are not adjusted, the minimum wage fixing system will be reduced to a mere formality and will no longer be effective at all as a means of combating poverty or as a means of social protection.

Concrete Government action is long overdue. The Government of Guinea-Bissau must demonstrate its commitment to the principles and processes set out in the Convention. To that end, the Government must set up and maintain a proper mechanism to fix, regularly review and readjust minimum wages. In accordance with Article 3 of the Convention, workers' and employers' representatives must be consulted before the machinery is applied and shall be associated with the operation of the machinery. Genuine and freely chosen representation of workers must be ensured in this process.

We regret to note that workers' interests are not genuinely represented in Guinea-Bissau and at this Conference. We inform this Committee that the Worker members have submitted a claim to the Credentials Committee against the Government of Guinea-Bissau for interference in the nomination of genuine Workers' delegates to the Conference.

We further took note of the Government's intention to convene a multidisciplinary commission composed of the Prime Minister and other ministers, and representatives of employers, workers and civil society. We must insist on the tripartite character of the minimum wage fixing machinery, as envisaged in the Convention. Civil society organizations have no place in the process, and we urge the Government to refrain from such interference in tripartite social dialogue.

We urge the Government to immediately cease its attacks against the UNTG-CS, and to ensure its full participation and consultation in the operation of the minimum wage fixing mechanism. We also urge the Government of Guinea-Bissau to seek ILO technical assistance to address these major failings in their application of the Convention. Given the failure of the Government to address the comments of the Committee of Experts since 2019, we urge the Government to accept a direct contacts mission.

Employer members – The Employer members thank the various speakers who took the floor and most notably the oral information provided by the Government of Guinea-Bissau.

Once again, the Employer members emphasize the importance of progress and momentum in Guinea-Bissau's efforts to obtain a machinery to fix minimum wages in the private sector under sections 153 and 154 of the new Labour Code, in line with the Convention. The Employers reiterate the Committee of Experts' call for a timely response on the observations put forward since 2019. The Employer members note that the new Labour Code has been adopted by Parliament and that promulgation has taken place. The Employer members invite the Government to continue working with its social partners when harmonizing national laws with the Convention.

After considering the discussion, we request the Government to, first, take the necessary measures to bring the machinery for fixing minimum wages in line with Articles 2 and 3 of the Convention; and secondly, communicate in line with Article 5 of the Convention on the trades or parts of trades in which the minimum wage- fixing machinery has been applied, indicating the methods as well as the results of the application of the machinery, and the approximate number of workers covered.



Conclusions of the Committee

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

Despite some steps taken to adjust the national minimum wage, the Committee regretted that it has still not been fixed and that the minimum wage has not been revised since 1988.

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

- review the minimum wage for the public and private sectors without delay in accordance with the Convention; and
- establish the minimum wage fixing machinery in consultation with the social partners with a view to fixing and updating the minimum wage on a regular basis in accordance with the Convention.
- The Committee also requests the Government to:
- strengthen social dialogue, including the machinery for consultations with workers' and employers' organizations, by ensuring their independence and autonomy in law and practice; and
- provide to the Committee of Experts a copy of the promulgated and published version of the new Labour Code.

The Committee requests the Government to avail itself of ILO technical assistance in close cooperation with freely established and independent workers' and employers' organizations to ensure full compliance with the Convention and to transmit a report on progress made to the Committee of Experts by 1 September 2023.

Interpretation from Portuguese: Government representative – We listened attentively in this ILO forum to the various observations made yesterday on the application of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), by Guinea-Bissau in the private sector.

It is true that Decree No. 17/88 of 4 April 1988 has been in force for 35 years, not 35 months, 35 days or 35 seconds, and that is justification for updating it. This is why, as the head of the Government delegation of Guinea-Bissau has explained, the Government of my country is working on updating it with the involvement of the social partners so that nobody is excluded. Despite the obsolete nature of this Decree, no employer applies the wage level established in the (this) legislation. Even though the legislative text has not been updated, the labour inspectorate, in its enterprise inspections, has assumed an important role in informing and guiding the employers so that they apply minimum wages in enterprises which are well placed in terms of payment of wages.

We have duly taken account of the recommendations of the Committee of Experts regarding the updating of wages and, as indicated yesterday by the head of the delegation, we request ILO technical assistance in the area of fixing the minimum wage.



Indonesia (ratification: 1957)

Right to Organise and Collective Bargaining Convention, 1949 (No. 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 (SMEs), 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 the 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 of the Job Creation Law on the implementation of the Convention and the request to update information regarding the changes to 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 in the economic and investment sectors as well as in the 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 more sustainable economy. The Job Creation Law and its amendment through Law No. 6/2023 on the stipulation of the 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 manpower Act). 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 were estimated to be over 10,000 unions before the enactment of the Law, comprising more than 3.2 million members. After the enactment of the Law, from 2020 to 2023 the number of trade unions rose 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 Workers' 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 provisions. In general, the provisions of collective bargaining apply to all scales of business. Both in terms of collective bargaining agreements and in the event of industrial relations dispute settlement. Regarding wages, Indonesia reiterates that the agreements between employers and workers in micro and small enterprises are concluded 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' wages 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 that 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 Law as follow-up to the Constitutional Court decision, we would like to provide the following information.

Amendments to the Law, both procedural and substantive, have been carried out through the revision of Law No. 12/2011 on the formulation of legislation that regulates the omnibus law method and meaningful public participation and Law No. 6/2023 on the stipulation of the government regulation regarding job creation to become law. The amendment to the Law has undergone dissemination and public engagement with various stakeholders such as labour unions, employers, academia and civil society. 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 the national laws guarantee the 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 Workers' Unions and Law No. 2/2004 on the Settlement of Industrial Relations Disputes. Workers and labour unions whose rights are considered to have been violated are encouraged to utilize the national arrangements as stipulated in the two laws. The Government provides services to facilitate complaints of alleged violations 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 of Law No. 13/2003 and mandatory arbitration to resolve industrial relations disputes, articles 5, 14, 25 of 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 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 Law No. 13/2003 and Ministerial Decree No. 28/2014, and to prevent broader industrial relations disputes. We are taking this approach considering that the capabilities of companies at the sectoral level are varied.

Fifth, regarding the right 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 right 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 fulfilling our obligations and addressing the Committee of Experts' observations is unwavering. We are open to constructive dialogue and collaboration with the ILO and wider stakeholders on this 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 in: 1991, 1993, 1994, 1995, 1997 and 1998, but not for some time. It has also been the subject of 21 previous observations by the Committee of Experts.

By way of background, overlapping regulations, and historical and out-of-sync policy data within central and local government, were 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 a process of revision to rectify the shortcomings and to produce the current law. This was done through a public socialization process and engagement with various stakeholders including unions, employers, universities and other members of the public sector. 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 could lead to a strengthening of the economic systems in Indonesia, enhancing a 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 violate 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, the Indonesia Trade Union Prosperity (KSBSI) and the Confederation of Indonesian Trade Unions (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 this 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 article 122 of the Manpower Act, so as to prohibit the presence of the employer 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 a government official and by the employers.

We note here that there is no provision for anything other than a passive role for employers and the 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 also requested the Government to take the necessary steps to 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 at 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 will agree that that is a pretty general statement, not a more specific one.

In the case of Indonesia, the Job Creation Law regarding collective bargaining agreements 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 account for 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, accounting for 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 around 17,495; 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 an inability to pay the minimum wage which was too high compared to the profits they generated.

The Omnibus Law changed this. It brought micro and small enterprises into the formal economy in such 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 micro and small enterprises from applying provisions related to the minimum wage. This is aimed at ensuring that a fair wage for the



workers in micro and small enterprises is fulfilled while still considering the viability of micro and small enterprises. 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 level, 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 under 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 under 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 measures that will enable workers in Indonesia to benefit from the protection afforded under the Convention. We have a particular situation in mind.

On 2 November 2020, President Joko Widodo signed Law No. 11/2020 on job creation, known as the Omnibus Law, despite 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. 6/2023 on 21 March 2023. The stated motivation behind the enactment of the Omnibus Law, 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 significantly damages the existing system of wage setting in Indonesia, by removing minimum wage protections 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 machinery for collective bargaining, the law exempts micro and small enterprises, for which wages 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 fomenting 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. 13/2003. Without these provisions, workers are exposed to the risk of abusive recourse to fixed-term contracts, leading to social instability and a 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 has 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 the 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 article 122 of the Manpower Act, so as to prohibit the presence of the employer during voting procedures; amend articles 5, 14 and 24 of Law No. 2/2004, 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 in the above-mentioned tripartite consultation.

The Government has much work ahead to bring its laws and practice 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 under the Convention.

Employer member, Indonesia – Thank you for granting the Indonesian Chamber of Commerce and Industry (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 of 2020, then confirm it under Act No. 6/2023, using the omnibus method.

According to a survey conducted by the Indonesian Central Statistics Bureau, the Indonesian workforce in 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 under-employed. Meanwhile, the new workforce reached 2 million and every year it is estimated that there will be about a 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 for 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 Act of 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 terms 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, who were not previously addressed by the Manpower Act.

As Indonesia has ratified nine fundamental Conventions, we believe that the said Law has been formulated deliberately to ensure that 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 wages for workers in micro and small enterprises exist because it will be unrealistic if we apply the same standards for micro and small enterprises as medium and large enterprises. However, article 90(b) of the Job Creation Law also stipulated that agreements between employers and workers on minimum wages for micro and small enterprises workers may not be lower than a certain percentage of average public consumption. Additionally, workers in micro and small enterprises 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, since they account 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 the Tripartite Consultation Forum.

On this occasion, we would like to also emphasize that the Indonesian employers' association respects the right 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, the Christian National Trade Union Federation and KSBSI to conduct training on 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 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 are 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, the Job Creation Law, which became known as the Omnibus Law. Trade unions and civil society 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 that 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. 2/2022 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, reduced severance payment and so on.

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

On 20 March 2023, the Director-General of the ILO wrote a letter to the Government 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. With the enactment of this law, the previous Law No. 11/2020 on job creation automatically no longer applies.

There is 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 originating from the annulled Law No. 11/2020. 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 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 to 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 contracts 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 in the media when the women workers disclosed the practice 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, the 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, 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. The 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 wages would be set based on data provided by the national statistics agency.

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, Minister of Manpower Regulation No. 5/2023 entered 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 changes in working hours 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.

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 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 of the ILO to ensure the proposed amendment is in conformity with the Convention by way of a direct contacts mission request to Indonesia.

Government member, Brunei Darussalam – I am 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 the 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 ILO 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 possibilities for the organization of collective bargaining, while also enhancing the legal basis to prevent all forms of discrimination in labour and employment and 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 Indonesia and the social partners in the country with the necessary technical assistance.

Employer member, Thailand – The Employers' 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 its economy by rejuvenating the labour law by enacting Job Creation Law No. 11/2020 through the omnibus method. Concerning this case, ACE believes that the Government has conducted a robust and comprehensive consideration accommodating the interests of all the relevant stakeholders, including by conducting a social dialogue between Government, labour unions and 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 Government has made its best efforts to embrace all relevant parties in order to fulfil its responsibilities in enhancing the welfare of 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.

Worker member, Belgium – Law No. 13/2003 included numerous protections and limitations on the purpose, duration and renewals of fixed-term contracts. All these protections were repealed by the Omnibus Law of 2020. The three-year limitation on fixed-term contracts was extended to five years by Government Regulation No. 35/2021. The provision on transforming oral contracts into open-ended contracts was abolished. While fixed-term contracts for jobs of a permanent nature remain prohibited, the new law renders this prohibition ineffective.

The significant imbalance in bargaining power between employers and workers means that, in practice, employers can impose contractual conditions on workers without negotiation. As a result, many more workers are being hired on consecutive precarious



contracts, with limited legal protections. Moreover, some companies have dismissed workers with permanent status, only to rehire them as temporary workers.

Precarious contracts create obstacles to exercising the right to freedom of association. Workers engaged in trade union activity can be more easily subjected to reprisals and dismissed. These contracts have a negative impact on groups exposed to employment discrimination, particularly women. For example, it is common for employers not to renew the contracts of pregnant women.

Lastly, the increased power of employers due to the precariousness of employment can also lead to violence and harassment. Persons seeking contract renewals can be coerced into sexual relations through the widespread practice of “staycations”. Recently, a worker at a cosmetics company in the city of Bekasi, West Java, testified that prior to the renewal of her contract, her manager invited her via WhatsApp to join him at a hotel for a so-called vacation. If she rejected this invitation, she risked not having her contract renewed. The case was handled by the Labour Inspectorate and the police, and on May 29 the Minister of Manpower issued Decree No. 88 on the guidelines for preventing and dealing with sexual harassment and violence at work in relation to this practice.

It is certainly highly desirable for Indonesia to combat violence and harassment, including gender-based violence and harassment, and to ratify the Violence and Harassment Convention, 2019 (No. 190).

However, protection against violence and harassment also requires the ability to negotiate better working conditions, such as better job security and effective protection against dismissal.

Government member, United States of America – We thank the Government 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. 12/2021 on the Creation of Law to include provisions detailing an “omnibus law model” and a meaningful public participation process. It also indicates that Law No. 2/2022 on job creation replaces Law No. 11/2020. 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 the 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 articles 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 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 of 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. 36/2021, 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 United States 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 with 18,000 collective agreements as of 2022. The Government has seen to it that a thorough assessment is undertaken at the enterprise level and the necessary steps are taken 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 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 Act, 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. 36/2021, 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 micro, small and medium-sized enterprises. Based on data published by the Ministry of Cooperatives and SMEs 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 to article 90 of the Manpower Act 2003, which “prohibits employers from paying lower than the minimum wage”. To be more precise this article states clearly that: (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. 36/2021 denies the right of a meaningful wage negotiation to 97 per cent of the workforce, which goes against the core objective of the Convention.

Government member, Algeria – The Algerian delegation thanks the Government for the information provided, which signals its willingness to cooperate with the ILO supervisory bodies. The additional information provided by the Government summarizes a range of matters and outlines its desire to make further progress in inclusive social dialogue, improve freedom of association and strengthen protection against all anti-union discrimination.



We therefore take this opportunity to highlight the importance of giving the Government sufficient time to engage in constructive social dialogue with the bodies and representative trade unions within the framework of national legislation and in compliance with its obligations and commitments under relevant international standards. That will allow collective bargaining to be strengthened in all workplaces, thus better adapting employment relationships to businesses' specific circumstances.

The Government has established mechanisms to promote sectoral collective bargaining and tripartite social dialogue, making constructive progress in creating decent jobs, combating unemployment and preventing collective labour disputes, including in export processing zones. Moreover, the country's Constitution sets out clearly that individuals' rights and freedoms are protected by law, independently and impartially.

We also welcome the Government's communication and substantive exchanges with the social partners, as well as the significant number of collective agreements and accords that have been concluded on the matter of working conditions.

Lastly, the Algerian delegation hopes that the Committee's conclusions will be objective, technical and balanced, based on information provided by the Government.

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

Under the Manpower Act 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 marginalized industries had also to be considered. So, debates in relation to decision-making in wage councils, especially over the "decent living needs" were a 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. 78/2015 was introduced. This Regulation changed the cycle of updating the "decent living needs" from one year to five years. In other years the 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 the determination of the minimum wage and room for negotiation existed.

Government Regulation No. 36/2021, an implementation decree for the Job Creation Law, dramatically worsened the mechanism. Under the new regulation, the minimum wage is determined technocratically based on predetermined formulas 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 the minimum wage.

While the collective bargaining system is yet to be effectively established, the minimum wage setting process served as de facto wage negotiation. The minimum wage setting only based on predetermined formulas, when it is combined with other changes in Government Regulation No. 36/2021, will deprive trade unions of the right to bargain for wage increase.



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

Worker member, Brazil – The Government substantially amended article 66 of Law No. 13/2003, on outsourcing company activities and its effects on working conditions.

Prior to the so-called Omnibus Law, the law established that the workers of an authorized labour supplier could not be employed for the performance of the basic functions or main line of business. Unfortunately, the Omnibus Law has deregulated the triangular labour relationship, extending the scope of outsourcing to any activity of the user company, including its basic functions or main line of business.

This is a model of decentralization of productive activity to the direct detriment of workers' rights that is well known in Latin American countries, including in Brazil, which was a prisoner of neoliberal policies applied by authoritarian governments until last year.

Moreover, the new Law exempts the main company from any responsibility for any non-compliance of labour and social security obligations by the subcontractor.

But the gravity of the Omnibus Law lies in its disregard for the right to freedom of association, as the company could seriously affect unions by hiring workers through labour agencies.

Indonesian law does not recognize the right of workers hired through an agency or supplier to join the main company's union. The Law states that these workers may only, at best, organize in their direct employer's union.

Obviously, this extreme fragmentation of labour is not conducive to the application of the main company's collective bargaining agreement.

It will lead to different working conditions for the subcontractor's workers and for the main company's workers, even though they probably work in the same place and probably perform the same tasks.

In short, the Government must urgently repeal the labour outsourcing regulations that have undermined decent work in Indonesia.

Government member, Türkiye – We thank the Government for the information it provided and welcome its willingness to constructively engage and cooperate with the ILO. The Government 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 to continue to undertake the necessary steps in this regard.

We welcome that the Job Creation Law does address the unique circumstances faced by workers in 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 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 to prevent disputes, while workers in export processing zones 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 to the attention of members of this august chamber that the Minister of Manpower Regulation No. 5/2023 that allows the company to cut the wages by 25 per cent and reduce 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. The provisions of article 9(1) do not explicitly stipulate the obligation for employers to prove to workers and/or workers' organizations 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 a decrease in orders is only a matter of verbal claim; it is not supported by any verifiable documents or data like an external 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 an impact on workers' hours and 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 is to gather workers to sign agreements related to Regulation No. 5/2023 with intimidation, if they refuse to sign agreements, companies will lay off workers in large numbers. The workers, who were mostly women, had no choice. After obtaining "approval" from workers, the company entered negotiations with 11 unions to pass Regulation No. 5/2023 into force. The union has no choice since the members have already agreed. The company has reduced working hours under the slogan "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 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 the significance of these allegations.

Observer, IndustriALL Global Union – I am speaking 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 Job Creation Law 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. Some 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 undermine 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 should not use the global crisis, economic slow-down, and plans to attract more foreign investment, to justify its rollback 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 the sectoral minimum wage and regional minimum wage, and 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 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 observations and recommendations. The Committee is critical in advancing social justice, decent work and the global protection of workers' rights. Consequently, we have attentively listened and taken thorough note of the Committee's recommendations. We are pleased to acknowledge that certain delegations recognized Indonesia's unwavering commitment to upholding and adhering to the principles enshrined in the Convention.

Equally, we attentively acknowledge the concerns and recommendations provided by the 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 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 lack 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 provisions governing collective bargaining as delineated in our existing labour framework remain fully intact and applicable.

Third, our Government maintains its 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 organize 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 regulations related to the Job Creation Law. In this regard, the Government assures that public participation and collective bargaining, as the fundamental principle of the Convention, are fully upheld.

Indonesia's efforts to promote collective bargaining represent 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 the 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 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. 13/2003. While the Law was not often respected or enforced, workers, especially workers in a union, could protect themselves from exploitation. Whatever pre-existing protections there were 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 to address these critical issues.

We therefore urge the Government to review the Job Creation Law with the social partners and to 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 article 122 of the Manpower Act to prohibit the presence of the employer during voting procedures.
- Amend articles 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 under 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 the social partners.
- Accept a direct contacts mission.

Employer members – Just reiterating a couple of the points made earlier in relation to 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. 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 Worker members call for the Government to report to the ILO by this year on the measures that they are taking. 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, we need 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 organized in what is regarded as the traditional sense, 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 do not 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 given the impression that the primary exemptions 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 that 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 Settlement Act, 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 arbitration becomes the only viable mechanism to break the circuit. It seems, on face value at any rate, that the use of arbitration under the terms of the Industrial Relations Dispute Settlement 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 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 the Convention 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 creating and fostering job creation and enhancing employment opportunities. As the third largest democracy in the world, Indonesia remains fully committed to implementing 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.

Italy

Labour Inspection Convention, 1947 (No. 81), (ratification: 1952)

Labour Inspection (Agriculture) Convention, 1969 (No. 129), (ratification: 1981)

Written information provided by the Government

The Government has provided the following written information, as well as the Annual Report on Protection and Supervision in Labour and Social Legislation 2023.

The results of the task forces of the SU.PR.EME. and A.L.T. CAPORALATO! projects from 2020 to 2022 and of the activity against labour exploitation are illustrated in the Annual Report on Protection and Supervision in Labour and Social Legislation 2023. The document in question reports 1,206 non-EU workers without a regular residence permit found at work during inspections. During the inspections, information is provided to migrant workers on their rights, as well as through the delivery of the model adopted by the inter-ministerial decree (Ministry of the Interior, Ministry of Labour and Social Policy and Ministry of Economy and Finance) referred to in article 1, paragraph 3 of Legislative Decree No. 109/2012, also and above all through the support of cultural mediators who explain the role of the Inspectorate and clarify – in a language they can understand – that when a situation of labour exploitation is ascertained, the employer is liable, while the victims can access special protection mechanisms. As stated in the report, within the framework of the action carried out in the implementation of the aforementioned projects, 598 workers were assisted by the International Organization for Migration (IOM), of whom 239 were granted residence permits as victims of labour exploitation and/or are awaiting a favourable opinion by the Public Prosecutor's Office (there were 3 in 2018).

With specific reference to the request concerning the number of residence permits granted for "special cases", data from the Ministry of the Interior, updated to June 2022, on residence permits both for reasons of social protection and in case of serious labour exploitation is provided in Tables 1 and 2 below. Updated data is being surveyed. This data will be transmitted as soon as provided by the competent authority. In addition, as part of the projects, multilingual information leaflets (in Italian, English, French, Arabic, Urdu, Pashto, Bengali, Hindi, Punjabi, Chinese and Romanian) have been prepared and distributed, aimed at helping foreign workers present on Italian territory to become aware of their possible situation of exploitation and of the possibilities of reporting and rescue. It should



also be noted that, to date, at six territorial inspectorates (specifically Bari, Cuneo, Ferrara-Rovigo, Foggia, L'Aquila and Reggio Calabria), experimental multilingual desks have been activated to receive complaints of irregularity and labour exploitation of foreign citizens and, more generally, to give support and information on their rights. Again, as a result of collaboration with the IOM, the inspection request form, available online on the Inspectorate's website, has been translated into nine languages (English, French, Romanian, Chinese, Arabic, Bengali, Punjabi, Urdu and Ukrainian).

It is also confirmed that the inspectors ensure adequate protection for migrant workers also from an economic point of view by issuing ascertainment warnings (section 12 of Legislative Decree No.124/2004), under which financial rights are immediately and freely satisfied. In pointing out that in recent years data on the effective use of this tool are increasing overall, it is reiterated that the details of ascertainment warnings, contribution recoveries and financial resources specifically related to workers without residence permits are not available through the survey system in use. As for the time devoted by inspectors to verifying the regularity of migrant workers' stays, this appears to be entirely marginal. In fact, according to Act No. 286/1998, inspectors who ascertain the employment of migrants without residence permits are required to report this to the police forces, and the latter, not labour inspectors, are responsible for identifying the irregular foreign national and charging that person with the offence of illegal entry and stay in the territory of the State, pursuant to section 10 *bis*.

► **Social protection (article 18 TUI)**

Citizenship	Total
Afghanistan	2
Albania	30
Algeria	2
Bangladesh	16
Bolivia (Plurinational State of)	1
Bosnia and Herzegovina	4
Brazil	5
China	2
Colombia	13
Egypt	3
El Salvador	1
Eritrea	1
Gambia	3
Ghana	4
India	3
Mali	2
Morocco	17
Myanmar	1
Nigeria	71



Citizenship	Total
North Macedonia	6
Occupied Palestinian Territory	6
Pakistan	11
Republic of Moldova	2
Senegal	8
Serbia	2
Somalia	1
Sri Lanka	4
Syrian Arab Republic	1
Tunisia	3
Ukraine	3
Venezuela (Bolivarian Republic of)	2
Total	230

► **Serious labour exploitation (article 22 TUI)**

Citizenship	Total
Bangladesh	1
Egypt	2
Gambia	7
Ghana	6
Guinea	2
India	2
Mali	1
Morocco	10
Nigeria	17
Pakistan	27
Senegal	7
Sierra Leone	1
Total	83

Discussion by the Committee

Chairperson – The last case on our agenda is Italy on the application of the Labour Inspection Convention, 1947 (No. 81), and of Labour Inspection (Agriculture) Convention, 1969 (No. 129). I will now invite the Government representative of Italy to take the floor.

Government representative – We welcome with particular openness this occasion in which Italy can present its strong and concrete commitment to the full implementation of both Conventions Nos 81 and 129. The elements and information that will be presented



today and in this room in response to the direct questions that have been addressed to Italy, are already described in the document submitted to the Office on 22 May.

Italy has always been strongly and concretely committed to combating irregular work and labour exploitation. In this way, as you probably know, since 2015 it has set up a national agency dedicated to making more effective and coordinated labour inspections in the country. But on this occasion this afternoon, I would like to inform you that in the framework of the National Recovery and Resilience Plan of December 2022, the Minister of Labour and Social Policies adopted the National Plan to combat undeclared work. It is the first relevant national document in this area. It was prepared by a specific multi-stakeholder technical table, with the participation of researchers and experts on the subject. Before its adoption, the National Plan was also submitted to the social partners.

Through this Plan, which will be implemented in Italy over the period 2023–25, over the next three years, the Government undertakes to carry out concrete and effective action to combat and prevent the phenomenon of undeclared work in all economic sectors. In particular, and this is the first point in response to one of your questions, a relevant aspect of the National Plan concerns the strengthening of the collection and sharing of statistical data in order to better understand the phenomenon of irregular work in all its forms and to plan better activities and more efficiency in inspections. So, we have a specific line of action for collecting statistical data.

The analysis of this phenomenon, based on the currently available information, has highlighted the need to pay particular attention to some critical sectors, such as domestic work and agriculture. Both are sectors where we know we have relevant presence of migrant workers. The National Plan also intends to encourage, through a reorganization of sanctions, a progressive and continuous transition from irregular forms of work to regular and transparent work in the country.

In the framework of our national inspection agency, my colleagues working in the national agency created a specific national portal for information on undeclared work. A new database can be useful for the activities of the national agency. And in April, the Minister of Labour established a national committee to prevent and combat undeclared work, entrusted with the task of coordinating and monitoring the action plan in line with the reform of the National Recovery and Resilience Plan of the European Union (EU). The Committee is chaired by the Minister of Labour and Social Policies and is made up of representatives of the different institutions at the national and regional levels with experts in this field appointed by the Minister, with ten representatives of the social partners.

We have some relevant information that in our opinion can be useful for this discussion. Since 2020, three years ago, the Government has adopted all relevant measures to implement the system of labour inspection. This is the National Strategy to prevent and combat labour exploitation and illegal hiring in the agriculture sector.

This plan implements a national law adopted in 2016: Act No. 199. It represents an important shift towards a more comprehensive and multidimensional approach to labour inspection, and is structured around four strategic pillars: prevention, protection, enforcement and remedies. These four strategic pillars, in our opinion, are in full conformity with both the Conventions that we are discussing today.

In December 2018, the Government established a specific group of experts (*Tavolo per il Caporalato*), chaired by the Minister of Labour to support the National Strategy in the agricultural sector. The National Strategy addresses action to prevent and combat irregular



work in agriculture, with a particular focus on the most vulnerable categories, such as migrant workers in an irregular situation, taking into consideration the specific characteristics of the national territory. The idea is to combine penalties with concrete action for prevention and for the social inclusion for these migrant workers. It is important to underline that this National Action Plan was adopted in line with the specific action of the European Commission and is co-funded by the Structural Reform Support Programme and, as you probably know, the technical support for the National Strategy is provided to the Ministry of Labour by the ILO National Office for Italy.

Another element we think can be relevant to this discussion is that, since 2020, in the framework of the National Strategy, the Ministry of Labour has launched, with the National Labour Inspectorate, specific joint action establishing special task forces to carry out labour inspections with an innovative approach. National labour inspectors are supported by cultural mediators from the IOM. This is an innovative and multi-agency approach. These taskforces were set up with the multidimensional approach and with specific coordination with the local authorities of specific territories. Cooperation between labour inspectors and cultural mediators concerns inspection visits in the workplace, but also during the planning phase and afterwards during the phase of taking care of victims of irregular work.

The activities carried out through this specific approach based on task forces has now been adopted not only in agricultural, but also in other sectors: manufacturing, construction, services and logistics. Another point we want to underline regarding the specific role of labour inspectors is that, in our national system of labour inspection, labour inspection is totally addressed at securing the protection of all workers, including migrant workers, and with specific regard to this group of workers, during inspection they are provided by inspectors with all available information on their rights. Also, through the delivery of special leaflets adopted in Italy, and translated in collaboration with the cultural mediators, in the languages of each of the migrant workers, information is provided on their rights, the responsibilities of the employer and the special protection mechanism to which victims have access on the basis of Italian legislation. So, this is a form of providing support for migrant workers.

We can now offer migrant workers these multilingual leaflets with an information dossier, in 11 different languages, to help migrant workers present in the Italian territory enforce their rights and social inclusion and prevent the risk of exploitation. Also, as a result of the collaboration of cultural mediators from international organizations, the inspection request form dedicated to workers that is available online on the website of the Inspectorate is being translated into nine languages. So, it can be adopted and used more effectively and is accessible to migrant workers.

These activities have been crucial over the past four or five years in building the trust of migrant workers in cultural mediators and labour inspectors. We can observe this phenomenon in our different territories. Especially, with the frequent visits to informal settlements and a regular presence in the area. With a strong relationship with migrants' associations and with the follow-up of mechanisms with migrant workers and their families. Capitalizing on this positive experience, the national inspectorate has started strengthening territorial offices to be closer to the needs of migrant workers. We now have the experience of six territorial offices in which there are specific help desks as a pilot project. These are multilingual help desks, dedicated to receiving reports of irregularities and of exploitation from migrant workers, and more generally to provide information and support on their rights. The commitment of the Ministry and the Inspectorate is to improve this approach, to have more help desk offices in all of Italy in the near future.



Finally, a point on the role of labour inspectors. Labour inspectors, in communicating the presence of migrant workers to the public security authority, pay specific attention to describe and to emphasize all the useful elements for example, with the collaboration of the victim, in the context of violence, or serious exploitation to support the timely issuance of the special case residence permits for these workers. It is important to recall this, because this approach is moving clearly in the direction of paying full attention to workers. This is clearer in our system. In enforcing the protection of migrant workers in every situation, and in enforcing their rights, both labour and social rights, this is in full respect of both Article 3 of Convention No. 81 and Article 6 of Convention No. 129.

The final point of my intervention relates to special permits. Last week, in our document, we sent you the data collected by the Ministry of the Interior regarding the two types of special permits: for social protection reasons and for serious labour exploitation. Yesterday, we received very up-to-date data that we can send you after this discussion in a new document that can give you more specific updated elements.

Worker members – This is the first occasion on which the Committee has examined the application by Italy of Conventions Nos 81 and 129.

In its comments, the Committee of Experts has raised a series of questions specifically concerning the additional functions entrusted to labour inspectors in relation to immigration. It noted that labour inspectors are required to notify the public security authorities of the presence of any irregular migrant worker, since under Italian legislation unlawful entry and residence on Italian territory continues to be a criminal offence. The Government has provided updated data indicating that in 2022 a total of 1,206 workers without valid residence permits were identified. According to the Government's report, these workers received information on their rights.

The IOM also provided assistance to 598 migrant workers to gain access to special protection measures. As a consequence, residence permits were issued to 313 migrant workers on grounds of social protection and in special cases of exploitation. Information has also been provided on the experimental multilingual help desks established by six provincial labour inspectorates to receive denunciations of labour irregularities and exploitation of foreign workers and to provide them with support and information.

We note the information provided. However, we express concern at the criminalization of illegal immigration in Italy, its interference in the fulfilment of the primary duties of labour inspectors and its adverse impact on the capacity of foreign workers to assert their rights. We recall that, in accordance with Article 3(2) of Convention No. 81 and Article 6(3) of Convention No. 129, the primary duty of labour inspectors is to protect workers and not to ensure compliance with the Immigration Act.

In the words of the Committee of Experts, workers in an irregular situation may not be prepared to cooperate with the labour inspection services if they fear negative consequences of inspection, such as being fined, losing their job or being expelled from the country. The objective of labour inspection can only be fulfilled if workers are convinced that the primary function of inspection is to ensure compliance with legal provisions relating to conditions of work and the protection of workers. The requirement for labour inspectors to inform the public security authorities of the presence of irregular migrant workers is not therefore in compliance with the requirements of the Conventions. The Government should adopt measures to establish a clear distinction between the activities undertaken by labour inspectors, in accordance with the provisions of the Conventions, and immigration controls, in which labour inspectors should not participate.



With regard to the protection of migrant workers, we regret that this year the Government has abolished residence permits for special cases, as a result of which migrant workers are at even greater risk. We also observe that the two triennial projects, SU.PR.EME and A.L.T. CAPORALATO!, intended to combat exploitation and gangmasters in agriculture, are about to come to an end. We regret that the Government has decided to use measures that are limited in time to combat the systematic and extended exploitation of migrant workers in agriculture, in which a significant proportion of migrant workers are engaged, and where subcontracting and phantom cooperatives are commonplace. These abusive practices require a sustained and specific response by the Government, and should be an integral part of the labour inspection strategy drawn up by the Government. We also note that the Government has not provided information on the recovery of wage and social security credits for workers without residence permits, and that it confines itself to indicating that the current information system only allows an overview of the overall figures.

We echo the request by the Committee of Experts for the provision of full statistical information on the role of labour inspectors in informing migrant workers of their labour rights and the enforcement of those rights, including improved data on the recovery of the specific wage and social security credits of foreign workers without residence permits. Moreover, we note that platform work and domestic work, in which many migrant workers are engaged, and in which abuses and violations of workers' rights are extremely frequent, are not covered by the labour inspection services. We recall that the mandate of the inspection services must cover all workers equally, and all workplaces in all sectors, whether private or public, in rural or urban areas, in the formal or informal economy, with a view to guaranteeing compliance with the legal provisions relating to conditions of work and the protection of workers. The Government must ensure without delay that the scope of labour inspection covers all workers and workplaces, including labour platforms and domestic work.

Finally, we note that the National Labour Inspectorate, established in 2017, absorbed the National Social Security Institute, the National Workers' Compensation Institute and the inspection departments of the Ministry of Labour and Social Policy. In the 2022 annual labour inspection report, it can be seen that, despite this institutional reform intended to rationalize inspection procedures, labour inspection activities continue to be carried out by the same institutions referred to above, as well as by local health agencies, regional environmental protection agencies and the police. Each of these institutions has a specific area of competence, whether it is occupational safety and health, wages or working time, and covers a specific geographical area. Nevertheless, there remain serious doubts concerning the measures adopted to ensure the necessary cooperation between these various bodies and the coordination of their action. Proof of the lack of coordination is contained in the comment by the Committee of Experts, in which it indicates that the compilation and publication of statistics of employment accidents and cases of occupational disease are not the competence of the central authority, the National Labour Inspectorate, but they are drawn up and published separately by the National Workers' Compensation Authority Institute. The Committee also requested the Government to provide information on the impact of the recent organizational reform on the activities undertaken by the National Labour Inspectorate, particularly in relation to the coordination of occupational safety and health inspections between the National Labour Inspectorate and local health authorities.

The reports of the Italian trade union confederations also provide examples in which, due to the limitation of their areas of competence, officials of the National Social Security Institute are only able to note a violation in relation to social security contributions, but not



the failure to pay workers their wages, even though both are intrinsically interrelated. This is a perverse situation which mainly prejudices workers.

We recall that, under the terms of Article 5 of Convention No. 81 and Article 12 of Convention No. 129, the competent authority shall make appropriate arrangements to promote effective cooperation between the inspection services and other Government services and public or private institutions engaged in similar activities. The Government is therefore under the obligation to take immediate measures to ensure such cooperation and the effective functioning of the labour inspection services.

Employer members – The case under discussion concerns Conventions Nos 81 and 129. These two instruments are tightly linked and form part of the series of international labour standards intended to guarantee protection for workers in the sectors concerned. At the outset, the Employer members stress the importance of States' compliance with the ILO Conventions they have ratified. Furthermore, the Employer members would like to emphasize the vital importance of labour inspection both for the protection of workers and for a well-functioning economy.

Allow me to turn to some background information on this case: Italy ratified Convention No. 81, which is a priority governance Convention, in 1952. Convention No. 129, which is a priority Convention as well, was ratified by Italy in 1981. We also note that since 2007 the Committee of Experts has issued six observations, the last one in 2022, denoting a failure by the Government to meet the commitments undertaken by ratifying the Conventions. Today, however, is the first time that the case regarding Italy's compliance with Conventions Nos 81 and 129 has been discussed by the Committee. As to the country situation, it is worth noting that, in July 2020 after the fall of the Government, the President called for general elections in September 2022, which saw a new coalition gaining a majority of seats in Parliament.

Allow me now to turn to the key issues of this case: The Committee of Experts, in its 2022 observations, identified elements of concern with respect to Article 3(1) and (2) of Convention No. 81 and Article 6(1) and (3) of Convention No. 129, regarding additional functions entrusted to labour inspectors. The Employer members take note that the Government indicated in its report that inspection activities have been conducted within the three-year Plan against exploitation in agriculture through two projects financed respectively by the European Commission and the Ministry of Labour and Social Policy. We further note that the Government has indicated that labour inspectors shall communicate the presence of migrant workers in an irregular situation to the public security authority. It should also be noted that, to date, in six territorial inspectorates, multilingual desks have been activated dedicated to receiving complaints of irregularity and labour exploitation of foreign citizens and, more generally, to give support and information on their rights.

Furthermore, according to the written information provided by the Government in May 2022, the results of the task forces of the above-mentioned projects and of the activity against labour exploitation show that 1,206 non-EU workers without a regular residence permit were found at work during inspections. According to the Government, during the inspections, information was provided to migrant workers on their rights and the role of the inspectorate. The Employer members also note the national Legislative Decree, according to which residence permits may be granted to concerned workers in so-called "special cases", that is for reasons of social protection and in cases of particular exploitation. The granting of such permits is subject to the condition that the migrant worker in an exploitative situation files a complaint and cooperates in the criminal proceedings against the employer. In this



regard, according to Government's information, 230 special residence permits were issued for reasons of social protection and 83 for reasons of serious labour exploitation.

Finally, the Government mentioned that when inspections reveal failure to comply with contractual obligations, therefore creating financial credits for workers, the labour inspectors may ensure the recovery of such credits of the concerned workers. However, the Government also indicated that the current system of collection of statistical data only allows for an overview of the total figures in this regard, without specific reference to workers without a residence permit. In light of the Committee of Experts' observations and information provided by the Government, the Employer members request the Government, firstly, to continue to provide information on the number of migrant workers in an irregular situation detected by labour inspectors; and secondly, on the role of labour inspectors in informing migrant workers about their labour rights and in enforcing those rights.

We ask the Government to include in this information data on the recovery of wage and social security credits specific to foreign workers without a residence permit; and the number of "special case" residence permits granted as a result of cooperation by those individuals with the inspection services. Finally, in line with the Committee of Experts' observations, we request the Government to provide information on the resources of the labour inspectorate that are allocated to the task of verifying the legality of the immigration status in practice as a proportion of inspectors' overall time and resources.

Worker member, Italy – I am speaking on behalf of the three Italian trade union confederations, the Italian General Confederation of Labour (CGIL), the Italian Confederation of Workers' Trade Unions (CISL), and the Italian Union of Labour (UIL). The Italian trade unions consider both Conventions Nos 81 and 129 prerequisite standards for the respect and implementation of fundamental occupational health and safety rights. As addressed by the Committee of Experts, we would like to stress that defending the independence of public labour inspectors is of utmost importance. In fact, we welcome the withdrawal of the agreement between the National Labour Inspectorate, which I will call INL from now on, and labour consultants, which would have allowed enterprises to be notified before a possible inspection, and enterprises with a certification of compliance issued by labour consultants, obviously for a fee, to be excluded from possible inspections.

This is in the context of a dramatic situation in terms of numbers of inspectors and of the resources at their disposal: an enterprise knows that its chance of being inspected is once in 15 years. We would like to make a few observations on the additional information provided by the Government:

The number of cases of "special protection" reported continues to be dramatically low, and part of these were notified by the trade unions themselves and specific multi-stakeholder projects, and not as a result of national inspections, as one would have expected. Moreover, we want to challenge the following statement by the Government: "inspectors ensure adequate protection for migrant workers also from an economic point of view by issuing ascertainment notices (section 12 Legislative Decree No. 124/2004), under which financial rights are immediately and freely satisfied."

As we have repeatedly pointed out, the "ascertainment notices" issued by the labour inspectors are an important tool that we hope can be increasingly extended. However, this notice alone does not at all guarantee the recovery of what the ILO and the Committee of Experts have defined as "wage theft" against migrant and non-migrant workers, irregular and otherwise. The INL reform initiated in 2017, which we welcomed as it contributed to strengthening the autonomy of the INL from the Ministry of Labour, still falls short of



complying with Articles 4, 5 and 16 of Convention No. 81 and Articles 7, 12 and 21 of Convention No. 129 regarding the coordination of inspection activities by a central authority. Despite the efforts deployed through the SU.PR.EME and A.L.T. CAPORALATO! programmes (*caporalato* is the Italian word for gangmaster) and some good practices of multi-agency inspection and coordination, in the majority of the territories affected by irregular labour and exploitation, the different inspection services (INPS, INAIL, ASL Inspectors, the police, including the *carabinieri*, *guardia di finanza*, and so on) act autonomously, without any coordination among themselves and in a disjointed manner. For example, the inspection activities promoted by the INPS (the national social insurance agency), conclude with reports that only concern social security contributions, without capturing the growing phenomenon of “wage theft,” as INPS inspectors do not issue ascertainment warnings to workers found to have been paid below the contractual minimum.

In this context, the Italian unions believe that setting up a “guarantee fund”, which could ensure the enforceability of ascertainment warnings and the payment of the so-called “wage theft” to workers, would contribute to shifting the responsibility for the recovery of the economic value of the warnings from the worker to the INPS, without removing the overall responsibility from employers.

What is more, the SU.PR.EME and A.L.T. CAPORALATO! projects are part of the national anti-*caporalato* plan prepared by the Ministry of Labour and financed with EU funds. But these are about to end and, in any case, represent an extraordinary activity that cannot guarantee continuity or stability of interventions which, on the contrary, an institutional structure such as the labour inspectorate should ensure.

For this reason, in compliance with point 2.2.7 of the ILO Guidelines on general principles of labour inspection, which indicates that “Labour inspectorates should collaborate with workers’ and employers’ organizations in the design, adoption and review of inspection policies, strategies, or programmes and plans”, the Italian unions think that an institutionalized tripartite body that ensures the regular planning and monitoring of inspections should be established. And the INL should set up an integrated database that collects disaggregated data on the inspections carried out by all the responsible inspection bodies at the local and regional levels.

Section 8 of Italian Act No. 199/2016 against “Caporalato” is not fully implemented. Only 6,000 enterprises are enrolled in the Quality Agricultural Labour Network out of a potential pool of 200,000. The territorial sections are less than half of those planned, are not fully operational and are not participated in homogeneously by all inspection services. In this context, we welcome the multidisciplinary experiment in six provinces, as mentioned now by the Government.

Irregular labour and modern forms of slavery are still widespread in the agricultural sector, as documented by Italian trade unions. The introduction of occasional fixed-term contracts in agriculture fuels exploitation and illegal labour, undermining Act No. 199/2016. This will be further aggravated by the recent re-introduction of payment by vouchers in the agriculture sector for payments up to €15,000 under Decree No. 48/2023. On the ground, we have observed that there has been a significant increase in the number of companies providing signed semi-regular contracts (so-called “grey contracts”) to avoid INL warning notices and sanctions.

Let me also remind the Committee that, in Italy, labour inspectors have to communicate the presence of irregular migrant workers to the public authority and that the illegal entry



and stay in the country and the employment of workers without a permit are criminalized by sections 10bis and 22(12) of Legislative Decree No. 286/1998.

As raised several times by the Committee of Experts, it is necessary to avoid the result of the inspection controls being the immediate deportation of workers found in a situation of irregularity. We need to ensure a clear distinction between labour inspection and immigration controls and to strengthen the independence and resources of the former. As long as the irregular status of migrants remains a criminal offence, there will be no full compliance with Convention No. 81. Punitive measures against employers should be accompanied by reward measures in favour of good practices and virtuous employers, who are now prevented from formalizing workers because of the Italian Bossi-Fini law.

At the same time, section 18 of the Consolidated Immigration Act should be amended to ensure that inspections can lead to a safe regularization process for vulnerable migrant workers, in a manner that does not place the entire burden of the regularization process on the shoulders of those who are already exploited, that is the workers.

The gender dimension of exploitation should not be overlooked. Contact with severely exploited people, and especially women, requires outreach work that does not end with one single inspection, but requires the help of cultural mediators. For this, in accordance with ILO Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, national labour inspection services should be further equipped to proactively prevent and report gender-based violence and harassment in the agricultural sector. Inspections are also particularly challenging and ineffective in the context of subcontracting. Strengthening labour inspectors, doing joint work with all those involved in controls is the best answer to bringing more legality to procurement.

Finally, let me address the issue of access to remedies. The recovery of unpaid wages and compensation for damages suffered due to exploitation is a key issue in addressing irregular labour, especially by migrant workers, who otherwise would have no interest in reporting exploitation, as they could only expect negative consequences. Alongside judicial remedies, which generally do not have the confidence of vulnerable workers, the Italian unions believe it is necessary to pursue the path of non-judicial remedies. These are procedures characterized by speed, confidentiality and informality, which can provide positive responses to the pressing needs of workers, especially in relation to unpaid wages. These conciliation mechanisms may involve labour inspectorates, or may be handled jointly by unions and employers, or they may be led by trade unions.

Employer member, Italy – I am honoured to take the floor with a short intervention in my capacity as Employers' delegate of Italy and on behalf of the Confederation of Italian Industries.

We welcome the opportunity of considering the case of Italy on the application of Conventions Nos 81 and 129 on the system of labour inspection, in particular with regard to functions related to immigration. We believe it is a chance to reflect on the challenges that any country faces when securing the enforcement of the legal provisions on working conditions and the protection of workers who are migrants in an irregular situation. At the same time, we believe it is also an opportunity to show the progress that can be made in this regard, building on the positive steps already taken to address existing weaknesses and gaps. Italy is among the top front-line countries for migrants arriving in Europe and of course illegal immigration represents a huge challenge for our country. In this context, illegal migrants are more vulnerable to becoming victims of abuse and exploitation on the labour market.



We would like to express our firm opposition to any form of abuse or exploitation of migrant workers. It is first of all, of course, a matter of respect for human dignity and fundamental rights. From our perspective, the employment of illegal migrant workers also creates unfair competition for the vast majority of enterprises which respect the law and leads to losses in tax and social security revenues.

Italy has in place an advanced and very detailed legal framework providing protection for migrants that goes well beyond international standards and EU provisions. Moreover, I would like to stress that, in our well-established collective bargaining system, collective agreements address issues that are key to migrant workers, such as training, housing, food needs and leaves. Employers collaborate with the public authorities in line with the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), which recognizes the specific role of the social partners, and they are engaged, often together with the trade unions, in projects to tackle undeclared work and promote the social inclusion of migrants. The aspects relating to inspections and sanctions for illegal employment, also with regard to the more problematic elements highlighted by the Committee of Experts, remain an issue in Italy, but the information provided by the Government today shows that Italy is well aware of the challenges, committed to structurally addressing them and has already taken important steps that go in the right direction. This direction, from our perspective, considering the complexity of the phenomenon of illegal migration, must be towards a broad strategy that could bring together different actors at the public and private levels with their respective responsibilities and tools. We, as employers, stand ready to contribute to further developing this pathway. We would encourage the Committee to take into due account the efforts and progress made by Italy in remaining strongly and concretely committed to the full implementation of Conventions Nos 81 and 129.

Worker member, Spain – There are many issues that arise in the complaint against the Government of Italy that this Committee has very rightly decided that it will examine here, from the lack of resources of many labour inspection services following years of austerity policies and cuts, to the interpretation of some of the functions that the Italian Government has entrusted to the labour inspection services, which go beyond those set out in Article 3 of Convention No. 81 and Article 6 of Convention No. 129.

I will speak about one of the issues already raised by the Italian Worker member: the lack of guarantees of exhaustive and effective inspections in contracting and subcontracting chains in the agricultural and logistics sectors. The contracting and subcontracting to which I am referring are a cover for fraudulent and illegal practices that use false cooperatives and other corporate structures in which the Italian inspection services do not enforce the law, ILO standards or collective agreements. Industrial accidents, many of which are mortal, therefore abound there, along with interminable workdays, insecure employment and wage deductions that are not in compliance with the rules agreed between employers' and workers' representatives. It is widely known that in the Emilia Romagna region, ghost cooperatives subcontract labour and manage parts of the production cycle in client companies. Many livestock farms subcontract the logistics to these spurious cooperatives, which in practice fully manage the barns in which the animals are reared. While the workers appear to be members of the cooperative, they are often forced to work under terrible conditions. If cooperatives close as a result of complaints, trade union pressure or supervision, they reappear under a new name and with different members. This is not a one-off, as we can see that in other sectors, such as logistics, there are complex fraudulent hidden tax practices involving invoices for legally inexistent transactions and fictitious contracts, in violation of regulations in the sector. The financial police of Milan and the tax



office have identified employment relationships with commissioning enterprises concealed by screen companies, which in turn used cooperatives (or other forms of shell companies). Huge logistics companies are involved in this labour exploitation of the weakest workers, that is migrants, and the three major Italian trade union confederations have therefore called for protection for the almost 30,000 workers affected, and have offered to work with the judicial authorities. These cases can only be prevented if the inspection services, working in conjunction with the other actors involved in enforcement, succeed in bringing these illegal practices to an end.

Like the perverse labour reforms introduced in 2011 by the conservative Spanish Government, the current Italian legislation allows workers who should by the nature of their work be employees to be forced to form part of a series of pseudo-cooperatives with the sole aim of evading their obligations, paying lower wages and worsening the protection of workers, or in brief of making them precarious, thereby evading the provisions of Article 4 of Convention No. 129. The Italian labour inspectorate cannot, and must not be an institution that focuses on reporting irregular migrant workers. It is right for this Committee to ask the Government to provide information on the time and resources devoted to this function which, as is recalled in Article 3(2) of Convention No. 81, may interfere with the effective discharge of the primary duties of the labour inspectorate, which, I quote, are: “to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare”.

Government member, Algeria – The Algerian delegation would like to thank the Government representative for providing replies to the questions raised by the Committee of Experts on the application of Conventions Nos. 81 and 129.

Italy is party to the international legal instruments on labour inspection and duly fulfils its international obligations in good faith. It should be emphasized that, through their work in providing guidance and information, undertaking inspections and issuing infringement notices, the labour inspection services monitor the failure to give effect to fundamental rights respecting labour relations and conditions, and consequently play an important role in the enforcement of those rights.

My delegation therefore welcomes the relevant information provided by the Government representative in the context of the efforts to ensure effective labour inspection in the agricultural sector, and in particular to identify any failure to meet contractual obligations towards the workers concerned, including migrant workers, and to ensure that workplaces are inspected as frequently and as thoroughly as necessary, particularly in relation to occupational safety and health.

Indeed, the Government representative’s answers describe the major measures taken to regularize the labour situation and working conditions of migrant workers and their related rights.

Moreover, the measures adopted to combat exploitation and illegal labour intermediation in agriculture; capacity-building for inter-provincial labour inspection services, including their personnel; the strengthening of their information systems, and coordination with public health and social security services, and the management of migration flows; and improvements in working methods and investigation techniques, and the prevention of illegal work in this sector in particular, undoubtedly contribute to strengthening protection for all workers, whether regular or irregular, and consequently to enforcing the rights guaranteed in labour law.



All these measures demonstrate Italy's efforts to give full effect to Conventions Nos 81 and 129.

Finally, my country believes that issues relating to the general improvement of working conditions should be addressed as part of constructive and mutually beneficial dialogue with all actors, including farmers and representative trade union organizations.

In view of the commitments made, the Algerian delegation commends Italy on the results obtained to date and encourages the Government to continue working to strengthen the resources, capacities and prerogatives of the labour inspection services, in line with the national legal system and the international labour instruments in force.

Worker member, Republic of Korea – I would like to emphasize the importance of strengthening inspection capacity and control tools to identify and respond to the situation of exploitation, violence and harassment against workers and gender pay discrimination in agriculture as well as in the domestic sector.

The gender dimension of exploitation cannot be disregarded. We witness the feminization of migration and of poverty as a global phenomenon as more and more women are forced to leave home to support their families. In this situation, agriculture, domestic work, and sex work are the only options available for women, especially migrant women in irregular situations to work in the informal economy even under prohibitive conditions. Women working in irregular situations are vulnerable to the most serious forms of exploitation and abuse.

In Italy, there is a growing feminization of exploitation in the agricultural sector, among workers not only from other EU countries, especially Bulgaria and Romania, but also Italians to a much lesser extent. The tragic case of Paola Clemente, a women worker who died from fatigue while working in the agricultural sector in 2015, painfully reminds us of this. Paola died in the deafening silence of the Apulian countryside. There are more than 40,000 Italian women victimized by the Apulian “caporalato” or illegal forms of labour intermediation, who are facing the same silence. The reality of the exploitation of women workers affects the whole country and other sectors.

The Government of Italy particularly expressed its concern at the dire conditions of workers in the domestic sector and committed to strengthen labour inspection in this area, and this is well noted. I would like to draw the Committee's attention to the lack of inspection in the sector. Violation and irregularities in the domestic sector continue to be under documented. In 2022, the Italian national inspectorate carried out only 1,055 inspections in the domestic work sector and found irregularities in 49.29 per cent of inspections. However, the number is insignificant considering that there are around one million employers of domestic workers, according to the Italian national social insurance agency. The Government, as one of the first countries that ratified Convention No. 190, should strengthen the National Labour Inspectorate so that it can proactively prevent and report gender-based violence and harassment in the agricultural sector, and this should be extended to domestic work and platform economy work. An alternative approach to tackle this specific area should be developed.

Worker member, Argentina – I should say that the Autonomous Workers' Confederation of Peru endorses my intervention. I will therefore start by saying that in the case before us we note the efforts made by the Government of Italy, but we consider and reaffirm that these efforts have been totally inadequate.



The work of labour inspectors is fundamental to guarantee compliance with the labour rights set out in international conventions. The dramatic situation experienced by workers, particularly those in agriculture, aggravated by their situation as migrant workers, requires labour inspectors to be provided with Government support, which they are not receiving, both in terms of the current numbers of labour inspectors and the conditions under which they discharge their duties. Labour exploitation and the underground economy are clear and explicit signs of a sick and unlawful production system, which in many cases is allowed to continue, with the situation being further aggravated by organized crime.

It is necessary to emphasize that the violation of human rights is corroborated by the precarious situation of migrant workers, especially those in an irregular situation, and principally women and children who are subjected to child labour. They are very often hidden during inspections by those who exploit their labour and are the most painful face of new forms of modern slavery. For example, we can say that during each summer season, around 7,000 daily migrant workers, both steady and temporary, in the Capitanata region, provide cheap labour, especially for the tomato harvest, which accounts for one third of the total national production. The conditions of work there are dramatic in terms of the figures for exploitation and illegality. Moreover, over and above the sheer size of the harvest, processes for the mechanization of the harvest are very much delayed. The absolute exploitation can be seen not only in the irregularities in the payment of wages and the failure to comply with contractual requirements, but also include the generalized system of gangmasters with a high level of penetration by organized crime throughout the supply chain, which affects all aspects of the organization of work, from recruitment to transport, from accommodation to the payment of days worked, all of which is subject to insufficient controls.

Labour inspectors do not have the resources to discharge their duties effectively, which allows abuses by exploiters. Inspections relating to irregular migrant workers, even when it is found that they are being exploited, do not include any labour controls and no compliance notices are issued. Nor are any charges brought, to our knowledge, in institutions which could offer 'special protection', but action is limited to reporting them rapidly with the employer to the judicial authorities so that expulsion orders can be issued.

The shock between discharging the function of labour inspection and the legislation that requires irregularities to be referred to the criminal justice system needs to be changed. The Government's solution of normalizing the situation through regular contracts has been applied in a very limited manner in view of the great number of cases. In this universe, labour inspectors are totally overwhelmed in relation to giving effect to the broad requirements set out in Article 6 of Convention No. 129, and particularly in paragraphs 1 and 2, as emphasized in the report of the Committee of Experts. Accordingly, in the absence of the reinforcement of their numbers and resources, their work is not giving effect to the objective set out in the Conventions under examination, and this is compounded by the fact that the human rights violations suffered by the many groups of migrants go beyond the wage exploitation and the working conditions from which they suffer on a daily basis.

Accordingly, while the irregular situation of immigrants continues to be a criminal offence, in accordance with sections 10*bis*, 12 and 22 of Legislative Decree No. 286/98, there cannot be full compliance with Conventions Nos 81 and 129, as the role played by inspectors will be ineffective. The irregular status of migrants must be decriminalized.

Interpretation from Arabic: **Worker member, Tunisia** – On behalf of the Tunisian General Labour Union, I will speak of the violations of Conventions Nos 81 and 129 by the Government of Italy which affect all foreign nationals arriving in Italy, in addition to the



suffering of those who are lucky enough to escape drowning, death, the inhumane practices in camps and forced removal. The situation is therefore growing worse at workplaces.

Convention No. 81, in Article 3, defines the functions of the system of labour inspection as such, which guarantees the enforcement of legal provisions relating to conditions of work, such as those respecting health, work and the employment of young persons, and other issues. Normally, it is necessary to comply with these provisions and labour inspectors have to enforce them. In practice, over 97,000 Tunisian nationals live illegally in Italy, with 21,000 in Sicily, where Tunisian workers are exploited in the health and agriculture sectors. They suffer from inhumane conditions of work and treatment by gangmasters when they have to work in Italy.

When work is irregular, these workers need to have seasonal contracts which are partially renewed and which they must sign again during the course of the year. When these workers go from one enterprise to another, or from one region to another, the working conditions stay the same with unstable forms of employment.

This type of employment prevails everywhere in Italy since, in addition to a limited number of permanent employees, there are tens of thousands of workers whose contracts will soon expire. Among the cases examined in Sicily, there is often one permanent employee for every 40 seasonal workers, and the wages paid are inadequate. This is shown to a significant extent through the failure to publish administrative reports and the penalties, and particularly criminal penalties, imposed by labour inspectors in the event of violations.

As a result, in the case of inspections, the potential penalties do not exceed the minimum level, even though different types of measures should be adopted, as it is an important sector with much precarious work, and many of the wages are below the contractual average, including the minimum wage.

At the same time, in Syracuse, there are 20 labour inspectors for around 7,000 enterprises, meaning that the rate is one inspector for 350 enterprises. For the whole of Sicily, the rate is one inspector for 443 enterprises, or a total of 185 inspectors for some 80,000 enterprises, meaning there is one inspector for every 900 enterprises. That is why it is difficult to ensure compliance by enterprises with the rules and standards of decent work. Indeed, the figures show that there is insufficient dissuasion and insufficient capacity to change the attitudes of enterprises in relation to workers.

The ratification of the two Conventions by Italy encourages others to take the necessary measures through the application of strict national legislation on labour contracts, including provisions on decent working conditions, and the provision and assignment to labour inspectors of the capacity to discharge their functions with transparency, professionalism and impartiality, without any discrimination whatsoever, between local employees and foreign nationals.

We therefore have to improve the situation of workers, particularly in the countries of the South. We need to show solidarity between unions throughout the world so as not to lose the gains made by workers as a result of their important sacrifices, beginning in Chicago in 1886, when dozens of people were killed.

Worker member, United Kingdom of Great Britain and Northern Ireland – We note with concern the similarities between this case of labour inspection in Italy and issues regarding the United Kingdom that the Trades Union Congress (TUC) has raised with the Committee of Experts previously and which were the subject of extensive observations in 2020. We had noted that analysis of Government enforcement agencies shows that bodies



tasked with protecting victims of modern slavery are also sharing information on their immigration status. Although in our case we have the concern that this threatens compliance by the United Kingdom with the Forced Labour Convention, 1930 (No. 29), and its 2014 Protocol. We note the interrelated nature of the fundamental principles and rights at work, and that of the bodies tasked with protecting victims, including the work of labour inspectors. Indeed, in the United Kingdom, the Immigration Act of 2016 makes it a legal requirement for information gateways to exist between immigration enforcement and enforcement bodies. We have seen the damage this has caused to the effectiveness of labour inspection.

Our own practical experience, as trade unions supporting garment workers in the exploitation-ridden city of Leicester, emphasizes the seriousness of this corruption of the role of inspectors. Where unions, community groups, NGOs and journalists have found multiple victims of modern slavery and other abuses over a long period of time, government agencies report few serious issues. The workers tell our representatives that this is because they are afraid to speak to the authorities in case their status or in some cases that of their fellow workers is reported to the immigration authorities. Their employers know this, and the most unscrupulous of them will exploit workers' fear of speaking to inspectors to break labour laws with effective impunity. In short, by combining the duties of labour inspectors with those of immigration inspectors, they cannot effectively do their vital work, and workers suffer as a result. Effective labour inspection is crucial to the realization of fundamental workers' rights. The obsession with immigration displayed by both of our Governments harms all workers.

And yet in Italy, while inspectors are all required to report on immigration, in other areas they are specifically prevented from intervening. A health and safety inspector who uncovers evidence of wage theft, for example, has no power to intervene. This says everything we need to know about the priorities of the Italian Government. The ILO's own guidelines recognize the centrality of inspection with a clear inclusive mandate. Its most recent Guidance on general principles of labour inspection emphasizes, in point 1.1.1, that: "The mandate of labour inspection should apply equally to all workers and all workplaces in all sectors [...] in the formal and the informal economy". It also notes in point 1.3.1 that the range of regulatory oversight of labour inspection should include: "any aspect of legislation pertaining to conditions of work and the protection of workers, as defined by national legislation according to Article 27 of Convention No. 81, including [...] the informal economy".

The management of migration must not be prioritized over the realization of the fundamental principles and rights at work and other ILO Conventions. Labour inspectors must be allowed to do their vital work in an environment that gains the trust of workers. Only someone deliberately exploiting or endangering workers should fear inspection. We therefore urge the Government to wholly change this approach and allow inspectors, as Convention No. 81 sets out in Article 3.1(a), to "secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work".

Observer, International Transport Workers' Federation (ITF) – In the context of the Committee of Experts' analysis of Italy's application of Article 3(1) and (2) of Convention No. 81 concerning the additional functions entrusted to labour inspectors related to immigration, it would be pertinent to consider another segment of the economy where many migrant workers, some of whom are in vulnerable situations, are concentrated, namely the platform or gig economy. While data is hard to come by, the results of the European Trade Union Institute's internet and platform work survey suggest that around 5 per cent of Italy's gig workers in logistics are foreign born. It is also understood that migrant agricultural workers in the south of the country often travel north after the harvest season to work in other industries, like tourism, logistics, domestic work and the gig economy.



In October 2021, a tribunal in Milan found a manager of an intermediary private employment agency that procured workers for a large multinational food delivery platform to be guilty of gangmaster offences – the same unconscionable practice that has plagued Italy's agricultural sector for years. In this case, investigators found that workers were subjected to degrading work conditions and paid €3 per ride, and had their tips confiscated. Prosecutors said the workers were extremely vulnerable migrants and asylum seekers from conflict areas, including Mali, Nigeria, Côte d'Ivoire, Gambia, Pakistan and Bangladesh. The prosecutor found one migrant delivery rider who worked 68 hours over the course of a week to have earned only €179.50. The prosecutor also concluded that some migrants were "punished" with an arbitrary reduction in their compensation if they violated the terms of their agreement.

More widely, following another 2021 investigation conducted jointly by the public prosecutor and a specialized branch of the labour inspectorate, the *Comando carabinieri per la tutela del lavoro*, four major multinational food delivery platforms were fined a staggering €733 million for health and safety violations and employment status misclassification. Indeed, the platform companies were ordered to hire their 60,000 riders as employees or para-subordinate workers. The action of the public prosecutor in the specialized branch of the labour inspectorate in these cases is commendable. Effective labour inspection and access to relevant data and records by the competent authorities is absolutely critical to ensure that the rights of platform workers, including migrant workers, are protected. This is why the mandate of the labour inspectorate should be extended to the platform economy with material resources made available to inspectors for this purpose.

As the UN Working Group on Business and Human Rights highlighted following an official ten-day visit to Italy in 2021, that: "Migrant workers, including from African and Asian countries, working in sectors such as agriculture, garment and logistics, are trapped in a cycle of exploitation, debt bondage and human rights abuses that must be broken [...] This requires decisive action by the Government and business to provide decent work conditions for all workers".

In this regard, while recognizing the ability to grant "special case" residence permits, for reasons of social protection and in particular cases of exploitation, we need to highlight the dangers of inspection personnel notifying the public security authorities of the presence of any irregular migrant workers as illegal entry to and residence in the State territory remains a criminal offence. If undocumented workers, including those in the platform economy, face immigration enforcement, they are less likely to raise complaints of abusive employment practices. Further, it will also be difficult for prosecutors and the inspectorate to build a case against an abusive employer if workers do not report these practices.

We trust that the Government will engage meaningfully with trade unions and employers to address the issues raised by the Committee of Experts in order to bring its legislation into conformity with the Conventions in question.

Government representative – I can conclude my previous remarks with three elements and then I will pass the floor to my colleague.

First of all, regarding the inspectors employed by the labour inspectorate, we can confirm that their number is sufficient and adequate to provide all the activities in the field of labour inspection and the concrete and effective protection of all workers. Of course, we can confirm that all Italian labour inspectors are public officials with stability of employment and are totally independent of the chains of government and from improper external influence. Their recruitment is prescribed by national law only on the basis of their qualifications, as



expected in Italy for all public officials. Regarding their numbers, at the end of December 2022, the total number of inspectors coordinated by the national agency was just under 4,000. Last year, and we continued this year, the National Plan to combat undeclared work provided a total of 2,412 new inspectors for the National Labour Inspectorate. All inspectors, as we can confirm, are assigned to verifying compliance with labour and social protection at the national level without any distinction as to workers.

The second point is related to the question of the data on the recovery of wage and social security credits related to foreign workers without a residence permit. We can now provide inaugural information on the credits for social security, that in the last year 2022, are calculated by the national institute for social protection at just under €4 million. This is the total amount for all workers without a residence permit.

Finally, it is important to highlight that, on the basis of Italian legislation, the regular employment of migrant workers does not undermine the right of these workers without residence permits to benefit from a proper wage, social security contributions and provisions regarding work hours, health and occupational safety, as well as rights relating to the principle of non-discrimination for the protection of minors and working mothers. For specific elements and technical remarks, I would like to give the floor to my colleague from the national inspectorate.

Another Government representative – My colleague has already spoken about the question which was raised about the independence of labour inspectors in Italy. The first thing to note is that we have a specialized authority which is detached and separate from the Government, and this is a fact.

The whole legal system concerning labour inspection in Italy is intended to provide protection for workers. There is no confusion in that. Our system is traditionally based on sanctions, a sanction-based system. No sanction is issued in a labour inspection report to workers, whether or not they are migrants. The sanctions in the reports of labour inspectors in Italy are always for employers, who in such cases exploit workers, and in this specific case, migrant workers, whether or not they have regular work permits. This is an important point, because I have heard something which is not correct. Labour inspectors issue fines to employers, not to workers. So, this is a fact.

More technically, about coordination with other bodies, it has been said that there is no coordination at all, particularly with other inspectors in the social security system. Every month in each province of Italy there is a meeting between the labour inspectorate and the INPS. The person who said that probably does not know, but it has been like this throughout Italy since 2015.

About coordination with the occupational safety and health (OSH) system, which is new for labour inspection in Italy. We have traditionally worked on OSH matters in the building sector, now we have competence in all sectors. But this is very new, so it is true that we are implementing the system and that OSH inspectors in the regional system have very long competence and have worked in this field since the 1970s. So, in this sense, we have regional/local coordination between the National Labour Inspectorate (the State-level authority) and the regional OSH inspection system (regional/local OSH inspection authorities). In this way, every region has coordination in this specific field, so this is coordination as well.

More specifically, on the remarks made on tools and remedies; an important tool that we have, in addition to fines and sanctions in the strict sense of the term, we have



compliance orders for the payment of unpaid salaries, which are orders issued by labour inspectors. This is an important tool which makes it possible to recover salaries, and more specifically decent salaries, because these orders refer to the salary set out in collective agreements at the national level. This is a tool and a remedy to which all migrant workers are entitled, whether or not they have a regular permit. This is another important point, as all migrant workers, whether or not they have a regular permit, have access to the settlement procedures which we have in labour inspectorates. So, we have settlement procedures to which migrant workers are also entitled, even though they do not have a regular permit in Italy. This is quite important to say as well, so there is access to that.

A further tool concerning this item is the administrative assessment in labour inspection reports of the social security contributions to which workers are entitled. This is a measure to which all migrant workers are entitled, whether or not they have a regular permit in Italy: access to the right to social security contributions, even in the informal economy. I have heard a comment about chains of subcontractors. In Italy we have a very widespread system of joint and several liability concerning the whole chain, which is quite an important measure concerning wages and social security contributions, and this is a measure which is activated by the National Labour Inspectorate. A very quick remark about the gig economy, where we have very obviously innovative legislation. Very recently in Italy we have extended the protection of the law provided to employed workers to gig economy riders, and this is implemented by the labour inspection system in Italy.

Finally, as I have less than one minute, just to say a very quick word about what happens in practice. I am the director of a small territorial labour inspectorate in the north of Italy where there are many migrant workers. We have seen that this new approach to inspection with the collaboration of the IOM is very important, not only in the six provinces where this is implemented, but even in my province where we do not have this implementation. In this context, we have met the officials of the IOM and cultural mediators in task forces in other territories, and we are importing these meetings to our province, and we are starting other new approaches, which are much more informal obviously. This means that this measure, contrary to what was said before, it is a measure that is not going to end and which has now been renewed for the next two years. But it is a new approach which is really important for those of us who work in the territory as labour inspectors, and it is resulting in an important change in cultural approach. Multi-agency collaboration is very important and changes the cultural approach of labour inspectors as well.

Employer members – We have listened carefully and thank the various speakers who took the floor for the interventions and detailed information provided. We reiterate that Conventions Nos 81 and 129 are priority governance Conventions, which therefore require special consideration by Governments, workers and employers. The Employers wish to stress once again the importance of compliance with ratified ILO Conventions. Considering the Committee of Experts' observations in today's discussions, the Employers recommend the Government of Italy to provide information on the number of migrant workers in an irregular situation detected by labour inspectors, and on the role of labour inspectors in informing migrant workers about their labour rights. We ask the Government to include in this information data on the recovery of wage and social security credits specific to workers without a residence permit, and the number of special case residence permits granted as a result of cooperation between inspection services. Finally, in line with the Committee of Experts' observations, we request the Government to provide information on the resources of the labour inspectorate that are allocated to verifying immigration status in practice.



Worker members – We thank the Government of Italy for the information and clarifications provided. We also wish to thank the other speakers.

First, we wish to clarify three issues. The first is that in our intervention we never questioned the independence of inspectors. Second, it seems strange to us to say that 4,000 inspectors are sufficient when the Worker member of Italy has told us that enterprises know that their chances of being inspected are once every 15 years. And, third, we never said that inspectors punish workers, but that there is an indirect risk that inspection can lead to expulsion from the country. We therefore wish to reiterate our concern at the criminalization of illegal immigration and at the additional duties imposed on labour inspectors to inform the public security authorities of the presence of irregular immigrant workers. We recall once again that the primary duty of labour inspectors is to protect workers and not to enforce the Immigration Act. As a result, these additional duties are not compatible with Conventions Nos 81 and 129.

We call on the Government to repeal the laws and regulations which require labour inspectors to notify the public security authorities of the presence of any irregular migrant worker. We also observe with concern the ending of resident permits for ‘special cases’ which used to be granted to irregular migrant workers and those subject to exploitation, as well as the lack of disaggregated data on the recovery of wage credits and social security contributions due to migrant workers. We recommend that, instead of distancing irregular migrant workers even further from the formalization of their work, the Government should adopt measures for the enforcement of legal provisions relating to conditions of work and the protection of migrant workers, including by: facilitating recourse to rapid non-judicial remedies, such as conciliation mechanisms; increasing the penalties imposed on offending employers; establishing a guarantee fund to ensure compliance with the warnings and penalties imposed by labour inspectors and the rapid payment of wage arrears and the pending social security contributions of migrant workers; and the extension of the scope of labour inspection to platform work and domestic work. Specific measures should also be adopted in the long term to address the numerous violations of workers’ rights and cases of exploitation, including of migrant workers, in the agricultural sector.

In this regard, we encourage the Government to make use of the various existing tools, and in particular the comparative analysis undertaken by the ILO and the EU in 2020 on the protection and assistance provided to victims of labour exploitation. Furthermore, in view of the clear lack of coordination between the various bodies entrusted with labour inspection, the Government should take immediate measures, in accordance: on the one hand, with Article 5 of Convention No. 81, to draw up, in collaboration with the social partners, a labour inspection strategy that clearly determines the missions and functions of each body and service and strengthens cooperation and collaboration between them; and, on the other, in conformity with point 2.2.7 of the ILO Guidelines on general principles of labour inspection, to establish a tripartite process for the planning and follow-up of inspections. We call on the Government to create a database for the coordinated compilation of statistics between the various bodies and institutions entrusted with labour inspection. We urge the Government of Italy to seek ILO technical assistance to address the shortcomings identified and to ensure that Conventions Nos 81 and 129 are applied fully and effectively in the country.

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 concern several issues regarding compliance with the Conventions, in essence related to labour inspection with respect to employment of migrant workers in an irregular situation.

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

- improve the collection of disaggregated labour inspection data, including by establishing an integrated database in coordination with the different agencies and bodies performing labour inspection duties;
- consider the establishment of a tripartite consultative mechanism in line with the ILO Guidelines on General Principles of Labour Inspection to ensure the effective design, adoption and review of inspection policies, strategies, programmes and plans, including the strengthening of gender-responsive enforcement measures related to ascertainment warnings and the collection of unpaid wages and contributions;
- consider the establishment of a wages and contributions protection fund in consultation with the social partners to assure the payment of unpaid wages and contributions;
- extend the collection of statistical data regarding cases of failure to comply with contractual obligations to workers in an irregular situation, to ensure recovery of the credits for these workers, notably unpaid wages and social security contributions;
- provide the Labour Inspectorate with the necessary resources for effective labour inspection.

The Committee also requests the Government to continue to provide information on:

- the number of migrant workers in an irregular situation detected by labour inspectors;
- the role of labour inspectors in informing migrant workers about their labour rights and in enforcing those rights; and
- the number of “special case” residence permits granted and a result of cooperation by those individuals with inspection services.

The Committee invites the Government to avail itself of ILO technical assistance to effectively implement all of the Committee’s recommendations.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2023, on measures taken and progress achieved towards full compliance with the Convention.



Lebanon (ratification: 1977)

Forced Labour Convention, 1930 (No. 29)

Written information provided by the Government

Articles 1(1) et 2(1) of the Convention

In addition to the information presented in 2022 to the Committee, we wish to inform you of new facts that have not yet been considered by the Committee of Experts with respect to the following:

1. Regarding the law

An agreement has been signed between the Government of the Republic of Lebanon and the Government of the Federal Democratic Republic of Ethiopia concerning the employment of Ethiopian workers in Lebanon and which takes into account human rights and prohibits trafficking in human beings. The Ministry of Labour of the Republic of Lebanon and the Ministry of Labour and Skills of the Federal Democratic Republic of Ethiopia are the competent authorities in coordinating the monitoring of the agreement's implementation and on following up on this. Both parties have agreed to work together in combating illegal employment activities and trafficking in human beings in the two countries.

Section 7 of this bilateral agreement, entitled "Employment, Terms of Employment and the Employment Contract", stipulates as follows:

1. Recruitment and employment of workers, including domestic workers, in Lebanon shall be facilitated only through legally licensed recruitment agencies.
2. Upon obtaining the work visa, the employer shall apply for the recruitment of the worker through a contract signed at the embassy or consulate of the Federal Democratic Republic of Ethiopia in Lebanon.
3. The employment contract shall state the rights and obligations of the employer and the worker, as well as the basic conditions of work, in accordance with the applicable international labour instruments, including ILO declarations, principles and Conventions to which both countries are a party.

This bilateral agreement is on course towards attaining its end result in law, which is its ratification by the Council of Ministers. The Government shall send you a copy of it pending its entry into force.

Order No. 1/1 of the Minister of Labour of 5 January 2023, concerning regularizing the status of foreign female domestic workers who perform jobs other than those specified in the work permit.

Orders by the Minister of Labour to close down, or to revoke the licences of a number of agencies for the recruitment of female domestic workers. These orders have been posted on the Ministry's website.

Order No. 69/1 of 27 May 2022, concerning the approval of the mechanism for classifying recruitment agencies.

2. Regarding measures

In the course of 2022, a number of administrative measures were taken against several agencies for the recruitment of female domestic workers owing to their violation of the Order



regulating the work of the agencies for the recruitment of female foreign workers; 69 complaints against them were received concerning the infringement of female domestic workers' rights.

Throughout 2022, the Ministry received 89 complaints relating to female migrant workers, comprised as follows:

- 62 complaints by an employer against agencies for the recruitment of female domestic workers, with 41 of them being resolved;
- Seven complaints by female workers themselves against agencies for the recruitment of female domestic workers, with six of them being resolved;
- 20 complaints by embassies, consulates, associations and trade unions, with 15 of these being resolved. The bulk of these complaints were over employers' failure to pay female migrant workers their wages.

After reviewing the results of the Follow-up Labour Force Survey (LFS) 2022 in Lebanon, which was conducted by the Central Administration of Statistics (CAS) in collaboration with the ILO and also with financial and technical assistance provided by the ILO, we would like to share with you this feature shown in figure 25 (left-hand section) [*sic*]. Data collection for the Survey took place between 27 December 2021 and 31 January 2022. This has been published on the CAS website.

The most noteworthy result is the decline in the labour force participation rate (LPFR) of non-Lebanese, from 60.8 per cent in 2018–19 to 47.7 per cent in 2022, which was significantly higher than the decline in the labour force participation rate of Lebanese, i.e. from 46.3 per cent in 2018–19 to 42.6 per cent in 2022. This may be attributable to the transient nature of most international labour migration in Lebanon; thus, with the downturn in the economic situation, international migrant workers have been tending to leave the labour market and return to their country of origin or else move to a third country in search of new employment.

Kindly find below the tables regarding the numbers and percentages of **migrant workers (non-Lebanese workers) and domestic workers** based on the Labour Force and Household Living Conditions Survey (LFHLCS) 2018–19 and the Follow-up Labour Force Survey, 2022.

► **Domestic workers and non-Lebanese workers 2018**

Persons in employment (aged 15+), LFHLCS 2018	Number	Percentage
Domestic workers	103 015	6.5
Other workers	1 487 386	93.5
Total	1 590 401	100.0
Lebanese workers	1 242 204	78.1
Non-Lebanese workers	348 197	21.9
Total	1 590 401	100.0



► Domestic workers and non-Lebanese workers 2022

Persons in employment (aged 15+), LFHLCs 2022	Percentage
Domestic workers	1.4
Other workers	98.6
Total	100.0
Lebanese workers	84.9
Non-Lebanese workers	15.1
Total	100.0

Article 25. Penal sanctions for the exaction of forced labour

In its communication No. 215 – A. T. of 22 May 2023, the Ministry of Justice states the following in its response:

- Although the Lebanese Labour Code excludes domestic workers in private homes from its provisions, this does not imply that they forfeit the legal protection enjoyed by everyone who resides on Lebanese soil. Thus, they may still file their civil lawsuits on the basis of general civil rules and provisions, most notably the Obligations and Contracts Act.
- On the issue of confiscation of passports: the Ministry of Justice would like to state that two judicial rulings were successively issued on 23 June 2014 and 27 July 2016 by the Summary Affairs Court in Beirut, requiring a woman to return a passport to a foreign female worker in her employment. In these two rulings, the court held that the retention of female domestic workers' passports by employers constituted a violation of the fundamental rights guaranteed in international agreements ratified by Lebanon, foremost among them being freedom of movement.
- Concerning the order issued by the State Shura Council to suspend the implementation of the Standard Unified Contract (SUC): The legal justification for this order was that the order of the then Minister of Labour was deemed to have violated several formal conditions, the most significant ones being the lack of competence of the Ministry of Labour to issue it and the violation of the principle of separation of powers in light of the fact that section 7 of the Labour Code excludes domestic workers from its scope of application. Accordingly, any amendment to this section is the responsibility of Parliament and such an order cannot be issued under a caretaker government. It also contradicts the Obligations and Contracts Act, thus constituting a clear violation of all prevailing legal fundamentals and principles.
- In its observation, the Committee of Experts notes that the economic crisis facing Lebanon has exacerbated the socio-economic precarity of women migrant domestic workers. This has prompted the Government to take the necessary measures to provide them with adequate legal protection.

In this connection and with regard to facilitating access to justice, the Ministry of Justice makes mention of the joint initiative on legal aid that it concluded on 4 September 2019 with the United Nations Development Programme (UNDP) and the Office of the United Nations High Commissioner for Refugees (UNHCR), with the support of the Canadian Government and in cooperation with the Beirut and North Bar Associations. This joint project represents the cornerstone, or fundamental basis to improving social stability through the provision of various legal assistance tools and services and promotes justice for juveniles under the



auspices of the Ministry of Justice. It is also in line with the UNDP Action Plan for Lebanon 2017–20, which was formally adopted after the Lebanese Government gave its approval in 2017. Moreover, the Access to Justice Working Group, which includes representatives of the UNDP, the UNHCR, the Ministry of Justice and the Bar Associations of Beirut and Tripoli, is working assiduously to implement pilot projects to provide legal aid. This initiative has evolved significantly following the completion of the study of the various basic documents that contain principles and guidelines for the practical launch of the legal aid offices, such as a uniform code of conduct and operating procedures. A number of geographical areas, namely Saida, Tripoli and Baalbek, have been selected, with offices being opened in them; these have commenced their work on providing legal support to marginalized and most disadvantaged groups, including, of course, Lebanese, foreign and stateless women and girls. Among the main legal services provided by the aid offices are dissemination of information and awareness of rights; legal counselling and support; mediation and various alternative means of dispute resolution; and the securing of legal representation. If female domestic workers so wish, they may avail themselves of the free legal services provided by these aid offices.

With regard to female domestic workers being afraid to resort to the competent authorities to report any form of ill-treatment in case they are arrested, have to pay a fine or are deported to their countries for not possessing the required identity documents or for residing illegally in Lebanon: It is to be noted that a circular issued by the Office of the Public Prosecutor of the Court of Cassation does not call for the arrest of any non-citizen who is not in possession of identification documents or who is residing illegally in Lebanon if that person has reported to a police station to file a complaint about being the victim of an offence. In such a case, the person will be granted a grace period to regularize their status and to hire a lawyer or secure a guarantor.

Concerning the offence of sexual harassment: On 21 December 2020, Act No. 205 of 2020 was passed by the Lebanese Parliament. This Act is aimed at criminalizing sexual harassment and legislating for the rehabilitation of victims of it. Section 2(a) of the Act makes clear just how wide-ranging and comprehensive it is, for it makes sexual harassment a punishable offence regardless of the identity, occupation or status of the victim. Accordingly, it is applicable to any Lebanese or foreign person who has been sexually harassed, regardless of where the person concerned may be and of the nature of the person's work. Thus, the clause specifically states: "Anyone who commits an offence of sexual harassment shall be sentenced from one month to one year's imprisonment and a fine between three to ten times the minimum wage, or one of these penalties." Furthermore, this Act criminalizing sexual harassment raises the penalty in section 2(b) to become "from six months' imprisonment to two years and a fine of 10 to 20 times of the minimum wage, or one of these two penalties: ... if the offence of harassment occurs in the context of a dependency or an employment relationship." The provision stated in this clause therefore covers all those who have a subordinate relationship with their employers, and regardless of whether the relationship is governed by the Labour Act or the Code of Obligations and Contracts (general law), implying that domestic workers benefit from its provisions.

Referring again to Act No. 205 of 2020, section 2(c) makes it clear that the penalty is further increased to "two to four years' imprisonment and a fine of between 30 to 50 times the official minimum wage ... if the perpetrator holds material, moral, employment or educational authority over the victim ..."; or, "... if the perpetrator exerts extreme psychological, mental, or physical pressure in the commission of the crime to obtain favours of a sexual nature ...".



Therefore, all the paragraphs referred to above are clearly applicable to an offence of harassment of a male/female domestic worker, bearing in mind that it is the judge who has the discretion to determine which paragraph is most appropriate to the situation according to the particulars of each case. Indeed, Act No. 205 of 2020 covers all situations involving sexual harassment against male/female domestic workers, including those not included in the Labour Act.

Concerning the number of cases of forced labour of migrant domestic workers that have been investigated and prosecuted and the number of convictions and penalties handed down: The following information has been received from the Human Trafficking Repression and Morals Protection Bureau.

► **Human trafficking repression and morals protection bureau: Offences involving foreign female domestic workers**

Nationality	Offence	Role	Result
2022			
Ethiopian	Prostitution	Perpetrator	Arrest
2 Sierra Leoneans	Trafficking in human beings	Perpetrator	Arrest
Guinean	Prostitution	Suspect	Released on her own recognizance
Cameroonian	Prostitution	Suspect	Released on her own recognizance
Kenyan	Sexual harassment	Victim	The Kenyan woman was with the KAFA organization and her travel to her country was facilitated by them after her sponsor provided a clearance certificate and paid a sum of 300,000 Lebanese pounds
2021			
Ethiopian	Prostitution	Perpetrator	Arrest
Ethiopian	Theft	Perpetrator	Arrest
Ethiopian	Trafficking in human beings	Victim	She was arrested for theft and deserting the home of her employers
Ethiopian	Rape	Victim	She was arrested for theft and deserting the home of her employers
Bangladeshi	Violation of public morals	Perpetrator	Released on her own recognizance.
2 Sierra Leoneans	Prostitution	Perpetrator	Arrest



Nationality	Offence	Role	Result
2020			
Ethiopian	Information was received concerning a person attempting to sell a foreign female worker using the OLX app	Victim	Her sponsor stated that she had wanted to transfer her sponsorship and not to sell her –she remained with her sponsor
Ethiopian	Rape	Victim	Against a taxi driver – she was left free to go
Ethiopian	Sexual harassment	Victim	She returned to her country
Ethiopian	Facilitating and engaging in prostitution	Suspect	Released on her own recognizance
Ethiopian	Rape	Victim	She was employed in a restaurant – she filed a complaint against her workmate, who was also working as a taxi driver, and a search and inquiry order was circulated concerning him
Nigerian	Sexual harassment and violence	Victim	She was with the KAFA organization
Nigerian	Prostitution	Perpetrator	Arrest
Nigerian	Information was received concerning a person attempting to sell a foreign female worker on Facebook.	Victim	Her sponsor stated that he had wanted to transfer her sponsorship and not to sell her – She remained with him

Head of the Human Trafficking Repression and Morals Protection Bureau, Lieutenant Colonel Charbel Aziz.

Discussion by the Committee

Interpretation from Arabic: **Government representative, Minister of Labour** – I offer my congratulations to the Chair of the Committee and my greetings to you all. I wished to appear personally in the Committee accompanied by His Excellency the Ambassador of Lebanon because we care about the reputation of our country and we wish to demonstrate our serious intent and our attachment to the ethical and human standards which form the basis of our culture and our allegiance to the country of diversity which Lebanon is.

I would like to add that the Government has not had to cover the costs of our travel, or those of the Worker or Employer representatives. I say this to give evidence of our credibility and our wish to cooperate despite the difficult circumstances of our country. We are sure that there will be constructive cooperation and we take responsibility for the situation.

I am going to give you a brief overview of the situation in my country, not in order to justify any shortcomings, for which I take responsibility, even if the current situation that I have inherited is the result of circumstances which preceded my term of office and got worse in the wake of the COVID-19 pandemic.



First, we have constitutional problems arising from the non-election of a President of the Republic and from the transformation of Parliament into an electoral body which no longer fulfils its legislative role. Consequently, we have no new legislation, in addition to a Government which does not have full powers since it is acting in a caretaker capacity.

Second, administrative and legal problems. We are undergoing an open strike of public sector employees and the paralysis of these government departments because of the collapse of their salaries, with the exception of a small number who are running the public services. It is the first time that there is an open strike. We have never known such a situation, not even during the civil war. So it is a small number of officials who are running the government departments and public services.

We also have a lack of minimum infrastructure, such as electricity and computers. We will need oil to generate electricity, we are even running out of ink and paper. We are working in very difficult circumstances.

This has resulted in failure to follow up on reports and to respond to questions put to Lebanon. This has not been deliberate. By way of example, to illustrate our living conditions, the wage of foreign domestic workers, who we respect like our sisters, is currently double my salary as a Minister working for the Government.

Third, we are having to confront two tragedies. First, the displacement of our Syrian brothers, who now make up one third of the population of Lebanon. In fact Lebanon is the only country in the world carrying a burden of such proportions and hosting such a large number of displaced persons. They share all services with us – water, electricity – but as host country we do not receive any donations or aid from the international community, unlike the refugees themselves. Our children are dying at hospital entrances, others cannot go to school. This is happening right before our eyes, to the extent that I, as a Minister, am obliged to beg for my salary at ATM machines while refugees and displaced persons can receive all kinds of donations and assistance while Lebanese people watch helplessly. This is very dangerous; this has repercussions on social security and demographics.

On top of this, there is the forced displacement of the Palestinians which has been going on for over 70 years. There are currently about 1 million Palestinians in Lebanon and we defend their right of return. It is a very dangerous situation since their social situation has an impact on us, who live alongside them. So I appeal to your feelings and your conscience and on behalf of the Lebanese people and children I ask you in all objectivity, far removed from any political interference, to listen to the appeal of the Lebanese people and children.

Fourth, the collapse of the economy and living conditions and the deterioration of the value of the national currency. This has led the population to block the roads, and the banking sector is destabilized. We have also seen the collapse of wages. There is also the fact that I sometimes have to wait two or three hours to make a journey of even two kilometres. As I already said, the roads are blocked, and this has an impact on our work.

I tell you in all objectivity that Lebanon, whether its government departments or the people as a whole, has become a country which is living in a situation of forced and compulsory labour. It is the first time that we are seeing such a situation in the world, I can say that the whole country is living in a situation of forced and compulsory labour, officials and workers have nothing left to live on, their wages have collapsed. Once again, I am repeating all this so that you can understand the situation: it is not to justify myself.



This is because we are attached to our country and we honour our obligations, we have undertaken what I will describe below. Despite these difficult circumstances, despite the collapse, we have taken action, we have made every possible effort.

We have drawn up a new draft Labour Code. It is the first time that we have done this since 1963. This draft legislation includes respect for all humanitarian standards. I have submitted the draft Labour Code to Parliament and, as I already said, Parliament is currently not playing its legislative role, it is content to seek to elect a President. This Labour Code provides, for example, for the inclusion of the category of men and women domestic workers, their obligations and rights, and we are seeking to currently change the *kafala* (sponsorship) system in order to move on from the situation in which we find ourselves. We know very well what freedom and the price of freedom mean.

Second, the promulgation of the Act on the prevention of trafficking in persons had already entered into force.

Third, we have adopted an Act penalizing sexual harassment, including at work.

Fourth, we have signed a guide on the prevention of sexual harassment in the workplace with the assistance of the United Nations Development Programme (UNDP) and the Swedish Embassy in Lebanon. This guide shows us how to act under such circumstances and what to do to save or assist victims. We have also signed a technical agreement with the ILO Regional Office in Beirut to train officials of the Ministry of Labour in the preparation of reports which have been requested in Lebanon. We have thus sent our replies to the questions on the Forced Labour Convention, 1930 (No. 29), and we will reply systematically in future to all requests for clarification sent to us in due course.

While I was speaking to you, before coming back into the room, the Office received a new report from Lebanon. This shows the serious nature of our cooperation with the Committee and our response to all requests.

For a year and eight months, since taking up my duties at the Ministry of Labour, I have not issued any new licences for agencies which recruit domestic workers, in order to stop any misconduct. I will not accept any political interference in order to save the reputation of Lebanon, which is above all that.

I also promulgated Decision No. 41 in May 2022. This law regulates the operations of agencies for the recruitment of foreign workers, and this is an important reform to which I attached a similar decision which regulates accountability for agencies. This is happening for the first time in Lebanon. In fact we have closed more than 77 recruitment agencies, which represents 20 per cent of the number of legally approved agencies. This once again shows Lebanon's serious intent despite the very difficult conditions in which we are living.

I have also adopted a new "black mark" mechanism for rating these agencies. We are trying to combat misconduct by employers, so I have not just addressed the matter with the agencies, but also with the employers. We have drawn up a blacklist of employers who mistreat domestic workers. Just before I came to Geneva, I had a problem with a relative of mine who has been blacklisted. I did not take any account of our being related, for the sake of protecting human rights and safeguarding the image and reputation of my country.

We have also set up a "complaints" section on the platform of the Ministry of Labour for complaints in electronic form from workers, including migrant workers. And since we have many power cuts or even have no electricity at all, I received a donation which enabled me to



set up a photovoltaic power system at the Ministry so that we can continue our public service work.

As I already said, I have established a platform which follows workers' complaints directly. This section is available even during holidays and weekends. This is being done in cooperation with the Lebanese General Security Services. I wish to cooperate with civil society, especially with reliable associations. Some organizations lack transparency, we do not know where their money comes from, how they obtain it, or how they spend it.

I would also like to draw your attention to respect for human rights in my country. The Lebanese justice system has handed down two court judgments which are now case law. From now on I will take this judgment as a basis for ensuring that foreign workers enjoy their rights, since there is no legislation in this area in Lebanon.

I am also focusing on social dialogue for the most vulnerable workers. We are taking into account the interests of the tripartite constituents. We have a tripartite committee which has met more than 16 times in 18 months, resulting in us increasing wages 14 times, and the people of Lebanon know this, whether employers or workers. This is why I am proud. As a minister in office, I have acted to ensure that the workers' minimum wage in Lebanon is higher than my salary as a Minister. I wished to show that I am there to serve the workers and to protect their interests.

I am not forgetting the active role of the unions in Lebanon and I thank you for your efforts and your follow-up. We need to protect human rights. I reaffirm that we are serious and determined and that we are on the right track. I am very happy to listen to your observations and I reiterate our willingness to cooperate with the ILO.

In fact I have made all necessary arrangements and I say to you with all my heart: Lebanon, my country, is suffering. If you are objective, you will feel this suffering with us. We are a free, autonomous and sovereign country. We have confronted some very difficult situations – war, terrorism, occupation. We maintain our freedom, we are one of the countries at the origin of human rights. We are a country of diversify and we welcome displaced persons and emigrants. We have been left alone, we have been left behind. We lack material resources, but we remain a country with a free and human will.

Chairperson – Thank you very much Excellency for this detailed presentation providing the context of the challenges and their impact.

Employer members – We thank the Government of Lebanon for the oral and written information on this case, of which we have fully taken note. The Employer members stress the importance of States' compliance with the Forced Labour Convention No. 29, 1930, which is one of the ten ILO fundamental Conventions. Employer members have always stood against any form of forced labour and have fully condemned any resort to it.

Once again, we would like to reiterate our strong commitment towards the full elimination of such unacceptable practice as defined in Article 2 of the Convention. Before addressing the substantive issues of this case, we would like to provide some procedural and contextual information about Lebanon's situation.

To begin with, Lebanon ratified the Convention in 1977. However, according to the six observations the Committee of Experts provided since 2017, the country has repeatedly failed to achieve compliance.

The Committee of Experts issued an urgent appeal in 2021, which casts further light on the seriousness of the case, and this year has identified this case as one of the six double



footnoted cases. Today is the first time we are discussing Lebanon's application of Convention No. 29 in a tripartite setting in this Committee. Regarding the country's economic and political context, since 2019 Lebanon has been affected by a dramatic economic crisis which is disproportionately impacting marginalized communities, such as migrant workers.

The COVID-19 pandemic as well as the explosion that hit the Port of Beirut in 2020 further exacerbated the financial fallout. Moreover, the political situation has been instable over the last years with mass protests in 2019 and Prime Minister resignations in both 2019 and 2020.

The Committee of Experts identified two main issues in this case, which have been repeated in previous observations. The first issue concerns the vulnerability of migrant domestic workers to conditions of forced labour contrary to Articles 1(1) and 2(1) of the Convention. The second issue relates to penal sanctions for the exaction of forced labour as required by Article 25 of Convention No. 29. We take note that on 22 May 2023 the Government of Lebanon provided written information to the Office addressing both issues.

On the first issue regarding migrant domestic workers, the Employer members observe that, according to the Government's last report of 2018, a Bill on domestic workers was drafted. It was submitted to the Council of Ministers for discussion, and a Steering Committee was established under the Ministry of Labour to deal with migrant domestic worker issues, where a representative from the ILO Decent Work Technical Support Team also participated. We also take note that, in 2018, the ITUC reported that none of the draft policies discussed by the Steering Committee has ever passed into law. In their observations, it was also noted that migrant domestic workers continue to be subjected to abusive practices.

The Employer members also take note of the Committee of Experts' observation according to which migrant domestic workers continue to lack adequate legal protection and be subjected to abusive practices which have intensified during the COVID-19 pandemic. Furthermore, according to the Committee of Experts' observations, in October 2020 the implementation of a revised Standard Unified Contract for the employment of domestic workers was suspended by the State Council one month after its adoption by the Ministry of Labour.

On this point, we take note that, according to the statement provided by the Government in May 2023, the suspension was due to the lack of competence of the Minister of Labour as well as violation of the principles of separation of powers by adopting such an instrument. In the same written information, the Government of Lebanon also lists several legal and administrative measures adopted in favour of migrant domestic workers.

As to legislative measures, the Government points out that:

- a bilateral agreement signed between the Government of Lebanon and the Government of Ethiopia to combat illegal employment activities and trafficking in human beings;
- three Orders were issued by the Ministry of Labour on different issues, namely regularization of the status of foreign female domestic workers, closing down or revoking licences of a number of agencies for the recruitment of female domestic workers, as well as the establishment of a mechanism for classifying recruitment agencies.

As regards administrative measures, it is highlighted that throughout 2022 several agencies for the recruitment of female domestic workers were closed down due to the



violation of legal provisions. There were 89 complaints concerning female domestic workers received by the Ministry.

The Employer members also take note that Lebanon, notably the Central Administration of Statistics, received financial and technical assistance from the ILO to draft a Follow-up Labour Force Survey, published in 2022. It shows a significant decline in the labour force participation rate of non-Lebanese, mainly due to the downturn in the economic situation since 2019. While we commend the measures put in place to strengthen the protection of migrant domestic workers, we are of the view that further efforts should be undertaken.

The Employer members therefore would like to request the Government to scale up its efforts and take, without delay, all the necessary measures to provide legal protection, assistance and remedies to migrant domestic workers who are victims of abusive practices and working conditions amounting to forced labour. Measures should also include the effective implementation of the revised Standard Unified Contract and the adoption of the Bill regulating the working conditions of domestic workers.

Finally, the Employer members would also like to call upon the Government to provide information on any legislative changes adopted or envisaged to review the *kafala* system and we hope that the Government will send a copy of the bilateral agreement signed with the Government of Ethiopia without delay, as well as the other relevant legislative measures mentioned in the written information.

Concerning the second issue regarding penal sanctions for the exaction of forced labour, the Employer members note that in the 2012 General Survey the Committee of Experts stated that exaction of forced or compulsory labour shall be punishable as a penal offence. A fine or a short prison sentence should not be considered as an effective, dissuasive penalty. We also take note of the ITUC's observations as to the current lack of accessible complaint mechanisms for migrant domestic workers and the lengthy judicial procedures.

The Employer members further note the persistent concern of United Nations (UN) treaty bodies as to migrant domestic workers' lack of awareness of the remedies available in cases of violation of their rights and other barriers, including the risks to which migrant domestic workers are exposed when filing a complaint. Concern was also expressed on the general state of impunity that perpetrators benefit from.

The Government, for its part, addressed some of these points in its written information of May 2023. The Employers appreciate the provision of information by the Government as well as the measures undertaken to strengthen access to justice for workers. However, we are of the view that further measures are necessary to achieve full compliance with Convention No. 29.

We feel compelled to reiterate the Committee of Experts' requests and ask the Government to adopt the necessary measures to ensure that migrant domestic workers have full access to justice, are fully protected against any measures of retaliation and that sufficiently dissuasive penalties are applied.

The Employer members further align with the Committee of Experts' request to the Government regarding the provision of information on the measures taken to strengthen the capacity of law enforcement bodies in this area as well as on the number of cases of forced labour of migrant domestic workers which have been investigated and prosecuted.

Worker members – It should first be noted that, despite the urgent appeal addressed to it by the Committee of Experts in 2021, the Lebanese Government has not submitted a



report. It should also be noted that this failure to report has persisted since 2018. The Committee of Experts has therefore decided to examine the case on the basis of the information available. On the substance, the observations of the Committee of Experts are extremely worrying and focus on two areas.

The first concerns the situation of migrant workers, and particularly domestic workers. These workers are subject to a specific legal status that binds them to a particular employer. This is the infamous *kafala* (sponsorship) system, which the ILO's supervisory bodies have repeatedly deemed to be forced labour. This legal status does not protect workers against abusive practices by their employers and leaves them open to arbitrariness and abuse. In concrete terms, this means that migrant domestic workers continue to report the systematic confiscation of their passports, long working hours, employers' refusal to grant them sufficient time off, forced confinement in the workplace, poor living conditions, delayed payment or non-payment of wages, and verbal, physical and sexual abuse. A decree drafted in 2020 containing a standard contract and intended to guarantee a degree of protection never saw the light of day. It was suspended by the State Council, which is an administrative court.

The second area concerns effective protection against forced labour, particularly in the absence of dissuasive penal sanctions. The Worker members are grateful to the Lebanese Government for the written and oral information it has provided to the Committee, and are aware of the difficulties it faces. However, the Government cannot release itself from its responsibilities and it seems that the evidence put forward is not sufficient to dispel our concerns. The indication that an agreement concerning migrant workers is being negotiated between the Lebanese and Ethiopian Governments does not seem to offer a solution to the problems raised. These problems are rooted in Lebanese law and practice. Coordination with migrants' countries of origin could be a solution, but only on a complementary and ancillary basis. We take note of the Government's explanations concerning the suspension by the State Council of the decree containing the standard contract. However, we do not consider it appropriate to invoke a rule of domestic law to justify a failure to comply with an international commitment.

International organizations deal with States as an entity, and do not have to take these considerations into account in their assessment of whether international commitments have been respected.

Lastly, with regard to protection measures against forced labour, we do not feel it is sufficient to mention the theoretical possibility for migrants to lodge complaints. The figures on the number of complaints against agencies provided by the Government suggest that the situation is generally positive. However, these low figures are not in proportion with the number of domestic workers in the country.

Alleging that only 69 complaints concerning domestic workers were lodged in 2022 shows that these figures are far from an accurate representation of reality. A closer look reveals that the vast majority of these complaints were lodged by employers against agencies. This illustrates and demonstrates that domestic workers do not have effective access to complaint mechanisms. Protection measures must be effective and efficient. They must take into account the vulnerability of migrant workers and involve the implementation of appropriate mechanisms by the Government.

The Worker members consider that legislative initiatives are required that guarantee this protection in law and in practice.



Interpretation from Arabic: **Employer member, Lebanon** – I do not have a lot to add to what his Excellency the Minister of Labour said, but as a representative of manufacturers and employers in Lebanon and a member of the International Organisation of Employers I can just say that we have taken note of the measures and decisions taken by the Ministry of Labour to respond to the complaint as submitted to this Committee and we are cooperating with the ILO Regional Office in Beirut to try to push forward the necessary steps to resolve these matters. We sincerely hope that those measures will be enough to resolve these issues.

We are going to continue to work with the Ministry of Labour to try to ensure that decisions are implemented, to try to restore Lebanese reputation in terms of protecting employment law. I would also like to thank the International Organisation of Employers and the Arab Organization of Employers, both of which have supported Lebanese manufacturers in trying to find a solution. So, I will not repeat what has already been said by the Minister.

Interpretation from Arabic: **Worker member, Lebanon** – I am sure you are aware as the Minister of Labour has described that we are facing tremendous economic challenges and challenges in the workplace which have damaging impact on society in general and on Lebanese workers in particular.

Workers in the private sector and the public sector are affected as the Minister of Labour has described. In fact, some civil servants, officials, are demonstrating and blocking the roads in our country. Now we are determined to participate actively and engage in the work of this Committee so I would just like to recall the gravity of the situation which has paralysed the economy. Of course, we have not implemented all of the provisions of this and other Conventions, but we are determined to try to ensure that they are implemented and to meet our obligations in spite of the challenges we face. Thanks to the support of the ILO and the support of employers' and workers' organizations, we have seen a number of measures taken and laws prepared to try to protect foreign and domestic workers so that those workers can submit complaints if they face abuse. In fact, a number of complaints have been filed with the Lebanese judicial authorities, complaints from foreign workers when their passports were confiscated. Many have got their passports back thanks to the complaint mechanisms. Now other complaints have also been filed for cases of abuse or harassment and the prosecution officers have taken steps to strengthen the legal protection for foreign and domestic workers so that they can be protected from abuse. Perpetrators now face prison sentences of up to one or two years depending on the severity of the case and other steps and legislative measures have also been taken. Allow me to remind you that we do our utmost to try to protect workers' rights. The International Organisation of Employers has set up a special committee to try to help us implement the Conventions that we have ratified, including Convention No. 29.

Government member, Sweden – I have the honour of speaking on behalf of the **European Union (EU) and its Member States**. The candidate countries of **Albania, Bosnia and Herzegovina, North Macedonia, Republic of Moldova, Montenegro, Serbia**, the European Free Trade Association (EFTA) countries **Iceland and Norway**, members of the European Economic Area, align themselves with this statement.

The EU and its Member States actively promote the universal ratification and implementation of the fundamental international labour standards. We support the ILO in its indispensable role to develop, promote and supervise the effective implementation of ratified international labour standards and of fundamental Conventions, including Convention No. 29. We are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights.



The EU–Lebanon relationship is governed by the Association Agreement, which has enabled us to strengthen our bilateral cooperation since its coming into force in 2006. In addition, the EU–Lebanon Joint Working Group on Trade and Investment forms a framework for further developing the partnership. Through the European Neighbourhood Policy, the EU remains committed to supporting Lebanon and its people.

We are concerned about the fact that the Government of Lebanon has not reported to the Committee of Experts on the Application of Conventions and Recommendations since 2018, especially given the gravity of the case. We call on the Government to supply full information during the current session of the Conference Committee and to reply in full to the Committee of Experts' comments since 2018.

We note the impact of the dire economic situation and the COVID-19 pandemic on the vulnerability of migrant domestic workers of whom the vast majority are women. We share the deep concern of the Committee of Experts that migrant domestic workers remain subjected to abusive practices and working conditions that amount to forced labour and are not granted adequate legal protection. Reports on confiscations of workers' passports, long working hours, insufficient time off, forcible confinement to the workplace, poor living conditions, delayed payment or non-payment of wages and verbal, physical and sexual abuse are deeply worrisome, especially in combination with the lack of adequate legal protection and remedies.

We urge the Government of Lebanon to take the necessary measures, without delay, and in tripartite consultation, to provide domestic workers with adequate legal protection. This includes the revision of both the Standard Unified Contract which would guarantee a minimum level of protection, and the Bill regulating the working conditions of domestic workers as well as the legislative review of the *kafala* system with a view to introducing an adequate level of protection, in line with ratified ILO Conventions.

We emphasize the utmost importance of improving the access to justice and legal protection of migrant domestic workers against retaliation or deportation in case of rights violations as well as of imposing appropriate and dissuasive criminal penalties on perpetrators. We call upon the Government of Lebanon to take the necessary measures to ensure that adequate protection, assistance and remedies are provided to victims of abusive practices and forced labour. Migrant domestic workers must also be informed of the available remedies in the event of a violation of their rights.

We recall the importance of ILO support, including technical assistance, in facilitating compliance with all ratified ILO Conventions and the promotion of tripartism. We encourage the Government to step up its cooperation with the ILO in order to fulfil its obligations under Convention No. 29.

The EU and its Member States reiterates its deep concern with the case as set out by the Committee of Experts. We will continue to follow and analyse the situation and remain committed to our close cooperation and partnership with Lebanon.

Worker member, Norway – I am speaking on behalf of the trade unions in the Nordic countries. Lebanon is facing serious allegations of violating Convention No. 29. Among the critical concerns are the rights of migrant workers. Here, the issues are emphasized by the deeply flawed *kafala* system, which has contributed significantly to the failed, crony economy of Lebanon. The migrant community continues to suffer from various forms of entrenched oppression, including high unemployment rates, housing insecurity, and constant fear of arrest and deportation by the Lebanese authorities. Many migrant domestic workers have to



work under grave and abusive working conditions. These women, mainly from Africa and Asia, went to Lebanon with a dream of a better life helping their families back home financially. Instead, they are facing physical and sexual abuse, long working hours and hardly any payment. It is widely believed that the population of undocumented migrant workers exceeds that of documented migrants. Without legal status, they are confined to the informal sector, facing non-negotiable salaries and abysmal working conditions. The most vulnerable are constantly living under threat of being reported to the authorities by their employers or landlords, excluding any true possibility of demanding better working conditions.

The *kafala* system remains a challenge. Serving both the private and public sectors, it allows recruitment agencies to charge substantial fees to employers for hiring foreign workers, while the General Security Office and the Ministry of Labour impose additional charges for residency and work permits. These recruitment agencies alone generate millions of dollars in revenue each year. Moreover, the *kafala* system renders migrant workers entirely dependent on their employers, depriving them of basic rights and subjecting them to exploitative conditions. The Syndicate of Owners of Recruitment Agencies in Lebanon (SORAL), backed by official protection, actively obstructs any progress in improving the situation of migrant domestic workers.

We urge the Government to take the necessary measures to ensure that the migrant workers in Lebanon are protected and have access to justice when their rights are violated. Further, we request the ILO to send a direct contacts mission to Lebanon to assess the labour rights situation, providing technical expertise, facilitating dialogue, strengthening capacity-building efforts, and catalysing policy reforms.

Government member, Switzerland – The application of the Convention in Lebanon has been the subject of recurrent observations by the Committee of Experts for some 15 years. Switzerland regrets that the Lebanese Government has not taken the necessary measures during this period to comply with its international obligations.

The situation of hundreds of thousands of migrant domestic workers in Lebanon has been a cause for concern for several years. Owing to the sponsorship system that ties them to a particular employer, migrant domestic workers find themselves in a weak position where they are exposed to forms of abuse and exploitation, including forms of forced labour. In addition, because of their precarious position, migrant domestic workers have very limited access to justice, making it difficult for them to obtain redress for the harm they have suffered.

Switzerland has taken note of the observations provided and the explanation put forward by the Lebanese Government, and calls on it to continue its efforts and to take all measures to provide migrant domestic workers with adequate legal protection, in particular by guaranteeing them access to legal remedies. These measures could be strengthened by the examination and possible ratification by Lebanon of the Domestic Workers Convention, 2011 (No. 189).

Worker member, Zambia – I am speaking on behalf of the trade unions in Africa. Workers from Africa and East Asian countries come to Lebanon to work in domestic services through offices which are specialized in recruiting foreign workers, within a law called the sponsorship system.

I will talk about the women and men leaving Africa, especially from Ethiopia, to work in Lebanon. As soon as the young workers arrive to Beirut airport, the sponsor confiscates the passports and papers, and the first and last controller touches all their movements. There are



no clear limits to working hours, no days off, no freedom of movement, and no ability to communicate periodically with their families back home. All for a pittance of no more than 100 or 150 dollars a month.

This April 2023, Lebanon and Ethiopia signed an agreement to regulate employment under the protection of human rights and the prevention of human trafficking. This agreement was negotiated and signed without the engagement of the trade unions in both countries, and this will keep workers under the same poor, bad conditions. There is a risk that the agreement will remain merely symbolic, failing to address the systemic issues, which is faced by African workers in Lebanon. Without robust monitoring and accountability, violations of human rights and human trafficking may still continue unabated.

Furthermore, the agreement may not adequately address the root causes of exploitation and abuse. The *kafala* system, which ties a worker's legal status to their employer, remains intact. This system inherently creates power imbalances and enables the mistreatment of migrant workers. Failure to address this fundamental flaw undermines the effectiveness of the agreement in protecting human rights.

Additionally, the agreement may lack provisions of comprehensive support services, especially to Ethiopian workers. Access to legal aid, and social supports are essential components of safeguarding their rights and well-being. Without these services, workers may still face barriers in obtaining the assistance they need and remain vulnerable to abuse and exploitation.

Lastly, the agreement may not sufficiently give and prioritize the gender-specific challenges faced by Ethiopian women in Lebanon. Gender-based violence, unequal pay, and limited access to reproductive healthcare are critical issues that should be addressed.

We urge the Lebanese ministry of labour to review this agreement by engaging with unions from both countries, and we urge the Government of Lebanon to take the necessary measures to ensure that the migrant workers in Lebanon have the right to join trade unions. Further, we request the ILO to send a direct contacts mission to Lebanon to assess the labour rights situation and facilitate dialogue.

Interpretation from Arabic: **Government member, Tunisia** – We welcome the administrative and legislative measures taken by the Lebanese Government to fulfil its obligations under Convention No. 29. A law has indeed been enacted to regularize the situation of foreign domestic workers. This is an excellent development.

We also welcome the measures adopted to provide social and legal protection for migrant domestic workers, so that they are protected from precarity and sexual harassment.

We believe that the Lebanese Government's commitment is positive and constructive and in line with our request for the Government to meet its obligations. We believe that it is imperative today to ask the Lebanese Government to fulfil its obligations and help it in doing so.

Interpretation from Arabic: **Government member, Syrian Arab Republic** – We call for cooperation and technical assistance so that this country is able to fulfil its obligations. We must avoid any interference in Lebanon's internal affairs, while at the same time providing a framework that enables Lebanon to meet its obligations.

Worker member, Spain – In May, a trade union delegation from my organization, the Workers' Commissions of Spain, went to Lebanon. There, after many meetings with trade unionists, civil society organizations and various authorities, we were able to verify what we



all know – i.e. the serious deterioration of the socio-economic and political situation in Lebanon, which is affecting its working class, migrants and refugees.

With the worsening of the situation, we have noted an increase in the violation of ILO Conventions, especially Convention No. 29, which is closely related to the right to organize.

The absence of effective protection of the right to organize contributes to the prevalence of forced labour practices and creates an environment in which exploitation can flourish. The situation of the right to organize in Lebanon thus presents significant challenges for the working class, especially for marginalized groups such as migrant workers, refugees and domestic workers.

Although Lebanon has ratified a large number of ILO Conventions, including the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), there are significant gaps in its implementation and compliance.

One of the main obstacles is the restrictive legal framework. Lebanese labour law provides for the right to form unions and engage in collective bargaining, but these rights are limited to the Lebanese population working in certain sectors, excluding many vulnerable groups who are prevented from organizing and collectively defending their rights.

In addition, there is a lack of awareness and understanding of labour rights. Many women workers, especially migrant and domestic workers, are unaware of their rights and the avenues available to them to obtain redress. This lack of knowledge contributes to a climate of vulnerability and exploitation. Moreover, language barriers, lack of social networks and fear of reprisals make it difficult to participate in collective action.

We call on the ILO to send a direct contacts mission to Lebanon, which would be crucial in assessing the state of labour rights, providing technical expertise, facilitating dialogue, strengthening capacity-building efforts and catalysing policy reforms. By engaging directly with stakeholders and offering support, the ILO can play a key role in improving working conditions, protecting workers' rights and promoting fair and inclusive labour practices in Lebanon.

Interpretation from Arabic: **Government member, Algeria** – The Algerian delegation appreciates the efforts made by the Lebanese Government to implement the Convention. We welcome the additional provisions added to the national legislation for this purpose, as well as the intensification of its cooperation with the ILO. These positive developments show that the Lebanese Government is making real efforts to combat all forms of forced labour, and to protect migrant workers, especially domestic workers.

Despite the difficulties faced by this country, the measures to prevent trafficking and labour exploitation that have been implemented are at the heart of public policies aimed at reviewing legislation and introducing a number of amendments, in conformity with the comments of the Committee of Experts.

Algeria thus remains convinced that Lebanon will implement, in the near future, the measures that it has adopted to comply fully with the Convention and endorses the measures taken to eliminate forced labour, which is also prohibited by the Constitution and by the Lebanese Labour Code.

Lastly, the Committee should take into consideration the positive aspects emerging from the explanations and arguments presented in the Lebanese Government's report. Algeria trusts that the Committee's conclusions from the discussion will be objective and well-



balanced, which will undoubtedly enable the Lebanese Government to draw from them when implementing the Convention.

Interpretation from Arabic: **Government member, Egypt** – We welcome the steps taken by Lebanon to implement the Convention. The Lebanese Government has adopted a series of legislative measures that aim to strengthen human rights and combat trafficking in persons. Indeed, a law has been enacted in that regard to fight against exploitation and trafficking.

Furthermore, the Lebanese Government has proposed reforms to the Labour Code that respond to human rights obligations. That Bill is currently being examined by Parliament.

The Lebanese Government has also promulgated a law to combat sexual harassment in the workplace that addresses allegations of sexual harassment against domestic workers, in addition to the measures adopted in 2019 that provide legal assistance to migrant domestic workers, in cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR) and other United Nations agencies.

There has also been cooperation with the Beirut Bar Association, and a mechanism has been put in place to receive complaints from migrant domestic workers. It is important to assist the country in capacity-building, an essential part of helping the country meet its obligations under Convention No. 29.

Interpretation from Arabic: **Observer, International Trade Union Confederation (ITUC)** – We are meeting to discuss the lack of respect for international obligations by the Lebanese Government. This non-respect particularly refers to Convention No. 29, and happens in the labour market in the country. This is a problem that has persisted for several years now, and this really undermines one of the fundamental rights at work. We are talking about forced labour, but we must not forget discrimination and the absence of freedom of association and the freedom to engage in free collective bargaining as well. In this regard, reference could be made to the FENASOL complaint and the reports that were attached to it.

We would have wished to celebrate in this forum the ratification by my country of Conventions Nos 87, 155, 187, 189 and 190, but this is not the case. Despite the various efforts that have been undertaken, they are somewhat sporadic, and there are some shortcomings still. We can take account of the positive response from the Government and the Minister, but today I am speaking on behalf of the workers of Lebanon who are excluded from the tripartite discussions in the country. Looking at the social and economic situation, which affects the situation of all workers, all organizations that represent social partners are excluded from these discussions. For example, we see that the domestic workers' union set up in 2015 is not allowed to operate. These unions are not registered and are still not recognized, which is not surprising. However, we should not forget as well that there is a draft Bill on domestic workers which should bring in legal reforms and the idea would be that thanks to these reforms, we would be able to guarantee trade union rights for our workers in the private sector and in the public sector. But, despite all of this, there are still shortcomings.

The right to free collective bargaining in the public sector, for example; this is something that should be granted to all workers and a number of laws have been brought in, but the social partners were not involved in the framing of those laws. There are disciplinary proceedings that have been brought in for any of those who dare try to exercise their trade union rights or their most basic rights. Sometimes they are even dismissed from their jobs. We should not forget that we have received more than 250 complaints, and these are cases which are well documented, and they show that these allegations are true. Therefore, we would ask the ILO to work with the social partners and the Government and to send a direct



contacts mission. We feel that this would be the way in which we could draw up a road map and we should bring in all the stakeholders, including our trade union FENASOL. We believe that is the only way in which we can move ahead, and we can bring in a programme which would be agreed to, and which would be achievable.

Observer, International Domestic Workers Federation (IDWF) – It is no secret that migrant workers in Lebanon struggle and suffer under *kafala*, an exploitative sponsorship system that binds migrants' residency to their employers. Status depends entirely on an employer's decisions. Workers are deprived of their dignity, fundamental human rights and social protection. Their passports are confiscated, and their working conditions are left to their employers' goodwill and cannot be considered agreed. There cannot be free work or ethical contracts under *kafala*.

The *kafala* system leads to a form of trafficking in persons, owing not only to migrant workers' lack of knowledge and potential abuse, but also to the lack of ethical contracts. Domestic workers are subjected to abuse from the moment they enter their employers' homes owing to the existence of forced labour conditions where work is carried out under threat.

It is also worrying to see that the Government's response is limited to sticking-plaster solutions, such as a bilateral agreement which does not apply to all nationalities affected by the *kafala* system and whose selective approach risks creating a hierarchy of protection instead of total commitment to international standards.

Bilateral agreements cannot, and should not, substitute universal rights for all. Furthermore, neither Lebanon nor Ethiopia have ratified the Domestic Workers Convention, 2011 (No. 189), and Lebanese labour law does not cover migrant workers, which is a form of systemic discrimination that contravenes the universal scope of application of Convention No. 29.

Calling for respect for non-existent laws is misleading. The selective emphasis placed on revoking the licences of some agencies does not address the problem at its root: the *kafala* system. Workarounds, such as the re-registering of an agency in the name of another family member, are used to keep agencies in business.

The complaints cited by the Ministry do not reflect the breadth or the extent of the violations and abuse. Migrant domestic workers often face obstacles to reporting the abuse that they suffer, including the language barrier, fear of reprisals and a lack of information on their rights. By its nature, their work in private homes often isolates them from the outside world, helping to render their struggle invisible and their suffering silent.

Moreover, the mere existence of legislation or decrees does not translate automatically into access to justice or protection of rights. In reality, in cases of abuse, migrant domestic workers have no other choice than to take matters into their own hands and leave their employer's home, which is their workplace, and face accusations of fleeing.

Their visa status is not regularized, preventing them from accessing justice. Turning to the justice system involves revealing their status as undocumented workers, placing them under pressure to find new jobs and regularize their status during the grace period. The prevailing atmosphere of fear and mistrust of the authorities prevents domestic workers from exercising their rights, thereby rendering their work involuntary.

We urge the ILO to deploy a direct contacts mission to Lebanon to establish dialogue with all stakeholders and facilitate the development of legislative changes that respect



international labour law to guarantee protection for migrants, their human dignity and their rights.

Observer, Building and Woodworkers' International (BWI) – The policies of the Lebanese Government and its inability to reform the labour legislation have led to the suffering of its workforce and left the country's migrant workforce without legal protection from working under the threat of a penalty.

The State's policies have led to an increase in the number of unemployed, an unprecedented expansion of the informal economy, and extreme vulnerability of workers to exploitative labour practices. We acknowledge the bankruptcy of the banking sector, the collapse of the purchasing power of wages to 97 per cent, and a terrible decline in the quality and continuity of services, such as medicine, transport and electricity, but it should be highlighted that this lack of services hit the most vulnerable first.

The construction sector in Lebanon has for a long time relied on migrant workers and after the war broke out in the Syrian Arab Republic, refugees have comprised a majority of the construction workforce.

The situation of Syrian construction workers in is a matter of great concern and has been widely documented by human rights organizations and international bodies. The various forms of exploitation and rights violations include extensive working hours under hazardous conditions, exposure to unsafe environments while lacking the proper protective gear and safety training, and many workers being paid significantly less than the minimum wage. In addition, many Syrian workers are frequently victims of wage theft through the withholding of payments or wages as a form of threat.

At the same time, a majority of the migrant workforce in Lebanon lack legal protection due to their precarious immigration status. The *kafala* system in place, where the migrant worker's immigration status is tied to their employment, leaves them vulnerable to exploitation and abuse by employers.

Finally, migrant workers face tremendous discrimination and xenophobia which often results in their marginalization and exclusion from social services and protections. Verbal and physical abuse create a hostile environment and undermine their well-being and dignity. These conditions show that Lebanon has not taken effective measures to prevent and eliminate abuse, to provide victims with protection and access to appropriate and effective remedies, or to sanction the perpetrators of forced or compulsory labour.

Chairperson, based on this, we call on the ILO to send a direct contacts mission to Lebanon to catalyse the policy reforms to improve working conditions in the country.

Interpretation from Arabic: **Government representative** – I would like to thank all the delegates. As I said in my opening statement, we are ready to cooperate. As to the direct contacts mission, this will be handled by the ILO Office in Beirut. Now I would like to make a few observations.

The easiest thing to do is to generalize. When you fail to mention any statistics or figures, it means that you are generalizing, which is not conducive to objective discussions. This information is serious and vague.

When you talk about hundreds of thousands of workers, this is vague and untrue. We do not have a hundred thousand migrant workers – that is completely wrong. When you say that wages are 50 dollars, this is totally untrue. Any foreign domestic worker earns more than I do. Maybe you have not understood me. My salary today is 100 dollars as a Minister, and any



migrant worker earns between 150 and 200 dollars per month. Making such accusations on these issues without any facts to back them up is therefore not an objective approach.

As to xenophobia, you talk about my country and say that we have cases of xenophobia. A third of our population is Syrian. There are 500,000 Palestinians living in our country and only four million Lebanese, which shows that we are not xenophobic. Syrian refugees do not live in camps in Lebanon. We put them up in houses and they attend our schools; we do not dump them in boats as some countries do. We do not do that. It is unfair to accuse us of being xenophobic. We are a welcoming, hospitable and diverse country. If you come to Lebanon, you will feel respected and appreciated, so I firmly reject all these accusations. There is no country in the world where a third of the inhabitants and residents are refugees and migrant workers. These accusations are very serious, and I completely reject what has been said. It is unfortunate, all the same, because it is as if you did not listen to me. You read out your speeches written well in advance, and you react as if you did not listen to me. And you deny everything that I said.

I acknowledged my responsibilities when I began my speech, and I even repeated this many times. We are going to fulfil our obligations, even if this is not about me personally, as I inherited this Ministry and others held this position before me. I want to improve my country's reputation and situation and I am very sorry to hear the terms that you are using. I have said that we are ready to cooperate. I have said that we are ready to fulfil our obligations, and the ILO Office in Lebanon has helped us to draft reports that are submitted on a regular basis. Furthermore, even before I entered this room, I said that there was a new report that had just been submitted.

We respect our reporting obligations and do so on time. Sometimes I do not have any money to buy paper or ink for my Ministry. Can you believe that? How can you run a Ministry when you do not have any money to buy pencils or ink? I am not telling you this to make you feel sorry for us – I just want you to have a clear picture of the situation.

So put yourselves in our place. We are a country of four million Lebanese. Part of our territory continues to be occupied, our airspace is being violated, and cluster bombs are killing our children. We have 500,000 Palestinian refugees living in our territory, and in very difficult conditions, but we also have an economic embargo. Syrian refugees constitute a third of our population. I want to treat all migrant workers equally in terms of wages. We cannot afford to go to hospital because we do not have any foreign currency, whereas migrant workers receive their wages in foreign currencies and in cash, and they can go to hospital because they have the money to pay. We can no longer do that. Of course, it is their right; they are our brothers in humanity.

As regards forced labour, we are all in a situation of forced labour, including myself in the public service. We heard the spokesperson for the Lebanese workers, who said that we have not held any consultations with him, but he comes to my Ministry every day. I meet him every day and I consult him. I respect the law: there is a tripartite dialogue with the most representative workers' organizations, and he is not the most representative. So I am truly astonished by these comments. My office is open to all trade unions. I even work outside of working hours and during the holidays. I serve my country – that is what I try to do – and I serve my people. I am ready to listen to your constructive criticisms, but I have reservations about what you are saying and I would like you to take them into account and to consider what I said in my opening statement and what I am saying now. We are on the right track. All the delegates talked about the *kafala* issue. It is a real problem, and we need to find a solution. We are going to draft a new Bill to put an end to this system. We are waiting for the



election of a President of the Republic, for Parliament to sit, and for the Government to be formed. All this has to be finalized so that we can get to work. Despite all this, I have not remained idle or silent. I have done everything I could, everything that was in my power given the circumstances in which we live. I have left no visit or phone call unanswered. People who have taken the floor have visited me and seen the way I work. They have seen that sometimes we have power cuts during meetings. They see what I do despite the difficult circumstances. What I am saying is that we have to fulfil our responsibilities, and that we are doing it and are on the right track.

The courts have ruled in favour of domestic workers and migrant domestic workers. Passports have been returned to female domestic workers. The Standard Unified Contract (SUC) has been adopted and encompasses all decent working conditions for migrant workers.

Some have claimed that the Ministry of Labour receives complaints from employers. That is not true. Migrant workers and domestic workers can call us. They have all means of telecommunication available to them and can call me personally. I have made my personal telephone number available to all migrant workers, and domestic workers can call me on my personal line. It is therefore not true to say that they do not have access to a complaint mechanism. We have many migrant workers and they can call me, day or night. I have documented evidence of that. When I receive such complaints, I call the general security forces, which ensure that all matters are followed up completely transparently. You can see that the Lebanese people today is well aware of this situation, and everyone knows that they cannot abuse anyone. That is common knowledge. We do not have xenophobia in our country, it does not exist. Given the diverse nature of our population, we are a diverse people, and we have the highest number of refugees, of migrant workers, in the world; we are a diverse country.

We have paid the price for it because we have experienced terrorism. Despite that, we have respected our laws, we have respected and improved our sites, we have protected the mosques, churches and schools, as well as children, against terrorism, precisely in the name of diversity. We are sending a message of diversity: we are a tolerant country, peoples can coexist together and we have a social contract that respects human beings.

Today, in the age of artificial intelligence, human beings are sometimes not protected. We in Lebanon try to protect everyone. We have an ILO Regional Office in Beirut, we coordinate with it, we are open to discussion, to dialogue and to all suggestions.

I invite you to verify what I have said, verify my words, verify all the decisions that I have taken. Through our most recent decisions we have abolished the *kafala* system. We are on the right track, we are serious, we are transparent, and we want to meet our obligations. My physical presence before the Committee is evidence of that. My country will not attempt to evade anything. Right now, I am ready to face up to my responsibilities and, while I am here, I am receiving calls from Lebanon, because there are problems with strikes, for example. I am therefore endeavouring to follow affairs in my country even while I am here.

What we are going through in Lebanon is truly serious, it is unimaginable. I can, nevertheless, explain the situation to you, the crisis that we are going through, the human rights crisis. We were co-authors of our country's declaration of human rights. I can therefore tell you that the population is currently experiencing the worst. Abuse against a single human being affects humanity as a whole. Anyone who carries out a charitable act for a human being does it for all of humanity, and that is exactly our culture.



We are experiencing many difficulties, but we are on the right path. We will follow up everything that we do. We are open to dialogue with you, we are ready to respond to your questions, we are ready to accept your constructive criticism. I reject, however, any generalization; I think that is very easy to do, and it is very easy to level accusations without facts, without evidence. If you have evidence, I ask you to give it to me and I will deal with it.

I have come here to represent my country, despite everything that we are currently going through, and I can tell you that the whole of Lebanon is in a situation of forced labour. That includes all public officials, because our wages are poverty wages, peanuts, but we do not want to give up, we do not want to lose hope. We see the light at the end of the tunnel, and we will leave the darkness and emerge into the light. I am not here to talk to you about poetry or ideals, I am here to give you the facts, and those facts resemble a bleeding heart.

We are doing our best and, whatever you ask of us, we try to do, to fulfil our obligations. We are in regular contact with the ILO office in Beirut, we have trained our staff and we are trying to do what we can to meet our objectives.

I would like you to understand what is happening in Lebanon. Please follow what is happening and support us, because we are taking steps, we are moving forward. Lebanon is ready to send you this message of hope if you have a little compassion for the Lebanese people, who are trying to do their best in the circumstances. Let us try, together, to hear their suffering, because we are a welcoming country, a diverse country. I would like to thank you, to thank all those who have sent us messages of hope. We are on the right track.

Worker members – We note the Lebanese Government representative's remarks and his dissatisfaction. However, our role is not to make pleasant comments but to ensure that situations evolve.

The Worker members invite the Government not to engage in a semantic debate, but to deal with the subject in depth, in view of the remarks contained in the Committee of Experts' report. The Worker members would also like to reassure the Lebanese Government of our solidarity with the Lebanese people and our awareness of the difficulties facing the country. However, among the elements put forward by the Lebanese Government are figures taken from the study on forced labour carried out with the assistance of the ILO.

These figures indicate a decrease in the rate of forced labour among non-Lebanese nationals. However, the Government itself points out that this development can be attributed to the reduction in the foreign national workforce in the country, mainly due to the economic situation. The Worker members do not believe that this can be used to absolve the Government of its responsibility, given that it had nothing to do with this development.

The Government also refers to a number of texts on protection against harassment. The existence of these legal provisions is positive. But, given their isolated nature, they alone are not sufficient to provide an adequate response to the problems we have outlined.

The Worker members are of course, and I repeat, aware of the difficulties facing the country, but the situation we are describing must be given priority attention.

The fight against forced labour requires strong political will and the involvement of trade union organizations – and I mean all trade union organizations – and must be supported by robust and credible state institutions.

It is therefore essential to combine these different elements in order to achieve the right objectives. Here are a few of them. First, adapt the legal framework so as to include domestic workers within the scope of labour law. Second, put in place a process for dismantling the



kafala system for all migrant workers. Third, provide dissuasive criminal sanctions against forced labour and mechanisms for access to justice for victims, taking into account their vulnerability. To this end, we are asking the Government to accept a direct contacts mission, which is of course different from a commission of inquiry.

Employer members – The Employer members thank the various speakers who took the floor and notably the Government of Lebanon for their interventions and detailed information provided. We reiterate that Convention No. 29 is a fundamental Convention which therefore requires special consideration by the ILO, Governments, Workers, and Employers.

The Employer members wish to stress once again that we strongly condemn any form of abusive practices or work conditions that can amount to forced labour. We also believe it is essential that adequate criminal penalties are imposed on perpetrators so that such practices do not go unpunished.

In light of the Committee of Experts' observations and today's discussion, the Employer members recommend the Government of Lebanon to, firstly, take the necessary measures to provide migrant domestic workers with adequate legal protection, including by ensuring the effective implementation of a revised Standard Unified Contract and the adoption of the Bill regulating the working conditions of domestic workers.

Secondly, take the necessary measures to ensure that migrant domestic workers have access to justice, including adequate protection, assistance and remedies in the event of violation of their rights and are protected against any measures of retaliation or deportation and to ensure that the penalties imposed by law are really adequate and are strictly enforced upon persons who exact forced labour.

Thirdly, provide information on the measures taken to strengthen the capacity of law enforcement bodies in this area and the number of cases of forced labour of migrant domestic workers investigated and prosecuted, as well as on any legislative changes adopted or envisaged to review the *kafala* system, and thereby looking at measures other States are undertaking in the region.

Finally, we call on the Government to provide a copy of a bilateral agreement signed with the Government of Ethiopia without delay, as well as any other relevant legislative measures mentioned in its written information.

We count on the collaboration of the Government for the implementation of the above-mentioned recommendations and full respect for Convention No. 29 in law and practice. Thank you for your attention.

Conclusions of the Committee

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

While noting the prevailing situation in the country, the Committee deeply regretted the failure of the Government to respect its reporting obligations despite an urgent appeal by the Committee of Experts.

The Committee expressed deep concern at the lack of adequate protection for migrant domestic workers in law and practice and noted the lack of rapid, efficient and effective complaints mechanisms for migrant domestic workers.



Taking into account the discussion, the Committee urges the Government to take effective and time-bound measures to:

- provide migrant domestic workers with adequate legal protection, including by ensuring the reinstatement and effective implementation of the revised Standard Unified Contract and the adoption of the Bill regulating the working conditions of domestic workers, and provide information to the Committee of Experts on the measures taken in this regard, and on the results achieved;
- ensure that migrant domestic workers who are victims of abusive practices and working conditions amounting to forced labour have access to justice – including adequate protection, assistance and remedies – in the event of a violation of their rights;
- ensure that migrant domestic workers are protected against any measures of retaliation or deportation, and that their cases are processed expeditiously and that decisions are enforced;
- introduce and enforce effective and sufficiently dissuasive penalties to employers and labour recruiters who engage migrant workers in situations amounting to forced labour;
- strengthen the capacity of law enforcement bodies in this area and provide information to the Committee of Experts on the measures taken in this regard, and on the results achieved;
- abolish the *Kafala* system and replace it with a work permit system that allows domestic migrant workers to change employer and provide information to the Committee of Experts on any legislative changes adopted or envisaged to review the *Kafala* system;
- hire and train additional labour inspectors and increase material resources to them necessary to carry out labour inspections in the domestic work sector and provide details to the Committee of Experts on the training received by labour inspectors, the number of inspections in the domestic work sector, the number of offences detected, and the penalties imposed;
- provide a copy of the bilateral Agreement signed with the Government of Ethiopia, as well as any other relevant legislative measures mentioned in its written information;
- provide information to the Committee of Experts on the number of investigations, prosecutions, convictions and penalties imposed for the offence of engaging migrant domestic workers in situations of forced labour; and
- provide any outstanding information requested by the Committee of Experts before its next session together with detailed information on the measures taken to implement these recommendations, and on the results achieved.

The Committee urges the Government to avail itself, without delay, of ILO technical assistance to ensure full compliance with its obligations under the Convention in law and practice.

The Committee also requests the Government to accept a direct contacts mission.

The Committee requests the Government to fully comply with its reporting obligations and to provide, in consultation with the social partners, a report to the



Committee of Experts by 1 September 2023 on measures taken and progress achieved on the application of the Convention in law and practice.

Interpretation from Arabic: **Government representative** – Lebanon thanks the Committee for the presented report and notes its conclusions regarding Lebanon's observance of the Convention.

In this regard, we would like to make the following statement. Lebanon is a democratic State which is attached to human rights and rights in general and respects all its international commitments. Lebanon is a country which is open to dialogue and constructive cooperation with the international organizations, in particular the ILO. Consequently, the Lebanese delegation, under the guidance of the Ministry of Labour, has participated in the work of the Committee and established a transparent dialogue with this Committee in order to improve the situation of the Lebanese workers. Lebanon is of course bound by the Conventions which it has ratified, in particular those of the ILO, including Convention No. 29, despite the lack of resources and the difficult situation faced by the country, which in particular is slowing down certain structural reforms. However, we have implemented a number of measures in order to rectify many shortcomings and gaps, and we referred to the most significant ones during the examination of the case of Lebanon last Wednesday.

In conclusion, I would like to say that Lebanon takes note of the conclusions, including with regard to the sending of a direct contacts mission. However, we regret that the Committee has not taken account of the detailed explanations which we contributed in the context of the discussion. Nevertheless, we reiterate once more our attachment to the principle of cooperation based on constructive dialogue with the ILO, in order to improve the situation of the workers in Lebanon. We would like the ILO to take account of the difficult circumstances that we are going through and to provide us with technical assistance commensurate with the difficulties that we are facing.

Liberia (ratification: 1962)

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

Written information provided by the Government

The Government of Liberia has requested and has been offered technical assistance by the ILO that would offer a road map for the resolution of the issues most recently raised by the Committee on the Application of Standards. The ongoing work of technical assistance (which began towards the end of May) includes a review of existing decisions by the Ministry with the goal of advising as to what actions in line with the Committee's recommendations can be done now, without violation of the current law, and proposing amendments to fully effect unrealized rights.

One possibility that would not require amendment is to modify the procedure of crafting the Standing Orders for the Civil Service such that public sector employees experience a process more closely resembling that of collective bargaining as enshrined in the Decent Work Act. The Government remains engaged in preventing workers from being arrested in pursuit of their rights and no custody of a labour leader is currently known. Existing national law does not allow the dissolution of a trade union by an employer or employers' organization. This is only permitted upon application by the union itself, its members or the Minister to a court of competent jurisdiction (section 35.3(a) of the Decent Work Act). Any



decision is also subject to appeal. No Minister has either entertained or instituted any process for the dissolution of a union. The Government is aware though that a voluntary shift of workers in a bargaining unit, consistent with their rights, from one union to another has been described by the union losing members as “dissolving” the union at that plant, although the term is not being used in its correct legal sense.

To properly protect workers, the State Party remains committed to robustly intervening in any case where an employer’s action is intended to undermine organization in the workplace. The Government continues to be protective of the safety of the leadership of the National Health Workers’ Union of Liberia (NAHWUL), although it has not been able to receive information from its leadership that will enable investigation of the alleged threat. The Government indicates that amendment of laws is an exercise outside the remit of the executive branch of Government, where the Ministry is situated, and NAHWUL’s continued claim of the desire to strike as the key reason why it should be formally considered a union by the Ministry of Labour means that no lawmaker is interested in casting a vote that could lead to deaths in their district, even their family or themselves. That part of NAHWUL’s claims would have to be omitted and further forgotten if it would like the debate of its status to gain traction in the national legislature.

Existing labour organizations in Liberia remain open to foreign workers and the Ministry is yet to receive a single complaint by a foreign national of being refused membership by a national union operating in the plant. The rules for the formation of representative organizations are the same for all workers covered by the Decent Work Act. The Ministry makes available the services of its staff in the event that some foreign workers prefer to organize unions exclusively for themselves. The Government notes, moreover, that, unlike in other countries, where foreign workers are in domestic or artisanal work, foreign salary-earners in Liberia tend to be overwhelmingly at managerial grades, leading to them being more represented in the employers’ organization, where the first vice-chairperson and a member of the three-person arbitration panel are non-Liberian. Additionally, national groups, like the World Lebanese Cultural Union and the Indian Business Union, articulate the interests of their members, who may not be currently employed.

The Government notes that a rift between two factions of the Liberia Labour Congress (LLC), which went as far as the nation’s highest court, left it with no counterpart with whom to discuss this matter. At the request of the court, it has set up a committee headed by a former Chief Justice, joined by a former Deputy Labour Minister and having a former Senator as adviser, that is working with the factions in the LLC to resolve the workers’ movement’s ongoing leadership crisis.

The Government denies these allegations and is confused as to how reinstating an employee who had been summarily dismissed for several years, favouring the employee with opportunities and the assignment to a more prestigious role could be seen as a threat on the employee’s life. The Government’s confusion is even more pronounced by the absence of any particular evidence or trail by the distinguished General Secretary on the alleged threats. The Ministry notes that efforts to harmonize the Decent Work Act and the Standing Orders are still at the embryonic stage due to the fact that civil servants have some advantages over workers covered by the Decent Work Act that the ministries and the civil service are unwilling to see their workers lose. These include: (1) shorter working hours; (2) the right to more consecutive absences from work before the loss of employment is enforced (14 compared to 10); (3) the permanence of jobs (redundancy almost never occurs); and (4) opportunities for advancement, the right to leave their post to run for political office and return to the job if the electoral run is unsuccessful. Additionally, the legislature is yet to see any particular



interest in the general body of civil servants sacrificing these rights in the hope of obtaining bargaining rights that would essentially be null, as the International Monetary Fund has already capped public sector wages in Liberia.

Much of the advocacy for inclusion in the Decent Work Act is being pursued by a small group of leaders who are willing to endanger the benefits of their colleagues in order to obtain leadership in the Labour Congress, something that is likely to happen as the civil service is not just the largest employer, but is ten times larger than the next one (Firestone), which makes the leaders almost automatic winners at any Convention. Meanwhile, discussion with the lawmakers who were involved in the passage of the Decent Work Act reveals a strong concern at the possibility of the unwarranted promotion of the interests of any government in Labour Congress activities, when persons serving in the government chain of command can become leaders of the Labour Congress. Article 81 of the Liberian Constitution prohibits labour unions from canvassing for political parties, although their members can freely affiliate and contest as individuals.

Discussion by the Committee

Chairperson – We will proceed to the first case on our agenda which is Liberia on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). I wish to inform the Committee members, that the actual list of speakers in total has exceeded 17 and reduced speaking time limits will apply. I would like to invite the Government representative of Liberia, the Minister of Labour, to take the floor.

Government representative (Minister of Labour) – The delegation of Liberia states that a written response was submitted prior to this sitting. The Government of Liberia has requested and has been offered technical assistance by the ILO that would offer a road map for the resolution of the issues most recently raised by the Committee on the Application of Standards. The ongoing work of technical assistance, which began towards the end of May, includes a review of existing decisions by the Ministry of Labour with the goal of advising as to what actions in line with the Committee's recommendation can be done now without violation of the current Law and proposing amendment to fully effect on realized rights.

One possibility that would not require amendment is to modify the procedure of drafting the Standing Orders for the Civil Service, which is the public sector. We will note that in Liberia we have two sectors of law: one is for the public sector and one is for the private sector. What we have not achieved is to harmonize the two laws so that all workers, regardless of whether public, private or informal, can have a right to unionize. We were in discussion with the legislature to ensure that this is achieved and at one point there was friction within the LLC, so it became factional and as such it resulted into court. There was a lengthy court procedure which culminated in the Supreme Court of Liberia notifying the elected officials of the LLC and requesting the Ministry of Labour to nominate eminent Liberians to convene a new election. The chair for that committee is the former Chief Justice, former Minister of Justice, former chair of the National Elections Commission. They have had three meetings with the LLC and its members and their respective trade unions and they have now developed the guidelines to proceed with a new election. What we do not favour as a Government is that while that process is ongoing, either faction opts to represent the LLC, because the rule of law through the Supreme Court has determined that there should be a new election and that election should have taken place just before this meeting. However, the Elections Commission thought that there was a need for alternative dispute resolution, to first go to a hearing before going to election, because the divide among them is deep, and that process has been ongoing.



We were successful in talking with both factions in the dispute with regard to attending the May Day Programme. It was very interesting. It was like one Labour Congress, they all were present, everybody spoke and it was very delightful. We feel that the social approach is good, we have had talks with the chairpersons of both houses of the legislature on reviewing the Decent Work Act and the Civil Service Agency Act, to see how they can be harmonized. With the challenges that they are all going through in the current election season, we have to have a programme where we would take them out of Monrovia, maybe for one week, to a county outside the capital, where they will all sit and do the harmonization. We are talking about 14 from the Lower House and 7 from the Upper House. We have experienced that when you approach an amendment in such a way it is easier when it goes to plenary because it will have the support of the sponsored committees. We look forward to getting support from the ILO to achieve that. We want to state categorically that the Government of Liberia has never been involved with interference in workers' rights. We have been supportive to see how this harmonization can be done. We feel that we see a light at the end of the tunnel, and we ask for assistance from the ILO to ensure that a fresh election is held, consistent with the decision of the court, so that we can have first and foremost a unified, functioning Labour Congress in Liberia. Then we can go for the harmonization of the two laws to achieve one law for both public sector workers and private sector workers.

Employer members – The Employer members would like to thank the Minister from the Government of Liberia for the oral and written information presented on this case. We are discussing the Government of Liberia's application in law and in practice of Convention No. 87, which is a fundamental Convention. Liberia ratified the Convention in 1962 and the Committee of Experts provided observations on this case in 2017, 2018, 2019, 2020, 2021 and 2022. The last time this case was discussed by this Committee was as recently as 2022.

This Committee's conclusions in 2022 urged the Government to: (i) ensure that all workers are able to exercise their labour rights under the Convention in an environment of respect for civil liberties, including freedom of association, freedom of expression, peaceful assembly and protest without interference and fear for their personal safety and bodily integrity; (ii) ensure that trade union leaders and members are not jailed for engaging in trade union activities and that threats against trade union leaders for their activities are fully investigated and the perpetrators duly punished; (iii) enact measures, including dissuasive sanctions, to ensure that trade unions can only be dissolved by a judicial authority, only as a last resort for serious violations of law; (iv) resolve the registration of the National Health Workers' Union of Liberia (NAHWUL) as a trade union organization without further delay and provide additional information on any pending allegations; (v) review the Decent Work Act and any other related legislation to ensure that all workers, including foreign workers, are able to exercise the right to form or join a trade union of their choice; and (vi) ensure that public sector workers enjoy the protection of the freedom of association rights under the Convention.

The Government acknowledges that it is receiving ongoing technical assistance from the ILO. Following the conclusions of this Committee in 2022, the Committee of Experts repeated some of the issues of concern, including:

- ITUC-Africa's complaint about dissolution of a trade union by a state-owned company, as well as the harassment and arrest of trade union leaders: The Government denies that any trade union has been dissolved, which, it says, would not be in line with national legislation. The Government also states that the Ministry of Labour did not receive any allegations of harassment of trade union leaders. The Committee of Experts called on the Government to institute an independent investigation into the allegations without delay



and to provide information on the outcome. The Employer members align with the Committee of Experts in this regard.

- Lack of legal recognition for NAHWUL, harassment of its General Secretary, as well as the Government's increasing intolerance of workers exercising their civil liberties and rights under the Convention: The Government indicates that, pending legislative amendments to harmonize the Standing Orders for the Civil Service and the Decent Work Act, it is considering non-statutory means to afford employees a process that resembles collective bargaining. However, the Committee of Experts urged the Government to grant the union full recognition through harmonization of the Decent Work Act and the Standing Orders for the Civil Service. The Employer members support the Committee of Experts in this regard. With respect to the allegations of harassment of the General Secretary of NAHWUL, the Government stated that it does not have the necessary information to commence an investigation. The Employer members would like to urge the Government to conduct an independent investigation of the allegation and provide information on its outcome.
- Scope of application to civil servants: Noting the ITUC's allegation that a recent court decision excluded associations of public servants from the Decent Work Act, the Committee of Experts urged the Government to provide information on the developments around its efforts to harmonize the Decent Work Act and the Standing Orders for the Civil Service, in order to ensure that public servants enjoy the rights enshrined in the Convention. In this regard, we note the information submitted by the Government that harmonization may not be a priority, given the articulated differences in conditions of service and benefits under the two regimes. Nevertheless, the Employer members call on the Government to harmonize the laws to the extent necessary to ensure that public servants can access their rights under the Convention.
- Exclusion of certain categories of maritime workers: With regard to the exclusion of certain categories of maritime workers from the Decent Work Act (section 1.5(1)(c) and (e)), the Committee of Experts had called on the Government to indicate how these workers were protected or enabled to enjoy the rights enshrined in the Convention. However, the Government did not provide any information in this regard. Therefore, the Employer members align with the Committee of Experts in urging the Government to provide information in this regard.
- Foreign workers: The Committee of Experts had previously recommended the amendment of section 45.6 of the Decent Work Act to enable foreign workers to form their own organizations to defend their occupational interests. In this regard the Government indicated that it was engaging with existing foreign workers' bodies to form a separate body for this purpose. The Government is accordingly urged to submit information on developments on this issue.
- Essential services: As regards the Committee of Experts' request to the Government to provide information on any developments with regard to the designation of essential services by the National Tripartite Council, the Employer members do not support this. We would point out that the issue of essential services is related to the right to strike and therefore falls outside the scope of the Convention. We would like to recall that, as evidenced by the clear wording and the legislative history of ILO standard-setting, neither Convention No. 87 nor any other ILO Convention contain rules on the right to strike.



This concludes our comments on this case. We look forward to hearing the views of other groups on this case.

Worker members – This is the second consecutive year that the Committee has been asked to examine the application of Convention No. 87 by the Government of Liberia.

Last year, the Worker members deplored the closing of the space for trade unions to freely operate in Liberia. In view of the deteriorating situation, this Committee has urged the Government to ensure that all workers are able to exercise their labour rights in an environment of respect for civil liberties, including freedom of association, freedom of expression, peaceful assembly and protest without interference and fear for their personal safety and bodily integrity.

We regret to observe that no progress has been made on the ground since our last review. On the contrary, the Government continues to unduly interfere in trade union activities and persists in not complying with its obligations under the Convention in law and practice, in spite of what we hear regarding contact between the Government and the ILO in respect of technical assistance.

Firstly, the Government continues to deny NAHWUL legal recognition. The Government has explained that, since 2018, the Ministry of Health has given functional acceptance of NAHWUL as a body representing its members, pending the revision of appropriate national laws. We recall that in 2016 NAHWUL filed a complaint with the Committee on Freedom of Association on these same matters. We regret that there has been no progress with respect to the legal status and registration of NAHWUL. The Government must take immediate steps to register NAHWUL as a trade union organization. This can no longer be delayed any further.

Secondly, the Decent Work Act of 2015 does not apply to workers covered by the Civil Service Agency Act. Section 1.5(c)(i) and (ii) of the Decent Work Act excludes from its scope of application work falling within the scope of the Civil Service Agency Act. The Government has acknowledged this. Although in its report to the Committee of Experts the Government indicated that it was working to harmonize the Decent Work Act and the Standing Orders for the Civil Service, nothing has been done to ensure that civil servants and public servants can exercise their right to form or join a trade union – a right protected by the Convention.

In 2022, the Civil Law Court decided that the association of public civil servants is not subject to the Decent Work Act. As such, they cannot be members of the LLC – an umbrella organization of labour unions in Liberia. The court therefore declared that the conference of the LLC which was held on 30 March 2022 and in which the association of public civil servants participated was null and void. This is a major setback for the union movement in Liberia and interference in the independence of the LLC.

In 2023, the Government continued to hinder the trade union activities of the LLC. In May, the LLC submitted its delegation list to the Ministry of Labour for the purposes of the Conference. The Government refused to nominate the delegates proposed because of their membership with the Civil Servant Association of Liberia. Instead it nominated unilaterally the workers' delegation, in violation of the ILO Constitution.

There is no doubt, as has been articulated by the Committee of Experts, that all workers are covered by Convention No. 87 with possible limitations regarding the police and armed forces. We again want to urge the Government to take immediate steps to register the Civil Servant Association of Liberia and to address any harm caused to the LLC in this regard. Thirdly, section 1.5(c)(i) and (ii) of the Decent Work Act also excludes officers, crew members and any other persons employed or in training on vessels from its scope of application. The



Government must provide detailed information as to how, both in law and in practice, these particular rights are ensured to maritime workers, including trainees.

Furthermore, in line with the comments of the Committee of Experts, we urge the Government to take any necessary measures, including through the amendment of section 45.6 of the Decent Work Act recognizing the right of foreign workers to join organizations, to ensure that the right to establish organizations to defend the occupational interests of foreign workers is fully recognized both in law and in practice.

Finally, with respect to the determination of essential services, we note that section 4.1 of the Decent Work Act gives the National Tripartite Council the function of identifying and recommending, to the Minister, services to be considered as essential services, for consideration and determination. Though section 41.4(a) of the Act defines essential services as those that in the opinion of the National Tripartite Council, if interrupted, would endanger the life, personal safety or health of the whole or any part of the population, the President of the Republic decides whether to designate any service as an essential service and can apparently do so without recourse to the recommendation of the National Tripartite Council. We must reiterate that respect for the rule of law and civil liberties is essential for the exercise of freedom of association and urge the Government to ensure that the powers of the President to designate any service as an essential service is in line with Convention No. 87.

Employer member, Liberia – Liberia's employers' sector is facing challenges with regard to forming policy and having access to finance. This is creating a serious setback in the private sector. If you follow today in our country, most of the businesses are closing down. Since COVID-19 there has been no help given to the private sector. Therefore, if we must maintain what we are doing now with the employment system, we will see the private sector grow. In that case we will be able to maintain the workforce. So we ask that this meeting look at the issue of the private sector in Liberia. With regard to access to finance, the issue of rates is huge in the market. The employer is going to the bank to access a loan, the turnaround time of a loan is very short, because of liquidity needs in our country. These are challenges that we are faced with. The result is that most of the businesses are closing down and the workforce in our country is being reduced, so we need at least to seek in this Committee how to address the issue in our country.

Worker member, Liberia – Liberia is appearing before this Committee for the second consecutive time. The organized labour community in Liberia is appreciative of this listing because the right to freedom of association in our country is facing an existential threat. This threat is a well-coordinated but jaundiced attack organized by our Government, whose elected and appointed officials as politicians enjoy their rights to freedom of association under their various political parties. These attacks against the enjoyment of freedom of association against workers are perpetrated against the background that our Constitution expressly prescribes for the right to be enjoyed by all workers without distinction. This year, 2023, marks the 51 years since Liberia ratified Convention No. 87, in 1962. The LLC is the only trade union centre for workers within the public, private and informal sectors of Liberia, which continue to engage in every trade union campaign action to ensure the protection of trade union dignity and the protection of workers' rights within the borders of Liberia.

Regrettably, Liberia remains the only African country that has refused to recognize the right of public sector workers to freely form and join trade unions of their choosing, despite being the oldest member of the ILO of the continent. Indeed, the country's long stay in this Organization has not benefited freedom of association within the world of work. This is



because public sector and maritime workers continue to have their rights to freedom of association undermined, denied and attacked. The legislative framework for labour relations and governance in Liberia can still benefit from urgent, genuine and critical reform. Aside from exclusion of public sector and maritime workers denied the enjoyment of this right, those from the informal economy and domestic workers are not covered by the Decent Work Act. We are not convinced that the Government will supervise well and include technical support to ensure the efficient application of the provisions of the Convention as stated in its letter. This is because the Government continues to interfere in trade union activity. The Convention provides that workers' organizations, administration and activities should not be interfered with. Unfortunately, the current Government has continued to do this and has interfered to another low level. We ask this Committee to imagine the situation where we conducted our congress and elected a worker from the public sector as President, only for the Government to say that this leader cannot be recognized. The Government is in concert with some disgruntled workers to undermine our administration. Today, we have a ruling that agreed that the current wayward Decent Work Act is superior to the country's Constitution.

The Constitution of the LLC, especially articles 7 and 27, speak of membership/affiliation, that workers' organizations in the formal (public and private sectors) and those in the informal economy subscribe to the visions and mission of LLC after internal due diligence has been done, according to the provisions contained in the Convention. The following public sector workers were duly affected: the Civil Servant Association, the National Teachers Association and NAHWUL.

Liberia is a signatory to the African Charter on Human and Peoples' Rights (the Banjul Charter), adopted on 28 June 1981 in The Gambia. Liberia was a major player in the development of this Charter. We recall this development because the Government has continued to disagree with the provisions of this very important instrument of Africa that safeguards and advances civil liberties. The Government continues to violate Article 10 (right to freedom of association), Article 11 (right to assembly) and Article 9 (right to receive information and free expression), which are some of the basic means to safeguard workplace rights and advance industrial relations in practice. Liberian workers wish to appeal to this Committee to take further steps to ensure that its conclusion on this matter is well implemented upon the presentation of the road map by the Government that the ILO should monitor and collect reports on. Of course, the implementation must be done with the full participation of the social partners, especially the LLC, without any hesitation whatsoever.

Government member, Sweden – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The candidate countries **Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, Republic of Moldova**, and the EFTA country **Norway**, member of the European Economic Area, align themselves with this statement.

The EU and its Member States are committed to the promotion, protection, and respect and fulfilment of human rights, including labour rights. We actively promote the universal ratification and implementation of the fundamental international standards, including Convention No. 87. We support the ILO in its indispensable road to develop, promote, and supervise the effective implementation of ratified international standards and the fundamental Conventions in particular.

The EU and its Member States are long-term partners of Liberia. This partnership is further reinforced in the framework of our cooperation with the African Union and ECOWAS



as well as including Liberia among the beneficiaries of the EU's "Everything but Arms" scheme.

We note with deep concern that according to the ITUC's most recent observations, while the Government has given functional acceptance to NAHWUL, it is yet to validate its legal recognition. We are greatly concerned about the observations made by ITUC-Africa denouncing the dissolution of a trade union by a state-owned company, individual cases of police force to break up peaceful strikes, and the arrest of union leaders and wrongful dismissal of workers for participation in strike actions.

We urge the Government, in line with the Committee of Experts' request, to ensure that all workers, including those in the public sector, are able to exercise their labour rights under this Convention, in an environment of respect for civil liberties including freedom of association, freedom of expression, peaceful assembly and protests without inference or fear for their personal safety.

We fully echo the request of the Committee to enact measures to ensure that trade union leaders and members are fully protected, including against imprisonment for engaging in trade union activities. It is essential to establish regulations, including dissuasive sanctions, for dissolving trade unions, allowing it only as a last resort for severe legal violations.

We call the Government to ensure full legal recognition of NAHWUL through the harmonization of the Decent Work Act and Standing Orders for the Civil Service and to address any pending allegations of the Government's increasing intolerance of workers exercising their civil liberties and rights under the Convention.

We encourage the Government to review the Decent Work Act and any other legislation to ensure that all workers, including foreign workers, are able to exercise the right to form or join a trade union of their choice.

We stress the importance of guaranteeing the rights under the Convention. Also, with regards to maritime workers including trainees, we join the Committee's call on the Government to provide information on laws and regulations covering this category of workers, since they are excluded from the Decent Work Act.

We recall that the Government has the responsibility to ensure the full application of the Convention, which it has voluntarily ratified. In this regard, we call on the Government to investigate the allegation of trade union rights violations and to provide a full reply to the Committee of Experts' comments.

Keeping the link to the Decent Work Act, we would like to add that, while legislation is largely in place, child labour persists in the country. Based on UNICEF data for 2020, 32 per cent of children in the country are engaged in child labour. Of these, 30 per cent are working in dangerous conditions. We recognize that child labour is both a cause and a consequence of poverty, inequality, discrimination, social exclusion, and a lack of access to education. The EU continues to promote education and technical vocational training through support to the Government and state institutions in providing education and skills training for Liberian youth.

We take note of the written information supplied by the Government. We welcome that the Government has requested and been offered technical assistance by the ILO. We welcome that the Government ratified – last year, shortly after the Conference – two ILO fundamental Conventions, Nos 100 and 138. We also welcome the Government's work



towards developing a national action plan on business and human rights. The EU and its Member States will continue to follow and analyse the situation regarding Convention No. 87.

We remain committed to our close cooperation and partnership with Liberia. This cooperation could also include specific technical assistance for the effective implementation of these three fundamental Conventions.

Worker member, Belgium – Each year since 2018, the Committee of Experts has made observations concerning the non-observance of Convention No. 87 by Liberia. In June 2022, the Conference Committee examined the case and concluded its examination by making several key requests to the Government, namely to:

- ensure respect for civil liberties, including freedom of association, freedom of expression, peaceful assembly and protest;
- stop the arbitrary imprisonment of trade unionists, carry out full investigations and punish the perpetrators;
- ensure that trade unions can only be dissolved by the judicial authorities;
- recognize without delay the National Health Workers' Union of Liberia (NAHWUL);
- ensure that all workers, including foreign workers, are entitled to form and join unions of their own choosing; and
- ensure protection of freedom of association for public sector workers.

The 2023 report of the Committee of Experts notes with regret the absence of adequate responses from Liberia to its pressing requests and the lack of information provided on the current situation. Today the Government refers to a written comment and a request for technical assistance made since May.

But today in Liberia the space in which the trade unions can operate freely continues to shrink drastically and the serious interference and violations indicated previously persist. NAHWUL is still being treated as a criminal organization simply because its members are asserting their rights to freedom of association.

Furthermore, the International Trade Union Confederation for the Africa region (ITUC-Africa) has indicated that trade union leaders, particularly those in the public sector, continue to be pursued and harassed, and that trade union activities are subject to violent crackdowns and disruption by the police. The Deputy General Secretary of the LLC was arrested and detained by the police just a few weeks after the closure of the activities of this Committee. He was also pursued by the police, who ambushed him while he was giving an interview to a radio station a few kilometres away from the capital city Monrovia.

Freedom of association and the right to collective bargaining are the cornerstones of decent work. They also enable workers to come together to defend civil liberties in addition to their economic interests. Respect for freedom of association and the right to collective bargaining can play a key role in balanced economic development, to which they contribute by promoting inclusive productivity and social peace.

Respect by Liberia for freedom of association in law and in practice would contribute to maintaining peace, respect for civil liberties, and stability after the many crises which have affected the country.

Worker member, Zimbabwe – This is the second time this Committee is discussing the case of Liberia for violating the same Convention No. 87. We discussed it recently, just last



year. We recall that some of the conclusions of this Committee were that the Government of Liberia should review the Decent Work Act and any other related legislation to ensure that all workers, including foreign workers, are able to exercise the right to form or join a trade union of their choice; and make sure that the Government ensures that public sector workers enjoy the protection of the freedom of association rights under the Convention. The 2023 report of the Committee of Experts noted a lack of progress in the implementation of the above conclusions and the Government refused to submit a progress report.

The contentious section 1.5(c) that excludes public service workers and maritime workers and others from the scope of the Decent Work Act, has not been amended and continues to be interpreted and used as a tool for separating public service workers and private sector workers and, more particularly, to deny public sector workers the right to belong to the LLC. I condemn the court's ruling that nullified the federation's elections in 2020 and 2022, this ruling being contrary to article 17 of Liberia's Constitution, which recognizes the right to freedom of assembly and association.

Instead of taking measures to amend the Decent Work Act as directed by this Committee, the Government engaged in this in its own way of setting up what it called an independent commission to conduct an alternative dispute resolution system between old executive members of the LLC and the new executive comprising elected members. The first meeting of that commission was held on 17 February 2023. This is another clear case of interference in the affairs of the LLC.

In paragraphs 1610–1612 of the Compilation of decisions of the Committee on Freedom of Association, that Committee has stressed that a matter involving a conflict within the trade union movement itself is the sole responsibility of the parties themselves, and conflicts within a trade union should not be resolved by the Government but by its own members.

The LLC conducted its elections in accordance with its constitution and the Government must refrain from bringing other leaders through the back door. Therefore I call upon the Government of Liberia to stop its interference in LLC issues.

Worker member, Norway – I speak on behalf of the trade unions of the Nordic countries. The right to organize is a key element of the ILO's mandate and status within the framework of advancing social justice and shared prosperity. Most importantly, being organized in a trade union gives workers a sense of belonging, representation, and legitimacy. An organized workplace provides benefits for the employers, the economy and country in terms of trade unions' involvement in the regulation of employment relations, advancing industrial harmony, productivity, and stability. Sadly, Liberia, under its labour law precludes several groups of workers from exercising their fundamental right to organize and to form or join a trade union of their choice.

We note with deep concern that the Decent Work Act does not cover the public sector unions nor the workers in the maritime sector. These workers are effectively denied their vital, fundamental rights to organize. In addition, the National Health Workers' Union continues to face serious obstacles to registering itself as a legitimate union. It is unfortunate that the Government continues to evade its legal obligations.

All Nordic workers enjoy the right to form and join trade unions of their own choice and the right to bargain collectively. These rights belong to the workers in the public sector, such as healthcare workers, police, prison staff and even armed forces personnel, just as much as to those in the private sector. The right to affiliate to and join a national trade union organization is for everyone.



We are aware that there are countries on the African continent in which the public sector workers are unionized and can join national trade unions of their choice. We would like to encourage the Government to learn from the examples of these countries as well as share their experiences. Accordingly, we urge the Government to take the necessary measures to ensure the immediate registration of NAHWUL so that the healthcare workers can fully exercise their right to form organizations of their choice and defend their rights. We further urge the Government to review the Decent Work Act and any other related legislation to ensure that all workers are able to exercise their rights.

Worker member, South Africa – Given that the Government of Liberia continues to interfere in the affairs of trade unions and federations, the direct implication is that the Government of Liberia wants to dictate how trade unions must be run, especially with respect to public sector workers.

Last year, this Committee heard the case of Liberia, Africa's first member of the ILO, concerning this Convention. Sitting in the hall, the impression from all the speakers without exception was that the Government was acting in the most alien manner on a fundamental Convention that is unambiguous. Interestingly, I could decipher from the suggestions of the various speakers, including those of the Employers, that the Government's application of the provisions of this Convention would benefit from assistance. Strangely, the Government has continued to act as if nothing is amiss. Further, it has made itself the supervisor of trade unions' internal administration while preventing public sector workers from freely joining trade unions of their choice.

Our counterpart in Liberia, the LLC, has informed us that the Liberian Government was the one which, to their dismay and disapproval, dictated the composition of the workers' delegation. We protested, but the Government remains paternalistic and overbearing.

Further, this Committee needs to be reminded that Liberia's Constitution affirms that workers, without discrimination, can join trade unions of their choosing. My research shows that the Liberian Constitution copied, in a way that we can be proud and appreciative of, the provisions of Convention No. 87, affirming that workers, without distinction, shall be allowed to form and join trade unions of their choice freely. This is why it is strange to us that a court of law can rule that the Constitution is inferior to other items of national legislation.

In South Africa, the Labour Relations Act, No. 66 of 1995, as amended, gives the right to trade unions both in the public and private sectors to organize and to belong to a trade union federation of their choice. Currently, in South Africa we have four trade union federations, with unions organized in different sectors of the economy. The Government respects the rights of unions to organize and form trade union federations to the extent that the Government does not interfere or dictate with regard to the management of trade unions, nor do they interfere in the election of their leaders.

We therefore urge the Government to desist from interfering in trade union activities and to do the needful by recognizing the organized trade unions, in particular in the public sector, without further delay.

Worker member, Kenya – I am making this intervention on behalf of the workers affiliated to the East African Trade Union Confederation and those of West Africa under the Organization of Trade Unions of West Africa (OTUWA). There are no essential services without workers, and every worker, whether in the private or public sector, deserves a fair working environment, which includes better wages, safe jobs, paid sick leave, and union representation. Workers' classification as critical service workers or public sector employees



should not be used as a symbol of outrage and denial of the freedom to organize and bargain for collective agreements.

The designation of vital services by the National Tripartite Council under section 41.4(a) of the Liberian Decent Work Act is essentially a move to deny workers' a right to fair labour practices. It forbids them from participating in labour union activities. The concept of essential services is based on Article 3 of the Convention, which establishes the right of workers' organizations to organize their activities and programmes without interference from public authorities. Furthermore, with the recognition of freedom of association, no Member State should limit the rights given by Article 3 of the Convention to groups of workers considered as essential service workers.

Joining and engaging in trade union activities does not necessarily mean strikes or industrial disharmony but gives a legal framework for engagement in arbitration and mediation over employment concerns, which helps to dignify workers.

To contextualize the importance of the right to organize of essential service workers, particularly in Liberia, we have vibrant nurses' and doctors' unions in many African countries, Kenya being one of them, which have been key anchors of healthcare provision. It is through such unions that public institutions and governments have been able to provide the much-needed healthcare services and the attentions of these particular health workers. I am a doctor and a trade union representative of organized medical doctors and health workers of Kenya. Liberian health workers were the heroes of the country's fight against the Ebola virus disease and COVID-19 pandemic. These gallant workers risked all to ensure that the health regime of the country was preserved despite scores of them paying the supreme sacrifice. We understand that they were effective because their trade union organization – NAHWUL – effectively coordinated the workers. This is a typical example of how beneficial vibrant trade unions can be in strengthening healthcare systems. Therefore, the obvious and unnecessary brutality and discrimination visited upon public sector workers in Liberia disguised as essential services is a clear violation of workers' right to organize and provide the much-needed strengthening of public service provision. This Committee must insist that the Government of Liberia do the needful.

Worker member, Botswana – I am the Secretary-General of the Botswana Sectors of Educators Trade Union. I speak on behalf of the workers of Botswana. Education International aligns itself with my statement. As an organization committed to promoting the rights and well-being of teachers and students, we believe it is our responsibility to remind the Government that all teachers, whether employed by public authorities or by private employers, should fully enjoy their rights to association and assembly.

All workers, including public servants, should be able to exercise their labour rights under the Convention in an environment of respect for civil liberties, including freedom of association, freedom of expression, peaceful assembly and protest without interference and fear for their personal safety and physical integrity.

Teachers need a commitment from public authorities to respect, promote and realize their fundamental principles and rights at work.

Public employees, with the sole possible exception of the armed forces and the police, by virtue of Article 9 of the Convention, should, like workers in the private sector, be able to establish organizations of their own choosing to further and defend the interests of their members.



Adequately funded, quality public services are key for human-centred development. Decent status and working conditions for teachers are important. The quality of an education system cannot be greater than the quality of its teachers.

The status of teachers is multifaceted. Improving status must be about pay, employment conditions, union rights, media representation, funding, training, education policies, autonomy, continuous professional development and so on.

Observer, Public Services International (PSI) – I speak on behalf of PSI and its affiliate in Liberia, NAHWUL. Despite the discussion in this Committee last year, and the specific recommendations by the Committee of Experts, nothing has changed in Liberia. So I would quickly like to remind you of the following: the Committee on Freedom of Association already recommended the recognition of NAHWUL in 2018 (Case No. 3202); the Government signed a Memorandum of Understanding with NAHWUL in 2019, stating that the Ministry of Health would facilitate the granting of legal status to the union and that the union would be considered as a stakeholder when decisions were made affecting health workers; Mr George Poe Williams, former General Secretary of NAHWUL, is still in self-exile because of lack of guarantees for his safety, though at least he was able to reunite with his family after more than three years.

I would like you to know that after our discussion last year I had a meeting with the Liberian Government delegation in this Committee. It was a very friendly exchange and my impression at the time was that there was room for improvement and further discussion and engagement with the Government. However, I am afraid that none of these have materialized. On the contrary, the Government has increased its discriminatory actions against NAHWUL; for instance, at the end of 2022, the Chair of the Senate Committee on the Executive invited some associations that are constituents of NAHWUL to his office to discuss the new public health law, leaving NAHWUL out. Early in 2023, Ministry of Health and Civil Service Agency officials had a discussion with some of NAHWUL's auxiliary associations on salary increments without the union's involvement. In the same period, NAHWUL wrote to the Minister of Health for an audience following a consistent salary deduction without explanation, but she did not respond. There have been other discriminatory actions. I would like to point out that among the three public sector workers' groupings, namely NAHWUL, the Civil Servants Union of Liberia (CSUL) and the Civil Servant Association of Liberia (CSAL), NAHWUL is the only union that is not allowed to collect dues from its members through the checkout system. I would also like to point out that Moibah Johnson, the President-General of the LLC, was removed from the list of delegates for this session of the Conference on the grounds that he is a civil servant and that, by law, civil servants are not permitted to form a union, let alone join the LLC.

Given all these examples of clear violations of freedom of association, I would like again to state that we deplore these practices. We demand that the Government refrains from interfering with trade union affairs and we ask the Committee to adopt conclusions matching the gravity of these allegations.

Observer, International Transport Workers' Federation (ITF) – The COVID-19 pandemic had a huge impact on the life of seafarers with hundreds of thousands of them stranded away from home for many months. Many were not paid. Many were refused medical treatment and the rates of abandonment climbed to never before seen levels. One hundred and eighteen cases of abandonment were reported in 2022, a nearly 25 per cent increase over 2021. These included Liberian-flagged vessels. While the pandemic may be



over, there continues to be a number of threats to the safety of seafarers, including armed conflict and piracy.

Trade union rights are enabling rights, and all seafarers should enjoy this fundamental right. As a proud maritime nation, Liberia plays a critical role in the global shipping industry. The Liberian Shipping Registry is the world's second largest and comprises over 5,000 vessels, aggregating over 200 million gross tons. This represents almost 15 per cent of the world's ocean-going fleet. Therefore, it is particularly important that all national and foreign seafarers, including cadets and trainees working on board Liberian vessels both domestically and internationally, enjoy full trade union rights under the Convention. As the Committee of Experts has noted, section 1.5(c)(i) and (ii) of the Decent Work Act of 2015 explicitly excludes officers, crew members and any other persons employed or in training on vessels from its scope of application. There is no justification under the Convention for the exclusion of this particularly vulnerable occupational category from coverage. In practice we have observed that over 60 per cent of Liberian-flagged vessels are covered by an ITF-approved collective bargaining agreement – and we certainly hope to see even higher coverage in the future. Nevertheless, it is imperative that national law explicitly grants full trade union rights to seafarers.

Under the Maritime Labour Convention, 2006, as amended (MLC, 2006) , which Liberia ratified in 2006, the Government must satisfy itself that the provisions of its law and regulations respect, in the context of the Convention, the fundamental rights to freedom of association and the effective recognition of the right to collective bargaining. It is therefore also in this regard that we encourage the Government of Liberia to act swiftly on this matter so as to bring its laws and regulations into conformity with both Convention No. 87 and the MLC, 2006.

ITF would be happy to work with and assist the Government, the shipping registry and the national social partners to rapidly bring about this necessary labour law reform through a revision of Liberia's maritime regulations or otherwise.

Government representative – We need to set the legal framework in perspective. Liberia is a sovereign State, governed by the rule of law, with three branches of Government, none interfering with the other, but coordinating. The legislator could not and cannot take steps to harmonize the Decent Work Act with the Civil Service Agency Act while trade unions remain fragmented. It was not the Government that took trade unions to court, it was trade unions which took trade unions to court, as a result of a disputed election for the LLC. The court informed that the Elections Commission of the LLC proceeded wrongly, it nullified the result of that election consistent with law and ordered a new election, and the Bill was taken from the Lower Court to the Supreme Court. I, as Minister of Labour, was interested in knowing the result of that complaint, but interestingly the appellant did not prosecute the case at the Supreme Court, it was abandoned. That was a brilliant opportunity to raise the issue of constitutionality, because in Liberia only the Supreme Court can rule on issues of the Constitution and I, as Minister of Labour, did urge them to file their petition and let the Supreme Court rule on this issue once and for all. They abandoned it and therefore the Supreme Court was left with no option but to confirm and reaffirm the decision of the Lower Court. As such, the court said: we do not make the law, we interpret the law. If you want to change the law, go to the legislature. The legislature is prepared to work with the unions to harmonize the law. But they are fragmented, and they have been fragmented since 2020. As I have said before, there is this entire volume of 1,200 court papers and petitions, there have been all kinds of delays, which they themselves have caused. We are now at the stage where they are all cooperating with the independent commission, which comprises the National Bar



Association, the Elections Commission and the Press Union of Liberia, eminent entities in the country. As such they are proceeding to ensure that once an election is held or leadership emerges, then they can proceed with the harmonization of the law. If the legislature proceeds without a unified union, who are they going to speak to? They are already in conflict with each other, that is why we call on this body, instead of amplifying these issues beyond the contextual framework, to come and support the trade unions. There was a time when one trade union went to court to get another trade union out of the premises. Seeing that the case was still pending in court, no particular trade union should therefore operate the office. The LLC needs serious attention and the Government does not want to lead because it may be interpreted as interference. There are several issues that led to the fragmentation of the union. Those issues have to be resolved, elections held, or leadership determined. All of these complaints that you see coming to you are on the head of the LLC, there is no real issue with the LLC according to law, in Liberia there is the rule of law and the result was nullified. So we want a united trade union, it is stronger, you can bargain harder and what happens when a trade union is strong? The middle class in society grows faster, a weak trade union means that the middle class will remain stagnated. It is very important for the Government. Just a few days ago a mining company faced a strike and approached the Ministry of Labour to declare the strike illegal. We refused. They end up now providing additional salary increments to the workers and benefits. It happened also to LAC, a rubber plantation company, they too put the workers down. The Firestone rubber company denied the existence of an issue about rice. We found out that there were people in the management of the company who were getting kickbacks for rice that was supplied to the workers. We resolved that. Bea Mountain, a gold mining company, just last week had strikes. We went in there, we did not declare this strike illegal; we harmonized it, they got a 10 per cent salary increment. Those people that are writing back and forth are those who are eyeing for the leadership of the LLC when elections are upcoming. The rank and file of the trade unions that are managing or have oversight or use huge volumes of workers in these concession areas, are very appreciative of the role that the Ministry of Labour and the Government is playing to protect them. What we see here is that the ILO has a duty to provide technical and other assistance to ensure that we achieve this objective. We are inviting the ILO not to talk with factions but to send representatives to Liberia to be part of the Elections Commission that will conduct the LLC elections. It is very important for transparency. We invite the ILO and the EU and anyone who wants to come to Liberia – but there must be an elected leadership that is recognized by all the constituent trade unions. Once that is done, we see no problem with the legislature proceeding to harmonize the law. But the legislators too are waiting to talk with a legitimate leadership of the LLC.

Someone spoke about child labour. Consistent with the Decent Work Act, Liberia for the first time has established the light work list and the hazardous work list. We are involved with huge awareness, throughout the country, to ensure that every community leader will be able to detect when a child is engaged in light work or in hazardous work. We have our labour inspectors in all of the counties ensuring that these things are adhered to. Interestingly, Liberia is one of the few countries in Africa that has huge logistics in the labour sector relating to vehicles, motorbikes and communication devices. Huge investment was made in this sector by the Government. So all we need as a Government is collaboration. We are open to collaborating with partners to ensure that these things are done. We ask for your assistance to ensure that the LLC election goes smoothly and a legitimate relationship emerges because that is almost like a precondition to many other things that we can achieve.

We at the Ministry of Labour also want to note that, during the civil war period in Liberia, the United Nations (UN) had a peacekeeping force in Liberia. During that period, the Decent



Work Act was introduced. Liberia was the first test case for it. The legislature hardly had time to look at it. It was passed at a time when the UN peacekeeping force in Liberia was basically running the country. Now we have a law that we need to review and amend. Let us do it together. Let us all stop pointing fingers and drawing blame. It is good that we have this Act but when I became Minister of Labour in 2020 I had my own concerns about tripartite issues – about declaring a certain sector essential or not essential – but that is the law. What we need to do is to get a unified trade union – not fragmented as it is now – with a legitimate leadership and we can work together. So all this is because we acted in good faith, but we want to know that they should also exercise endurance to ensure that the LLC has a legitimate leadership. There are so many trade unions right now because of the fragmentation and the Government is dealing with trade unions individually. We are not dealing with the LLC as a unit because the court ordered new elections – it has notified those who were elected. So the ILO is invited to come to Liberia so that a representative can be part of the commission that is responsible for supervising the elections for the LLC. Once we achieve that, every other thing would not be an issue.

Worker members – We thank the Government of Liberia for the information provided. We also thank all those who took the floor to throw more light on the situation in Liberia with respect to the application of the Convention. Indeed, we urge the Government to take the discussions of this Committee, as they have said, in good faith, and ensure that social partners have an opportunity to contribute.

We have raised serious violations with respect to Liberia's application of the Convention in law and in practice under the guidance of the ILO. We are deeply concerned at the lack of progress since our last examination of the case in 2022. The Government of Liberia must demonstrate its commitment to the principles and rights enshrined in the Convention by fully implementing the recommendations and conclusions adopted by the supervisory bodies of the ILO and by this Committee and by bringing its law and practice in line with the Convention, in full consultation with the social partners.

We also want to welcome the Government's indication that they are ready to address the matters raised by the Committee of Experts and urge the Government to be guided by the long-standing guidance of the supervisory bodies, including the Committee of Experts with respect to the full exercise of the rights protected in the Convention by workers in essential services in the strict sense of the term.

In particular, we call on the Government to do the following:

- Ensure that all workers are able to exercise their labour rights under the Convention in an environment of respect for civil liberties.
- Register NAHWUL as a trade union organization without further delay and provide additional information to the Committee of Experts on any pending allegations as well as information to the Committee on Freedom of Association concerning Case No. 3202.
- Review the Decent Work Act and any other related legislation to ensure that all workers, with the sole exception of the police and the armed forces, are able to exercise their right to form or join a trade union of their choice. In particular, ensure that public sector workers and civil servants enjoy the rights and guarantees set out in the Convention.
- Provide information to the Committee of Experts on provisions drafted or envisaged for enactment and the time frame expected for such an enactment.



- Review the law to ensure that officers, crew members and any other person employed or in training on vessels are able to exercise their rights under the Convention, and to provide information to the Committee of Experts on how the rights are ensured to maritime workers, including trainees.
- Review section 45.6 of the Decent Work Act to ensure that the right to establish organizations to defend their occupational interests is fully recognized to foreign workers both in law and practice.
- Review the Decent Work Act to ensure that the designation of essential services is done in line with the Convention.

Lastly, the Government must provide information to the Committee of Experts, by 1 September 2023, on all the measures being taken to comply with its obligations under the Convention and any developments in this regard. We call on the Government of Liberia to accept a direct contacts mission.

Employer members – The Employer members would once again like to thank all the speakers who took the floor and shared their interventions and in particular the Minister representing the Government of Liberia for both the written and the oral information provided today. We have taken note of all the submissions and we as Employers are confined to making conclusions and recommendations based on the specific observations of the Committee of Experts and, in this regard, the Employer members would then recommend to the Government of Liberia to:

- Firstly, institute without delay an independent investigation into the allegations made by ITUC- Africa about the dissolution of a trade union by a state-owned company and the harassment of trade union leaders and to provide information on the outcome;
- Enact measures, including dissuasive sanctions, to ensure that trade unions can only be dissolved by a judicial authority and only as a last resort for serious violations of law;
- Resolve the registration of NAHWUL as a trade union organization without further delay;
- Review the Decent Work Act and any other related legislation to ensure that all workers, including foreign workers, are able to exercise the right to form or join a trade union of their choice; and
- Ensure that public sector workers enjoy the protection of the freedom of association rights under the Convention.

We are encouraged by the Government's declared openness to accepting ILO technical assistance and in this regard would urge the Government to continue availing itself of this assistance to ensure full compliance with the Convention.

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 the long-standing nature and the prior discussion of this case in the Committee, most recently in 2022.

The Committee regretted that the Government had not implemented its previous recommendations.



Taking into account the discussion of the case, the Committee requests the Government to take urgent steps, in full consultation with the social partners, to bring its law and practice in line with Convention No. 87 and in particular to:

- ensure that all workers are able to exercise their labour rights under the Convention in an environment of respect for civil liberties, including the right to freedom of association, freedom of expression, peaceful assembly and protest without interference and fear for their personal safety and physical integrity;
- ensure that trade union leaders and members are not jailed for engaging in trade union activities and that threats against trade union leaders for their trade union activities are fully investigated and the perpetrators duly punished;
- put in place measures, including effective and sufficiently dissuasive sanctions, to ensure that trade unions can only be dissolved following due process and by a judicial authority only as a last resort;
- register the National Health Workers' Union of Liberia (NAHWUL) as a trade union organization without further delay and provide additional information to the Committee of Experts on any pending allegations;
- review the Decent Work Act and any other related legislation to ensure that all workers are able to exercise the right to form or join a trade union of their choice and in particular, ensure that public sector workers and civil servants enjoy the rights and guarantees set out in the Convention;
- ensure that the rights enshrined in the Convention are afforded to maritime workers, including trainees, and that any laws or regulations adopted or envisaged cover this category of workers; and
- ensure that foreign workers are entitled to form and join unions of their own choosing in line with the Convention.

The Committee urges the Government to provide information to the Committee of Experts, by 1 September 2023 on all the measures taken to implement these recommendations and to comply with its obligations under the Convention and on any developments in this regard.

The Committee calls on the Government to continue to avail itself of ILO technical assistance and to accept a direct contacts mission.

Government representative – The Government of Liberia takes note of the Committee's recommendations in relation to the Convention, and the Government is committed to implementing this Convention. We look forward to ILO technical support ensuring that Convention No. 87 is implemented and we also look forward to considering our laws ensuring that the health workers in all civil service departments are unionized. We also look forward to a good working relationship with this Committee.



Madagascar (ratification: 1960)

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

Discussion by the Committee

Chairperson – The third case we will discuss today on our agenda is Madagascar on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). For this case we have 13 speakers registered, that means that there will be speaking time as foreseen, and it will not be reduced.

Government representative – Concerning the 2022 observations of the Committee of Experts, the Government has noted them all and we are going to provide some explanations regarding the observations relating to Convention No. 87, which was ratified by Madagascar in 1960.

Concerning the observations of the Randrana Sendikaly Alliance – which alleges the arrest and conviction to 12 months' imprisonment of one of their members belonging to the Syndicalisme et Vie des Sociétés (SVS) union – the Government would like to provide the following clarification.

The company which employed the trade union delegate filed a complaint for conduct which was inappropriate, insulting or invasive of privacy. This case did not go through the Ministry of Labour but the enterprise immediately filed a complaint with the Criminal Court of Madagascar. A court decision was handed down at the outcome of the proceedings with regard to these accusations of conduct which was inappropriate, insulting or invasive of privacy. The Ministry of Labour could not interfere with this decision of the Criminal Court of Madagascar.

Even so, we would like to point out that, during the inquiries that we carried out further to this summons from the Committee, the trade union delegate had placed a post on Facebook which was public, not just addressed to the members of the union, concerning information from a meeting which the enterprise had held with staff delegates and union delegates. This relates to the first observation of the Committee of Experts.

Regarding the Autonomous Trade Union of Labour Inspectors (SAIT), labour inspectors with their union held talks with the Government. The Government provided the labour inspectors with four vehicles so that they could perform their duties. We are in a phase of equipping the labour inspectors with six additional vehicles, and over the last three years nine buildings have been constructed for the labour inspectorate to enable inspectors to do their work.

The Government has also pledged to pay the equivalent of about €100 per labour inspector to already move forward in improving inspectors' salaries and conditions of work. This allowance has not yet been paid but we hope that we will soon be able to pay inspectors the equivalent of this sum.

Regarding the third observation concerning the Christian Confederation of Malagasy Trade Unions (SEKRIMA), the Government has made a great deal of effort to ensure that the unions can now exercise their rights.

With regard to Article 3 on the representativeness of workers' organizations, we are at the stage of preparing the Order on representativeness. This Order will surely be published



this month (June 2023). Last week we already held a meeting with all the unions operating in Madagascar and so we are awaiting the publication of this Order on representativeness.

As regards the maritime sector, in particular the workers governed by the Maritime Code, it should be noted that Madagascar has just ratified the Maritime Labour Convention, 2006, as amended (MLC, 2006). The President of the Republic will come next week to deposit the instrument of ratification adopted by the National Assembly and the Senate last week.

Regarding the last observation of the Committee of Experts on the right of workers' organizations to organize their activities and formulate their programmes, we would like to inform the Committee that the Government and the social partners are currently engaged in the reform of the Labour Code. This has necessitated several consultation sessions. It is now over two years since we have consulted and worked with the National Labour Council to ensure the reform of the Code which was presented at the level of the Government. We are therefore waiting for the approval of the Government for the text to be submitted to the National Assembly and the Senate.

So these are the initial remarks and observations of the Government of Madagascar concerning the observations made by the Committee of Experts in 2022.

Worker members – We are discussing the case of Madagascar today to cast light on an extremely worrying situation. Furthermore, I would like to state that the Worker members regret that the discussion is occurring in the absence of a Workers' delegate.

Despite the previous observations that the Committee of Experts has addressed to the Government, the latter has not always taken follow-up action. This is the case with the remarks concerning the complaints of the SAIT, which refer to the violation of the right of unions to organize their activities.

We note that the Government still does not provide details on how it guarantees the right of trade unions to organize their administration and activities. Even though it claims that its legislation ensures the protection of freedom of association, it seems to us that conformity with the Convention must be not only in law but also in practice. With regard to the complaints and issues that we continue to raise, we are bound to observe that this is far from being the case. This applies particularly to the right of seafarers to establish and join unions.

I will also mention the situation concerning the elections for staff delegates. The legal provisions enabling them to be organized exist but are without effect. The Government indicated to the Committee of Experts that "certain factors" prevent them from being organized. Even more seriously, the trade unions and more particularly the General Federation of Workers Unions of Madagascar (FISEMA) have been confronted with decisions of the Ministry of Labour which unilaterally modified the names of the representatives in a series of organizations. This attitude demonstrates total contempt for the independence and autonomy of trade unions, which the Government nevertheless claims to defend.

Let us also refer to the existence of a compulsory arbitration procedure which makes it possible to put an end to a collective dispute. We note with astonishment the explanation given by the Government, which is reproduced in the report of the Committee of Experts. It merely indicates that disputes and strikes cause problems for society, workers and the economy. It does not appear to realize that disputes and disagreements are inherent in the functioning of societies. Nor does it appear to realize that arbitrarily putting an end to these disputes is the best way to fuel them and make them resurface with even more vigour.



Allow me now to come onto what for us has been the most brutal blow dealt by the Government to freedom of association in our country. On 28 August 2022, the trade unionist Sento Chang was sentenced to 12 months in prison. For what crime? What did he do to deserve such punishment? He was accused of breaching the confidential nature of a meeting and taking part in causing unrest among the workers. Specifically, Sento Chang informed his work colleagues via the social media of various trade union issues which had been discussed with the management. In particular this was about trade union elections, the need for the Food Committee to voice its concerns about the poor quality of food following reports referring to food past its use-by date, the training of workers on the role of the labour inspectorate, and the fact that the employer was required to approve and not refuse workers' right to holidays, leave days and sick leave, which are protected by labour law.

We are not asking the Ministry of Labour to get involved in the criminal proceedings but to ensure, as the Government, that trade union activities are not criminalized. Whatever you think of the workers' claims, whether or not you find them acceptable, human decency implies that the right of Sento Chang to exercise freedom of association must be defended. It is unacceptable for somebody to end up in prison because of unfounded accusations whose only purpose is to flout the exercise of a fundamental right.

Employer members – By way of background, Madagascar ratified the Convention in 1960, as we have heard. While there have never been discussions of the implementation of this Convention by Madagascar in the Committee, no less than 18 observations in this regard have been issued by the Committee of Experts since 1991.

At the political level since gaining independence from France in 1960, Madagascar has experienced repeated bouts of political instability, including coups, violent unrest and disputed elections. The most recent coup in 2009 led to five years of political deadlock, international condemnation and economic sanctions. After a decade of political turbulence, a new President took office in January 2019.

At the economic level, after experiencing one of the worst recessions in its history, due to the COVID-19 pandemic, Madagascar's economy recovered slowly in 2021 and 2022. The country's fragility was aggravated by multiple climate shocks as well as by the inflationary pressures linked to the aggression in Ukraine.

Coming to the heart of the discussion in this Committee, the Committee of Experts identified in essence four main issues: alleged anti-union acts in the maritime sector; the right to form and join trade unions for seafarers; issues related to the representativeness of worker's organizations; and issues related to compulsory arbitration and the requisitioning of striking workers.

On the first of these issues, the Employer members would like to recall that the Committee of Experts previously urged the Government to ensure that an independent enquiry that was conducted into anti-union acts in the maritime sector was concluded as soon as possible. In its 2022 observation, the Committee of Experts noted that the Government had only provided a brief reference to the above-mentioned enquiry, while it mentioned that the Ministry of Transport and Meteorology was organizing a meeting with the General Maritime Union of Madagascar, to address the conflict between the union and enterprise in the maritime sector. In this regard, the Employer members would like to request the Government to clarify whether the meeting with the union has taken place and if so, to provide detailed information on its outcome as well as on the outcome of any meeting concerning allegations of anti-union acts in the maritime sector.



On the second issue, we take note that according to the Government's indications, fundamental rights and freedoms of seafarers were taken into account in the preparation of the draft Maritime Code. Here the Employer members would like to know from the Government if the Maritime Code has been adopted in the meantime and if so, whether it contains specific provisions providing for the right of seafarers to form and join trade unions. We further request the Government to transmit a copy of the Maritime Code if it has been adopted.

On the third issue, the Employer members take note of the Government's indication that it is left to the workers to organize the elections for staff representatives and to forward the results to the Ministry of Labour and Social Legislation. We request the Government to provide more specific information on the kind of factors that have prevented the holding of elections for staff representatives since 2015 and whether these factors have been overcome in the meantime.

We further note the allegations of FISEMA, according to which, when appointing workers' representatives to the boards of directors and management committees of three institutions in the area of social security and health, the Ministry of Labour unilaterally changed the names of the representatives who were to sit on the boards and committees. We request the Government to provide its comments on the union's allegations.

As regards the fourth and last issue, which concerns comments by the Committee of Experts on the provisions of the Labour Code, providing for compulsory arbitration and the requisitioning of striking workers in the event of disruption of public order, the Employers wish to point out that this relates to the right to strike and therefore falls outside the scope of the Convention. The Employer members will therefore not comment on this point and, in line with current practice, it will not be covered in the conclusions of the case. This concludes our intervention on Madagascar and we look forward to hearing the views of the other participants.

Government member, Sweden – I speak on behalf of the **European Union (EU) and its Member States**. The candidate countries **Albania, Bosnia and Herzegovina, North Macedonia, Republic of Moldova, Montenegro**, and the EFTA country **Norway**, member of the European Economic Area, align themselves with this statement. The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights, the right to organize, and freedom of association. We actively promote the universal ratification and implementation of fundamental international labour standards, including Convention No. 87. We support the ILO in its indispensable role to develop, promote and supervise the effective implementation of ratified international labour standards and of fundamental Conventions in particular.

The EU and its partners in eastern and southern Africa, among them Madagascar, are currently negotiating to deepen the existing Economic Partnership Agreement. Given the positive results generated by the current agreement, the partners have declared their readiness to move beyond trade in goods towards a more comprehensive agreement. It is our expectation that the Government will urgently bring its law and practice in accordance with the Convention, before the expanded Economic Partnership Agreement is ratified and implemented. The EU remains open to a genuine dialogue based on mutual respect on these and other topics of interest.

We are deeply concerned at a number of challenges to the human rights situation in Madagascar, which involves a further worsening of labour rights, including the allegation of imprisonment of a trade union leader for engaging in trade union activities. We echo the



request of the Committee of Experts to the Government of Madagascar to provide its comment on this very serious allegation and to take all necessary measures to ensure that workers and employers may exercise freely the right to organize. Additionally, we note that the Government has yet not responded to the 2021 observations of the SAIT alleging the violation of the right of trade unions to organize their activities. We urge the Government to do so without further delay.

In addition, we continue to support the Committee's call urging the Government to conduct an independent inquiry on anti-union acts in the maritime sector. Clarifications are needed on whether the meeting with the Ministry of Transport and the General Maritime Union of Madagascar (SYGMMA) has been concluded, and its eventual outcome. Further clarifications are also needed on the new Maritime Code to be adopted and whether it contains specific provisions providing for the right of seafarers to form and join trade unions.

We observe violations of Article 3 of the Convention and are deeply concerned at the serious allegation of interference by public authorities in the appointment of representatives in boards and committees of social partners' organizations. Workers' and employers' organizations have the right to elect their representatives in full freedom, including the organization of their administrations. The EU and its Member States call upon the Government to supply full information on the allegations and rulings by the Council of State.

We fully share the call of the Committee of Experts in respect of the Government's responsibility to ensure that the rights provided for in the Convention are respected both in law and in practice. Furthermore, we request the Government to provide information on the measures taken to ensure the implementation of the Labour Code and its implementing order. In order to align national legislation with the provisions of the Convention, we urge the Government to avail itself of ILO technical assistance as soon as possible. The EU and its Member States will continue to monitor the situation closely. We recall the importance of ILO support, including technical assistance, in facilitating compliance with all ratified ILO Conventions and the promotion of tripartism.

Worker member, Botswana – As workers in Botswana, we align to the freedoms provided by the Convention with full recognition that workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes. The enjoyment of these fundamental rights and freedoms is unattainable without ensuring that the public authorities refrain from any interference which would restrict these rights or impede their lawful exercise.

Therefore, we have noted with concern undue failures to register and recognize trade unions in Madagascar with a deliberate intention to avert the enjoyment of the tenets of the Convention by trade unions and by extension the workers in Madagascar. Of course, industrial harmony is imperilled when freedom of association is denied and undermined.

ILO standards dictate that the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in applicable international standards and we urge the Government to comply in full with ILO standards.

In 2018 Botswana appeared before this Committee and one of the violations included was failure to recognize trade unions. The country has since engaged federations and employers' organizations to bring its laws into conformity with ILO standards because an infringement of fundamental freedoms is a serious indictment with regard to the rights of the workers and indeed the democratic credentials of any country. We will urge the



Government of Madagascar to take a leaf out of Botswana's book as regards practice within the African peer review mechanism.

The Committee of Experts has expressed its concern on this case and has expertly urged the Government to comply with the dictates of the Convention. We fully align ourselves with the call from the Committee and urge the Government to fully comply without any undue delay.

We reiterate our call for the Government to ensure conformity with ILO labour standards to guarantee enjoyment of freedom of association by workers. This should also be done in practice through registration and recognition of affected trade unions.

Worker member, South Africa – It is prudent that the Government of Madagascar understands its ratification of the Convention. We raise this matter given that the Government of Madagascar continues to interfere in the affairs of trade unions. The Government wants to dictate how trade unions must manage their affairs and who should represent them in statutory bodies in the country.

The Committee of Experts noted the submissions by trade unions that in 2019, when appointing worker representatives to the boards of directors and management committees of the National Social Insurance Fund, the Antananarivo Inter-Enterprise Health Organization and the Inter-Enterprise Medical Association of Antananarivo, the Ministry of Labour and Social Legislation unilaterally changed the names of the representatives who were to sit on the boards and committees. FISEMA, one of the trade unions, successfully challenged the interference in the Council of State, which issued three rulings in its favour in 2021 and 2022, but the Government remained adamant.

The right of workers to choose their representatives is protected by this Convention and cannot be said to exist if that right is not fully respected in law and in practice, not just as window dressing but as a fundamental principle.

Trade unions elect or appoint their leaders to a strategic position to enhance the rights of their members. This is in line with the trade unions' constitutions. It is the right of workers to elect and deploy their members into strategic positions based on the unions' needs following their internal processes. The Government should not interfere in such matters. If there are any challenges with the persons appointed, the Government must engage with the unions concerned rather than imposing its own representatives.

In South Africa we have a tripartite structure called Nedlac (National Economic Development and Labour Council). All trade union federations have a seat, and those who sit there are deployed by their respective organizations. Trade union leaders are nominated to serve on boards of parastatals and companies without the Government interfering as to who should serve in which board or company. It is the prerogative of the trade union to elect or nominate a leader to serve in the interest of the said union.

I invite the Government and its social partners to visit the Republic of South Africa and learn how we manage our social dialogue. Our Government does not interfere with trade union appointments in parastatals and other bodies in which we are required to participate.

Worker member, Spain – We note the report of the Committee of Experts requesting the Government to amend sections 220 and 225 of the Labour Code, which provide that if mediation fails, the collective dispute is referred by the Ministry of Labour to a process of arbitration and that the arbitration award ends the dispute and the strike. Section 228 of the Labour Code provides for the possibility of suspending a workers' strike in the event of



disruption of public order. The Committee noted with regret that the Government's reply merely indicated that prolonged disputes and strikes caused difficulties for society, workers and the economy. The Government's reply shows that it does not wish to comply with the Convention with regard to the right to strike. The right to strike is the only influence that workers can exert to defend their interests. The Committee on Freedom of Association declared that striking is a right and established the basic principle underlying this right as the main means by which workers and their associations can legitimately promote and defend their economic and social interests. In Madagascar this right is being unilaterally withheld through compulsory arbitration. This is contrary to the Convention. According to the principles, the right to strike can only be restricted or prohibited in the case of public servants exercising authority in the name of the State, in essential services in the strict sense of the term or in situations of acute national crisis. In such situations, employees may be forced to resort to compulsory arbitration. We reiterate the principle that arbitration should be voluntary. If there is no agreement to resort to arbitration, workers should exercise their right to strike without interference from employers or the Government. We also note that the right to strike is provided for in article 33 of the Constitution of Madagascar. It states that "the right to strike is a fundamental right of workers" and provides that "the right to strike is recognized without prejudice to the continuity of public service or the fundamental interests of the nation". This in itself is another source of problems. This wording is too loose and needs to be made more specific.

Observer, Building and Wood Worker's International (BWI) – On behalf of BWI and in solidarity with trade union leader Mr Sento, who was arrested and sentenced to a 12-month prison term, I make this intervention regarding the application of the Convention by the Government of Madagascar.

Freedom of association is a right – it is not a crime, and yet, trade union leaders are imprisoned for exercising that right. The arrest of Mr Sento is an example of a worrying trend we see worldwide of criminalizing basic trade union activities. Mr Sento merely did his duty as an elected representative by informing his members concerning the results of meetings held with the management of an enterprise in the textile sector.

However, the State used his way of communicating through Facebook as a ground for applying the Criminal Code for publishing confidential business information, even though he removed the post as soon as he was requested to do so. This is just one of many examples of a growing trend of not dealing with labour disputes in an appropriate dispute settlement but using the criminal law system, to arrest and deter leaders of the trade union movement from performing their duties. We condemn the criminalization of collective bargaining.

Madagascar, as an ILO Member State, is obliged to respect the rights of trade unions in line with the Convention, which provides for the right of trade unions to conduct activities and organize. Hence we recall the Government's responsibility to ensure that the rights to freedom of association and organizing are provided for and should not only be respected and protected in law but also in practice.

Observer, IndustriALL Global Union – I am speaking on behalf of IndustriALL Global Union and our affiliates in Madagascar, the Federation of Autonomous Industrial Workers' Union (FESATI), SEKRIMA, the Federation of Trade Unions of Workers in Free Trade and Textile Companies (SEMPIZOF), and Syndicalisme et Vie des Sociétés (SVS), on violations of ILO Convention No. 87, the country's Constitution, and the Labour Code of the country.



In previous years, FESATI had raised the issue of anti-union collusion between employers and the Government of Madagascar. This behaviour was evident when employers refused to recognize a trade union and violated workers' rights.

This time, we call attention to the sentencing of a trade unionist for carrying out his union responsibilities at the workplace, which is protected by international labour standards and the national Labour Code.

Therefore, IndustriALL Global Union joins the SVS in calling attention to the unjust imprisonment of trade union representative Sento Chang, who spent nine months at the detention centre in Antananarivo, which as far the global community is concerned is among the worst in the world, over a post on Facebook regarding working conditions at the garment factory where he worked as a machinist.

Sento Chang was subjected to an unfair trial that concluded in a record 48 hours under a hostile judge, who apparently colluded with the company lawyer. Furthermore, an appeal against the judgment was never heard and the judge ignored the fact that the duties of the trade union representative are enshrined in the Madagascar Labour Code. For justice to prevail, we call for a judicial review of the sentence and for his full reinstatement.

The employers and the Government must engage with trade unions instead of violating fundamental rights. It is through constructive dialogue that working conditions and industrial relations can and must be improved, without intimidation and without threat of imprisonment. Even though Sento Chang was released on 30 May, it is important to note that the Government of Madagascar has violated fundamental rights of a trade union representative, and contrary to Conventions Nos 87 and 98, as well as Malagasy law itself. Consequently, it is imperative that the Government of Madagascar adopts immediate corrective measures to ensure the full respect of fundamental workers and trade union rights, and the fair conduct of the judicial system.

Observer, International Trade Union Confederation (ITUC) – Malagasy workers face a number of obstacles to their enjoyment of the rights provided for in the Convention. The report of the Committee of Experts reveals a lot about the situation in the country. Our colleague Mr Sento, a trade union delegate, was imprisoned for 12 months for exercising his right to freedom of association.

This conviction followed the publication on Facebook of the results of collective bargaining meetings held with the enterprise E-Toile SA, Antananarivo, of which he is an employee. Part of his sentence was reduced by presidential pardon, leaving him with nine months' imprisonment. Mr Sento's lawyers filed an application for provisional release and an appeal on 6 September 2022, in relation to the verdict handed down on 31 August 2022, but the appeal was not heard before his release from prison on 30 May 2023 and has not been heard to date.

We wonder why his case has deviated from normal judicial procedures in our country, where defendants are granted provisional release pending appeal. Moreover, the lawyer was not notified of his sentence until 17 April 2023, so Mr Sento has effectively been arbitrarily detained.

The workers of Madagascar condemn the use of criminal law in purely occupational and trade union matters, and particularly in matters of collective bargaining. Workers' representatives have the right to use technology to disseminate information to their members, and should not be criminalized for doing so. I recall that the principle of freedom



of association protects workers' representatives from interference in their communication with their members, but this right has been violated.

In addition, the Government also interferes with the nomination of workers' representatives to public institutions in which we are required to participate. In 2019, the Ministry of Labour unilaterally changed the names of the representatives who were to sit on the Social Funds Management Board. This is an act that is repeated. The court declared the Government's action illegal. This was yet another example of direct interference in the selection of workers' representatives.

Workers, who are the victims, do not obtain adequate remedies. The Ministry of Labour does not take prompt action to settle disputes and, in some cases, protects unscrupulous employers by authorizing the dismissal of trade union and employee representatives.

I appeal to this Committee to provide technical assistance to my country to help the Government resolve these problems.

Government representative – Regarding the case of FISEMA, which was referred to several times just now, we would like to provide some clarification with regard to the proposals of names of persons who are to sit on social security bodies. We wish to provide clarification because it is a member organization of FISEMA which caused the names to be put forward by some of their members. After the various judicial decisions which have been handed down, new nominations have been made since 2022 to respond to these remarks of the Committee of Experts.

We would also like to point out that last year, for example, it was FISEMA which represented the workers' unions at the 110th Session of the Conference. Regarding the case of Mr Sento, we would like to provide some clarification, already given by the ITUC observer. A presidential decree for a reduction of sentence was issued in favour of Mr Sento, who was released last month. Nevertheless, the Government would like to point out that it respects the separation of powers and the independence of the judiciary. The Government guarantees this separation of powers but, despite everything, after several appeals from the different unions, the President adopted this decree reducing the sentence by three months.

We have noted all the remarks made by those who have taken the floor during this Committee session. The Government also notes the Committee's concern and requests it to note the efforts which it has made, including through the ratification of the MLC, 2006, for the maritime workers as well as the reform of the Labour Code, which has necessitated several years of consultation through the National Labour Council, consultations with the social partners, employers' organizations and workers' organizations alike. Several rounds of consultation have taken place, in particular expanded consultations; even the unions who have not been declared representative have been consulted for this reform of the Labour Code.

Lastly, the Government reserves the right to provide many more clarifications on the remarks which have been made today; the capacity for replying to these observations could be endless. In conclusion, the Government reaffirms its request for technical assistance in order to try to contribute to improving the application of the Convention.

Employer members – We would like to stress the importance of compliance with the Convention and the need for the Government to fully align its law and practice with the Convention. In light of the discussions and what we have heard, the Employer members would request the Government to provide: detailed information on the outcome of any meeting concerning allegations of anti-union acts in the maritime sector; information on any



developments on the new Maritime Code; and specific information on the factors that have prevented the holding of elections for staff representatives since 2015.

Worker members – We invite the Government to take the necessary steps to ensure that the new Maritime Code guarantees to seafarers the right to form and join unions freely. The Worker members also invite it to organize as quickly as possible elections enabling workers' representatives to be designated. It is also essential that it avoids interfering in trade union activities in the future, in particular in the processes for appointing their representatives within the different organizations. Moreover, the procedures which allow a labour dispute to be ended through arbitration must be abolished.

The case of Sento Chang must be the subject of thorough examination so that no union representative's activity is criminalized. I repeat: we are not asking the Ministry of Labour to get involved in the court proceedings but to ensure, as the Government, that trade union activities are not criminalized. To this end, we invite the Government to take the necessary steps to ensure that the criminal law provisions which might obstruct the exercise of trade union rights are abolished.

We urge the Government to agree to be guided by the supervisory bodies, in particular the Committee of Experts, so that its legislation is perfectly in line with the Convention in law and in practice. We therefore invite it to accept ILO assistance in the form of a direct contacts mission.

The Government's attention should be drawn to the fact that we are aware of the stakes involved and the challenges facing the country. We are aware of the challenges, whether economic, social or those related to the effects of natural disasters. But we would like the Government to understand that the trade union movement and respect for its autonomy are not obstacles to development. Quite the contrary. The country has an abundance of natural resources but it can only benefit from them fully if it guarantees workers their rights, in particular the most fundamental ones.

Conclusions of the Committee

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

The Committee noted with concern the long-standing issues relating to the restrictions on trade union activities in the maritime sector, the absence of any elections for staff representatives since 2015 and the use of compulsory arbitration.

The Committee expressed its deep concern regarding the imprisonment of Mr Zotiakobanjinina Fanja Marcel Sento and noted the Government information regarding his release by Presidential decree.

Taking into account the discussion of the case, the Committee urges the Government to:

- **take all necessary steps in order to ensure that the new Maritime Code guarantees to seafarers the right to freely establish and join the organizations of their own choosing without previous authorization;**
- **organize as soon as possible the elections for the designation of workers' representatives;**



- refrain from intervening in the activities of workers' and employers' organizations, including in the designation process of their representatives in the various social dialogue bodies;
- 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 take the necessary measures to amend sections 220, 225 and 228 of the Labour Code to bring them into conformity with the Convention;
- immediately and unconditionally quash the conviction of Mr Zotiakobanjina Fanja Marcel Sento;
- refrain from using the criminal law to target trade unionists;
- amend all provisions of the Criminal Code hindering the right to freedom of association of workers and employers; and
- provide a copy of the Maritime Code once adopted and detailed information to the Committee of Experts before 1 September 2023 on the outcome of any meeting concerning allegations of anti-union acts in the maritime sector, on any developments on the adoption of the Maritime Code and on the factors that have prevented the holding of elections for staff representatives since 2015.

The Committee requests the Government to avail itself of ILO technical assistance.

Government representative – The Government of Madagascar notes the conclusions of this Committee and thanks it for them.

Nevertheless, the Government would like to point out that, as was said during the discussion, the rule of law prevails in Madagascar and the Government guarantees the separation of powers and the independence of the judiciary.

We would also like to draw the Committee's attention to the second point in the Committee's conclusions that the Government already held elections relating to union representativeness in 2018 and 2022. A report describing this progress will be provided to the Committee by September 2023.

Furthermore, we would like to state that during this session of the Committee there has been visible progress in relation to the rights of maritime workers since Madagascar has just ratified the MLC, 2006, and at this time a Bill issuing the Maritime Code is being prepared.

The reform of the Labour Code is at the stage of being finalized and subject to reading by the Government, with the collaboration and consultation of the social partners.

Lastly, the Government of Madagascar requests the Committee to note that additional efforts will be made to apply Convention No. 87, and it reiterates its request for ILO assistance.



Nepal (ratification: 2002)

Worst Forms of Child Labour Convention, 1999 (No. 182)

Written information provided by the Government

The Government wishes to underscore the fact that article 39 of the Constitution of Nepal guarantees the rights of children by providing that no child shall be employed in

factories, mines or in any other hazardous work. The existing data collected through the Nepal Labour Force Survey 2017–18 indicates that child labour in Nepal has been significantly reduced from 1.6 million in 2008 to 1.1 million in 2018. However, these numbers are still high. That is why the Government has been making effective and efficient interventions. Through the Ministry of Labour, Employment and Social Security (MoLESS), the Government of Nepal has formulated the National Master Plan on the Elimination of Child Labour 2018–28. In 2022, the Ministry launched its Action Plan. The implementing roles are assigned to federal, provincial and local governments and relevant stakeholders. This year, the MoLESS and the ILO in Nepal jointly organized a stakeholders' consultation on the revision of the list of hazardous occupations for children. The participants in the workshop represented civil society organizations, trade unions, employers' organizations, United Nations agencies and development partners. The MoLESS also formed a Technical Tripartite Committee to review the list of hazardous occupations and recommended its inclusion in the amendment process of the Child Labour (Prohibition and Regulation) Act, 2000. The Government is also conducting a study and review of current child labour rehabilitation models in Nepal with the intention of making them more sustainable, child-centred and economic. The study results will provide clear guidance for all labour offices to initiate the rescue of children from the worst forms of child labour and provide them with proper support and care. The Government has launched the "Child Labour Free Local Level Declaration Program". More than 100 local governments have expressed interest in a child labour-free declaration. This is an area-based approach and targets specific geographical locations with the aim of addressing all forms of child labour, including the worst forms. It is a Government strategy to make child labour-free zones and it is aimed to reach out to all 753 local areas and involve local governments.

The Government is committed to ending all forms of forced labour. We take this opportunity to highlight the fact that Nepal declared itself free of *haruwa charuwa* [agriculture-based bonded labourers] in 2022. Existing laws and policies have ensured the rights of these people. In recent years, a number of administrative measures have been taken to encourage the school enrolment of children, resulting in 97.1 per cent school enrolment in the current fiscal year. The MoLESS, in partnership with the ILO, has provided skills-based training to former bonded labourers. Their long-term rehabilitation has already begun. An integrated act on forced labour has been drafted. We assure the Committee that the Government of Nepal will help to address the remaining issues later. Livelihood support will help families to end child labour.

The Government also reiterates that the Anti-Human Trafficking Bureau of the Nepal Police has been taking significant action, including community sensitization and the establishment of border checkpoints, to prevent human trafficking in Nepal. The Community Police Partnership (CPP) programme has been launched. The Anti-Human Trafficking Bureau has adopted three strategies to curb human trafficking, including the trafficking of girl children. In a preventive approach, it conducts awareness programmes at border checkpoints, including at Tribhuvan International Airport, Gautam Buddha International Airport and the Indian border. It conducts protection activities, such as rescue from destination countries, sends victims to rehabilitation centres for counselling and registers cases. It regularly carries out investigations, prosecution and surveillance. During the current fiscal year, 15 girl children have been rescued from trafficking. But it has been observed that many trafficking cases are not reported in Nepal due to fear and social stigma, so the community police are informing and empowering communities to speak up and report cases to the police. Similarly, the National Human Rights Commission (NHRC) is establishing an anti-human trafficking section at its premises. The Ministry of Women, Children and Senior Citizens has drafted a Ten-Year Action Plan to Combat Human Trafficking. Similarly, a human



trafficking policy will be drafted. The Ministry of Women, Children and Senior Citizens organizes awareness programmes, sensitizes local governments and engages with the cyber bureau. It also provides skills-based training to survivors of trafficking and supports the rehabilitation centre.

The National Child Rights Council (NCRC) has operated the Child Helpline (1098) and is providing services through 18 offices covering the whole of Nepal. Missing Children Response Centres rescue children who are in vulnerable situations through 240 units. There are sufficient mechanisms to address children's issues, such as the Ministry of Women itself, the NCRC, provincial child rights committees, local child rights committees and child welfare officers. Some 238 child rights committees have already been formed at the local level. Similarly, children's funds have been established in 213 local areas. Child welfare officers have been assigned to 266 local areas. Child protection system procedures have been prepared in 323 local areas.

The Ministry of Land Management, Cooperatives and Poverty Alleviation has identified 16,322 *haliya* [bonded labourer] families, of which 12,820 have been rehabilitated and 1,135 families have been handed over at the local level. Similarly, 27,570 *kamaiya* [bonded labourer] families have been identified, of which 27,021 have been rehabilitated and 300 handed over at the local level. Since Nepal became a pathfinder country and a member of Alliance 8.7, a Nepal Alliance 8.7 Secretariat has been established in the Ministry of Labour, which is supported by United Nations agencies on a rotational basis, including the ILO. The Secretariat submits annual reports to the global Alliance 8.7 Secretariat. This year, in April, the Nepal Secretariat, in close coordination with the MoLESS, submitted Nepal's annual report on child labour, forced labour, human trafficking and modern slavery. It consulted more than ten government agencies and civil society organizations to collect information. The detailed data for those areas is specified in the annual report. The Ministry of Labour, through the Nepal Alliance 8.7 Secretariat, has initiated data/information gathering on the progress made by various ministries/institutions on child labour, forced labour and human trafficking in Nepal. Integrated software is being developed to store data and information which is useful for planning and initiating targeted interventions to combat child labour, including its worst forms.

The Government has prioritized brick kilns as one of the sectors for regular intervention to protect children and prevent child labour. Several interventions are taking place at the source (villages) and destination (kilns) levels with a view to creating a child labour-free brick industry and making the employers more accountable for preventing the use of child labour in the sector. Kindergartens have been set up at brick kiln sites. The Central Bureau of Statistics (CBS) will conduct the next Labour Force Survey in Nepal in 2024. The MoLESS has requested the CBS to provide fresh data on child labour, including its worst forms, and to disaggregate data down to the local level. This will give a fresh picture of child labour and pave the way for future interventions in Nepal. The Government of Nepal, working with development partners, trade unions, employers' organizations and other concerned stakeholders, continues to be committed to the principle enshrined in the Constitution of Nepal of 2015 and to meeting its international commitments, as enshrined in the United Nations Charter and the Universal Declaration of Human Rights.



Discussion by the Committee

Chairperson – As I mentioned, the second case on our agenda is Nepal on the application of the Worst Forms of Child Labour Convention, 1999 (No. 182). I invite the

Government representative of Nepal, the Joint Secretary, Ministry of Labour, Employment and Social Security (MoLESS), to take the floor.

Government representative – In relation to the case of Nepal, there are some questions regarding issues such as child bonded labour services, social integration, offering children for pornography, and a number of cases of trafficking of children, free basic quality education and removing children from commercial sexual work, exploitation and immediate removal of children from the worst forms of child labour in the brick kilns.

The Government of Nepal has provided the following information in response to the observations made by the Committee of Experts.

The Government wishes to underscore the fact that article 39 of the Constitution of Nepal has guaranteed the rights of children with a provision that no child shall be employed in factories, mines, or in any other hazardous work. The existing data collected through the Nepal Labour Force Survey 2017–18 indicates that child labour in Nepal significantly reduced from 1.6 million in 2008 to 1.1 million in 2018. However, the numbers are still high. That is why our Government has been taking effective and efficient interventions. The Ministry of Labour, Employment and Social Security (Ministry of Labour – MoLESS) has formulated the National Master Plan on the Elimination of Child Labour 2018–28. In 2022, the Ministry launched its Action Plan. The implementing roles are assigned to federal, provincial and local governments and relevant stakeholders.

This year, the Ministry of Labour and the ILO Nepal Office jointly organized a stakeholders' consultation on the revision of the list of hazardous occupations for children. The participants in the workshop represented civil society organizations, trade unions, employers' organizations, UN agencies and development partners. The Ministry also formed a Technical Tripartite Committee to review the list of hazardous occupations and recommend including this in the amendment process of the Child Labour (Prohibition and Regulation) Act, 2000. The Government is also conducting a study and review of the current child labour rehabilitation models in Nepal with the intention to make them more sustainable, child-centred and economic. The study results will provide a clear guide to all labour offices to initiate the rescue of children from the worst forms of child labour and provide them with proper support and care.

The Government has launched its "Child Labour Free Local Level Declaration Program". More than 100 local governments have expressed interest in a child labour-free declaration. This is an area-based approach and targets specific geographical locations with the aim of addressing all forms of child labour, including the worst forms. It is a strategy of the Government to make a child labour-free zone and it has aimed to reach out to all 753 local communities and involve local governments. The Government is committed to ending all forms of forced labour. We take this opportunity to highlight the fact that Nepal declared itself free of *haruwa charuwa* (agriculture-based bonded labourers) in 2022. Existing laws and policies have ensured the rights of these people. These past years, a number of administrative measures were taken to encourage school enrolment of children which has resulted in 97.1 per cent school enrolment in the current fiscal year. The Ministry of Labour, in partnership with the ILO, provided skill-based training to former bonded labourers. Their long-term rehabilitation task has already begun. The integrated act on forced labour has been drafted. We assure the Committee that the Nepal Government will help to address the remaining issues subsequently. Livelihood support will help families to end child labour.

Our Government wants to reiterate that the Anti-Human Trafficking Bureau of the Nepal Police has been taking significant action, including community sensitization and establishing



border checkpoints to prevent human trafficking in Nepal. The Community Police Partnership (CPP) programme has been launched. The Anti-Human Trafficking Bureau of the Nepal Police has mainly adopted three strategies to curb human trafficking, including the trafficking of girls. In a preventive approach, it conducts awareness programmes at border checkpoints, including at Tribhuvan International Airport, Gautam Buddha International Airport, as well as at the Indian border. It conducts protection activities such as rescue from destination countries, sends the victims to rehabilitation centres for counselling, and files the cases. It regularly carries out investigations, prosecutions, and surveillance. In the current fiscal year, 15 girls were rescued from trafficking. But it has been observed that many trafficking cases are not reported in Nepal due to fear and social stigma, so community police are informing and empowering communities to speak up and report the cases to the police. Similarly, the National Human Rights Commission (NHRC) is establishing its Anti-Human Trafficking Section at NHRC premises. The Ministry of Women, Children and Senior Citizens has drafted a Ten-Year Action Plan to Combat Human Trafficking. Similarly, the human trafficking policy will be drafted. The Ministry of Women, Children and Senior Citizens organizes awareness programmes, sensitizes local governments, and engages the cyber bureau. It also provides skill-based training to trafficking survivors and supports rehabilitation centres. The National Child Rights Council (NCRC) has operated the Child Helpline (1098) and it is providing service through 18 offices that cover the whole of Nepal. Missing Child Response Centres rescue children who are in vulnerable situations by operating the 104 hotline. It is done through 240 units. There are sufficient mechanisms to address the issue of children like the Ministry of Women, the NCRC, provincial child rights committees, local child rights committees, and child welfare officers. There are 238 child rights committees already formed at the local level. Similarly, at the local level, 213 children's funds have been established. Child welfare officers have been assigned to 266 local areas. A child protection system procedure has been prepared in 323 local areas. The Ministry of Land Management, Cooperatives and Poverty Alleviation has identified 16,322 *haliya* (bonded labourer) families and among them, 12,820 have been rehabilitated. A total of 1,135 families have been handed over to the local level. Similarly, 27,570 *kamaiya* (bonded labourer) families have been identified. A total of 27,021 families have been rehabilitated. A total of 300 families have been handed over to the local level.

After Nepal became a pathfinder country and a member of Alliance 8.7, a Nepal Alliance 8.7 Secretariat was established in the Ministry of Labour, which is supported by UN agencies on a rotational basis, including the ILO. The Nepal Secretariat submits annual reports to the global Alliance 8.7 Secretariat. This year in April, the Nepal Secretariat, in close coordination with the Ministry, submitted Nepal's annual report on child labour, forced labour, human trafficking and modern slavery. It consulted with more than ten government agencies and civil society organizations for information collection. The detailed data in those areas are specified in the annual report.

The Ministry of Labour, through the Nepal Alliance 8.7 Secretariat, has started to gather data/information on the progress made by different ministries/institutions on child labour, forced labour and human trafficking in Nepal. Integrated software is under way to store data and information which will be useful for planning and initiating targeted interventions to combat child labour, including its worst forms.

The Government has prioritized brick kilns as one of the sectors for regular intervention to protect children and to prevent child labour. Several interventions are taking place at the source (villages) and destinations (kilns) to create a child labour-free brick industry and make the employers more accountable for the use of child labour in the sector. Kindergartens have



been set up at brick kilns. The Central Bureau of Statistics (CBS) is going to conduct the next Labour Force Survey in Nepal in 2024. The Ministry of Labour is requesting the CBS to provide fresh data on child labour, including child labour in its worst forms, and disaggregating it up to the local level. This will give us a fresh picture of child labour and pave the way for the future course of interventions in Nepal. The Government of Nepal, working with development partners, trade unions, employers' organizations and other concerned stakeholders, continues to commit to the principle enshrined in the Constitution of Nepal 2015 and is committed to meeting its international commitments, as enshrined in the United Nations Charter and the Universal Declaration of Human Rights.

Worker members – Child labour is a grievous violation of fundamental rights. Despite the strong commitment of Member States to end child labour, as demonstrated by the universal ratification of the Convention, presently 160 million children in the world are still in child labour, accounting for almost one in ten of all children worldwide. The ILO Durban Call to Action of 2022 emphasized the need for urgent action, because of the consequences of the COVID-19 pandemic, armed conflicts, food, and humanitarian and environmental crises, which threaten to reverse years of progress made against child labour. Ending child labour by 2025 in all its forms is also included under target 8.7 of the Sustainable Development Goals (SDGs). In Nepal, child labour is still prevalent in many provinces and sectors. The Labour Force Survey 2017-18, conducted by the CBS in collaboration with the ILO, reveals that nearly 1.1 million children are involved in child labour, of which 200,000 are involved in its worst forms.

With regard to the issues raised by the Committee of Experts in its comments, we take note of the adoption of the Act Relating to Children, 2018, which now covers all children and criminalizes a range of offences related to child sexual abuse, compulsory recruitment of children for use in armed conflict, and the use, procuring and offering of children for the production and trafficking of drugs. We also take note of the adoption of the National Master Plan on the Elimination of Child Labour 2018–28, which aims to protect children engaged in hazardous work through school enrolment programmes, family support programmes and alternative care options.

Through these initiatives, the Government has set its course. However, it is not enough to ensure that such practices are stopped for good. The legal framework adopted in 2018 and the National Master Plan must be effectively implemented through targeted measures for rehabilitation and social integration as well as timely investigations, swift and efficient prosecutions and convictions, and dissuasive sanctions.

With reference to the comments of the Committee of Experts, we take note of the efforts made by the Government to combat child labour, including through the implementation of various programmes aimed at:

- ensuring the rehabilitation and social integration of *haliya* and *kamaiya* girls (girls trapped in agriculture-based bonded labour practices) and of *kamlari* girls (girls offered for domestic work to families of landlords);
- combating trafficking in children; and
- improving access to education for children, including provisions of scholarships for girls and *dalit* children.

We welcome the initiatives taken by the Government. However, we note that important challenges remain, including with regard to the lack of impact of measures taken to improve



access to education and the significant number of children still out of school. Therefore, we call on the Government to continue to strengthen its efforts to:

- ensure that all child victims of bonded labour receive appropriate services for their rehabilitation and social integration, including access to education;
- combat trafficking in children through investigations, prosecutions and convictions;
- provide support and assistance to child victims of trafficking; and
- facilitate access to quality free basic education for all children, with a particular focus on girls and indigenous children.

Furthermore, we note that the Committee of Experts raised issues regarding the lack of effective and time-bound measures to prevent the engagement of children in the worst forms of child labour, to remove them from such work and to ensure their rehabilitation and social integration. The Committee of Experts refers in particular to the commercial sexual exploitation of children and the use of children in brick kilns, an activity which is inherently hazardous. It is estimated that over 13,000 children and 17,000 children work in these sectors respectively.

We echo the Committee of Experts' call on the Government to adopt effective and time-bound measures to:

- remove children from commercial sexual exploitation in the entertainment industry and to provide them with the appropriate assistance to ensure their rehabilitation and social integration; and
- to prevent all children from working in the brick kiln industry and to provide for their rehabilitation and social integration.

In addition, we note that according to the report on the National Labour Force Survey 2017–18, around 31,000 individuals are in forced labour in Nepal, of which an estimated 17 per cent are children. We call on the Government to take the necessary measures to remove children from forced labour.

While taking due note of the efforts made by the Government of Nepal to combat child labour, we are bound to note that child labour, and especially its worst forms, remains rampant in the country. We urge the Government to strengthen its efforts and mobilize all the means at its disposal to combat child labour in all its forms and to provide for the rehabilitation and social integration of victims of child labour, including access to education.

Employer members – We thank the Government of Nepal for sending updated information on this case. The Convention is the first ILO Convention to achieve universal ratification by its 187 Member States, a historic achievement which, sadly, is not synonymous with automatic universal application in law and in practice. It is essential that States comply with the Convention. Nevertheless, the fight to eliminate the worst forms of child labour concerns us all, it is a shared commitment, and it therefore requires the joint efforts of all the parties involved to ensure that children can develop their potential and guarantee the future of our societies.

We note that, since the ratification of the Convention by Nepal in 2002, the Committee of Experts had made five observations on this case, specifically in 2012, 2015, 2016, 2018 and 2022. This is the first time that we are discussing in this Committee the application of the Convention by Nepal. Allow me to introduce the case by referring to the current context in Nepal. This is a context of extreme poverty, aggravated by the pandemic, which heavily



impacted the economy and tourism, and of great political volatility, bearing in mind that in 2018 the first elections were held since the adoption of the Constitution of Nepal and in November 2022 the second federal and provincial elections were held since the entry into force of the current Constitution.

Despite all this, we note the measures taken by the Government such as the adoption of the National Master Plan on Child Labour 2018-28, for the implementation of which it is currently receiving assistance from the ILO Office in Nepal. Furthermore, Nepal is participating in other ILO projects and initiatives, in particular the global coalition Alliance 8.7, Safety and Health for All Workers in South Asia and the ILO-FCDO Partnership Programme on Fair Recruitment and Decent Work for Women Migrant Workers in South Asia and the Middle East, to mention a few. With regard to its observations of 2022, the Committee of Experts identified five main issues in relation to this case.

The first issue relates to direct assistance measures for the elimination of the worst forms of child labour, and the rehabilitation and social integration of child victims thereof, in accordance with Articles 3(a) and 7(2)(b) of the Convention.

The Employer members commend the efforts of the Government to provide direct assistance to the victims of bonded child labour. We also note the 27,021 *kamaiya* (bonded labourer) families, out of a total of 27,570, who have been rehabilitated, and 300 handed over to the local level, according to the Government's information. However, the Government should continue its efforts to ensure that all child victims of forced labour receive appropriate rehabilitation and social integration services, including access to education. The Government should also continue supplying information on the measures taken and on the child victims of forced labour who have been rehabilitated.

The second issue relates to the use, procuring and offering of children for the production of pornography or for pornographic performances, as covered by Article 3(b) of the Convention. The Employer members take note of the Act Relating to Children, 2018, which classifies as crimes a series of activities related to child abuse and sexual exploitation and the production of obscene materials or acts, imposing fines of 100 Nepalese rupees and imprisonment of up to five years. Although we welcome these legislative provisions, it is essential that there is effective application of the law so that the desired and awaited social change is achieved. In this regard, there will be a need, as indicated by the Committee of Experts, to receive information on the application in practice of the penalties related to the above-mentioned crimes, and also on the number of reported cases, prosecutions, convictions and penalties imposed.

The third issue relates to the supervisory mechanisms, penalties and direct assistance for child victims of the worst forms of child labour, as established by Articles 5, 7(1) and 7(2)(b) of the Convention, with a special focus on the trafficking of children.

According to information from the Government, the Anti-Human Trafficking Unit of the Nepal Police is adopting measures to curb trafficking in persons, especially girls, such as community awareness-raising and the establishment of border control posts, which seek to prevent human trafficking in Nepal. The Government appears to have observed that many trafficking cases are not reported in Nepal out of fear and social stigma, and so the community police is informing and training communities so that they will speak and report cases to the police. Despite all this, we insist that the Government must continue its efforts to combat the trafficking of children because of its extreme seriousness and provide information on the actions taken and their results.



The fourth issue relates to the adoption of preventive measures such as access to free basic education, as provided for by Article 7(2)(c) of the Convention. According to the latest information from the Government, in recent years various administrative measures have been taken to promote schooling for children, which has resulted in a 97.1 per cent school enrolment rate in the current year. We note that in Nepal free education is guaranteed up to secondary level. However, according to UNESCO, more than 74,000 children and 189,000 young persons did not attend school in 2021. In this regard, it is essential that the Government continues its efforts to promote access to high-quality free basic education for all children, in particular indigenous children.

The last issue relates to the adoption of measures to prevent the engagement of children in commercial sexual exploitation and in work at clandestine brick kilns, their removal from such work and the guarantee of their rehabilitation and social integration. The data on commercial sexual exploitation in the adult entertainment industry are serious, with more than 13,000 persons starting to work under the age of 18 years. On the other hand, over 17,000 children work in the brick kiln industry and 44.5 per cent of them perform hazardous work, despite the fact that, according to the Government, action is being taken to create a child labour-free brick kiln industry. In this situation, the Employer members can only align themselves with the Committee of Experts and insist that the Government should adopt effective measures to put an end to this situation of exploitation, and to provide appropriate assistance for the rehabilitation and social integration of these children and young persons.

The Employer members wish to emphasize that in order to eradicate the engagement of children in the worst forms of child labour, preventive measures are substantial but regrettably insufficient. The prosecution and punishment of adults, and the removal of children from the worst forms of child labour, cannot be sufficient, effective or sustainable in themselves. It is essential to adopt a multi-causal approach to put an end to child labour and adopt policies aimed at tackling the deep-rooted causes of child labour: namely, poverty, conflict, crises, lack of access to social protection, lack of access to education, and also the socio-economic circumstances which lead to the exploitation of boys and girls. Economic policies will be needed which promote the development of the regions that have the highest child labour risk factors.

Worker member, Nepal – I stand here today to address the issue of child labour and the pressing need for immediate action in Nepal. We welcome the positive initiative taken by the Government and support from trade unions and civil society on combating child labour. Nepal has successfully reduced child labour in the 2008–18 period and some positive steps have been taken by the Government. Nepal has signed up to be a pathfinder country for achieving target 8.7 of the SDGs and became a member of Alliance 8.7. However, the progress made is significantly slow and the Government has not been taking enough initiatives to meet this SDG target to end all forms of child labour by 2025. Despite the significant efforts to combat child labour, there are still several areas where the worst forms of child labour persist. These areas highlight the urgent need for targeted interventions and effective strategies to address these issues. Some of the major areas of the worst forms of child labour in Nepal include agriculture and domestic work, brick kilns and construction, mines and quarries, street hawking and forced begging, and sexual exploitation in the entertainment industry. It is crucial to note that these are the areas of child labour which often intersect with other forms of vulnerability, such as poverty, overall lack of education and high drop-out rates, discrimination and social exclusion. Addressing child labour in these areas requires comprehensive strategies that focus on poverty alleviation, access to quality



education, enforcement of labour laws, social protection programmes and awareness campaigns to change societal attitudes and behaviours.

Unfortunately, the Government has so far not taken enough action to end child labour, forced labour and human trafficking. To combat child labour, forced labour and human trafficking, the Government needs to review the legal framework in place. The essential legal framework to be reviewed is the Child Labour (Prohibition and Regulation) Act, 2000 and the Human Trafficking and Transportation (Control) Act, 2007, both are not yet in line with the new constitutional provisions, the federal systems and the spirit of the ILO Conventions. Furthermore, the road map for Alliance 8.7 implementation has not been moved forward yet, though the national unit has been installed in the Ministry to support the development of the relevant partners. This structure does not yet exist at the provincial and the local levels. The social protection schemes are still unable to include the informal sector workers due to the absence of the legal guidance on registration and distribution of identification (ID) cards.

The labour inspectors are significantly limited in capacity and funding to monitor and take action, and hardly reach workers in the informal sector. We know of 11 inspectors and they are, to our knowledge, not inspecting child labour. The Government has not followed the implementation of the labour audit provision and has not realized the announced training courses for them. In the recent budget speech of the Government, there has been no provision for the National Child Rights Council (the national apex body on children's rights), the Missing Children Response Centres (104 hotline), the Child Helpline (1098), and the rescue and rehabilitation budget for street and working children.

We call on the Nepal Government to implement the Child Labour (Prohibition and Regulation) Act, 2000, the Human Trafficking and Transportation (Control) Act, the harmonization of laws on child labour, as well as the legislation on compulsory education, forced labour and foreign employment. We further call on the Government to: adopt an integrated federal law on the prohibition, ending and rehabilitation of forced labour; promote registrations and distributions of ID cards for all informal sector workers through the local governments, and bring them under the coverage of the social security programmes; and expand the number of labour offices, or mandate employment service units at the local level labour desks with adequate, capable and competent human and financial resources. Furthermore, we call on the Government to immediately rectify and reallocate sufficient budget for the National Child Rights Council, the Missing Children Response Centres and the Child Helpline; promote labour audit and labour inspections with adequate training and licensing; promote the Alliance 8.7 action plan in local and provincial governments; and adopt an area-based approach in policies and programmes and increase investments to increase the number of child labour-free municipalities in Nepal.

Government member, Switzerland – The examination of the application of the Convention by Nepal has already been the subject of a number of observations by the Committee of Experts during the last ten years. Switzerland therefore notes with regret that the Government of Nepal has not taken the appropriate measures to fulfil its international obligations.

The situation regarding child labour in Nepal is a source of particular concern in two sectors: the adult entertainment industry and the brick kiln industry. According to a report by Alliance 8.7, more than 10,000 children under 18 years of age, the vast majority girls, work in the adult entertainment industry. These children are heavily exposed to forms of trafficking and commercial sexual exploitation. At brick kilns, thousands of children work in conditions which can seriously damage their physical integrity and mental health. The children are



exposed to flames, work for excessively long periods, sometimes at night, and have to carry very heavy loads.

The conditions of work described in these two sectors are not in line with the Convention. The Swiss Government therefore calls on the Government of Nepal to immediately take all necessary measures to put an end to these forms of work and remove all children from them. Among other things, this implies adopting legislative provisions prohibiting child labour, providing assistance to child victims of the worst forms of child labour to ensure their rehabilitation and social integration, and imposing criminal penalties on employers who have recourse to child labour in these sectors.

However, Switzerland duly notes the information sent by the Government of Nepal. We commend the efforts made by the Government of Nepal to combat the worst forms of child labour, particularly in agriculture and domestic work. We also commend Nepal's commitment as an Alliance 8.7 pathfinder country to combating child labour, forced labour and trafficking in persons. These efforts must be continued and strengthened by the effective implementation of the Nepalese Action Plan against child labour. Switzerland calls on the Government of Nepal to provide information and statistics on the results of the measures taken and encourages it to pursue its cooperation with the ILO.

Worker member, Mexico – The first part of this statement is an invitation to everyone here to reflect, since it is clear that if anything causes pain in our society, it is the mistreatment of young persons. Consequently, we cannot disregard practices that harm their integrity, since children are the pillars of our future society. We must underline the fact that, as stated in the preamble to the Convention, “[...] the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families”.

The Mexican employers repudiate acts that entail the trafficking of young persons, exploitation of them in sexual and unhealthy activities, and in any activity that can endanger their integrity and the right to life, the most invaluable thing that requires protection.

We urge the Government of Nepal to comply with the Convention since it has the obligation to take immediate action to prevent scenarios involving all types of labour referred to by Article 3 of the Convention. It should be borne in mind that the Committee of Experts has made five observations – in 2012, 2015, 2016, 2018 and, most recently, in 2022.

Let us not forget that the abuse of children is not restricted to a single geographic area. Even though we are dealing with the case of Nepal today, this is also a call to the international community represented here to prevent the continuation of these regrettable practices so as to eradicate violence against young persons. Many of us here are parents, and we need to adopt a much more empathetic approach to this situation in order to create the action needed in favour of young persons. Children need to be children, and we have to create the appropriate conditions to provide rehabilitation for those who have been subjected to such detestable practices and provide them with the necessary tools for their development and growth. The Member States need to guarantee their right to a full childhood, to health and to life.

We must prevent the recurrence of regrettable stories, including as a result of the recent global pandemic, such as that of a 13-year-old Nepali boy, who said, and I quote: “After they closed the school, I spent the whole day at home. My parents lost their jobs and soon we had



no money left and nothing to eat. I could not bear this situation and so I decided to do something”.

We insist that the future of young persons must be guaranteed since, if they do not enjoy a full childhood, we are destined to carry on living with the atrocities which have been committed until now.

Lastly, all the members of this Conference Committee were once under 18 years old. Why do I make this comment? Because under Article 2 of the Convention the term “child” means every person under 18 years of age. Clearly those here present probably came from diverse conditions – but these enabled us to get to this podium. We need to remember – and this is an urgent call to responsible adults, because we are not going to live forever, our tomorrows will come to an end one day – we need to remember that future generations will take up the discussion on the kinds of events that we are highlighting. So we insist that protection must be created for young persons, and we urge both the Government of Nepal and the whole international community to achieve this in order to eradicate these practices.

Interpretation from German: Worker member, Germany – The commitment of the Government of Nepal in the fight against child labour is to be acknowledged. Nepal ratified the Convention and formulated a National Master Plan to eliminate child labour by 2028. The Labour Code has been reviewed and has provided for sanctions. However, the economic situation after the pandemic has led to an increase in child labour. Currently, 1.1 million children are affected and that is approximately 15 per cent of the children in Nepal. However, the Child Labour (Prohibition and Regulation) Act, 2000, only covers children under the age of 16. It is also essential to protect young people between the ages of 16 and 18 from hazardous work. The Child Law must also be expanded to children between the age of 16 and 18 years and this must be passed in Parliament. The rights of those children must be better taken into account.

There are structural problems that lead to child labour. In Nepal, there is a large informal sector that undermines the effectiveness of any measures. In particular, the border regions with India and China, which are difficult to control, are a hotspot for human trafficking and that is why forced prostitution of minors often takes place in those regions. In this context, please let me also connect the economic situation of the parents with the situation of child labour. All workers, regardless of gender, class and caste, need to be adequately compensated. With higher wages for parents, fewer children have to go to work to supplement the household coffers. That has been made clear. In this particular case, we are discussing the worst forms of child labour with the most hazardous conditions. Work at kilns is highly dangerous for children. A ban must be enforced here more immediately. Labour inspectors must monitor this production more closely and increase the penalties. To do this, the budget and personnel must increase significantly, because as far as we know there are only 11 labour inspectors in the entire country. As to cross-border sexual exploitation of minors, international support is required. Moreover, as girls are particularly vulnerable to sexual exploitation, their protection must form a fundamental part of the reformed labour law. Strengthening state capacity is essential in the fight against child labour. The Ministry of Labour has undertaken action but we must ensure that this is sustainable. A more comprehensive social protection system should also be established. The ILO should assist the Nepalese Government here, both with legislation and with implementation through technical assistance. Finally, please let me highlight the central role that trade unions in Nepal have played in the progress made. Their involvement in all initiatives will continue to be essential if the goals just outlined are to be achieved.



Employer member, Guatemala – Not only are the children of the world the future, they are also the present, and so it is the responsibility of everyone to speed up actions to prevent and eliminate child labour and the worst forms thereof. Child labour deprives children of their childhood, their potential and their dignity, since it is harmful to their physical and psychological development. Even though the Government has undertaken various actions in its fight to comply with the Convention and eliminate child labour, this appears to be insufficient. We cannot ignore the fact that this is not just about taking action to eliminate child labour but about directly tackling the root causes. A multi-causal approach is required to open the way to stopping practices such as those described in the observations of the Committee of Experts, such as the trafficking of children, child pornography and abuse, making children work to pay off family debts, physical, sexual and psychological abuse, commercial sexual exploitation, low school attendance rates, and, no less important, the performance of forced labour and dangerous, unhealthy and unsafe work. All these actions are contrary to various fundamental rights established by the ILO.

Issues such as extreme poverty, corruption, violence, informality, and lack of access to education and healthcare, must be addressed and tackled with actions that promote decent, quality employment, and opportunities for adults to receive the necessary training for entry into the world of work, the implementation of social protection policies and the promotion of the right to safety and health at work, thereby creating a safe environment for children. Children have the right to be children, they must have the freedom to play and have fun, the right to receive special protection to be able to grow in a physically, mentally and socially free and healthy way, and the right to free education, since they represent the future of our societies. Child labour must be eradicated through joint action between States, workers' organizations, employers' organizations and society as a whole, understanding the diverse situations that give rise to child labour, and making use of social dialogue.

Worker member, Japan – The complaint before us is brought under the first ILO Convention that achieved universal ratification. The worst forms of child labour, such as slavery, sexual exploitation, the use of children in armed conflict or other illicit and hazardous work that compromises children's health, morals or physical well-being, deserve no place in our society.

We take note of the efforts and progress made by the Nepalese Government to eliminate the worst forms of child labour and improve the school enrolment and completion rates of children. However, many children are still out of school, and they face the highest risk of being involved in the worst forms of child labour. The situation has been worsened by the COVID-19 pandemic.

We are deeply concerned by the disaggregated data reported by the Government of Nepal, along with the ILO, which reveals that 79 out of 134 victims of human trafficking cases were children in Nepal's fiscal year 2020–21. Girls are especially vulnerable to commercial sexual exploitation as a result of human trafficking.

The research by CLARISSA (Child Labour: Action Research Innovation in South and South-Eastern Asia) further reveals different abusive and exploitative practices, including harassment and bullying against children in the adult entertainment sector by both customers and employers. The study also finds the involvement of different intermediaries, typically relatives, friends, neighbours, or brokers who children rely on to find work.

We, the Japanese Trade Union Confederation (JTUC-RENGO), believe the obvious alternative to child labour is education. Through free and compulsory education, we could prevent and remove the engagement of children in the worst forms of child labour. We are



also developing an initiative to connect Nepalese children to schools, together with the Japan International Labour Foundation (JILAF) and trade unions in Nepal.

The issue of the worst forms of child labour in Nepal is still persistent and systemic. We look to the Government of Nepal to continuously bring the laws and labour inspection practices in line with the Convention as recommended in the Committee of Experts' report and to engage with the social partners in implementing the recommendations made by this Committee.

Employer member, Colombia – First of all, I consider it important to underline the priority status which as Employers we attribute to the Convention, which seeks to protect children, the most vulnerable members of society. With the adoption of this Convention, the ILO recognized this subject as being fundamental for all Member States of the Organization. As we all know, this instrument seeks to provide a solution to a particularly aberrant situation. The Convention addresses the worst forms of child labour and makes a clear and unquestionable call for action, for all Member States to adopt urgent and comprehensive elimination measures.

In accordance with Article 1 of the Convention, the Government must take the necessary measures to secure the prohibition and elimination of the worst forms of child labour, including, under Article 3(b) of the Convention, the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances. According to the information provided, the Act Relating to Children, 2018, criminalizes a series of activities relating to child sexual abuse and exploitation and the production of obscene materials or acts, imposing penalties of a fine of up to 100 rupees and imprisonment of up to five years. Let us recognize here the progress made by the Government.

However, we reiterate the appeal made by the Employer members that the Government should provide information in practice on how it has secured compliance with this law. We urge the Committee to request the Government of Nepal to provide specific examples and evidence of the number of cases reported and investigated and those resulting in convictions. The Government should commit to implementing and effectively complying with the Convention and the legislation. We therefore request information which demonstrates the application of the Convention in practice.

In addition, we call for the issue of child labour to be analysed using a multi-causal approach. Progress must be made on the formulation of public policies, through tripartite social dialogue, which focus on promoting the development of the country, the creation of decent work and sustainable enterprises, and also the extension of social protection with the aim of ensuring that children and young persons can have access to social security and education.

In order to truly move forward in the elimination of child labour, specific economic measures are needed to promote the development of the countries and regions which are most at risk of child labour.

Lastly, we request the Government, with ILO technical assistance and through the various existing international cooperation mechanisms, to continue moving forward in order to ensure compliance with the Convention in law and in practice and to secure, as a matter of urgency, the elimination of the worst forms of child labour in the country.

Worker member, Guinea – I am speaking on behalf of the teachers' unions of Guinea and on behalf of the whole world. I support Education International, which expresses its deep concern at the issue of child labour in Nepal. As an organization engaged in promoting the



rights and well-being of teachers and pupils, we are fully aware of this serious violation of children's rights.

Child labour not only deprives children of their fundamental right to education but also exposes them to hazardous conditions and exploitation, which hampers their physical, emotional and intellectual development. Opportunities for quality public education for all must be widely promoted for every child without exception, and I am thinking in particular of girls and of children in marginalized, indigenous and poverty-stricken communities.

The Committee of Experts strongly encourages the Government of Nepal to continue its efforts to facilitate access of all children to high-quality free basic education, with particular account taken of girls and indigenous children.

As a teacher and a trade unionist, I can testify to the efforts of the teachers' unions to defend the right of all children to quality public education and protection against child labour. It is therefore important that Government measures involve trade unions and teachers in initiatives to remove children from child labour and combat school drop-out rates. I would also like to stress the value of pre-school education for involving children and their parents in school attendance from the youngest age. Clearly that implies adequate public financing of education.

In my country, Guinea, many children work in the domestic sector and in traditional, artisanal gold mines. I am well aware of the problem and I am not playing down the challenge faced by the Government of Nepal.

We therefore respectfully ask the Government of Nepal to request ILO technical assistance to strengthen its efforts to combat child labour and promote the rights of teachers as workers.

Employer member, France – “There is only one science to teach children: the science of human duty”. As you know, the case of Nepal is concerned with the worst forms of child labour. You have just heard the details listed by the spokespersons and the various speakers, on the basis of the Committee of Experts' report.

We note that this report describes a situation of progress by the Government to remove children from forced labour, and we welcome this. However, we observe that there is still a long way to go to align the children's situation with the principles of the Convention, particularly when they are exposed to dangerous situations, for example if they are forced to work on brick kiln sites or girls are victims of sexual exploitation. And what about the application of criminal legislation, in particular regarding the use of children as mere material for pornographic performances? We would like to have further explanations.

“There is only one science to teach children: the science of human duty”. What is human duty vis-à-vis children if not the simple application of the principles of the ILO? What does the Convention, ratified by Nepal, tell us? It seeks the prohibition and elimination of the worst forms of child labour, as a major priority for national and international action, in order to enable access to free basic education.

How can the worst forms of child labour be eliminated without joint action, which takes account of the importance of free education while taking the needs of the families into consideration? The response is both social and economic in nature. This is why we encourage the Government of Nepal to take up the cause of children as a major priority for national action. We understand very well that the difficult economic situation increases their vulnerability.



According to the terms of the Convention itself, child labour largely stems from poverty, and the long-term solution lies in sustained economic growth, leading to social progress. Consequently, it would be good to invite the Government to adopt a public policy which can develop the economic situation in order to reduce poverty, while not omitting to establish monitoring mechanisms, effective penalties, and direct assistance in order to remove children from the worst forms of child labour.

“There is only one science to teach children: the science of human duty”. This sentence which I have used several times in my statement originates from the philosopher Jean-Jacques Rousseau, who was born here in Geneva. It reminds us that the future is in the hands of our children, and that we will not be able to build a more humane world if we fail to teach children the principles of decent work and social justice.

Observer, Building and Wood Workers’ International (BWI) – I would like to draw your attention to the situation of child labour in the brick kiln sector in Nepal. The work in brick kilns is hazardous in nature and widespread use of child labour is a cause of grave concern and undermines the Convention. The constitutional and legal safeguards have failed so far. This is despite the Nepal Labour Act, 2017 and also the earlier Child Labour (Prohibition and Regulation) Act, 2000, that prohibits children under 18 years of age undertaking hazardous work. The Government of Nepal also has in place the second National Master Plan on the Elimination of Child Labour (2018–28).

I would like to cite the Nepal Child Labour Report 2021 that revealed that nearly 1.1 million children are involved in work, of which 200,000 are involved in the worst forms of child labour, including in brick kilns. Further, another important report specifically on the brick kiln sector, jointly prepared by the CBS, the Government of Nepal, the ILO and UNICEF and regarded as the first nationally representative research on the brick kiln industry, reveals important statistics that expose the prevalence of child labour, with 6,229 or 3.5 per cent of them in forced labour, among the 176,373 manual labourers in the brick kilns (including family members). Further, it estimated 34,593 children (between the ages of 5 and 17) are living on brick kiln worksites and children account for approximately 10 per cent (17,738) of total workers. About 96 per cent, or 17,032, of these working children were identified as being in child labour.

This report validates the findings of BWI affiliates in Nepal, that they have experienced in their outreach to brick kiln workers and have been raising constantly to the relevant government authorities. Due to insecure and informal employment, the workers are often denied freedom of association resulting in low unionization that also undermines the resolution of workers’ grievances and realization of decent work in the sector.

Wage payment in the sector is largely through a piece-rate system that is abysmally low and pushes children to also contribute to the labour to augment their family income. When workers are employed in decent work and receive decent wages, children do not have to contribute to their labour to sustain their families. Child labour in the brick kiln sector is a serious symptom of a lack of decent work for adults and their families. Where the rights of adult workers are enshrined in ILO Conventions and are properly respected, household incomes are higher, and the children are more likely to be in school than at work. In addition, strong trade unions in the workplace and in the community are the most effective means to ensure that children and those workplaces and communities will not face exploitation.

Thus it is of critical importance to promote registration and distribution of ID cards for all informal sector workers through local governments and bring them under the coverage of the social security programmes.



Government representative – Thank you for the concern and the questions which are raised here on this floor. We respect and obey this decision which is raised here on this floor. We respect the obligations which we have. We respect the legislation we have.

The worst forms of child labour in Nepal are not due to only one single cause; we have various causes behind it. Poverty is the most influential there and the social structure is not so developed. We do not have the mechanisms for awareness-raising, and the sort of socio-economic background we have is very poor. These are the main causes and also we do not have a proper education system.

There are actions taken by the Government but it is not enough, and we feel that the strategy we have is not giving us the proper results. On the basis of the strategy we have, we have an action plan, and a viable master plan and we have lots of interventions in this area. As I already mentioned, it is not enough, and the result is very poor, I realize it.

Regarding the quantity of child labourers, we have gradually reduced the number of victims.

When we talk about the actions taken, we need direct intervention, as has been suggested to us. When I go back to Nepal, I will suggest this to the Government and the proper people, including the tripartite constituents governing all the labour issues, and with whom we will share these issues and react accordingly.

Eradicating poverty is the most important factor to address the whole scenario; skills development and awareness-raising are also important. The education system should be developed. We have the scenario that more than 97 per cent of children are going to school, but we still do not have quality education. This has an impact.

When we talk about the execution, the prosecution and sentences, we also have interventions. When we talk about the legal system, we have planned for the amendment of the Child Labour (Prohibition and Regulation) Act, 2000, in accordance with the Constitution. When we talk about the proper allocation of the budget, we can say it is not true.

Finally, your concern is very important to us, and your interventions are very important to us too. With regard to the intervention on child labour issues in Nepal, there is not only the issue of the worst form of child labour, there is also the issue of the children who have the right to go to school for a proper education. When we do not provide children with education, the children do not have analysing skills nor the proper knowledge. From the side of the Government, I take responsibility for that. I say thanks for your concern and suggestions, they are very important to us.

Employer members – The Employer members wish to thank the various speakers who have taken the floor, and in particular the Government of Nepal, for its statements and the information provided. In our closing observations we would like to emphasize once again the importance of the Convention and observance thereof by all States which have ratified it. Only by ensuring the rigorous application of its provisions will we be able to eradicate the worst forms of child labour and achieve the goal of eliminating child labour by 2025, as established by SDG target 8.7.

Although we duly note the progress made by the Government in law and in practice, we cannot ignore the need for greater efforts at national level to fully apply the Convention and achieve its underlying objectives. Therefore, in line with the recommendations of the Committee of Experts, the Employer members wish to request the Government of Nepal: to adopt a multi-causal approach to put an end to child labour and adopt policies to tackle the



deep-rooted causes of child labour (poverty, conflict, crises, lack of access to social protection, lack of access to education, and also the socio-economic circumstances which lead to the exploitation of children); to adopt economic policies that promote the development of the regions at greatest risk of child labour; to continue its efforts to ensure that all child victims of bonded labour receive appropriate rehabilitation and social integration services, including access to high-quality free basic education, and continue providing information on the measures taken in this respect and also on child victims of bonded labour who have been rehabilitated; to also provide information on the application in practice of penalties for recently established crimes relating to the sexual abuse of young persons, and also on the number of reported cases, prosecutions, convictions and penalties imposed; and to adopt effective measures to remove children under 18 years of age from commercial sexual exploitation in the entertainment industry and from the brick kiln industry, and to provide appropriate assistance for their rehabilitation and social integration.

Lastly, the Employer members wish to invite the Government to continue availing itself of ILO technical assistance and to continue collaborating with the Office, in particular through existing projects and initiatives relating to the elimination of child labour. We rely on the collaboration of the Government of Nepal with regard to the application without delay of the above-mentioned recommendations, in order to achieve the full observance of the Convention in law and in practice.

Worker members – The Government of Nepal has undoubtedly demonstrated its political will to tackle child labour and its worst forms through the adoption of the laws prohibiting child labour and of measures to protect, rehabilitate and reintegrate victims of child labour. The Government also adopted a National Master Plan on the Elimination of Child Labour 2018–28.

Despite these efforts, too many children in Nepal remain exposed to child labour. Among the 7 million children between the ages of 5 and 17 in Nepal, 1.1 million children are found to be engaged in child labour, with a large prevalence in the agricultural sector. Children in Nepal are also vulnerable to the worst forms of child labour, including agriculture-based bonded labour practices, commercial sexual exploitation, and hazardous work in the brick kiln industry.

We note that according to a 2021 joint report of the ILO and the CBS, while the country has experienced a decrease in child labour over the last two decades, there is still a lot more to be done. The considerable number of working children and scale of child labour shows a gap of proper implementation of laws and policies to eliminate child labour. The joint report also points to the need to adopt a coordinated approach to law and practice to fill the existing gaps in child labour and child protection in the country.

One of the key challenges for ending child labour in Nepal is the Government's lack of resources and capacity. The Ministry of Labour is the focal ministry for child labour, but it lacks adequate resources to protect children.

We take due note of the efforts deployed by the Government of Nepal to address the issue of child labour and its worst forms. We echo the Committee of Experts' call to the Government to: strengthen its efforts to ensure that all child victims of bonded labour receive appropriate services for their rehabilitation and social integration, including access to education; provide support and assistance to children victims of trafficking; combat trafficking in children through investigations, prosecutions, and convictions; and facilitate access to free, basic, and quality education for all children, with a particular focus on girls and indigenous children.



The Government should also adopt effective and time-bound measures to remove children from commercial sexual exploitation in the entertainment industry and to provide them with the appropriate assistance to ensure their rehabilitation and social integration; to prevent all children from working in the brick kiln industry; and to provide for their rehabilitation and social integration.

Noting that Nepal currently benefits from the technical assistance of the ILO, we invite the Government to continue to avail itself of it, focusing especially on providing capacity-building to the labour administration and other public authorities in charge of combating child labour and protecting children, and on reinforcing policy coherence and coordination at the national and regional level.

Considering that the National Master Plan is about halfway to its scheduled completion, a review of progress achieved and remaining gaps in implementation could be conducted.

Conclusions of the Committee

The Committee noted the written and oral information provided by the Government and the discussion that followed.

The Committee noted the initiatives taken by the Government to address the worst forms of child labour.

The Committee noted with deep concern the persistence of the phenomenon, including agricultural-based bonded labour, commercial sexual exploitation and hazardous work in the brick kiln industry.

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

- **eliminate the worst forms of child labour, notably in agriculture, the brick kiln industry and the entertainment industry, and to ensure that child victims of such hazardous work are removed from these situations and rehabilitated, particularly through access to free education and vocational training;**
- **scale up its efforts to end child labour through a multi-causal approach and adopt policies to address the root causes of child labour;**
- **continue its efforts to ensure that all child victims of bonded labour receive adequate services for their rehabilitation and social integration, including access to free, basic and quality education; and to continue to provide information on measures taken in this regard, as well as on child victims of bonded labour who have been rehabilitated;**
- **take effective and time-bound measures to remove children from commercial sexual exploitation, bonded labour in agriculture and hazardous work in the entertainment and brick kiln industry and to provide adequate assistance for their rehabilitation and social integration and provide information to the Committee of Experts on the measures taken in this regard and the results achieved, indicating the number of children under 18 years removed and rehabilitated;**
- **increase material resources to the Ministry of Labour, Employment and Social Security to help combat the worst forms of child labour;**
- **provide information to the Committee of Experts on the application in practice of section 72 in relation to section 66(3)(d), (h) and (j) of the Act Relating to Children, 2018 for the offences related to the use, procuring or offering of children for the**



production of pornography or pornographic performances, indicating the number of cases reported, prosecutions, convictions and penalties applied;

- redouble efforts to combat trafficking in children and provide information to the Committee of Experts on the activities undertaken by the Nepal Police and the high-level task force, in monitoring and identifying victims of trafficking, and on the number of cases of trafficking of children identified, investigations, prosecutions and convictions carried out and the penalties imposed;
- improve the functioning of the education system to facilitate access to free, basic and quality education for all children, particularly girls and indigenous children, and to take measures to increase the school enrolment, attendance and completion rates and to decrease the school drop-out rates, and provide information to the Committee of Experts on the measures taken in this regard, and on the results achieved; and
- provide information on the practical implementation of sanctions related to the newly introduced offences of child sexual abuse, as well as on the number of cases reported, prosecutions and convictions carried out, and penalties applied.

The Committee requests the Government to continue to avail itself of ILO technical assistance to ensure full compliance with the Convention without delay, focusing especially on:

- providing capacity-building to the labour administration, labour inspectorate and other public authorities in charge of combating child labour and protecting children; and
- reinforcing policy coherence and coordination at the national and regional level.

The Committee requests the Government to provide information as requested by the Committee of Experts before 1 September 2023, together with detailed information on the measures taken to implement these recommendations.

Government representative – It is my great pleasure to have the opportunity to be here and provide remarks on the case of forced labour and bonded child labour, prevailing in Nepal, which needs immediate action from the side of the Government of Nepal. We read the conclusions and recommendations provided by the Committee, and we have some remarks.

The Government of Nepal has taken measures and actions which might not be enough in themselves to solve all these issues. We have good cognizance among employer and trade unions on the basis of ILO principles but it seems there are all kinds of reasons which can be reconsidered in the future.

All kinds of recommendations are seriously taken and there will be all of the required actions implemented in the future. A report will also be available to the Secretariat within the time frame. The Government of Nepal is committed to materialize in actions, all of the solutions.



Netherlands – Sint Maarten (ratification: 1951)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 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 employers' 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 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



by 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 emphasizes 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 for this association – was not in conflict with Kingdom laws.

The Government of Sint Maarten also met with the Regional Director in June 2022, where 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 by 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, as the SER forms a vital part in our legislative process.

We move to the right of workers' organizations to organize their administration and activities, striking rights (direct request 2017) and the response to the observations of the 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 provided via letter on 18 November 2022.

Sections 372, 373, 374 *bis*, 374 *ter*, 374 *quater*, 376, 387 and 391 were referenced in the previous letter drafted to the Committee. These sections 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 374(a), 374 *ter* and section 374(c).



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. As 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, which was 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 subject to disciplinary action in certain cases: for example, if they did not fulfil the professional obligations requested, were guilty of any violation of the regulation or acts of omission, or were involved in a criminal prosecution, they could be subjected to the disciplinary actions described in section 87, paragraph 1. Considering that the above-mentioned sections of the Penal Code have been removed, public workers can no longer be subject 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 after it obtained in 2010 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 Court of Appeals 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 independence are not the same, and the Convention is about independence.

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 convened 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' organizations 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 and any unequal treatment between organizations and recommend 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 within the scope of the Convention. The comments and the questions of the Committee of Experts therefore have no grounds 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 freely established organizations 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 working conditions. 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 this case in 2022, the Court of Appeals 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 employers' 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 with 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 on 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 even had this Government office’s address and phone number on its stationery. When they 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 to 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 from 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, the Government has not made any attempt to meet on this topic since. What is more, the Committee’s advice to refrain from any undue government interference seems to have been poorly understood and to have only moved 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, on the 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, understanding 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 those of 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 of 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 to be employed by the client company where the worker is placed, but employed by the employment agency.

We see that workers from employment agencies lose their job placements if they stand up for better working 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 from 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 for 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 workers to organize in reality in Sint Maarten.

For teachers in Sint Maarten, especially at one faith-based government-subsidized school, the right to organize 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 the 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, as to 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 has also been 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 a matter 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, while others working on government-subsidized school boards are not civil servants but have most of the same rights and benefits as 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 of teachers to strike, and legal opinions can be contradictory 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 violated 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 to 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 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, as to the 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, today this inequality in the remuneration of workers and the social protection floor in the Kingdom of the Netherlands is affecting 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.

Worker member, France – Among other clarifications, the Committee of Experts asked the Government to comment on the statement that, and I quote: “the widespread use of temporary contracts by employers constitutes a significant limitation to the right to organize”.

Sint Maarten, the Dutch part of a small island in the West Indies, is the result of a colonial heritage, which is cosmopolitan and characterized by a workforce that was once servile and is now highly casualized. The use of employment agencies to serve the economic interests of tourism and other activities is particularly important. The flexibility advocated by the Government, aimed at promoting economic activities, is accompanied by measures that deprive workers of job security and the free exercise of trade union activity, in total disregard for the principles of the Convention.

For example, when it comes to the designation of a representative trade union by referendum, only workers directly employed by the company can take part. Contract workers from employment agencies, including those performing jobs in the client company which are permanent, are not allowed to take part in the referendum because they are formally considered not to be employed by the client company where the worker is placed, but employed by the employment agency.

Internal demands by agency workers are prohibited, and workers placed with a client company lose their jobs if they demand better working conditions at the client company, or if they unionize or unite with workers directly employed by the client company. From one day to the next, if the management of the client company so desires, workers from employment agencies can be replaced by other workers hired by the same agencies. As a result of this so-called “flexibility” in the labour market, contract workers are not paid by the employment agency if no other job is offered to them after they have been replaced. This latitude given to companies on the grounds that they use intermediaries is a clear violation of the Convention.

The result is that contract workers are afraid to unionize or to unite with workers directly employed by the companies. Furthermore, the current legislation does not offer sufficient protection to workers hired directly by a company for fixed-term contracts, and the misuse of such contracts also enables companies to limit access to trade union representation and the exercise of the right to organize.

According to the latest information, employers, company managements and even ministries are sending warning letters to these workers and their unions. These workers are even being summoned by the courts.

It is therefore clear that, despite the Government’s claims of engaging in good practices, the explicit right of workers to practice trade union activities, regardless of the type of employment contract, is flouted in Sint Maarten.



Not only are workers denied a fundamental right, but such practices deprive them of access to a decent life. With precarious, non-permanent contracts, they are unable to meet certain administrative obligations that would enable them to benefit from decent living conditions. This is unacceptable to the Committee.

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

There are a couple of rebuttals I would like to make. First, 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 recently as April of this year.

It is important to note that at no point did the SER ever restrict the ESCM 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 are speaking about right now, the SER, was established by the Government. We seek the best interests 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. 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 suggested in this manner. It is important to note that the COCI has always been a representative in the SER as well. It is important to note as well that when the facilitation or recommendation came about, 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 at which it was advised to give the ILO the opportunity to mediate and for 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 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 it to see if it could facilitate an amicable solution.

There were also statements made about the newly passed law by Parliament, but I would like to note that Parliament is the highest legislative body in our country. Parliament has the right to amend, approve, disapprove any articles or laws that come before 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 the people and not just some. We also hear the employees speak of short-term contracts and the abuse of short-term contracts. It is important to note that we have also taken into consideration these complaints and made a new amendment to our Civil Code, which is currently before the SER, 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 could handle this amicably because the SER being in disarray hinders a lot of our legislative processes and enhances some of these same issues that the employers and employees speak about. 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 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 into 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 consultations on the matters raised by the Committee of Experts and others relating to the competence of the ILO as set out in 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 regard to Sint Maarten remains clear: we do not compromise the freedom of association of employers. The Employer members therefore urge the Government to take immediate and effective measures to ensure that, both in law and 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 in 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 been pending since 2017. We emphasize the quality and relevance of this data, as well as future regular reports, 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 for, and welcome the technical assistance from the ILO which was requested in 2022. We look forward to being able to resolve the issues together, following the recommendations and coming to amicable solutions for everyone involved and thereby ensuring adherence to Convention No. 87.

Nicaragua (ratification: 1967)

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

Discussion by the Committee

Government representative – On behalf of the State of Nicaragua, I refer to the 2023 report of the Committee of Experts in which it notes the observations of the International Organisation of Employers (IOE) and the ITUC, and reiterates the comments made in the discussion held in the Conference Committee on the Application of Standards in June 2022 in relation to the application of the Convention by Nicaragua. With reference to these comments, in which the Committee of Experts urges the Government to give effect to the recommendations and conclusions of the Conference Committee and to provide information in consultation with the social partners on the measures adopted in this context, the State of Nicaragua considers that it is regrettable and unacceptable for the Conference Committee to take up this subject once again when it was addressed and clarified at the 110th Session of the International Labour Conference. It is clear that an attempt is being made to link a subject that is not related to the spirit of the Convention, as set out in the Constitution and Standing Orders of the ILO, thereby once again demonstrating interference and the politicization of matters that are not related to labour.

We refute the instrumentalization and politicization of the ILO, through comments and interventions with a clear political bias which damage the credibility of the House and its Constitution. We condemn the fact that the present Committee is the stage for perverse interests with a view to interfering in the internal affairs of Nicaragua for the purpose of undermining the peace, sovereignty and labour and social stability of Nicaraguan families.

The State of Nicaragua, in relation to the recommendation to amend sections 389 and 390 of the Labour Code, recalls that, in accordance with the principle of sovereignty established in the Political Constitution, we have always held and reaffirm that the decision rests with the people of Nicaragua, and not in recommendations that affect the rights granted to Nicaraguan families.

The State of Nicaragua ensures compliance with the Political Constitution, all national labour laws and the international Conventions of the ILO ratified by Nicaragua for the benefit of workers and is continuing to strengthen dialogue and the right to freedom of association with Nicaraguan workers with a view to ensuring the full exercise of the right to organize their activities and formulate their programmes in full freedom, thereby giving effect to the right of workers to participate in the management of enterprises through trade unions. We add that we are a responsible State under international law and that we have fully complied



with the requirement to provide reports on this subject, as set out in articles 19 and 22 of the Constitution. We fulfil our financial obligations in respect of the Organization, of which we have been a Member since its foundation, despite the unlawful coercive measures fomented by certain Government Members of the ILO.

And yet, in Nicaragua, women and men Nicaraguan workers benefit from legal provisions that enable them to strengthen dialogue and consensus in the event of labour disputes or strikes with a view to ensuring stability of employment as a very important strategy to achieve progress in the eradication of poverty and the defence of labour and social peace in our country. A clear illustration of the harmonious social dialogue between workers and employers in Nicaragua is the recent adoption of an increase of 10 per cent in the minimum wage.

We reiterate that the Government of National Unity and Reconciliation does not accept and will not accept the use of this mechanism to continue destabilization campaigns and that we are continuing to restore the rights of Nicaraguan families, including the right to employment stability, freedom of association and social peace and justice.

Employer members – I thank the Government of Nicaragua for its appearance today, and for the information provided to the Committee. Nevertheless, we refute several of the arguments put forward by the Government representative this afternoon.

Indeed, we have before us a case involving a fundamental Convention of this Organization. We are faced with a case that has already been discussed on various occasions and on which the Committee of Experts has provided comments.

This year, the Committee of Experts has once again made comments as there has been no change in the situation denounced by the IOE on 1 September 2021, and indeed the situation is worse in certain respects. The observations have taken into account the comments made in 2022 by the IOE and the ITUC, and we are once again examining observations in 2023 in relation to the State of Nicaragua and the Convention, of which we will soon be celebrating the 75th anniversary of its adoption. The Committee of Experts tells us, in brief, that it deeply regrets that the Government's report contains no information on, nor any allusion to, the recommendations made by the present Committee in 2022, which is a matter of concern to us. The only thing that the Government of Nicaragua has done is inform us of certain progress in relation to the application of the Convention. We are therefore concerned at this attitude of ignoring the recommendation made by the Committee, a supervisory body of the ILO that is tripartite in composition. This therefore denotes an apparent lack of action and an apparent absence of commitment to ensure respect for these standards-related obligations which have been incumbent upon the Government of Nicaragua since 31 October 1967 by virtue of its ratification of the Convention.

The Committee of Experts also urged the Government, in consultation with the social partners, to take each and every one of the measures urged by the Conference Committee last year, which concern serious and urgent matters.

The Committee of Experts called for the freeing of any employer or member of a trade union who may have been imprisoned in relation to the exercise of the legitimate activities of their organizations, in respect of which we have not received any justification or explanation whatsoever from the Government. It also requested the Government to establish the tripartite dialogue round table recommended by the Conference Committee in 2022 without further delay and to accept at an early date the direct contacts mission.



With reference to Article 11, the Committee of Experts has recalled that the rights conferred upon the employers' and workers' organizations protected by the Convention are void of meaning in the absence of respect for fundamental freedoms: such as the right to protection against arbitrary detention and imprisonment; and the right to a fair trial by an independent and impartial tribunal; and requested the Government of Nicaragua to report on the measures adopted. Up to now, in relation to a case which in the view of the Employers' group is serious and urgent, we have not received any reply on this situation from the Government of Nicaragua.

This attitude by the Government is serious, in our view, because it is resulting in a crisis in the work of the ILO supervisory bodies, which are tripartite in composition, and the conclusions that they adopt are therefore approved with the consensus of the social partners in the Committee. It is therefore of no avail to make allegations when the provisions of ILO Conventions, Recommendations and standards are unfavourable and to avoid taking action when the comments of the supervisory bodies do not fit in with our interests and situations. This is a matter of concern and means that, once the case has been examined, we will be emphatic in reiterating many of the conclusions reached by this Committee last year, with the corresponding renewed emphasis.

According to several international and Nicaraguan human rights bodies, acts of persecution and intimidation are persisting in the State of Nicaragua which are tantamount to the criminalization of any expression of dissidence and of freedom of expression, including through the detention and prosecution of members of civil society under charges and procedures of questionable legality. Moreover, these bodies emphasize the adoption of a series of laws which have resulted in the closure of important civic and democratic spaces in violation of international standards on these subjects.

With reference to the first of these points, a series of social leaders, among others, have been imprisoned, and we wish to place emphasis on the situation of José Adán Aguerri Chamorro, former President of the Higher Council for Private Enterprise (COSEP), as well as the threats, intimidation, persecution and reprisals against Micheal Edwin Healy Lacayo and Mr Vargas, among others, who are officers of the COSEP, as well as the violent seizure of Mr Healy's ranch on 17 June 2018 by 15 armed persons with their faces covered who took possession of his private property. In view of this situation, in respect of which, in light of its gravity, I recall that the ILO Director-General in two communications in 2022 called on the Government of Nicaragua to provide information concerning the arbitrary detention of José Adán Aguerri Chamorro, as well as the other cases, and on 21 October 2021 concerning the last President of the COSEP, Micheal Healy, and his Vice-President, Álvaro Vargas.

Acts of interference and threats have also been made against the property of the COSEP. Charges have been made on grounds of fiscal terrorism, a mechanism used by the Government against employers who, as opponents, are subject to charges for the crime of tax fraud. In relation to the land seizures, defamation campaigns and persecution of the COSEP, we would like to refer in particular to the level that this situation relating to the COSEP has reached with Ministerial Decisions Nos 26 and 27 of 2023, through which the Minister of the Interior revoked the legal personality of 19 employers' organizations, including the COSEP, on the grounds of failure to comply with the laws regulating them. The legal opinion on which these administrative acts are based indicates that the organizations did not complete the process of validating their registration, there were inconsistencies in the information provided and unjustified changes in their accounts. The opinion claims that, through these acts, they were not adopting policies of transparency, even though the



comments made refer exclusively to 2022. It was published on 6 March 2023 in the *Gaceta Oficial*.

The administrative dissolution of the COSEP, by decision of the Government, is in flagrant violation of the provisions of Article 4 of the Convention, which provides that workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority.

Not only was its legal personality revoked, in violation of the Convention, but in various cases the Government seized the property and froze the bank accounts of the chambers that had been dissolved. Furthermore, on 9 February 2023, the Court of Appeal of Managua ordered the immediate deportation of 222 political prisoners to the United States of America. On the following day, they were declared traitors of the country and deprived of their Nicaraguan nationality. On 15 February 2023, another 94 persons were deported to the United States, including two Presidents and a Vice-President of COSEP, whose nationality was also revoked.

The United Nations High Commissioner for Refugees (UNHCR) has expressed concern at this situation. It indicates that the recent legislative reforms in Nicaragua allow citizenship to be revoked on arbitrary grounds and are contrary to Nicaragua's obligations under international and regional human rights law. International law prohibits the arbitrary deprivation of nationality, including on racial, ethnic, religious or political grounds. The exercise of fundamental rights, including freedom of expression, freedom of assembly or other rights associated with political views, can never justify the deprivation of nationality.

The UNHCR called on Nicaragua, which is party to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, to respect its international obligations to ensure the enjoyment of the right to nationality and to take measures to prevent and eradicate statelessness. We are therefore confronted by a serious case and, above and beyond the conclusions that we may adopt in the Committee, the Employers' group in any case reserves the right and does not set aside the application of any other instrument available through the ILO Constitution to defend the situation of employers in Nicaragua and to endeavour to rectify the flagrant violation of the Convention by the Government of Nicaragua

Worker members – This is the second consecutive time that the Committee has considered the lack of application of the Convention by the Government of Nicaragua. As the Committee of Experts indeed noted, the Government reports contain no information or reference to nearly all the recommendations by the Committee last year, with one exception.

In this regard, we start by urging the Government to provide the Committee of Experts with all information on any measure it may have taken to ensure compliance with the recommendations. Before going into any of the specific points, we also again want to reiterate the basic principle that all governments must respect the right to freedom of association. We must emphasize, recalling the Committee of Experts, that the right to freedom of association is emptied of all meaning if there is no respect for fundamental human rights, the rule of law and civil liberties. We urge the Government to provide the Committee of Experts with all the material information regarding the charges brought against the leaders, the legal or judicial proceedings instituted and the outcome of such proceedings.

We must stress, as the Committee of Experts has done, the crucial role that tripartite social dialogue can play in achieving significant progress at the national level and, in this



sense, the Worker members also request the Government to facilitate social dialogue with the presence of the ILO. We reiterate our recommendation last year to urge the Government to establish a tripartite dialogue round table without further delay and to avail itself of ILO technical assistance to ensure full compliance with its obligations under the Convention.

On legislative matters, the Committee of Experts has insisted on the need to amend sections 389 and 390 of the Labour Code in order to ensure that compulsory arbitration is only possible in cases where strikes may be limited or even prohibited, mainly in cases of conflict within the civil service relating to officials exercising authority on behalf of the State, or in essential services in the strict sense of the term, or in the event of an acute national crisis.

The right to strike, as an intrinsic corollary of the fundamental right of freedom of association, is crucial for millions of women and men around the world to assert and defend collectively their economic and social rights, including the right to just and favourable conditions of work and the right to work in dignity and without fear of intimidation and persecution. The Worker members expect the Government to take all necessary measures with the technical assistance of the ILO to amend sections 389 and 390 of the Labour Code.

We note with interest the Government's efforts to strengthen the rights to freedom of association and, according to the information they provided, 44 new trade union organizations were formed in 2021, affiliating 1,158 workers, and 997 trade union organizations were updated, bringing together over 65,000 workers. Nevertheless, the Worker members highlight that the climate of violence, coercion and threats of any type aimed at workers' and employers' organizations does not encourage the free exercise and full enjoyment of the rights and freedoms set out in the Convention.

In this regard, as also emphasized by the Committee of Experts, the Worker members call on the Government to cease all acts of violence, threats, persecution, stigmatization and intimidation in relation to the exercise of both legitimate trade union activities and the activities of Employers' organizations. We urge the Government of Nicaragua to provide all the information requested by the Committee of Experts in this regard and, with the technical assistance of the ILO, to take all the necessary measures to comply with its recommendations.

Employer member, Nicaragua – I am speaking as a representative of private employers in Nicaragua, without forgetting that there was indeed an organization which, as a result of its actions, is in its current state.

We acknowledge the work that is being carried out at this session, and I am here representing the employers of the Nicaraguan Employers' Organization and as an accredited titular member of the country's tripartite delegation. We have come here to continue and contribute to the ongoing work on subjects relating to labour, wages and occupational safety and health, thereby giving effect to tripartism in our country. You can see here that we are representing employers who have been running businesses for over 30 years and who have never belonged to the so-called organization that has been mentioned, the COSEP, and we have been working independently to develop the Nicaraguan economy.

In this forum, we have analysed the report on the application of international labour standards, in which it is indicated that Nicaragua is not in compliance with the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). In this regard, I have heard various public officials and Employer members make accusations that amount to little more than political statements that are ill-informed, ill-intentioned and even destructive, based on



unreliable information, and which even hide behind the misuse of serious institutions such as this Organization and other human rights bodies, whose focus is unfortunately politicized, and not focussed on the primary objective, which is the organization of work under conditions that enable our countries to develop with equity and labour justice.

This practice has been used repeatedly; we saw it implemented in 2019, when I called for corrections to be made and for a positive focus on these matters for the benefit of our countries, which are mainly developing countries.

Employers' meetings are currently raising matters that are not in line with the national situation in relation to employers' organizations, and they have referred to the economy, social issues and issues related to the impact of the failed coup of April 2018. It was a disgrace that, ignoring the approach adopted by our country to security for its citizens, which was exemplary in Latin America, and the sustained annual economic growth of 5.2 per cent over several years, as recognized by the World Bank, in April 2018, with the participation of existing employers' representatives, a barbaric act was committed which was harmful to our enterprises in general, and those represented by that organization.

In addition to this destructive episode, they have failed to refer to the pandemic that hit us in 2019 and 2020, and two devastating hurricanes, Eta and Iota.

We as employers wish to point out that, together with the productive sector, which has never been held back, and through business investment, the labour of the workforce and appropriate Government policies, we have succeeded in restoring the work dynamic and achieving growth in production, with investments in road infrastructure, bridges, production routes and modern hospitals, creating one of the best health networks in Central America. Other projects include the provision of drinking water, sewerage systems, treatment networks, strategic energy projects, the construction of sports centres across the country, and more. Private enterprises have participated in all these initiatives, including our member enterprises and others, at both the national and international levels.

There are, however, persistent voices that refer to the disappearance of some businesses and organizations, including the previously referred to COSEP, to claim that there is no freedom of association and other falsehoods that do not reflect the reality in the country. They fail to acknowledge that many enterprises disappear as a result of their own actions, as happens with poorly managed enterprises, and others that do not fulfil their legal obligations, such as taxes, social security and legal matters.

Nicaragua is a democratic developing country, and it is our duty to comply with the legal system that adopts laws. Employers in Nicaragua are represented by the Association for the Promotion of the Development and Sustainability of Nicaragua (APRODESNI), and the National Confederation of Small Industry (CONAPI), covering micro, small and medium-sized enterprises, which account for between 80 and 85 per cent of the Nicaraguan economy, and which I have the honour of representing. It is not true that the organization to which reference has been made, of other employers, is the most representative in the country.

It must be made clear that, while some organizations, such as that one, are backed by international recognition and do not enjoy due recognition at the national level because they have usurped the representation of employers. We emphasize that the representation of Nicaraguan employers lies in the organizations referred to previously.

I therefore call on my employer colleagues here, the workers and trade unions that are present, and the governments accompanying us here, to understand the situation in our country, our history and the damage caused to our enterprises as a result of ill-intentioned



information, as Nicaragua is under pressure from a number of powerful countries and their organizations, including international financial institutions, such as the World Bank, the International Bank for Reconstruction and Development, the International Monetary Fund, the European Investment bank and others, which have cancelled the foreign investment that our country needs.

All of this is limiting national economic development, the well-being of citizens and business growth. With reference to the court cases, regrettably they have their roots in compliance with laws, whether in our country, Mexico or the United States, where they are applied with greater severity.

Our enterprises and employers' organizations are continuing to work, contributing to national economic development, and we will make every effort to keep you informed here, as we have been doing.

Moreover, any technical assistance and visits to our country will be well received, on condition that they are requested and in agreement with the Nicaraguan tripartite partners, which are fully functioning.

As in 2019, we call on the ILO to review its procedures, its way of seeing things, to avoid political bias that may distort the reality in our country.

Worker member, Nicaragua – It is incomprehensible why we are before this Committee, dealing with a case that clearly does not reflect the real labour situation. We believe that it is a political decision by some representatives who are ignorant of and certainly do not live in the real situation in Nicaragua. This Committee is once again surprised by the arguments presented, which are taken from sources that are far from impartial and, on the contrary, are mechanisms intended to attack our country through the misnamed economic sanctions driven by those who consider themselves to be the masters of the world.

In Nicaragua, there is full freedom to organize, but there are also rules and regulations that we all must respect. Freedom must not be confused with licentiousness or anarchy. The free exercise of the right to organize must not be understood as impunity to commit crimes or as being above all laws.

In Nicaragua, no union leader is persecuted or arrested for freely exercising the right to represent union interests. There is no persecution for having different ideas or points of view. Undermining the stability of the country and, worse yet, seeking foreign intervention to interfere in our internal affairs, irrespective of its origin, is a crime punishable by our laws. Any differences must be resolved through dialogue round tables and agreement sought. Therefore, the written information has nothing to do with the real situation. In Nicaragua, there are no political prisoners, and the cases of those who are imprisoned for exercising trade union representation or thinking differently have followed due process, in accordance with the law when individuals have committed crimes against peace, human security and the national economy.

Most Nicaraguans love Nicaragua. We defend the right to be respected and to make our own decisions that reflect the reality of our own country. But we reject and condemn all foreign interference that threatens our sovereignty. As a working class, we support any decisions that promote employment growth and the welfare of our people. We have learned that the neoliberal policies imposed by imperial powers have a substantial impact on labour and social rights. Nothing good will come from those who act as the world's police.



In Nicaragua, social dialogue is not only promoted and practiced, but is also a constitutional right. Tripartism continues to work despite the attempts of those who believe that only they are right. We are a peace-loving and hardworking people. The political Constitution of our country grants us the right to organize in accordance with our interests, while respecting the legal framework that regulates this right.

Both employers and workers have the right to organize unions and exercise the right to strike in accordance with the provisions of the Convention. However, some employers' organizations are organized as non-profit foundations or non-governmental organizations and are not regulated by the Ministry of Labour. What gives these employers the right to sidestep the legal provisions that regulate them? If these salaried agents of foreign powers do not comply with the laws that regulate them, what are they complaining about? Their approach of complaining in this Committee merely confirms their intention to further harm the people and the Government of Nicaragua.

How can we fight drug trafficking, cybercrime, money laundering and human trafficking unless the country has the laws to prevent and punish these crimes? Nicaraguan workers support any action by the Government to punish those guilty of these crimes, whoever they are. We support any action to combat corruption, condemn narco-terrorists and prosecute cybercrime, because it is our society that is suffering and is the victim of these scourges. So why should this body dictate which laws are to be approved or repealed? I remind you that the role of the ILO is to address labour issues and not to interfere in fields covered by other international organizations.

The double standards of the countries that define themselves as gardens or police the world find expression in the blacklisting of those who fail to comply with provisions mandated by organizations such as the Caribbean Financial Action Task Force (CFATF), which continues to develop legal standards to prevent drug traffickers or organized crime from using international non-governmental organizations for money laundering, but in this Organization the demand is made to repeal these legal instruments.

While reading this case, we did not find any arguments that justify the inclusion of our country in the cases before this Committee.

It is difficult to respond to a political situation using arguments based on labour. In other words, no matter how much we workers demonstrate support for full freedom of association, the full exercise of collective bargaining, dialogue with a view to achieving consensus to strengthen tripartism, employers will not accept any arguments that do not support their approach of attempted coups d'état, their attitude of selling off the country and surrendering to the interests of the great powers, which raise themselves up as dictators imposing sanctions on sovereign and free peoples and governments.

Nicaraguan workers condemn any economic aggression against economic and social programmes, which undermine action to combat poverty, our main enemy. I reiterate that in our country no one is in prison for exercising the right to organize or for trade union activities, there are no restrictions on the right to organize under the law, and there is no persecution or repression of trade unions.

It is regrettable that the work of this Organization has been deteriorating, years after the employers questioned the right to strike provided for in the Convention, to which we gave in due to union diplomacy. Today it is being used as a political instrument to support foreign interference, through decisions and actions that are not related to labour, but are of a political nature.



I believe that the script for the employers' representative was not well written. I am very sorry, Sir, but you are very much mistaken, and I invite you to visit Nicaragua to see the reality.

Government member, Sweden – I am speaking on behalf of the **European Union (EU) and its Member States**. The Candidate Countries **Albania, Bosnia and Herzegovina, North Macedonia, Republic of Moldova**, the potential candidate country **Georgia**, the EFTA countries **Iceland and Norway**, members of the European Economic Area, align themselves with this statement.

The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights, the right to organize and freedom of association.

We actively promote the universal ratification and implementation of fundamental international labour standards, including this Convention. We support the ILO in its indispensable role of developing, promoting and supervising the effective implementation of ratified international labour standards and of fundamental Conventions in particular.

The EU and Central America, including Nicaragua, have an association agreement. The objective of this agreement is to develop a privileged political partnership based on values, principles and common objectives. In particular, the respect for and the promotion of democracy and human rights, including labour rights, sustainable development, good governance and the rule of law, and to contribute to inclusive and sustainable economic development, full and productive employment and decent work. The EU remains open to a genuine dialogue based on mutual respect on these and other topics of interest.

Not only are we deeply concerned by the further worsening of human rights, including labour rights and living standards in Nicaragua, but also by the Government's failure to take any action to follow up on the conclusions of the 110th Conference Committee on the Application of Standards, demonstrating a lack of commitment to uphold its obligations under the Convention. In this regard, we regret that the direct contacts mission recommended last year by the Conference Committee has not taken place yet.

We reiterate our calls for the immediate cessation of all acts of violence, threats, persecution, stigmatization, intimidation, or any other forms of aggression against individuals or organizations in connection with both the exercise of legitimate trade union activities and the activities of employers' organizations. The arbitrary closure of the COSEP and other business organizations in March this year is a violation of this fundamental Convention.

We fully share the call by the Committee of Experts in respect of the freeing of members of employers' organizations or trade unions who have been unjustly detained. We acknowledge and welcome that the Government heeded the call and released Michael Healy, Álvaro Vargas Duarte, José Adán Aguerri, Luis Rivas and Juan Lorenzo Hollman, but we firmly reject the decision to exile them and render them stateless and thus impede the free exercise of their functions.

In addition, we continue to support the Committee of Experts' calls urging the Nicaraguan Government to review other unacceptable restrictions on freedom of association, including amendments to sections 389 and 390 of the Labour Code, which are currently violating the right of workers' organizations to organize their activities in full freedom, as well as the Act regulating foreign agents No. 1040, the Special Law on Cybercrimes and Act No. 1055 on the defence of the rights of the people to independence, sovereignty and self-



determination for peace. While taking note of the initiatives reported by the Government of Nicaragua with regard to the application of the Convention in law and practice, we still observe serious violations of the Convention and the fundamental right to freedom of association in law and in practice.

We call on the Government to avail itself of ILO technical cooperation as soon as possible and to ensure the access of a direct contacts mission to assess the situation of the violation of workers' and employers' organizations' rights in the country. We also recall the need to reinstate genuine social dialogue without further delay.

The EU will continue to monitor the situation closely and support the people of Nicaragua in their legitimate aspiration for democracy, respect for human rights, including labour rights, and the rule of law.

Government member, Canada – I am speaking on behalf of the **United Kingdom** and **Canada**. The United Kingdom and Canada deeply regret that Nicaraguan authorities have failed to accept any of the 2022 recommendations of the Committee on the Application of Standards, except for reporting on progress achieved regarding the application of the Convention in law and practice. In particular, they have failed to take all the necessary measures to cease all violations of the right to freedom of association, the right to organize and the right to collective bargaining, therefore perpetuating a climate of intimidation, violence and harassment against independent workers' and employers' organizations in the country.

Once again, we strongly condemn the labour rights abuses and violations taking place in Nicaragua. It is profoundly disappointing that the report of the Committee of Experts can only take note of the lack/absence of real and firm commitment on behalf of Nicaragua to abide by its obligation under the Convention.

In particular, the United Kingdom and Canada regret that the Nicaragua is continuing to carry out acts of persecution, intimidation, and repression against workers' and employers' representatives, including arbitrary arrests and detentions of social and business leaders. We strongly support the request by the Committee of Experts to take all the necessary measures to free any employers or members of a trade union who have been imprisoned in relation to the exercise of the legitimate activities of their organizations.

We note that Nicaragua has failed to provide any information regarding the establishment of a tripartite dialogue round table with the technical assistance of the ILO, as recommended by this Committee. Only genuine and constructive tripartite dialogue can lead to the full restoration and exercise of workers' and employers' rights in the country and ensure full compliance with fundamental labour rights protected by the Convention. We urge Nicaragua to accept ILO technical assistance and a direct contacts mission.

The United Kingdom and Canada have repeatedly called for Nicaragua to fulfil its international obligations, including by respecting the human and labour rights of all citizens and bringing an end to all repression in the country. We have been vocal in condemning the Government's constraint of political and social liberties and have urged the authorities to release immediately and unconditionally all those arbitrarily detained, including political and business leaders, trade unionists, journalists, students, human rights activists and those who participated in peaceful protests, and to cease their intimidation of civil society.

We again call on Nicaragua to uphold without any further delay its obligations regarding the Convention to respect and ensure that workers and employers are able to exercise their right of freedom of association, free from fear, violence, arbitrary arrest and detention. We



therefore strongly support the Committee of Experts in its request for further and more specific information from the Nicaraguan authorities on the right to organize, the promotion of collective bargaining, and on collective agreements.

Employer member, Honduras – Today we are examining the case of Nicaragua regarding non-observance of Convention No. 87, which provides a guarantee for employers and workers regarding their legitimate and recognized representation by the most representative organizations that each country must have. Recognizing, rejecting or legitimizing the representation of employers and workers is not at the discretion of governments. Certain actions and the failure to comply with the recommendations of this Committee and engage in social dialogue are a source of concern for our region and the world as a whole because they send a terrible message to all the countries of the world through the failure to recognize the most representative organizations.

As has been noted previously in the Conference Committee and by the Committee of Experts, joining or leaving workers' and employers' organizations is a voluntary matter. A government cannot take a unilateral executive decision not to recognize an umbrella organization and its members.

The Government of Nicaragua, through Ministerial Decree No. 26/2023 of the Ministry of the Interior, published in the *Gaceta Oficial* of 6 March 2023, annulled 18 employers' organizations, including the most representative organization COSEP, without any right of defence, and the other 11 employers' organizations were annulled subsequently. This violates the most sacred right to organize established in the Convention and the ILO Constitution, through the systematic violation of the right to freedom of association, tripartism and the right conferred on the most representative organization, namely COSEP.

Recognition of the most representative organization is not a matter for governments, but for the members of the organization and the ILO. Not only has the Convention been violated, but also the human rights of the employer representatives detained for more than 18 months and then deported, deprived of their nationality and in some cases even their property, all for defending the democratically elected employers' organization. The Committee called for the release of the employers' leaders last year, but what the Government did was to expel the members from the country following arbitrary judicial detentions at the very limits of Nicaraguan law.

The expelled employers' leaders were not given passports to leave the country, as they no longer had Nicaraguan nationality. Moreover, their accounts were frozen and property was taken from some employers' organizations, as was the case recently even for the Nicaraguan Red Cross.

The Government of Nicaragua must therefore be required to comply with the measures adopted by this Committee last year

Worker member, Bolivarian Republic of Venezuela – The Workers' delegation of the Bolivarian Socialist Workers' Confederation of Venezuela (CBST), in examining the Convention in the case of Nicaragua, does not find any formal complaint from employers or workers. If there is one, we request employers and workers to file it through the competent body, the Nicaraguan Ministry of Labour and of course the ILO, as we understand that the IOE has not brought forward any specific case of claims by any Nicaraguan employer. Nicaraguan labour law recognizes workers' and employers' organizations as trade unions and associations. Therefore, if they are organized as non-governmental or other types of organizations, they



do not meet the minimum requirements for this Convention and should not be the subject of discussions in this body.

In any case, we suggest that the Committee of Experts should review the achievements of the tripartite committees that have been in operation, for example on: the minimum wage, occupational health and safety, social security, housing and the conclusion of a five-year collective agreement in the Nicaraguan free trade zone.

But what is certain is that the sanctions imposed by the “yankee empire” have affected workers, their minimum wage, social security, production and the economy in Nicaragua.

The Workers’ delegation of Cuba aligns itself with this statement by the Venezuelan Workers’ delegation, and unreservedly shares and supports the same position. We emphasize that the “yankee empire” must take its hands off Cuba, Nicaragua, the Plurinational State of Bolivia, Peru and the Bolivarian Republic of Venezuela.

Government member, Cuba – Over the past few days at the Conference, we have listened to various Government, Worker and Employer representatives placing emphasis on aspects such as the cooperation of the countries concerned, reporting the presumed degree of seriousness of each issue and the need to avoid politization, all with the aim of maintaining the reputation of the Committee. My delegation shares these views with regard to the case under examination today.

We appreciate that the information provided by the Government of Nicaragua includes indications on the exercise and freedom of association in the country, and demonstrates the Government’s will to maintain communication and cooperation with the Committee of Experts, and to fulfil its commitments to the ILO and the Nicaraguan people.

Cuba has on several occasions expressed its rejection of the use of ILO supervisory machinery as a channel for allegations of a political nature. We consider that the policies in support of workers, as implemented by the Government of Nicaragua, must be analysed in an impartial manner. According to the information provided by the Government, between 2018 and 2021, 111 new trade union organizations were established in the country, with more than 3,900 members, and another 2,884 trade union organizations were updated, covering over 222,370 workers.

We reiterate the importance of continuing to promote tripartism and respectful discussion in each country, as well as the spirit of dialogue and cooperation.

We hope that the conclusions of this discussion will be objective, technical and balanced, and that the information and views provided by the Government, Employer and Worker representatives of Nicaragua who have spoken in this room will be taken into account.

Employer member, Chile – Point 8 of the ILO Decent work for sustainable development (DW4SD) Resource Platform concerning freedom of association recalls that freedom of association is proclaimed in the Universal Declaration of Human Rights (1948). It is the enabling right which allows the effective participation of non-state actors in economic and social policy, and which constitutes the core of democracy and of the rule of law. Hence guaranteeing the participation and representation of workers and employers is essential for ensuring the effective functioning, not only of labour markets, but also of national governance structures in general. The right of workers and employers to establish and join organizations of their own choosing is an integral part of a free and open society. In many cases, these organizations have played a significant role in the democratic transformation of their countries.



This is why the arbitrary interference by the Government of Nicaragua through the invalidation of the legal personality of COSEP and its 18 affiliated associations from the various sectors of production is so serious. The suspension by administrative authority of COSEP, the employers' organization which has historically been recognized by the ILO as the most representative in Nicaragua, constitutes a serious violation of the principles of freedom of association, and in particular of Article 4 of the Convention, which provides that workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority. The regrettable situation described above, which is a violation of the right to freedom of association of COSEP and its affiliated employers' organizations, is a subject which is bound to be of interest to both workers and employers because, just as the arbitrary dissolution of workers' unions by administrative authority is unacceptable, the dissolution of employers' associations by administrative authority cannot be tolerated either. We therefore call on the Committee to appeal strongly to the Government of Nicaragua to ensure compliance with the provisions of the Convention. To this end, the immediate revocation of the administrative measure invalidating the legal personality of COSEP and its 18 affiliated associations is essential.

Worker member, El Salvador – The report of the Committee of Experts, with reference to the observations on the Convention made to the Government of Nicaragua, expresses concern in a short paragraph at the limitations on the right to freedom of association of workers. However, the explanations given by the Government clearly indicate that dispute resolution has been strengthened through social dialogue, which is obviously a very acceptable solution for workers.

The use of social dialogue, and consequently collective bargaining, is the best way to settle collective disputes in labour relations. The Committee of Experts indicates that the imposition of compulsory arbitration to end a strike, outside the cases in which strike action may be restricted or even prohibited, is contrary to the right of workers' organizations to organize their activities in full freedom and to formulate their programmes. This is how it has been interpreted by the Committee on Freedom of Association, which only accepts limitations on the right to strike in situations in which essential services in the strict sense of the term are jeopardized, and in the other cases that it indicates. But the issues raised in Nicaragua, which are without foundation for a small group of employers, are regrettably common in many countries of the world which, although they have ratified the Convention and have recognized the right to freedom of association in their constitutions, still maintain legislation which restricts the real autonomy of trade unions, making it difficult for them to defend the interests of workers.

The workers of El Salvador unreservedly express their total support and backing for the decisions, autonomy and tripartite agreements of the real trade union movement in Nicaragua.

Interpretation from Russian: **Government member, Belarus** – We are grateful to the Government of Nicaragua for its report. The information provided shows that the Government is ready to continue its constructive cooperation with the ILO and also to engage in a special dialogue with the Organization. We welcome the measures taken by Nicaragua to guarantee compliance with the ILO Conventions that the country has ratified, and to take measures together with its social partners to guarantee freedom of association and the implementation of the national anti-poverty programme in the country. From the report, it is clear that there is a good climate in Nicaragua for setting up new trade union organizations. We urge the ILO to continue to provide Nicaragua with technical assistance in accordance with its mandate. At the same time, we urge the supervisory bodies of the ILO to



approach the assessment of the situation in any country objectively, and to take into account that membership of trade union organizations does not free citizens from complying with the law and protect them if they commit any actions which run counter to the interests of individuals, society, and/or the State.

Employer member, Costa Rica – Social dialogue, as indicated by the ILO, has the objective of promoting consensus through the democratic involvement of the main actors in the world of work, and it has clearly been shown that the results of social dialogue processes that are considered to be successful can resolve economic, labour and social issues, while promoting good governance, improving peace, and social and labour stability, and stimulating economic progress.

In our view, social dialogue is what strengthens us as societies, and enterprises and employers' organizations understand that, in order to make progress, we must work together. This is the reason for our commitment to developing together with our governments the changes to accelerate the expectations of our societies, that is better inclusion and opportunities.

The acts of the Government of Nicaragua are of enormous concern to our organization, and to others in the region. They consist of harassment, threats and ill-treatment of employer representatives. The unilateral revocation of the legal personality of our partner organization, and the 18 chambers of which it is composed, is an act that is in violation of employers' freedom of association and places in jeopardy the economic progress of the country.

We consider that this interference by the Nicaraguan authorities is a very bad precedent at the international level. Moreover, it is in open contravention of the provisions of the Convention, which set out the right of both workers and employers to establish and join organizations of their own choosing without previous authorization.

It is not by chance that the principle of freedom of association is identified as one of the fundamental rights set out in the ILO Declaration on Fundamental Principles and Rights at Work (1998).

We believe that extreme poverty, migration, inequality, corruption, violence and authoritarianism are situations that we have to address and combat through quality employment, with social responsibility, as a means of promoting good practices, transparency and an ethical approach by the private sector through various measures and practices that are environmentally friendly and with the commitment to build social dialogue that strengthens democracies. These have been and will continue to be the objectives of employers in Latin America and are still the goal of our brothers in the COSEP.

The Costa Rican Federation of Chambers, faithful to the principles of strengthening democracy and social security, expresses its solidarity with the employers represented by COSEP. The chambers concerned are organizations that represent an important sector which acts as a motor for the Nicaraguan economy. For that reason, the consequences that this can have for the foreign investment climate in the country are a matter of concern and we believe that the situation will become complex.

It is our obligation, as an employers' association, to issue a call in defence of social dialogue as a fundamental pillar of democracy and freedom of association as a fundamental right.



Worker member, Zimbabwe – The right to freedom of association is essential for both workers and employers. For workers it ensures their ability to join trade unions or other organizations that can collectively bargain for fair wages, safe working conditions and the protection of their rights. It empowers workers to negotiate as equals with employers creating a level playing field and promoting a more equitable distribution of wealth and power. Likewise, employers also benefit from the right to freedom of association. It enables them to establish employers' organizations that can advocate for their interests, negotiate with trade unions and engage in social dialogue with governments and other stakeholders. Crucially, the Convention emphasizes that public authorities must refrain from any interference that restricts this right or impairs the lawful exercise of freedom of association. Governments and public institutions have a duty to protect and promote freedom of association by ensuring that workers and employers can exercise their rights without fear of reprisals, intimidation, or arbitrary restrictions. When public authorities interfere with the right to freedom of association, they undermine the principles of democracy, undermine social dialogue and stifle progress. Such interference can manifest itself in various forms, including repressive legislation, undue restrictions on union activities, discrimination against certain groups, or harassment and violence towards trade unionists or employers' representatives. We must remember that a healthy and vibrant civil society is built on the foundation of freedom of association. It allows for the formation of diverse organizations that represent the myriad interests and perspectives within society. Governments, employers and workers themselves have a shared responsibility to create an enabling environment that promotes freedom of association, respects the autonomy of organizations and upholds the principles of social justice.

Government member, Bolivarian Republic of Venezuela – The Government of the Bolivarian Republic of Venezuela welcomes the presentation by the distinguished delegation of the Government of Nicaragua in relation to compliance with the Convention. We have noted the Government's explanations that the detentions of the persons involved in this case were as a result of their prosecution for acts set out and penalized in the national legislation, which are not related to the exercise of the lawful activities of employers and members of unions. In light of the explanations provided by the Government, it should be noted that the criminal acts established and penalized by the national legislation are not covered by the Convention. We recall that Article 8 of the Convention is clear and categorical in providing that freedom of association has to be exercised in accordance with the laws of each country, and therefore that workers, employers and their respective organizations, like other persons or organized collectivities, shall respect the law in their acts.

On the other hand, we understand, as indicated by the Government, that there is broad collaboration between the Chamber of Employers and the Government, which reinforces the National Plan to Combat Poverty. Moreover, we cannot ignore the fact that, in Nicaragua, between 2018 and 2021, there were 111 new trade union organizations with a membership of over 3,900 workers, and that over 2,800 trade unions cover 222,370 unionized workers. As always, we call on the ILO supervisory bodies to distance themselves from political considerations, at the risk of their comments going beyond their mandate, which undermines their seriousness and credibility, damages the noble objective of the ILO and interferes in the sovereignty of States. The Government of the Bolivarian Republic of Venezuela hopes that the Committee's conclusions will be objective and balanced so that the Government of Nicaragua can continue making progress and furthering its compliance with the Convention.



Employer member, Colombia – First of all, I would like to refer to the serious allegations that have been made within the framework of this Committee concerning acts of persecution and systemic repression by the Government of Nicaragua against the leaders of COSEP, such as Mr José Aguerri, arbitrarily detained in 2021, and Michael Healy. As a result of these acts, several leaders of employers' organizations are in exile.

It is important to recall that freedom of association is totally meaningless in the absence of civil liberties. The rights conferred on workers' and employers' organizations are based on respect for these civil liberties, such as the security of the person and freedom from arbitrary arrest or detention.

The persecution, detention and expulsion of employers' leaders for reasons linked to actions relating to legitimate representative activities is a serious violation of their rights and of freedom of association. In this regard, it is deeply concerning that the Government has not provided information on the recommendations made by this Committee last year. It is fundamental to call upon the Government to initiate the rebuilding of processes of trust and to ensure full respect for freedom of association.

Secondly, it should be emphasized that workers' and employers' representatives must be freely elected and represented on an equal footing, as set out in Convention No. 87 and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The Committee of Experts has indicated repeatedly that it is the prerogative of workers' and employers' organizations to determine the conditions for the election of their leaders and that the authorities should refrain from any undue interference in the exercise of this right.

It is for this reason that we note with deep concern that, through Ministerial Decisions Nos 26/2023 and 27/2023 of the Minister of the Interior, the Government ordered the revocation of the legal status of 19 employers' organizations, including the COSEP employers' federation. This serious act makes it more difficult to build tripartite social dialogue and engage with employers' and workers' representatives in accordance with the ILO Constitution

Interpretation from Chinese: **Government member, China** – I thank the representatives of the Government of Nicaragua for the presentations made. We carefully read the report of the Committee of Experts. The Government of Nicaragua submitted detailed materials, which unfortunately were not taken seriously by the Committee of Experts. The Government actively cooperated with the ILO and submitted relevant materials in a timely manner, demonstrating the Government's positive attitude of cooperation and dialogue. China appreciates this. The Government focused on building trust among trade union organizations, and promoting and protecting their right to freedom of association. Between 2018 and 2021, more than 100 new trade union organizations were established, accepting a total of nearly 4,000 workers. Nearly 3,000 trade union organizations were improved, covering a total of more than 220,000 workers. These achievements and progress should be highly valued by the Committee. We emphasize that, in the ILO supervisory mechanisms, the authoritative information provided by the Government concerned, should be respected and valued. Otherwise, the mechanism will lose its meaning.

We oppose the politicization of this mechanism, which is not in line with the purposes and principles of the ILO Constitution. The conclusions and recommendations made by the mechanism should conform or take into account, the national conditions of the country concerned, respect the country's sovereignty and refrain from interfering in its internal affairs. Any country has the responsibility to maintain social order and the rule of law and to crack down on crimes. There are no so-called rights above the law. We call on the Committee to adhere to the principles of objectivity and impartiality, respect the facts and correctly



reflect the relevant issues and the country's progress in implementing the Convention when reviewing this case and forming its conclusions, and to further encourage it to better fulfil its obligations under the Convention.

Employer member, Mexico – In relation to the case of Nicaragua, it should be recalled that in 2022 the International Labour Conference, through this Committee, deplored the persistent climate of intimidation and harassment of independent workers' and employers' organizations. It also noted with great concern the arrest and detention of employer leaders and urged the Government to immediately cease all acts of violence, threats, persecution, intimidation or any other form of aggression. Regrettably, as noted, this climate and environment have unfortunately persisted.

We also wish to recall that this Committee recommended ILO technical assistance to ensure full compliance with its obligations under the Convention and, in particular, that it accept a direct contacts mission to complete a fact-finding mission with full access related to the situation of the trade union rights of workers' and employers' organizations, none of which has yet happened.

As this relates to a fundamental Convention, it is clear that no State can allege interference when there regrettably exist and persist violations of the human rights and freedoms set out in the Convention. It should also be recalled that the United Nations Human Rights Council, which is the intergovernmental body responsible for strengthening the promotion and protection of human rights throughout the world, in the report of the Group of Human Rights Experts on Nicaragua submitted in March this year, indicated that, and I quote: "agents and public officials of various agencies and structures of the Government, and non-State actors participated, and continue to participate, as of the date of writing of this report, in serious and systematic human rights violations and abuses against a sector of the Nicaraguan population, including extrajudicial executions". For this reason, we are making an urgent appeal for the establishment of a direct contacts mission to undertake an investigation with full access in relation to the situation of violations of the rights of representative organizations in Nicaragua.

Interpretation from Russian: **Government member, Russian Federation** – The Russian Federation shares what has been said by the representative of Nicaragua about the compliance of the authorities of that country with the Convention. We do not think the accusations levelled against the authorities of Nicaragua in respect of failure to comply with the provisions of the Convention are justified. We think these accusations are purely political.

We believe that the Committee does not have the right to comment on the action of courts or the police and security forces of any country, or whether or not a person should or should not, be released if they are in jail. That is a clear violation of their authority. As far as we are aware, being a trade union or employer activist is not a justification for being released from prison if you have been put there as the result of committing an offence under the criminal law of the country of which you are a national. We do not think that the ILO's action should lead to interference in the internal affairs of any country, because that would politicize this Organization and its supervisory system and undermine their credibility as well as make them less effective.

Government member, Plurinational State of Bolivia – The Plurinational State of Bolivia welcomes the information provided by the Government representative of Nicaragua in relation to the effect given to the Convention.



As set out in the Constitution in my country, we respect the right of all workers to organize in trade unions in accordance with the trade union principles of unity, trade union democracy, political pluralism, as well as solidarity and internationalism. We have therefore listened carefully to the information provided concerning the promotion of the right to free organization and the action taken by the Government to ensure this right, and the information provided by the employer and worker representatives of the country.

In this regard, we wish to place emphasis on the information provided by the Government, which emphasizes that since 2007 it has been working to restore and regulate the rights of workers to freedom of association through dialogue and consensus among all the actors. In order to achieve labour stability and peace, we must welcome these efforts and also take into account the various challenges to workers' rights derived from unilateral measures and natural disasters.

We therefore encourage all the actors to contribute to the work of the Committee and for the Committee to promote the processes of dialogue, cooperation and the building of trust, for which it is necessary to distance this forum from any attempt at politicization generated by disinformation and mistaken understandings concerning the achievement of workers' rights. Indeed, we firmly believe that priority needs to be given to working for the implementation of the Convention and, as indicated in the Convention, while respecting the law of the land.

We encourage the Committee to continue working, together with all the actors, taking into account the Government's information, as well as the views of the workers' and employers' representatives of Nicaragua who are present today in this room, in support of all the efforts made for the implementation of the Convention.

Government representative – I would like to take this opportunity to thank the Governments who in their interventions contributed to and directed the discussion in accordance with the spirit of labour of this Organization and the Convention. We once again refute any interference or intention to interfere in our internal affairs. Criticism of our justice system amounts to a lack of respect for the State of Nicaragua and our national sovereignty. We conclude that Nicaragua will continue along the path of peace and action to combat poverty, seek social and labour stability, and above all peace for all Nicaraguans. Raising criticisms, referring to human rights and speaking of political prisoners betrays the essence of this House and this Committee. If you want to talk about human rights, the Human Rights Council starts on 19 June, so please go down to the Palais des Nations.

Worker members – We have taken note of the information and the responses provided by the Government of Nicaragua and we have also listened to all the valuable interventions of other speakers. As we expressed in our opening speech, the Worker members stress the importance of continuing to promote tripartite social dialogue at the national level and encourage the Government to take measures to facilitate social dialogue with the presence of the ILO.

Social dialogue is at the heart of the Constitution of the ILO and it is based on the recognition of, and respect for, employers' and workers' organizations. We urge the Government to respect its obligation in this regard and we urge the Government to cease all acts of violence, threats, persecution, stigmatization and intimidation in relation to the exercise of legitimate trade union activities and the activities of employers' organizations.

We encourage the Government to continue to implement initiatives and activities to promote freedom of association, including the right to form and join trade unions. The



Government should amend sections 389 and 390 of the Labour Code, so as to respect the right to strike and invite the Government to avail itself of the technical assistance of the ILO.

The Worker members encourage the Government of Nicaragua to take all necessary measures to ensure compliance with the conclusions of the Committee and invite the Government to avail itself of the technical assistance of the ILO.

Employer members – With reference to my first intervention, another of the issues that are of concern is the new legislation adopted in Nicaragua. At the end of 2021, the Congress adopted a series of three new laws:

- the Act No. 1055 on the defence of the rights of the people, under which any person can be prosecuted for acts affecting the independence, sovereignty and self-determination of the country, in which case they are prohibited from holding public office;
- the Act on cybercrimes, under which journalists and any person disseminating fake news can be detained and, in accordance with the view of the Government, involves the associated responsibility of the media that disseminated the information;
- the Act on the regulation of foreign agents, which prevents any international financing and requires any person who receives financing from outside the country to be registered and to report any operations, and prohibits such foreign agents from participating in internal matters, activities and politics.

Act No. 1040, published in the *Diario Oficial* on 19 October 2020, contains provisions that are in violation of freedom of association as defined in the Convention and in the Constitution of the Republic of Nicaragua. The wording of the Act places at risk the existence of sectoral employers' organizations. For this reason, the COSEP and a series of other civil society organizations have lodged an appeal for the Act to be declared unconstitutional, which is before the Supreme Court of Justice. Various international organizations have commented on the content and scope of the Act, indicating: that it is contrary to international human rights standards and amounts to an unacceptable restriction of freedom of association and the right to defend human rights in Nicaragua.

We would have liked the COSEP to be present in this assembly today as the most representative organization of employers in Nicaragua. Regrettably, it has been dissolved by arbitrary administrative decision. A delegate is today participating in this meeting who claims to represent employers, although that person was not designated in consultation with the most representative organization of employers in Nicaragua. For this reason, the IOE, with the support of the whole of the Employers' group, has lodged a complaint with the Credentials Committee to invalidate the presence of that person in the Committee.

In conclusion, and in compliance with your request to keep to the time limits, the Employer members believe that we are bound to place emphasis on the conclusions adopted by the Committee in 2022, which the Government of Nicaragua has not deigned to take into account. The Committee must deplore the persistent climate of intimidation and harassment to which employers' organizations are subjected. The Committee must urge the Government to bring an immediate end to all acts of violence, threats, persecution, stigmatization, intimidation and any other form of aggression against persons or organizations in relation to the exercise of legitimate trade union activities, and to adopt measures to ensure that such acts do not reoccur.

The Government must also ensure the immediate release of any employer who may be imprisoned in relation to the exercise of the legitimate activities of their organizations and



provide information on the civil and criminal trials that are being pursued in this regard, or which have been concluded, in respect of the principles of due process.

The Government of Nicaragua must develop, without further delay, social dialogue through the establishment of a round-table for tripartite dialogue, under the auspices of the ILO, chaired by an independent person and which has the confidence of all the partners, and which duly respects the representative nature of employers' and workers' organizations in its composition and meets periodically.

The Government must repeal Act No. 1040 on the regulation of foreign agents, the Act on cybercrime and Act No. 1055 on the defence of the rights of the people to independence, sovereignty, self-determination and peace, as indicated by human rights rapporteurs, which restrict the exercise of freedom of association and freedom of expression, which are basic requirements for the exercise of freedom of association, as set out in the Convention.

The Government should promptly seek ILO technical assistance to ensure full compliance in law and practice with its obligations under the Convention.

We urge the Committee to once again call on the Government to accept the difficulties that it is experiencing in giving effect to the Convention and to agree to a high-level tripartite investigation mission with full access on the situation of the violation of the rights of employers' organizations as soon as possible.

The Committee must request the Government to provide a detailed report to the Committee of Experts before 1 September 2023, and we hope that this report will on this occasion abide absolutely and fully with the requirements indicated by this Committee.

Finally, the Committee should decide to include its conclusions in a special paragraph of its report.

In conclusion, while we are grateful for the information provided by the representative of the Government of Nicaragua, we do not share their intent or content, and the Employers' group therefore insists on reserving the right to use any other instrument offered by the ILO Constitution to ensure effective compliance with the obligations deriving from the Convention and to protect the most representative organization of Nicaraguan employers.



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 persistent climate of intimidation and harassment of independent workers' and employers' organizations.

The Committee noted with deep concern the allegations of the arrest and detention of employer leaders and the further deterioration of the situation.

The Committee also noted with deep concern the absence of any progress and cooperation on the part of the Government since last year.

Taking into account the discussion, the Committee urges the Government to:

- **ensure that workers and employers can establish their own organizations and operate without interference, including Managing Board of Private Enterprises (COSEP);**

- immediately cease all acts of violence, threats, persecution, stigmatization, intimidation or any other form of aggression against individuals or organizations in connection with both the exercise of legitimate trade union activities and the activities of employers' organizations, including COSEP, and adopt measures to ensure that such acts are not repeated including the return of the Nicaraguan nationality of those who have been deprived of it for this reason;
- immediately release any employer or trade union member who may be imprisoned in connection with the exercise of the legitimate activities of their organizations and provide information on all the measures taken in that regard;
- promote social dialogue without further delay through the establishment of a tripartite dialogue round table under the auspices of the ILO, that is presided over by an independent chairperson who has the trust of all sectors, that duly respects the representativeness of employers' and workers' organizations in its composition and that meets periodically, as recommended by the Committee in 2022; and
- repeal Law No. 1040 on the regulation of foreign agents, the Special Law on Cybercrimes, and Law No. 1055 on the Defence of the Rights of the People to Independence, Sovereignty and Self-determination for Peace, which limit the exercise of freedom of association and freedom of expression.

The Committee urges the Government to avail itself of ILO technical assistance to ensure full compliance with its obligations under the Convention in law and in practice.

Government representative – We have taken due note of the conclusions of this honourable Committee.

We regret once again that, despite the explanations provided by our Government, the Committee persists in distorting the real labour, trade union and social situation in Nicaragua. The suggestion is of even more concern that the State is persecuting trade unionists, which is false. It is not in accordance with the history of our current Government: on the contrary, in Nicaragua, workers, employers and the Government embrace harmony. Tripartism is a tangible reality, as is freedom of association.

The politicization of specific instances is a matter of concern to us, as it is detrimental to the credibility of the Committee, and therefore undermines the historic achievements of the Organization which we must protect.

In Nicaragua, we will continue working as we have been doing, in compliance with our obligations, in cooperation with the ILO and upholding the restored labour, social and human rights of the Nicaraguan people as protagonists.

We do not accept interference or insinuations of interference. We are sovereign and respectful of international law, and there can be no discussion about our legislative framework.

We therefore refute biased conclusions based on intentions that go beyond the competence of this Organization. We will continue to work and strengthen dialogue between Nicaraguan workers and employers in defence of a decent life with work and rights for everyone.



Nicaragua (ratification: 1967)

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Discussion by the Committee

Chairperson – I would propose that we move to the next case on our agenda, which is the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in Nicaragua. Since we have more than 17 delegates registered to take the floor, the reduction of the time limit from 5 to 3 minutes will be applicable for other delegates.

Government representative – On behalf of the heroic working people of Nicaragua, the Government of National Unity and Reconciliation once more conveys fraternal greetings to all participants in this meeting.

With regard to the 2023 report of the Committee of Experts, we wish to make it clear that under article 27 of the Constitution of Nicaragua, “[a]ll individuals are equal before the law and have the right to equal protection. There shall be no discrimination based on birth, nationality, political belief, race, gender, language, religion, opinion, origin, economic position or social condition.” Nicaragua considers it unacceptable for this Committee to note reports of bodies that do not deal with labour matters. It is clear that attempts are being made to raise an issue that is not linked to the purpose or content of the Convention, or the provisions of the ILO Constitution or Standing Orders. This demonstrates, once again, interference and politicization through the raising of matters that are not labour matters. Since 2007, the Government of Nicaragua has been rolling out general social and economic development policies for all sectors of the population, including indigenous peoples and peoples of African descent. As a result, the Caribbean coast has been declared a priority area for human and socio-economic development, thus boosting the creation of employment for indigenous families and families of African descent. The steps taken to promote employment include the further extension of education coverage among indigenous peoples and peoples of African descent on the Caribbean coast thanks to the opening of technological colleges, including one in Bluefields, the Héroes y Mártires college in Puerto Cabezas, the Bernardino Díaz Ochoa college in Siuna and colleges in Waspam, Corn Island, Bonanza and Rosita. Students of different ethnicities, including students of African descent, follow technical education and training programmes in their own languages, set up under the National Plan against Poverty for Human Development 2022–26, which also provides for an intercultural health model in the autonomous regions; legal certainty in relation to property; water and sanitation; the supply of electricity on the Caribbean coast; management plans for the urban and rural sectors, and teacher training as part of the bilingual intercultural transformation at the early years, primary and secondary levels of education. Furthermore, the Plan contains provisions relating to assistance for families in producing food in diversified vegetable gardens, using crops native to the Caribbean coast; technology transfer to improve productivity on the Caribbean coast; the provision of capital to families through productive investment plans; strengthened partnerships and cooperative management and financing through a microcredit programme to promote entrepreneurship on the Caribbean coast. The Plan contains other provisions in the areas of support for families in promoting agroforestry systems using crops strategically selected for the humid tropics, assistance for families in managing fowl and pigs to ensure that production is sustainable and in harmony with Mother Earth, technology grants and the development and construction of road and productive infrastructure that connects the Caribbean coast to the Pacific region in the form of roads, pathways and bridges. Nicaragua, through its legal system, has provisions and



procedures in place that ensure compliance with national policies on safeguarding workers' labour rights. Those policies guarantee equality and non-discrimination at work in a harmonious, peaceful and safe environment, while respecting gender equality and avoiding all forms of discrimination on grounds of race, religion, wage or disability.

The Government of Nicaragua has demonstrated its compliance with the Convention in the reports that it has transmitted to the ILO in a timely manner in recent years. Nicaragua therefore does not accept the Committee's submission of matters unrelated to the content of the Convention for examination and discussion at this Conference Committee. The manipulation of this Committee into bringing us here to discuss the Convention and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which was reviewed earlier, demonstrates political bias and damages this mechanism's credibility.

To conclude, we reaffirm our position and reject any accusation or intervention in internal affairs that threatens peace, sovereignty or Nicaraguan families' employment or social stability.

Worker members – The Committee of Experts has identified several bases of discrimination on which it has made observations, and I will take them in the order they appear in the reports. First of all, sexual harassment: Nicaragua has legal provisions in place to address sexual harassment in the workplace. The Labour Code prohibits all forms of sexual harassment and provides a legal basis for victims to file complaints with the Ministry of Labour. Additionally, the law against violence against women mandates measures to prevent, punish and eradicate gender-based violence, including sexual harassment.

We take note of several Government initiatives aimed at combating sexual harassment. According to the information provided by the Committee of Experts, the Ministry of Labour has been implementing procedures to handle labour grievances, including complaints of harassment against women in the workplace. These procedures involve mechanisms that ensure immediate action and timely investigation by the labour inspectorate in full adherence to labour legislation. Despite these efforts to tackle sexual harassment, challenges persist. Limited awareness and understanding among employers, fear of retaliation and inadequate reporting mechanisms hinder effective resolution.

A case in point is that of the call centres that currently employ more than 11,700 workers in over 50 service outsourcing centres in the country. The majority of workers in the call centres are women who face daily pressure to achieve targets that become unattainable as time progresses. Testimonies suggest that, in many cases, victims are dismissed so as to shield perpetrators and prevent any potential case coming to light.

Multiple cases of harassment against women have also been reported by trade unions in the maquila sector, which employs approximately 140,000 workers in Nicaragua. We urge the Government of Nicaragua to increase the infrastructure and support necessary to conduct appropriate labour inspections so as to enforce labour laws and promote a safe and healthy working environment.

Secondly, political discrimination: the Committee of Experts also notes with concern the serious situation of political discrimination in Nicaragua. The Committee of Experts refers to resolution 49/3 adopted by the United Nations (UN) Human Rights Council on 31 March 2022. The resolution highlights several matters, including grave concerns over violations of civil and political rights during the 2021 electoral process, the use of legal provisions restricting political participation and the arbitrary detention of opposition candidates, journalists and



other human right defenders. The Committee of Experts also notes that the UN Human Rights Committee and Committee on Economic, Social and Cultural Rights have expressed concern at repression and discrimination against those critical of the Government.

Lastly, the Committee of Experts acknowledges a press release by the Inter-American Commission on Human Rights highlighting the intensification of the repression and persecution of political opponents. In regard to specific violations of Convention No. 111, trade unions will keep monitoring the situation in order to assess whether acts of employment discrimination against workers expressing political opinions have taken place since 2021. We urge the Government to inform the Committee of Experts of any measures taken to eliminate discrimination in employment and occupation on political grounds and provide adequate protection for workers in the event of discrimination on the basis of political opinion, including any legal or judicial procedures instituted and their outcome.

Thirdly, racial discrimination: the Committee of Experts also refers to a recent report by the UN Committee on the Elimination of Racial Discrimination on acts of violence against indigenous peoples and Afro-descendants in Nicaragua. The UN Committee urged the Government to take immediate action to protect the rights of these communities and hold accountable those who have violated them. The UN Committee also highlighted that Nicaragua does not have a national legislative framework that prohibits racial discrimination in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, nor does it have provisions on the issue in the Penal Code.

Despite the State's efforts to restore the social and cultural rights of indigenous peoples on the Caribbean coast, the reality is that these communities continue to face structural discrimination. This is reflected in the poverty rates, precariousness, exclusion and constant violence they endure. The UN Committee reiterated concerns about the lack of explicit protection and legal recognition for indigenous peoples in the Pacific, Central and Northern regions. Additionally, it expressed serious concern over reports indicating a regression by the State in protecting and respecting the rights of indigenous peoples and Afro-descendants. We support the recommendation of the UN body that urges Nicaragua to conduct independent studies on social, environmental and cultural impacts before granting licences for projects involving the development and exploitation of natural resources in indigenous or Afro-descendent territories. With a view to avoiding any further cases of discrimination or human rights violations, the affected indigenous communities must be involved and consulted in the decision-making process. In this regard, and in order to effectively address the issue of equal opportunity and treatment, it is important that the consent of indigenous peoples is sought before licences are granted for developments on their lands. In view of these serious issues, Nicaragua must adopt special measures or affirmative action to eliminate the structural discrimination affecting indigenous and Afro-descendent peoples.

Employer members – I hope that the break we have just taken has provided an opportunity for reflection after listening to all the discussion and debate on the issues related to Nicaragua, which, despite pertaining to different Conventions, are intertwined and play a part in the management and implementation of the country's obligations. The Government representative even mentioned Convention No. 87 in her last intervention, so I think it will allow us to approach the work as a whole and not as an isolated case.

This case relates to Convention No. 111, which Nicaragua ratified in 1967. The Employer members would like to highlight the importance of compliance with Conventions, particularly this one, because it is a fundamental Convention. A Convention is not declared fundamental on a whim, but because of its importance and purpose.



In the report of the Committee of Experts this year there are two footnoted cases concerning Nicaragua, the first related to Convention No. 87, which has already been addressed, and the second related to Convention No. 111, which we will address now. This demonstrates that we are dealing with a case that is extremely serious.

Allow me to read part of the text of the Convention so that we can pinpoint the type of non-compliance we are dealing with. Article 1(1)(a) states that, for the purposes of the Convention, the term discrimination includes: "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation". Article 1(2) states that: "Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination." And Article 1(3), which is very relevant, states that: "For the purpose of this Convention the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment." This is exactly what we are talking about.

I would like to highlight two parts of the report, one on discrimination on grounds of political opinion and the other on discrimination on grounds of sex, sexual harassment, racial discrimination against indigenous and Afro-descendant populations, equal opportunities and equal treatment policy and enforcement through labour inspection, which is all covered in the report containing the explanations of the Committee of Experts.

The Committee of Experts notes that it observes a serious situation of political discrimination in the country that has been made clear in reports by various UN agencies, such as resolution 49/3 of the Human Rights Council.

This resolution highlights the existence of violations of civil and political rights in the context of the electoral process that did not guarantee citizens' rights to participate in public affairs and to vote and be voted for. It should be noted that the Government has adopted legal provisions with the aim of restricting the ability of citizens to exercise their fundamental freedoms and participate in political processes.

There are also reports of the arbitrary arrest and detention of all types of citizens, which have already been mentioned by the Workers and I will not go into in detail. According to the reports received, there are also fears for the physical safety of the detainees owing to acts that could constitute torture or cruel, inhuman or degrading treatment or punishment, particularly in relation to older persons, girls and women.

The human rights violations and abuses described in the various reports appear to be a general pattern of behaviour in the country, to the extent that a group of experts has already been established by the President of the Human Rights Council to investigate the matter.

For example, under the International Covenant on Civil and Political Rights, the Committee on Economic, Social and Cultural Rights notes alleged discrimination on the grounds of political opinion against persons who oppose or criticize the Government in the exercise and enjoyment of their rights.

For its part, the Government reports that the Constitution recognizes non-discrimination, that lawsuits must be free of political discrimination and that between 2020 and 2021 the labour courts did not hear any cases of violation of rights. This is because, as the Workers mentioned, there is evidently a fear of reporting these issues. Far from reassuring us, all this information shows us that the Government is not recognizing or pretends not to be aware of the numerous reported restrictions and violations and the



serious situation that the country faces. Persons such as those who are here are perhaps unaffected by these circumstances, but there are others who are, as recognized by various UN agencies.

I would like to remind the Government that labour rights are encompassed in the sphere of human rights and are protected under international conventions including Convention No. 111 and, of course, Convention No. 87.

We believe that the Government's statements do not tally with the numerous sources of information, analysis and conclusions of the participants in the various bodies of the ILO and other UN agencies.

It has to be considered that the Committee of Experts, after analysing the evidence in the case, states that in Nicaragua there is a climate of violence, insecurity and intimidation that leads to and encourages acts of discrimination in employment and occupation and in general against all those persons who do not agree with the Government and who publicly express their opinion.

Unfortunately, what we find in the report of the Committee of Experts is not a recognition of political conditions, but acts of discrimination, to which I have already referred.

The facts presented show, and forgive me for saying it like this, the extreme contempt of the Government for the proposals that have been put forward and its refusal to acknowledge and improve with clear, verifiable, reparatory actions that demonstrate compliance with the obligations assumed upon ratification of the Convention. In practice, this situation affects workers, employers and the population in general.

We do not wish to dramatize or exaggerate, but considering the debate that has already taken place regarding Convention No. 87, this may be one of the most serious cases of non-compliance that we have to discuss in this Committee. What is more, this dismissive attitude is unacceptable for this House.

The statements made by the Government the last time we dealt with this issue rejected the matters raised in an equally definitive manner, and this is reflected in the absence of progress in relation to everything that was asked of them. We hope, and we ask with all due respect, that the Government will listen to the international community and show and demonstrate an interest in complying and not just in painting a picture that differs from reality.

We will pay close attention to how this debate develops before our next intervention.

Worker member, Nicaragua – I would like to ask the Employers' representatives to show more respect for the workers of Nicaragua. We lost our fear some time ago, we have faced situations imposed upon us, even war, and we have been victorious. So, I ask you to show respect if you wish to be shown respect.

What is the explanation for our country becoming a double-footnoted case in relation to two Conventions? There can only be one: it is about political interests and aggression by the political/employer parties who are lying and posing as victims in order to conceal their petty, anti-patriotic interests.

If anybody is guilty of discrimination and violation of the rights of Nicaraguan workers, it is those persons who attempted a foolhardy coup d'état financed and protected by those who call themselves defenders of human rights, but who violate them every day through economic interference aimed at causing harm to the sovereign, dignified people of Nicaragua.



In this statement I highlight absurd elements or disinformation aimed at concealing true intentions, as applies to the aggression against our country. If only we could respond to all these defamations and falsehoods. But it is good to respond in a way that ensures that the most reasonable persons have a different version from that put out by the media and the organizations which accuse, judge and condemn without any moral authority whatsoever.

There is talk of a hostile work environment, so the question is: on whose part? These politicians disguised as employers are the ones who dismissed more than 225,000 workers before the failure of their attempted coup. They are the ones who are denying the right to organize, who are maintaining poverty wages and who are opposed to the full assertion of labour rights. They are the ones who are destroying the social fabric of the welfare state in many countries in Europe, including one close to ILO headquarters.

So, the hostile environment is not being promoted by the Nicaraguan Government. It is being promoted by those who do not honour agreements when called upon by us workers to do so. Employer leaders complain at the inspections carried out by the Ministry of Labour to protect labour rights, but this is the absolute height of hypocrisy.

As clarification of the legal aspects, the labour legislation views harassment at work as an act that merits censure and determines the action needed in each case, according to the complaints filed. Sexual harassment is an offence to be punished through judicial action. This Committee is not a court to address or review these cases.

Since when and with what authorization does this Committee supervise the electoral processes of each country? I can assure you that many election scandals which have occurred in countries, including in the "first world", have not been questioned by this body. Hence, we men and women workers are the ones who have to decide our destiny and so we will continue to vote to guarantee our rights and strengthen our democracy and continue to build a sovereign and inclusive development model.

When those behind the attempted coup in 2018 murdered trade union leaders, abducted workers, raped women workers, destroyed installations and work machinery, we did not hear these organizations raising their voices in favour of the victims and their families. We did not read about any convictions despite presenting evidence of the atrocities committed by their protégés. So, they have no moral authority to be a credible source because they are not impartial.

In our trade union organizations, we bring together men and women workers without any discrimination on the basis of race, sex, partisan views or political conviction, and we respect their life choices, unlike the employers' organizations that look at the origins of your name to determine your job options.

It would be a good thing if those who write these reports were better informed regarding the development and progress of our country. For the first time in history there is a Government that fully integrates the nation. Go and see how it has promoted land ownership by indigenous communities, how roads, hospitals and health centres are built, how electricity and drinking water are supplied, how there are study centres for these communities. We affirm this with complete authority and with great pride because it has been us workers who have put these projects into practice backed by public investment from the Government.

How can those who violate human rights every day speak and write about them? What moral authority do those people have who promote the use of the economy to subdue and submit to their will the peoples who defend their sovereignty and self-determination? We



invite the members of this Committee to read the reports of organizations that, while recognizing the progress made by Nicaragua on gender equality and equity, confirm that the country optimizes financial resources to develop programmes that benefit the population and in particular the workers. Go and walk in the streets of our cities in peace and tranquillity, breathe the air without being contaminated by the lies and disinformation spread by the media, which have already been given a script to follow.

We reiterate that the whole process experienced by our country takes place within the legal framework. For anyone who loves Nicaragua, there is a place and a space. In Nicaragua there is no death penalty, and life imprisonment is only for murderers who commit atrocious crimes.

In conclusion, we consider that, in the context of respect and good relations, cooperation and support can be built without conditions. If there is real interest in the human rights of Nicaraguan men and women, we ask this Committee to call on those who are applying economic sanctions to suspend them, and perhaps in this way we can believe that there is a real interest in restoring harmony and understanding.

Brother and sister workers, let me say that our president, Daniel Ortega, is promoting the social dialogue that many of you are demanding. He respects the right to organize, and he promotes the participation of the workers in decision-making. Would this be the reason why the employers' organization and the enemies of peace are attacking us? I think that we can argue and we can continue pointing out many elements of the progress we have made in restoring the human rights of Nicaraguans. We can give specific examples of how we have achieved well-being. However, we wish to state that in political processes and in elections, like in any part of the world, any political party that does not comply with the requirements or provisions of law obviously cannot participate. We do not think that constitutes discrimination; rather, in Nicaragua it is about the interests of those who are still insisting today on intervention, on aggression and, obviously, on facilitating the return of foreign troops to our country.

This is why I note with real regret that falsehoods are being spread in this Committee. I call for more respect to be shown to the workers because we are the ones who are building the Nicaragua that will always be free and blessed.

Employer member, Nicaragua – When I have come here, I have felt pressure almost amounting to persecution concerning the matters raised in the Committee. We have explained that we are participating here in order to speak of our situation on the ground, not to listen to reports from people who, like I said in 2019 to the Employer delegate, who does not know our country, but who had plenty to say, referring to atrocities and situations that do not occur in our country. We are now going to speak about Convention No. 111 and Nicaragua's alleged non-observance thereof. Before that, I would like to clarify something here for my employer colleagues regarding the references to the representativeness of certain organizations and persons that were indeed well known in our country. We are speaking of Chano Aguerrri, the President of the Higher Council of Private Enterprise (COSEP). By way of clarification, this gentleman was not a businessman because he did not own an enterprise. He was simply the person who was running that organization, dependent on financing from the substantial capital that exists in Nicaragua. I am the owner of a number of enterprises which have been operating in the country for over 30 years, like other affiliated enterprises. With reference to the participation of men and women workers in our enterprises, there is participation under equal conditions of men and women workers and professional technicians, with no differences in terms of duties or wages. In other words, the



discrimination that is alleged does not therefore apply in our case. We employers have adopted a policy of 50 per cent men and 50 per cent women in the various posts both in our enterprises and in the public sector. The result of this is that Nicaragua is recognized as being among the top seven countries in the world with such participation. And if we speak of discrimination, I wish to refer to our experiences right here. I can cite some situations which we experienced here at the ILO in 2019, with the obstacles that were put in our way when attempts were made to authorize supposedly representative organizations, with priority always being given to the political approach. Our organization was even prevented from speaking in the virtual format. I am taking the opportunity today to request that this does not happen again and that we can participate fully and present our situation; and that you help us to overcome the problems regarding jobs and wages under equal conditions for men and women and that you do not spend time and space on other matters which have nothing to do with the subject of discrimination because they are political in nature.

I take this opportunity once again to ask for support from our organization, the ILO, the support of our Employer colleagues, so that if they need precise information, they should come to us, we invite them to visit our country where we can show them the real situation. We ask them to support us in eliminating the harmful sanctions imposed by certain countries, and you know which ones I am referring to, because our country is under massive pressure from these countries, where they cancel the external financing and private investment that is so necessary for the economic and social development of our country. I also take this opportunity to tell you that we, as the private business sector, will approach the Government of Nicaragua, the Ministry of Labour, to propose schemes for rapprochement, for dialogue, so that our Government and our organizations can make contact and achieve the objectives defended so that we can continue making orderly progress.

Government member, Sweden – I speak on behalf of the **European Union (EU) and its Member States**. The candidate countries **Albania, Bosnia and Herzegovina, North Macedonia, Republic of Moldova**, the potential candidate country, **Georgia**, the EFTA countries **Iceland and Norway**, members of the European Economic Area, align themselves with this statement.

The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights. We actively promote the universal ratification and implementation of the fundamental international labour standards. We support the ILO in its indispensable role developing, promoting and supervising the effective implementation of ratified international labour standards, and of fundamental Conventions in particular. The principle of equality and non-discrimination is a fundamental element of international human rights law. In the EU's founding treaties, and in the constitutions of EU Member States, the prohibition of discrimination is a core principle. Convention No. 111 is the translation of this fundamental human right to the world of work, employment and occupation.

Unfortunately, Nicaragua has been in a dire social, political and human rights crisis since April 2018, when the Government quashed mass protests against a proposal for social security reform. The Nicaraguan Government has carried out systematic incarceration, harassment and intimidation of presidential pre-candidates, opposition leaders, indigenous people, student and rural leaders, journalists, human rights defenders, trade unionists and business representatives. Since then, reports from the Office of the United Nations High Commissioner for Human Rights, the Inter-American Commission on Human Rights and, most recently, the Group of Human Rights Experts on Nicaragua have all shown that the situation has gravely worsened, with the systematic erosion of civic space, as well as the



persecution, arbitrary detention and forced displacement of those perceived as dissidents or opponents.

We welcome the liberation of 222 political prisoners on 9 February this year but deplore the decisions on the same and the next day to render them, as well as another 94 dissidents, stateless exiles. We remain alarmed by the reports of human rights violations and abuses, including gender-based discrimination. The renewal of the mandate of the Group of Human Rights Experts on Nicaragua by the UN Human Rights Council through resolution 52/2 reflects the commitment of the international community, including the EU, to defending democracy, the rule of law and human rights in the country.

We are gravely concerned about the climate of violence, intolerance, insecurity and intimidation, further aggravated by certain measures both in legislation and in practice, which is conducive to serious acts of discrimination in employment and occupation against persons who express their political opinion. We fully echo the request by the Committee of Experts to the Government of Nicaragua to implement the required measures in order to respond to its observations regarding non-discrimination in employment and occupation and to ensure the elimination of discrimination on the basis of political opinion. We also urge the Government to address the matters reflected in the resolutions and observations adopted by the previously mentioned human rights bodies and to comply with the requests therein.

We take note of the efforts of the Supreme Court of Justice to prevent, address and eliminate all forms of violence arising from labour and sexual harassment throughout the legal system. However, we fully support the Committee of Experts' request to provide information on the coverage of the "hostile work environment" under the Labour Code, penalties when sexual harassment complaints are upheld and the legal action taken in cases of sexual and quid pro quo harassment.

We urge the Government, in line with the Committee of Experts' report, to undertake the urgent action required to ensure that the rights of indigenous and Afro-descendent peoples, especially in the Atlantic Coast region, are effectively protected and respected. This includes promoting social inclusion and addressing poverty and inequality through targeted measures to eliminate the structural discrimination they still experience. We deplore the forced exile of various representatives of these peoples, including experts who were invited by the UN to testify on the situation of indigenous and Afro-descendent peoples in Nicaragua. Furthermore, efforts should be made to address the various forms of discrimination against indigenous and Afro-descendent women by integrating a gender perspective into all policies and strategies aimed at eradicating racial discrimination. We stress the importance of ensuring equal access to all of their rights, including education, employment and health, taking into account, and in full respect of, their cultural and linguistic specificities and differences.

The EU will continue to monitor the situation closely and support the people of Nicaragua in their legitimate aspiration for democracy, respect for human rights, including labour rights, and the rule of law.

Worker member, Bolivarian Republic of Venezuela – The report on Convention No. 111 from the National Front of Nicaraguan Workers states the following: cases of harassment at work are followed up by the trade union sector and by the Nicaraguan Ministry of Labour, since harassment is covered by law. Sexual harassment cases fall within the remit of the courts of justice, which are responsible for investigations. In Nicaragua, there is a law that adheres strictly to the Convention with regard to non-discrimination since it provides for equal conditions in jobs and the right to hold them. This law, known as the 50/50 law, applies



to employment and to public office, as well as to elected office. Indigenous communities are respected under the Caribbean Coast Autonomy Act, in compliance with the ILO's mandate, and approximately 50,000 square kilometres of territory have been allocated for this purpose.

With regard to the case highlighted by the International Organisation of Employers (IOE) in relation to elections in Nicaragua, we consider it to amount to interference that falls outside the competence of the Committee and is a matter for the Nicaraguan people. The majority of the confederation of workers of the Bolivarian Republic of Venezuela, together with the Workers' delegation from the Republic of Cuba, support the principle of the self-determination peoples, non-interference, sovereignty and independence. I would like to make a few observations on this subject. For example, today we heard an Employer representative stating that they were the majority, and that the Nicaraguan businessman or Employer member should not be here. There is a contradiction: he asks for the participation of other employers, but this one should not be here. This is a democracy where, correctly, on this point, on Convention No. 111, the masks have been removed to reveal the political-partisan position of these employers, in the same way as for the Russian Federation, China, the Islamic Republic of Iran, Nicaragua, the Bolivarian Republic of Venezuela, Cuba and the Plurinational State of Bolivia. But they do not say, or they do not admit, that the sanctions have an impact on wages, health, education and the economy in these countries. Therefore, I am of the view that the ILO must engage in a genuine and direct process of assisting workers and employers in the implementation of Conventions Nos. 87 and 111 and not go along with the political approach of employers.

Government member, Cuba – My delegation has taken note of the information provided by the delegation of the Nicaraguan Government regarding compliance with the Convention. It has also carefully analysed the observations made by the Committee of Experts. We consider that the matter before us requires further dialogue between the ILO and the social partners and Government, Worker and Employer representatives in Nicaragua. We wish to emphasize the Nicaraguan Government's cooperation with the Committee of Experts, by virtue of its commitment to the Organization. We also reiterate that it should not be forgotten that, in Nicaragua, between 2018 and 2021, 111 new trade union organizations were formed, bringing together 3,902 workers, and another 2,884 organizations, covering 222,370 workers, were updated. The Nicaraguan Government has also developed numerous social programmes for the Nicaraguan people and workers. We reiterate our rejection of the use of ILO supervisory mechanisms to level allegations of a political nature. We believe that the Nicaraguan Government's policies to support workers should be analysed in an impartial manner. As we have stated on other occasions, it is very important to continue promoting tripartism and social dialogue in every country, with a view to promoting a spirit of dialogue and cooperation. We encourage the Committee to adopt objective, technical and balanced conclusions based on the information provided by the authorities of the country concerned.

Employer member, Honduras – Today this Committee is meeting to discuss the Nicaraguan Government's violation of the Convention owing to discrimination on the basis of ideological, labour and political opinion. These matters have already been discussed in this Committee, and the Government does not wish to step back, violating the sacred right to hold opinions. Anyone who dares to express an opinion other than the official version is punished.

Social dialogue is the driving force of this House, and each of the tripartite constituents is aware that its objective is to always promote consensus, which is based on the democratic concept of respect for the others' ideological opinions.



Democracy is strengthened when ideas are respected, despite occasional dissent, but it is inconceivable and unacceptable for a Government not to respect the views of its citizens, and that they may be jailed or expelled from the country in which they were born due to their opinions or labour or political demands, as indicated by the Committee of Experts.

This year, we have still not received the information that the Committee of Experts requested from the Government last year. Therefore, we should include, in each section of the 2023 report, a special paragraph on the Government's failure to comply with this Convention, with no evidence that it wishes to comply.

We have an obligation to make a vigorous call for the defence of social dialogue as the pillar of democracy, as well as respect for opinions without any form of discrimination, particularly in the world of work. Threats by politicians or the police for holding an opinion that differs from that of Nicaraguan Government officials should not be acceptable for this Organization. We support the proposal by the Employer members.

Government member, Bolivarian Republic of Venezuela – The Government of the Bolivarian Republic of Venezuela welcomes the statement by the distinguished delegation of the Government of Nicaragua regarding the implementation of the Convention.

We have noted the Government of Nicaragua's explanation that article 27 of the Constitution prohibits all types of discrimination, including discrimination on political grounds, and that it is enforced by the Government for all citizens, including, without distinction, indigenous communities.

In this regard, in view of the arguments of the Government of Nicaragua, it should be highlighted that the Convention seeks to ensure equality of opportunity and treatment in employment and occupation.

We recall that Article 4 of the Convention is clear and categorical in establishing that the law must be respected and that, therefore, any measures affecting an individual who is justifiably suspected of activities prejudicial to the security of the State shall not be deemed to be discrimination, and must be respected if so decided by a competent court established in accordance with national law and practice. This is precisely the situation that arises here with respect to Nicaragua.

It is concerning that the Committee of Experts, or any other ILO supervisory body, criticizes rulings issued in accordance with the law, within the constitutional and legal framework and the competence of national courts.

We appreciate that the Committee of Experts has welcomed the initiative of the Nicaraguan Supreme Court of Justice on the protocol for preventing and addressing harassment in the workplace and sexual harassment in the Nicaraguan judiciary.

We also appreciate that the Ministry of Labour has taken action on complaints, including those concerning harassment in the workplace, and that the Government has provided information on the measures to protect indigenous peoples and peoples of African descent against racial discrimination in employment and occupation.

As always, we call on the ILO supervisory bodies to distance themselves from political considerations, so that they do not go beyond their mandate in their comments, which undermines their seriousness and credibility, damages the noble objective of the ILO and encroaches upon the sovereignty of States.

Lastly, the Government of the Bolivarian Republic of Venezuela hopes that this Committee's conclusions will be objective and balanced, with the aim of the Government of



Nicaragua continuing to make progress and strengthening the implementation of the Convention.

Government member, Belarus – We welcome the active participation of Nicaragua, its cooperation with the ILO and its submission of reports to the supervisory bodies of this international organization. We welcome the efforts undertaken by the Government to ensure that all categories of citizens enjoy favourable conditions to realize the rights enshrined in national legislation, the right to work, the active creation of jobs and development in the areas of culture and education. We welcome the efforts undertaken by the Government to support indigenous people as well as the ban on discrimination in employment and occupation at the State level.

The information provided by the Government casts doubt upon the objectivity of the ILO. We would like to emphasize how unacceptable it is for international organizations to go beyond their mandate or use clearly biased approaches and assessments of the situation.

Government member, China – We thank the Government representative of Nicaragua for the information. We carefully take note of the report of the Committee of Experts. The Government of Nicaragua has earnestly fulfilled its obligation under the Convention. Article 27 of the Constitution clearly states that everyone is equal before the law and has the same right to protection. Any discrimination on grounds such as race, sex, language or religion is prohibited.

The Government of Nicaragua attaches great importance to the comprehensive economic and social development of the country, protects the rights of vulnerable groups and continuously improves the living, working, education, cultural and health conditions of its people. In 2022, the bridge over the Wawa River was built on the northern Caribbean coast, directly benefiting more than 48,000 people and indirectly benefiting nearly 150,000, creating jobs and boosting production. This fully demonstrates that the Government pays great attention to people's well-being and has taken concrete and effective measures.

We urge this Committee, in its discussion of this case and in its conclusions, to respect the information submitted by the Government of Nicaragua, respect its legal system, focus on the mandate of this Committee and the ILO and avoid including language that interferes with the country's sovereignty, legal system and internal affairs. Otherwise, the credibility of this supervisory mechanism and the reputation of the ILO will be damaged.

Government member, Russian Federation – We are grateful to the Government of Nicaragua for providing an explanation with regard to the Convention. The legislative situation in Nicaragua is reflected at the highest level in the Political Constitution of the country, which clearly forbids any form of discrimination, including on political grounds. These standards are implemented in practice, allowing for the development of individuals, indigenous peoples and Afro-descendants in the labour market. At the same time, infrastructure is developed in full recognition of legislation and the standards that apply. The assessment of the situation in the country is very much based on non-governmental sources, and we would emphasize that this approach is not appropriate. It is important that all positions are taken into account in the concluding documents on these issues. Otherwise, there could be well-founded doubts about the objectivity and the non-biased approach of the Committee.

Interpretation from Arabic: **Government member, Syrian Arab Republic** – Based on the information provided by the Government of Nicaragua on the measures and procedures implemented in the context of the application of the Convention, and in view of the



cooperation it has shown with this Organization, and in the knowledge that Nicaragua provided replies within the deadlines, our delegation fully supports Nicaragua's observations.

We consider it necessary to strengthen cooperation with the Government and all the social partners. Measures must be avoided that end up politicizing our Organization's activities, which is not at all in line with respect for the principle of sovereignty and non-interference in the internal affairs of Member States, a cardinal principle of the United Nations system.

Observer, Confederation of University Workers in the Americas (CONTUA) – We have a clear, firm position in the trade union movement in favour of eliminating any form of discrimination in and outside the world of work, based on the view that guaranteeing non-discrimination is an obligation of States, as it is a fundamental human right of all people.

Furthermore, in line with the Inter-American Court of Human Rights in its advisory opinion on the rights of freedom of association, collective bargaining and to strike, and their relation to other rights, with a gender perspective, we consider that the Convention and other ILO Conventions should be articulated in terms of interpretation from a pro persona perspective with the standards of the inter-American system, other international human rights instruments, and the opinions and recommendations of the Committee on Freedom of Association and the Committee of Experts, in order to achieve a harmonious interpretation of international obligations.

The point we therefore wish to make is that we understand the concern of the Committee of Experts regarding the complaints which have been made, those directly related to ILO standards, and those which refer to other attendant human rights, because an organization of this type is bound to endeavour to ensure compliance with Conventions that have a direct impact on people. Hence this discussion in which the Government and the social partners can express their views is very important for the workers. On the basis of the Committee and its conclusions, with input from the Office, we will be able to draw up a road map for collaborating in the search for solutions which make a conclusive contribution to the pacification of industrial relations, which will certainly contribute to political calm in Nicaragua.

Nicaragua is a young country which has endured a recent history of violent upheaval between sectors in dispute. In Latin America we have unfortunately been living for some time with divisions, unethical positions, extreme political differences which sometimes have their roots in violent situations, such as the recent storming of the presidential palace in Brazil. Not that this is an exclusively southern phenomenon: we can recall the incidents that occurred at the United States Capitol and other episodes in Europe, on a different scale, but for similar reasons.

From the trade union movement, we believe strongly that in principle with regard to labour matters, and reaching out in conjunction with other United Nations agencies, the social partners, the group of governments from our region, the Group of Latin American and Caribbean countries (GRULAC) and the Office must and can make a joint effort to contribute to achieving peace, respect for democracy, the rule of law and the guarantee of non-discrimination in all forms in Nicaragua.

Government representative – Once again I would like to express my gratitude for the statements from countries which engage in genuine dialogue and contribute to the labour spirit of this Organization. The Government of Nicaragua has been implementing social and labour policies which include the restoration of rights in general for Nicaraguan women,



establishing the conditions for women to play a leading role in the education system and the ongoing improvement of their employment skills, and to enjoy free healthcare and social security. There are collective agreements which include special clauses for the benefit of women workers, such as three months' pre- and postnatal leave, breastfeeding breaks, maternity care and accommodation for new mothers. There are also training and resources for entrepreneurship through programmes and projects aimed at women based on the Political Constitution, the Labour Code and other special laws which protect and restore the labour rights of working women in general, without any kind of discrimination. Women play an active part in the management of their workplaces and are members of federations, confederations, trade unions and joint committees in leadership positions, strengthening tripartism and freedom of association. The participation of Nicaraguan women in economic, social and political development is an important basis for ensuring gender equality and equity with highly significant results at the global level; Nicaragua has received recognition from the World Economic Forum (WEF), which rewarded these efforts by ranking Nicaraguan women seventh in terms of gender equality and first in the Americas in its WEF Global Gender Gap Report. Through its national policies and Act No. 648 on equal rights and opportunities, Nicaragua has succeeded in integrating women's vocational training skills and capacities into all areas of economic, political, social, cultural and productive activity, alongside progress in poverty eradication and the human development of Nicaraguan families. As an example, we may mention that Nicaragua has the highest number of women in leadership positions, such as ministerial positions, members of Parliament, mayors, deputy mayors, councillors and ministers. Furthermore, sexual harassment in Nicaragua is a crime, as established in the Penal Code, and it falls to the courts to pass judgment and hand down sentences. Moreover, Special Act No. 779 referred to the subject of political discrimination, which is being overcome through the electoral process. The political issue of the structures that provide access to power is addressed in the Nicaraguan Constitution and stems from the electoral authority of our country, as set out in Electoral Act No. 331.

Otherwise, Nicaragua has responded to all the Committee's requests. On 15 March, we sent a reply to the question regarding the disappearance of the defunct COSEP, an organization which was not registered with the Ministry of Labour, but described itself as a non-governmental, non-profit organization, for which reason it did not comply with the requirements laid down by law. In Nicaragua everyone has to comply with the law; privileges cannot be confused with rights. Moreover, Article 4 of the Convention provides that any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination. The persons referred to previously in relation to the criminal activity of 2018 which undermined the security of our nation implemented and financed the failed attempt at a coup d'état in Nicaragua.

We call strongly for the labour spirit of the Committee to be re-established. The Government of National Unity and Reconciliation reiterates its commitment to peace, work and the common good. Genuine dialogue needs equal conditions with respect and without external influences seeking to interfere in national sovereignty. Nicaragua cannot accept interference which seeks to disrupt labour peace and stability in the country. Dialogue and tripartism are a reality in Nicaragua and will continue despite the financial and hegemonic aggression of certain members of this Organization. Nicaragua will continue to fight for peace, social security and above all the rights of the men and women workers of Nicaragua.

Employer members – First of all, I would like to emphasize that our interventions are always respectful, we do not deliver them on a personal basis, they are based on the



information which is contained in the reports. We all consider that the information provided by this Organization is drawn up with professionalism and with the best intentions to establish the facts and circumstances which prevail in the various ILO Member States. We respect all participants, and in particular the workers. Several hours ago, when we were dealing with Convention No. 87 and now Convention No. 111, it was with the precise aim of ensuring that the workers can exercise their rights deriving from the international Conventions which have been ratified by the Member State in question. It seems to me that there could be no greater evidence of respect and proactive participation.

Having made that clarification, I would like to reiterate that it seems to me that this matter, although placed in a different case from Convention No. 87, should be examined jointly, not in isolation, and it is through joint action that solutions will be found. The Committee of Experts has determined that there are various workers' rights which are being violated or restricted; some of them are covered by one Convention, others by another Convention. But ultimately it is a whole set of acts and omissions which are occurring in both areas which need to be corrected. We, the Employer members, can only echo the points made by the Committee of Experts and in this regard we propose that the conclusions of the present case should underline the seriousness of the situation and urge the Government of Nicaragua to duly comply with the latest recommendations of the Conference Committee; that it should take immediate action to bring an end to the climate of violence, insecurity and intimidation which prevails in the country, and put an immediate end to arbitrary detentions on grounds of political differences, and also on grounds of gender, and provide information to the Committee of Experts in its next report.

We also call for the acceptance of a direct contacts mission and ILO technical assistance, as proposed previously. Here I would like to mention that many speakers who have taken part and the Government itself insist that these rights violations and omissions which obstruct the free exercise of rights have not been committed; that measures have been adopted and that things have been put right. What better opportunity to confirm this, not through a visit which has been kindly proposed and will take place soon, but by opening the doors to the ILO so that it can make its own observations, in accordance with the procedures established by this Organization.

All countries which have received technical assistance and a direct contacts mission have created better conditions for the application of the Conventions, for compliance with obligations and for the exercise of the corresponding rights.

So, I would like to emphasize that receiving such a mission would give peace of mind to us all, and it should be seen as support, not persecution, as has already been indicated. It is not me saying this, a number of speakers have said it. So, we wish to insist on this, as it seems to be extremely important.

Lastly, on account of the seriousness of this matter, we formally call for the conclusions to the present case to be included in a special paragraph of the Committee's report.

Worker members – The Committee of Experts took note of the information provided by the Government representative, and we thank her for that, and we also took note of the discussion that followed.

The Worker members reiterate their deep concern at the persistence of sexual harassment and gender-based violence in the country, including in the industries noted in the opening remarks. Violence and harassment have no place in the world of work, and the Government must redouble its efforts to make sure that no worker suffers such abuse. We



would welcome, in this regard, Nicaragua's ratification of the Violence and Harassment Convention, 2019 (No. 190), and its adoption of measures to ensure its transposition into law and practice.

We also reiterate our deep concern over the lack of a national legislative framework that prohibits racial discrimination in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination. There is no place for racism in the workplace, or in society as a whole. Afro-descendant Nicaraguans have suffered, and continue to suffer, discrimination in employment and occupation in practice. Nicaragua must not waste any time in adopting the appropriate legislative framework and investing the resources to end discrimination in practice. At the same time, we also note continued discrimination against indigenous persons and urge the Government to consult indigenous peoples in the decision-making process for the development and exploitation of natural resources on their territories.

Finally, we note the environment of political discrimination, which has seen the arbitrary detention of political leaders, human rights defenders, journalists, peasant and student leaders and members of civil society organizations. We must once again reiterate that workers cannot accept discrimination on political grounds. The genuine representation of the economic and social interests of workers' and employers' organizations can be seriously undermined in an environment of political discrimination and intolerance of the expression of different political views.

We urge the Government to refrain from such discrimination and to indeed provide protection for workers on the basis of their political opinion.

In light of the discussion, the Worker members urge the Government of Nicaragua to:

- provide the information requested by the Committee of Experts with regard to sexual harassment and to take all measures to ensure in practice the elimination of violence and harassment in the world of work;
- provide information on all measures adopted or envisaged to protect indigenous and Afro-descendent peoples against racial discrimination in employment and occupation, and to take specific measures in practice to protect indigenous and Afro-descendent peoples against racial discrimination in employment and occupation;
- take immediate measures to end the climate of violence, insecurity, and intimidation in the country and to ensure the elimination of employment discrimination on the basis of political opinion. We urge the Government to provide updated information in this regard, including on the outcome of any investigations into complaints made to the administrative or judicial authorities of acts of discrimination on the basis of political opinion;
- provide information on the results of the numerous measures taken in the context of the national policy on equality of opportunity and treatment, including the nature of the violations found in the application of the Convention, the corrective measures taken and the sanctions imposed.

Finally, the Worker members remind the Government that it can benefit from the high-quality technical assistance of the ILO. We therefore encourage the Government to benefit as much as possible from this technical assistance.



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 climate of violence, insecurity and intimidation in the country, which is propitious for acts of discrimination in employment and occupation based on political opinion.

It also noted the arbitrary detentions and the continuing reports of human rights violations and abuses, including gender-based discrimination.

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

- take immediate measures to end the climate of violence, insecurity and intimidation in the country;
- adopt the necessary measures to eliminate discrimination in employment and occupation and provide adequate protection for workers in the event of discrimination on the basis of political opinion;
- refrain from discrimination on political grounds, ensure that no penalties are imposed and provide adequate protection in the event of discrimination on the basis of political opinion;
- provide adequate remedies including the restoration of citizenship and the return of seized assets to those who have been discriminated against on the grounds of political opinion;
- provide information on any additional measure taken to eliminate discrimination on political grounds and on the outcome of any investigation conducted into complaints made to the administrative or judicial authorities for acts of discrimination on the basis of political opinion;
- indicate the extent to which the provision of the Labour Code (section 17(p)) also covers the “hostile work environment”; and
- provide details of any administrative complaint or legal action filed with the labour or criminal courts under the provisions of the Labour Code or Criminal Code in respect of sexual and quid pro quo harassment; as well as of the penalties imposed where complaints submitted to the Ministry of Labour are upheld and identified as acts of sexual harassment.

The Committee also requests the Government to continue to:

- take all measures to ensure in practice the elimination of violence and harassment in the world of work and to provide information to the Committee of Experts on all measures adopted regarding sexual harassment, including awareness-raising and prevention;
- take specific measures in practice to protect indigenous and Afro-descendant peoples against racial discrimination in employment and occupation and provide information on all measures adopted or envisaged to protect indigenous and Afro-descendant peoples against racial discrimination in employment and occupation;



- provide information on the outcomes of the many actions taken relating to the national policy of equality of opportunity and treatment; and
- provide information on the type of violations identified relating to the application of the Convention, the corrective measures introduced and the penalties imposed.

The Committee reminds the Government that it can avail itself of ILO technical assistance if needed.

The Committee requests the Government to report, in consultation with the social partners, on the progress achieved in the implementation of the Convention before 1 September 2023.

Government representative – Again, we have taken due note of the conclusions of this August Committee.

We are concerned at the persistent attempts to distort the reality in Nicaragua. In Nicaragua, women, indigenous persons, persons of African descent – indeed, all men and women – are protected and safeguarded. Our legal framework protects all men and women, without discrimination. Once again, we reject interference, influence and unequal treatment. The political motivations behind these conclusions violate the Convention and the spirit of the ILO, something that is of great concern to us.

Nicaragua will continue to protect all Nicaraguan women and men, seeking labour stability and peace with employment and dignified lives.

Nigeria (ratification: 2002)

Worst Forms of Child Labour Convention, 1999 (No. 182)

Written information provided by the Government

The recruitment and use of children in armed conflict

The Committee of Experts noted "... from the Report of the Secretary-General on Children and Armed Conflict that an action plan was signed between the Civilian Joint Task Force (CJTF) and the United Nations (UN) to end and prevent the recruitment and use of children and a standing order was issued by the CJTF in this regard. However, it noted that although there was a decline in the total number of verified cases of recruitment and use of children for armed conflict, the Report of the Secretary-General indicated that grave violations and abuses committed by Boko Haram against children remained gravely disturbing, in particular the use of children as carriers of person-borne improvised explosive devices as well as the large number of abductions".

The Federal Government of Nigeria's response in the report of the UN Secretary-General on Children and Armed Conflict in Nigeria indicated that the Government report covers the period from January 2020 to December 2021. The report focuses on the three conflict-affected states in North East Nigeria, namely, Adamawa, Borno and Yobe. It highlights grave violations against children committed by the terrorist groups – Boko Haram-affiliated and splinter groups, notably Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad and Islamic State West Africa Province.

The Government had previously reiterated its position on this same concern that terrorism is a global issue of concern and is worrisome to the world population especially



those living within and in the midst of the terrorist war zones. It has not been easy for Nigerians and others in similar or even worse situations. Parents losing a child to terrorist marauders is a horrendous experience and bane to society and the Government has deployed the military on recovery missions and to protect communities from further kidnapping sprees by terrorists.

The Government, through the Ministry of Defence, is carrying out regular sensitization workshops and ensuring the registration of members of vigilante groups who are also closely monitored by the Nigerian Security and Civil Defence Corps. Also, child victims who have been released and/or rescued from the enclaves of Boko Haram are adequately rehabilitated through Operation Safe Corridor carried out by the Federal Ministry of Humanitarian Affairs, Disaster Management, and Social Development and the Ministry of Defence. Moreover, the Child Rights Bill has been signed into law by some of the central states of the Federation with protracted armed conflicts, such as Borno State.

On monitoring mechanisms and penalties

Efforts at monitoring mechanisms and penalties are inter-ministerial. The Trafficking in Persons (Prohibition) Enforcement and Administration Act, No. 4, 2015, prohibits the forced or compulsory recruitment of children for use in armed conflict. It also addresses the penalties for violation of the Act and the punishment for perpetrators. The victims, inclusive of children, are adequately rehabilitated and integrated into society with the assistance of the Federal Ministry of Humanitarian Affairs, Disaster Management and Social Development. To this effect, a Bill to amend the Trafficking in Persons (Prohibition) Enforcement and Administration Act, No. 4, 2015, provides for stiffer penalties for cases of trafficking in persons and criminalizes trafficking in orphans. More efforts include the inauguration of state task forces against human trafficking in 23 states of Nigeria; the inauguration of the Anti-Trafficking in Persons and Violence Against Persons (A-TIVAP) Vanguard in 82 federal unity colleges, 2 Nigerian Air Force schools, and 1 command day secondary school; and the establishment of National Agency for the Prohibition of Trafficking in Persons (NAPTIP) offices in 28 states of Nigeria. In addition, the Government reiterates its previous statements on monitoring and penalty mechanisms. The Government notes the Committee of Experts' request in this respect and it will continue to provide information on identified cases of trafficking in children under 18 years, the prosecutions brought, the convictions obtained and the penalties imposed.

Preventing the engagement of children in the worst forms of child labour, access to free basic education and the special situation of girls

The Government restates its previous position on the various measures put in place to improve access to education, which include the national policy on inclusive education, the Safe School Initiative launched in the North West for students affected by the conflict, the Students Tutoring, Mentoring, and Counselling Programme and the school enrolment campaign. The Government notes the June 2022 press release by the United Nations Children's Fund (UNICEF), as mentioned by the Committee of Experts, with the intention to make inquiries in consultation with the Katsina State Government on the press statement and the figures attributed to it. Nationally, there is no gender discrimination as regards access to education in Nigeria. Boys and girls are given equal opportunities to attend school and gain knowledge. The Government is taking deliberate measures to curb any irregularities in this regard to increase school enrolment and attendance rates at primary and secondary school levels and to lower drop-out rates.



The *almajiri* (children in Islamic schools who are also sent out to beg: according to the Office report) phenomenon is being curbed by the establishment of the *almajiri* special education project with the aim of integrating basic education into the Koranic schools to form a holistic curriculum for that segment of society and diminish the risk of the worst forms of child labour. The *almajiri* schools are present and making inroads towards the educational emancipation of the most affected and vulnerable children and youth.

Legally, national laws in the spirit of the Articles and provisions of the Convention are very robust and comprehensive to protect children from the worst forms of child labour. They include but are not limited to the 1999 Constitution of the Federal Republic of Nigeria as the ground norm, labour laws, the National Agency for the Prohibition of Trafficking in Persons Act, 2015, as amended, and the Immigration Act. These laws cover the minimum age for work, the minimum age for hazardous work, the prohibition of forced labour, the prohibition of child trafficking, the prohibition of the commercial sexual exploitation of children, the prohibition of the involvement of children in illicit activities and the minimum age for voluntary military recruitment.

Child labour agencies and committees in Nigeria include the Federal Ministry of Labour and Employment, the Federal Ministry of Women Affairs and Social Development, NAPTIP, the Nigeria Police Force, the Nigeria Immigration Service, the Federal Ministry of Education, the Federal Ministry of Health, the Federal Ministry of Humanitarian Affairs, Disaster Management and Social Development, the Federal Ministry of Justice, the Ministry of Mines and Steel Development, the Federal Ministry of Agriculture and Rural Development, the National Human Rights Commission, the National Population Commission, employers' and workers' organizations, faith-based organizations and civil society organizations/non-governmental organizations (NGOs).

Finally, the Government notes all the observations and requests by the Committee of Experts on the issues of concern. It also acknowledges that the issue of the elimination of child labour, especially the worst forms of child labour, is a prerequisite for sustainable development and economic growth. Consequently, it considers that the efforts and zeal by the Government to date will ultimately ensure the eradication of forced labour, modern slavery and human trafficking, and the elimination of the worst forms of child labour, including the recruitment and use of child soldiers by the year 2025 as a matter of priority. The Federal Government of Nigeria reaffirms its commitment to the ideals of the Convention as ratified.



Discussion by the Committee

Chairperson – Dear colleagues we will now start the second case on our agenda, which is the individual case of Nigeria on the application of the Worst Forms of Child Labour Convention, 1999 (No. 182). Before I invite the Government representative of Nigeria to speak, I would like to inform the Committee once again that we have 19 speakers on the list and as I announced in the morning the automatic reduction of time applies.

Government representative – We thank you for this opportunity to provide full information to the Conference on the application of the provisions of Convention No. 182. It is acknowledged that this Convention can be considered as the most important among all the core Conventions as it deals with children, who are the future of a society. It can also be considered as a reflection of the soul of a nation as the state of its humanity is portrayed by how much the children are protected and given a good beginning for a hopeful future. In the

course of our appearance before this Committee we have taken to heart the guidance given on the Conventions pertaining to the effective abolition of child labour.

Currently, the Federal Executive Council has approved the Labour Standards Bill which provides for the protection of children at work and from admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the physical and mental development of young persons, in line with the provisions of the Minimum Age Convention, 1973 (No. 138). We are therefore open to guidance on the application of the Conventions duly ratified by Nigeria.

This Bill, with other bills covering labour administration, have been forwarded to the Federal Ministry of Justice for legal drafting, in preparation for legislation by the National Assembly. Among others, the Bill provides for the minimum age of employment to be 15 years, the list of hazardous child labour previously submitted to this Committee during the Conference in June 2016 and sanctions for contraventions.

The Federal Executive Council also approved the national policy on child labour, the national action plan for the elimination of child labour in Nigeria and a comprehensive list of hazardous child labour. We would wish to further inform this Committee that Nigeria became an Alliance 8.7 Pathfinder Country with commitments to achieve the Sustainable Development Goal (SDG) target 8.7 by taking immediate and effective measures to eradicate forced labour and end modern slavery and human trafficking and, as pertains to children, to eliminate the worst forms of child labour including the recruitment and use of child soldiers as well as to end all forms of child labour by the year 2025. To ensure compliance, the Ministry has made provisions in the Labour Standards Bill to extend labour inspections to the informal economy.

A specific checklist and labour inspection tools for child labour inspections at workplaces have been put in place to ensure the elimination of child labour in the nation. Also, a child labour website and reporting application have been developed and a process has been finalized for responding to child labour cases and to facilitate compliance at workplaces.

Within the framework of the national action plan for 2021–25, the Government is strengthening mechanisms at the three tiers of Government. We have the federal state and local government working for the elimination of child labour in global supply chains in collaboration with the Regional Office of the ILO. These efforts include the national steering committee at the federal level, the state steering committee at the subnational level and the community child labour monitoring committee on the elimination of child labour at the local government level through capacity-building on the implementation of the national action plan and the State's action plan.

The Federal Ministry of Labour and Employment has developed and validated a national social behaviour communication change strategy (NSBCC) for the elimination of child labour in Nigeria for 2021–23. The Ministry also ensures that the elimination of child labour strategy is mainstreamed into the five-year strategic plan of the National Orientation Agency in Nigeria.

Furthermore, the Government, through the Ministry and in collaboration with the national bureau of statistics and the ILO, as well as the ILO ACCEL Africa Project, conducted a national child labour and forced labour survey for the elimination of child labour and its worst forms in the nation. The results of the survey have been analysed and validated and the subsequent full report has been concluded and is being finalized for launch during the commemoration of the World Day Against Child Labour in 2023.



In all, Nigeria is fully committed in its quest to ensure the elimination of child labour, including its worst forms in workplaces within its boundaries. A child's life is like a piece of paper on which every person leaves a mark. There is therefore a popular and widely known African proverb that states, "it takes a village to raise a child and the child who is not embraced by the village will one day burn it down to feel its warmth."

We love our children and would not send them to war or affiliate them to terrorist groups to carry arms. We therefore reiterate our defence in 2016 on the same subject by stating that terrorism is a global issue of concern and is worrisome to the world population especially those living within and in the midst of the terrorists' war zones.

It has not been easy for Nigerians and others in similar or even worse situations. Parents losing a child to terrorist marauders is a horrendous experience and a bane to society and the Government has deployed the military or recovery missions to protect communities from further kidnapping sprees by terrorists. The report of the United Nations Secretary-General on Children and Armed Conflict in Nigeria covers the period from January 2020 to December 2021. The report focuses on the three conflict-affected States in North East Nigeria namely: Adamawa, Borno and Yobe. It highlights grave violations against children committed by the terrorist groups, including groups affiliated to Boko Haram and splinter groups, notably Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad and the Islamic State West Africa Province. In the report, the Secretary-General notes the decrease in verified grave violations against children compared with previous years and that the highly volatile and rapidly evolving security situation in North East Nigeria continues to have a negative impact on the protection of conflict-affected children.

In the report, the Secretary-General highlights the efforts made by the Government and by the CJTF to strengthen the framework to respond to and prevent grave violations against children. In this regard, Nigeria notes and appreciates the recommendations in the report for ending and preventing grave violations and improving the protection of children. We further reiterate that the Government, through the Ministry of Defence, is carrying out regular sensitization workshops and ensuring the registration of members of vigilante groups, who are also closely monitored by the Nigerian Security and Civil Defence Corps.

Child victims who have been released and/or rescued from the enclaves of Boko Haram are adequately rehabilitated through Operation Safe Corridor by the Federal Ministry of Humanitarian Affairs, Disaster Management and Social Development and the Ministry of Defence. Also, the Child Rights Bill has been signed into law by some of the epicentral states of the federation experiencing a protracted conflict such as Borno State. The Government notes the observations made by the Committee of Experts requesting it to continue to take measures using all available means to ensure the full and immediate demobilization of all children to put to a stop the use of children under 18 years in armed conflicts, to put in place effective and dissuasive penalties for perpetrators and to take effective and time-bound measures to provide for the rehabilitation and social integration of rescued and released children.

Efforts at monitoring mechanisms are inter-ministerial. The Trafficking in Persons (Prohibition) Enforcement and Administration Act, No. 4 of 2015, prohibits the forced compulsory recruitment of children for use in armed conflict. It also addresses the penalties for violations as punishment for perpetrators. The victims, inclusive of children, are adequately rehabilitated and integrated into society through the assistance of the Federal Ministry of Humanitarian Affairs, Disaster Management and Social Development. To this effect, a bill for an act to amend the Trafficking in Persons (Prohibition) Enforcement and



Administration Act, No. 4 of 2015, provides for stiffer penalties for cases of trafficking in persons and criminalizes trafficking involving orphanages.

More efforts include the establishment of state forces against human trafficking in the 23 states of Nigeria, the establishment of anti-trafficking in persons and violence against persons in federal schools and air force schools and the establishment of the National Agency for the Prohibition of Trafficking in Persons (NAPTIP), with offices in 20 states of the federation. In addition, we reiterate our previous statements on monitoring and penalty mechanisms. We note the Committee of Experts' request in this respect and the Government will continue to provide information on identified cases of trafficking in children under 18 years, the prosecutions brought, the convictions obtained and the penalties imposed.

On preventing the engagement of children in the worst forms of child labour and access to free basic education, the Government reiterates its previous position that things have been put in place to improve access to education, which include the national policy on inclusive education, a self-school initiative launched in the North West and a robust school campaign. We note the June 2022 press release by UNICEF, mentioned by the Committee of Experts, and have the intention to make inquiries in consultation with the Katsina State Government on the press statement and the figures attributed to it. Nationally there is no gender discrimination in terms of access to education. Both boys and girls are given equal opportunities to attend school and gain knowledge. We will take further necessary measures to curb any irregularities in this regard and to increase school enrolment rates and decrease drop-out rates. The *almajiri* phenomenon is being curbed by the establishment of the *almajiri* special education project with the aim of integrating basic education into the Koranic schools to form a holistic curriculum for that segment of society and diminish the risk of the worst forms of child labour. Legally, national laws in the spirit of the Articles and provisions of the Convention are very robust to protect children from the worst forms of child labour. We have the 1999 Constitution of the Federal Republic of Nigeria as the ground norm. We have labour laws, the Act on NAPTIP and the Immigration Act. These laws cover the minimum age for work, the minimum age for hazardous work, the prohibition of forced labour, the prohibition of child trafficking, the prohibition of commercial sex exploitation of children, the prohibition of the involvement of children in illicit activities and the minimum age for voluntary military recruitment. There are a lot of child labour agencies who are doing this work and a steering committee. A national reporting template for the national action plan is being developed and we have collaboration with various agencies including the United States Department of Labor and we commemorate the World Day Against Child Labour yearly. Nigeria is an Alliance 8.7 Pathfinder Country and this has demonstrated the determination of the Government towards the goal of SDG target 8.7 in Nigeria.

We note all the observations and requests by the Committee and we acknowledge that the issue of the elimination of child labour, especially its worst forms, is a prerequisite for sustainable development and economic growth. Considering the efforts and zeal by the Government to date, we hope that the Committee will note and consider that the Government is committed to continue in its quest to eliminate all forms of child labour by doing its utmost to deploy military and paramilitary personnel to curb the terrorist insurgency and minimize casualties. Programmes and policies will continue to be utilized to curb the menace of child labour and a reorientation to inculcate the benefits of education in the minds of people in the identified areas will continue.

Worker members – We are discussing the application by Nigeria of Convention No. 182, which was ratified by Nigeria in 2002. The report of the Committee of Experts raises a number of pertinent issues affecting the protection of children with respect to the



Government's obligations under the Convention. First, the Committee of Experts raised the issue of the recruitment and use of children in armed conflict. The Committee of Experts makes reference to the report of the UN Secretary-General on Children and Armed Conflict in Nigeria and the Action Plan that was signed between the CJTF and the UN to end and prevent the recruitment and use of children in armed conflict. The Secretary-General's report indicates the grave and deeply disturbing violence and abuse against children in the conflict areas and perpetrated in particular by Boko Haram. The report raises very grave violations, including child abductions and the use of children as carriers of person-borne improvised explosive devices. The situation of conflict and insecurity instigated by Boko Haram, and other terrorist and vigilante groups, is responsible for exposing children to the menace. The Government has an obligation to prioritize the elimination of the worst forms of child labour.

Regarding the recruitment of children for use in armed conflict in particular, the Government is under an obligation to take effective and time-bound measures to provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. In order to fulfil their obligation, the Government has indicated the measures it is taking in this direction. According to the Committee of Experts' report, the Government, through the Ministry of Defence, is carrying out regular sensitization workshops and ensuring the registration of members of vigilante groups, who are closely monitored by the Nigerian Security and Civil Defence Corps. Also, child victims who have been released from the enclaves of Boko Haram are adequately rehabilitated through Operation Safe Corridor, carried out by the Federal Ministry of Humanitarian, Disaster Management and Social Development and the Ministry of Defence. The Governor of the State of Borno, the ground zero of the protracted armed conflict which has been going on for more than 12 years, has signed the Child Rights Bill into law. The Bill provides for the protection of children against recruitment and use for armed conflict and other forms of violence and exploitation. One cannot doubt that the Government is taking action to address this major challenge, brought on by the conflict. The Government must do more by treating this phenomenon as a matter of priority. We ask the Government of Nigeria to do its utmost in addressing its obligations under the Convention. As reported by the Committee of Experts, the report of the Secretary-General indicates that the UN has verified 444 grave violations against 356 children in North East Nigeria. A total of 63 children, of whom 9 are boys and 54 are girls, some as young as 6 years of age were recruited and used by groups affiliated to Boko Haram and splinter groups, including Islamic State West Africa Province, in Borno State. It is harrowing, the thought of these children being abducted and used in the conflict. These children also suffer murder and sexual violence. The Worker members join the Committee of Experts to strongly urge the Government to continue to take measures using all available means to ensure the full and immediate demobilization of all children and to put a stop in practice to the forced recruitment and use of children by armed groups. The Government must take immediate and effective measures to ensure that thorough investigations and prosecutions of all persons who forcibly recruit children for use in armed conflict are undertaken and are sufficiently effective and that dissuasive penalties are imposed in practice. The rehabilitation and social integration of affected children must be of the highest priority. The Government must take effective and time-bound measures in this regard. The Government must spare no effort in seeking international cooperation and assistance, including the technical assistance of the ILO, to implement its obligations under this Convention. We also urge the Government to be guided by the ILO Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205).

Regarding effective monitoring and enforcement mechanisms in line with Articles 5 and 7 of the Convention, we take note of the Government's information that NAPTIP is



undertaking systematic efforts to fight trafficking in persons, including through conducting awareness-raising and capacity-building programmes for the judiciary and law enforcement bodies on investigation, and appropriate punishment for the offences under the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015. The Worker members welcome the information that the investigations into child trafficking cases have led to the rescue of 2,966 child victims of trafficking. However, we must highlight concerns that Nigeria remains a source, transit and destination country, for victims of trafficking, with the internal trafficking of girls for the purpose of domestic servitude and sexual exploitation and boys for the purpose of child begging, remaining rampant. We are alarmed by the information that 18 per cent of trafficking victims in Nigeria are girls under the age of 18 years, and that thousands of children from poor homes, most aged between 15 and 17 years are involved in domestic labour. The Government must redouble its efforts to combat child trafficking. In line with the Committee of Expert's observations, the Worker members urge the Government to continue to provide statistical information on identified cases of trafficking in children under 18 years, including the prosecutions brought, the convictions obtained and the penalties imposed. Children caught up in this situation are unable to access their right to education and to a safe and peaceful environment, to grow and develop and to realize their aspirations and full potential and, in many cases, cannot access opportunities for social progression. The Government must do all in its power to prevent the engagement of children in the worst forms of child labour by expanding access to free basic education and paying particular attention to the education of girl children in that regard.

We note the initiatives to improve the enrolment of children in schools as a preventative measure. However, we must emphasize as indicated in the report of the Committee of Experts, that there are still major challenges with net attendance, which is still low at about 70 per cent. Nigeria still has 10.5 million out-of-school children, with 60 per cent of them in northern Nigeria, where, as already noted, children's rights and access to free basic education are seriously being hampered as the conflict has deprived many children of access to education. It is therefore no wonder that the number of children in the street begging has increased, including children in Islamic schools who are also sent out to beg. This vicious cycle of poverty leads to a higher risk of being engaged in the worst forms of child labour, including being recruited into conflict situations, and it is therefore much more likely that one's life chances will be affected. The Government must take effective and time-bound measures to prevent the phenomenon of "streetism" among children and to provide for their rehabilitation and reintegration.

Employer members – The Employer members stress the importance of States' compliance with Convention No. 182, the first universally ratified Convention of the ILO, which is one of the ten ILO fundamental Conventions, and described by the Government representative as the most fundamental of the core Conventions. Nigeria ratified this Convention in 2002 and we note that, to date, the Committee of Experts has provided three observations on this case in 2015, 2018 and most recently in 2022. Today is the first time that this Committee is examining the application of the Convention by the Government. We take note that the Committee of Experts has identified this as a double-footnoted case for this year. A bit of context about the case. Since 2011, the security landscape in Nigeria has been shaped by the conflict between the State and Boko Haram as well as other armed groups. The conflict has been accompanied by certain cases of banditry and kidnappings in the North East and parts of the South West of the country. For instance, it is reported that in March 2021 around 618 schools were closed in 6 northern states over fears of attacks and abductions of pupils and staff. We also note that, politically, Nigeria has just recently held its general elections in March 2023 and elected a new president and new government at all



levels. The Employer members note that technical assistance has also been provided by the ILO to the Government on both labour law reforms and reporting obligations. Following a request by Nigeria in March 2018, the ILO Abuja Office provided a technical note on five bills relating to labour issues, followed in December 2021 by a workshop held to validate the Labour Standards Bill. The ILO has also supported and is still supporting the Government to meet its reporting obligations for the years 2022 and 2023.

The issues that have formed the basis of the observations. The Committee of Experts outlined serious elements of inadequacy on the implementation of the Convention by Nigeria. These shortcomings, which had been identified in the previous observations of the Committee, may be categorized into four main issues. These are: compulsory recruitment of children for use in armed conflict and providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration, in line with Articles 3(a) and 7(2)(b) of the Convention; monitoring mechanisms and penalties in line with Articles 5 and 7(1) of the Convention; preventing the engagement of children in the worst forms of child labour, access to free basic education and the special situation of girls, in line with Article 7(2)(a) and (e) of the Convention; and identifying and reaching out to children at special risk, in line with Article 7(2)(d) of the Convention.

Now the issues in turn. First issue. Reflecting universal consensus and a strong tripartite commitment, the Convention reminds us of the absolute importance of standing against the scourge of the worst forms of child labour. For the Employer members, it is therefore crucial that all Member States fully comply with their obligations outlined in the Convention. The Employer members wish to recall that according to the Government's report, Nigeria has put in place measures to carry out regular sensitization workshops and ensure the registration of members of vigilante groups. The Government also mentioned that adequate rehabilitation is being provided to child victims who have been released or rescued. Despite progress at the legislative and policy level, a 2022 UN Report on Children in Armed Conflict still records high numbers of children recruited by armed groups. We further take note of the Committee of Experts' observations deploring the persistence of this practice, which also entails other violations of the rights of children, such as abductions, murders and sexual violence. Like the Committee of Experts, the Employer members acknowledge the complexity of the situation on the ground with armed groups still present in the country. However, we equally share the Committee of Experts' concerns and echo their recommendations to the Government to ensure: the full and immediate demobilization of all children and put a stop in practice to their forced recruitment into armed groups; the thorough investigation, prosecution and penalization of all perpetrators of forced recruitment of children for use in armed conflict; and the rehabilitation and social integration of child victims of forced recruitment.

Second issue. Regarding monitoring mechanisms and penalties, the Employer members note that the Government has implemented measures to fight trafficking in persons through its national agency, including by providing capacity-building on investigating cases of trafficking. However, we also note that according to a 2018 statement of the UN Special Rapporteur on trafficking in persons, especially women and children, Nigeria remains a source, transit and destination country for victims of trafficking, and the internal trafficking of girls for purposes of domestic servitude and domestic exploitation and of boys for purposes of child begging is still rife. We further note that UNICEF and the International Organization for Migration (IOM) report that 18 per cent of trafficking victims in Nigeria are girls under the age of 18 years. Thousands of children from poor homes are involved in domestic labour. Also, on this issue, the Employer members align with the Committee of Experts' position in



asking the Government to strengthen its efforts to combat child trafficking by ensuring that the perpetrators of these acts are identified and prosecuted and that sufficiently effective and dissuasive sanctions are imposed.

Third issue. Regarding the prevention of the engagement of children in the worst forms of child labour and their access to free basic education, the Employer members note a 2018 UNICEF report which highlighted that Nigeria has the highest number of out-of-school children, amounting to 10.5 million, of whom 60 per cent are girls. The Government did not provide any information to the Committee of Experts regarding their observations on this issue. Nevertheless, we take note of the launch in June 2022 by the Niger State Government in partnership with UNICEF of a cash transfer programme to provide learning opportunities for over 20,000 out-of-school children in that State. Taking note of the Committee of Experts' deep concern at the significant number of children who are deprived of basic education, we support its request to the Government to intensify its efforts to improve the functioning of the education system and to facilitate access for all children to free basic education, in particular for girls and children affected by the war in the areas of North East Nigeria.

The fourth issue. As to identifying and reaching out to children at special risk, we take note of the Committee of Experts' concerns regarding the fact that 62 per cent of the 10.1 million out-of-school children in Nigeria are boys, of whom the majority, especially in the north, are *almajiri* children, who are denied the right to education. Noting also on this issue that the Government has not provided information, we align with the Committee of Experts in asking the Government to take effective and time-bound measures to protect all street children, including *almajiri* children from the worst forms of child labour and to provide for their rehabilitation and reintegration. We further ask the Government to provide information on the measures taken and the number of children covered.

Finally, in acknowledging the persistence of serious violations of the Convention and gaps in reporting, the Employer members call on the Government to continue to prioritize the rights of children, including in the commitments made and reaffirmed at the Global Conference on the Elimination of Child Labour held in Durban in 2022. We also call on the Government to continue to avail itself of ILO technical assistance.

Worker member, Nigeria – I speak for Nigeria's organized labour community, and we fully align with the submissions of the Committee of Experts concerning this case. As you have read, the Committee of Experts noted the pragmatic interventions that the Government has initiated to address the challenges undermining the development of the Nigerian child. Unfortunately, the Committee of Experts has observed that these measures fall far short for sundry reasons, some of which we shall touch on in ways that can provide more pieces of information to this Committee that can help it reach a conclusion that would assist our country to continue to improve in terms of areas of focus, direction, processes, content and likely outcomes.

Insecurity remains a severe challenge militating against the preservation of the environment for the development of children in schools and playgrounds. In North East Nigeria, the activities of criminal and violent groups have persisted. As the Committee of Experts has rightly noted, these groups have continued to utilize and exploit children as fighters, cannon fodder and kidnap victims to extract ransoms to finance their violent operations. Nigeria would need support to degrade, displace and defeat these elements. Further, it would be desirable for the Nigerian State to be able to effectively extract children involved in violent activities and victims of security-challenged environments. The Government must also be able to effectively rehabilitate and reintegrate these children into a



stable, safe and healthy environment. Given the traumatic and harrowing experiences these children are subjected and exposed to, it is pertinent that psychological and mental health counselling and assistance should be provided in the doses and at the frequency necessary to heal and help them reintegrate into their communities.

As organized labour and parents, we genuinely worry about where children continue to be enslaved, utilized in forced and bonded labour and trafficked within, through and outside of our country. We are distraught with the legal and administrative systems that allow perpetrators, handlers and sponsors to get away with very light sanctions. This Committee must encourage, support and work with the Government, with the collaboration of social partners, to review and revamp existing legislation. As a show of our commitment to being part of the solution to this endemic crisis, the Nigeria Labour Congress pledges to be a member of the Alliance 8.7 to be more active in the fight against all forms of child labour in Nigeria.

The state of labour inspection in Nigeria has remained lax and almost non-existent, which is also partly responsible for the growing incidence of child labour and the exploitation of children. In the past, this Committee has made the point about the need to improve the labour inspection regime in Nigeria, through a well-defined plan to improve systems, personnel, materials and schedules in a scalable manner. We ask that this request be reiterated with urgency and the addition of the provision of a road map for implementation.

In all sincerity, poverty and socio-economic dispossession are at the heart of the dominant and spiking state of the incidence of child labour in Nigeria. These issues are worsening in such a way that the worst forms of child labour are increasingly becoming normalized. The 2020 Multidimensional Poverty Index survey revealed that 133 million people live in different poverty stages, representing a staggering 63 per cent of Nigeria's population.

It is also disturbing that out of Nigeria's 216 million population, 20 million children are disadvantaged due to a lack of access to education. The United Nations Educational, Scientific and Cultural Organization (UNESCO) has confirmed that the country now has 20 million out-of-school children. We are worried that governments at all levels have made lightweight commitments to investment in education. World Bank figures show that Nigeria's public investment in education fell from 7.5 per cent in 2019 to 5.1 per cent in 2022. Several state governments are sacking teachers, most are withholding and delaying the payment of salaries and a wage freeze has been imposed for several years. As organized labour, we have continued to advocate for the defeat of illicit financial flow activities of tax avoidance, evasion and dodging as part of the interventions to improve internal and alternative resource mobilization possibilities, which will increase the Government's chances of financing public services such as education and public health provision.

Poverty is forcing many children to be absent, skip classes and drop out after successful enrolment. The situation is worse for the girl child, who is often recruited by the family as an additional hand in the family business rather than being sent to school. This kind of choice entrenches and sustains the feminization of poverty and generational poverty.

In the past eight years and counting, we have continued to witness the worsening of families' economic situation on account of successive Governments' voodoo fiscal and macroeconomic policies. Household poverty mirrors child labour in Nigeria. We urge this Committee to assist the Government in formulating and implementing socio-economic policies that will effectively target and address child poverty and child labour. The



development and deployment of an expanded and enriched social protection provision programme can help.

Government member, Sweden – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The Candidate Countries **Albania, Bosnia and Herzegovina, North Macedonia, Republic of Moldova, Montenegro, Serbia**, the European Free Trade Association countries **Iceland and Norway**, Members of the European Economic Area, align themselves with this statement.

The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights and the fight against child labour, with a priority to its worst forms. We will continue to stand up for the rights of every child to reach their full potential within the framework of the UN Convention on the Rights of the Child and its Optional Protocols, in line with the European Council conclusions on the EU Strategy on the Rights of the Child.

We underline that the universal ratification of the Convention must be accompanied by effective implementation in law and practice. As stated in the Durban Call to Action, the worst forms of child labour should be eliminated as a matter of urgency; a commitment that is also included in the 2030 Agenda for Sustainable Development.

The EU and its Member States are long-term partners of Nigeria. This partnership is further reinforced by the Multiannual Indicative Programme for Nigeria 2021–27, which highlights the EU's zero-tolerance approach to child labour and includes measures and objectives supporting youth employment, human development, education with a special focus on young women and girls and job creation, addressing trafficking in human beings.

While noting certain measures taken by the Government, we express our deep concern about the continued recruitment and use of children by armed groups, which is a grave violation of children's rights and international humanitarian law and perpetuates other serious crimes such as abductions, murders and sexual and gender-based violence. We urge the Government to ensure the full and immediate demobilization of all children and to put an immediate end to the practice of forced and other recruitment of children by armed groups in the country. The Government must ensure that adequate and timely support is provided to those children, who, as victims, should have access to rehabilitation, psychological and social integration support, noting also the growing issues of stigmatization and exclusion. We call for investigations and prosecutions for recruiting children in armed conflict and for full accountability to be ensured. Effective and dissuasive penalties should also be imposed on perpetrators. We urge the Government to take all the necessary measures to prevent the re-involvement of children in this vicious practice, including through targeted labour policies aimed at tackling poverty and creating decent work opportunities for their families and communities. We welcome the constructive engagement of local stakeholders, which has resulted in the development of a UN offer to support the Government in the implementation of the Borno Model in the North East of Nigeria. This offer prioritizes the development of guidelines for transitional justice and community-based reconciliation processes, including the safeguarding and protection of children and women, in coordination with the Federal Government.

Particularly worrying is the continuing practice of human trafficking and the large number of children who are victims of both cross-border and internal trafficking for labour and sexual exploitation, particularly affecting girls under the age of 18. In line with the Committee's request, we urge the Government to intensify its efforts to combat child



trafficking and to ensure that the perpetrators are investigated and prosecuted, and that effective and dissuasive penalties are imposed.

Given the gravity and magnitude of the situation, we also stress the importance of development cooperation and engaging all relevant stakeholders. We encourage the Government to avail itself of further technical cooperation, including by expanding existing ILO technical assistance in the country. We look forward to continuing joint efforts with the Government and the ILO and its constituents.

Government member, Canada – Canada would like to thank the Government of Nigeria for the updated information provided to the Committee of Experts and to this Committee on its efforts to combat the worst forms of child labour. Canada is deeply concerned by reports of the worst forms of child labour including the use of children in armed conflict by non-state armed groups such as Boko Haram and reports of abduction, murder and sexual violence.

Canada is further concerned by the Committee of Expert's report regarding the cross-border and internal trafficking of girls for the purpose of domestic servitude and sexual exploitation, and of boys for the purpose of child begging. All children have the right to reach their full potential through safe and equitable access to education. This is a critical element in eradicating child labour.

Canada firmly believes that an armed conflict is no place for children and condemns all grave violations of children's rights in the strongest terms. This is why Canada established the Group of Friends of Children in Armed Conflict in Nigeria in November 2022, which we continue to co-chair alongside Norway. Canada recognizes that the Government has taken steps to protect the rights of children. Canada welcomes the demonstrated commitment by the Government in this respect. The implementation of these legislative milestones will be key to protecting children from the worst forms of child labour and rehabilitating affected youths.

Canada fully supports the recommendations of the Committee of Experts and recommends that Nigeria ensure that all states adopt the 2003 Child Rights Act and protect children, including from harmful traditional practices; intensify measures to investigate, arrest and prosecute cases related to the worst forms of child labour, including trafficking in children; and impose dissuasive and sufficiently effective sanctions ensure free basic education to all children at the elementary and secondary levels; take all necessary measures to protect, rehabilitate and reintegrate all children at special risk, particularly children removed from the worst forms of child labour and armed conflict as well as free children; and finally continue providing information to the Committee of Experts, including statistics on the number of investigations, prosecutions and convictions related to child trafficking, as well as the number of children removed and rehabilitated from situations of forced labour.

We encourage Nigeria to continue to take action to protect the rights of children and look forward to the Government's next report to the Committee of Experts.

Worker member, France – Being a child in Nigeria, and particularly a girl child, is a huge risk factor, bringing with it the risk of remaining illiterate, falling victim to violence and, above all, being a victim of trafficking in persons. The term "girl child" is used by a number of NGOs and sociological research institutes to refer to a female child aged between 6 and 18 years. In regions affected by the conflict in North East Nigeria, girl children are more than twice as likely not to attend school as girls living in other regions.



In January 2020, the Nigerian President stated that there were 13 million out-of-school children in Nigeria. Young girls represent 60 per cent of that figure. The gender ideologies that pervade households and communities continue to favour boys over girls, creating disparities in their opportunities and educational outcomes. This cultural understanding hinders the education of many young girls and increases their risk of being victims of violence, trafficking in persons and sexual exploitation.

The Committee has corroborated this analysis, noting that around 60 per cent of out-of-school children are girls and that many of them enrol in school and later drop out. Poverty is the principal factor affecting the education of young girls. Violence is another. Indeed, although some parents overcome the preference for male children and agree to send their daughters to school, locating a school, the distance to be travelled and the environment can remain significant barriers, along with persistent sexual harassment in educational settings by teachers and male students.

Similarly, many reports have highlighted that large class sizes, the lack of toilets accessible to young girls and the behaviour of boys and male teachers make school attendance difficult, and sometimes impossible, for these young girls. It is therefore a question of political will, first and foremost. Added to these barriers is social exclusion linked to cultural and religious practices, such as early marriage, which deprive young girls of an education.

Nigeria remains a country of transit and destination for trafficking and internal trafficking in girls for the purpose of sexual and domestic exploitation. For several years, the ILO has expressed alarm at the gendered outcomes of trafficking in persons. Girls aged under 18 years are particularly affected by the phenomenon.

While noting certain measures taken by the Government, the Committee must express its deep concern at the significant number of children, and particularly girls, who are deprived of basic education, because educating girls is, undeniably, an important part of a country's development, as indicated by the adage, "if you educate a girl, you educate a family and the whole nation".

Government member, Switzerland – Switzerland is deeply concerned at the persistent conflicts in northern Nigeria and their devastating consequences for the entire population. Switzerland calls on all parties to those conflicts to respect international law and to make every effort to find a peaceful resolution.

The situation of children is particularly alarming. Many armed groups recruit children by force, sometimes by abduction, in order to use them in armed conflict, including as carriers of explosive devices. That practice contravenes the Protocols Additional to the Geneva Conventions and the Convention. Switzerland therefore calls on the parties to the conflicts to demobilize children engaged in armed forces and to bring an end to their recruitment for military purposes. Switzerland also requests the Government to adopt the necessary measures to facilitate the social reintegration of former child soldiers. Furthermore, the Government must launch criminal proceedings against individuals who have recruited children for military purposes.

Armed conflict also has a direct effect on access to education. According to the ILO's estimates, around 10 million children are out of school in Nigeria. These children are more likely to live in precarious conditions and to be victims of numerous forms of abuse and exploitation, including forced labour. Trafficking in children for the purpose of domestic servitude, sexual exploitation and child begging is of particular concern in Nigeria.



Switzerland therefore calls on the Government to strengthen its education system and security in schools, particularly in conflict zones; to adopt the measures necessary to prevent, combat and punish trafficking in children; and lastly, to improve protection for, and promote the social inclusion of, out-of-school children.

Worker member, Togo – The report of the Committee of Experts and its decision to highlight the case of Nigeria with a double footnote concerning this important and fundamental Convention show that, despite the efforts made by the Government, the child labour situation in Nigeria has not improved. The report shows that the situation has worsened, as evidenced by the irrefutable facts and figures provided by various reputable international organizations such as UNESCO, the United Nations Development Programme (UNDP) and the ILO. Today, more than 20 million children are not in education and are subject to various forms of child labour, with risks to their mental, physical, moral, social and psychological development.

This statement aims to draw the Committee's and the Government's attention to the urgent need to combat child labour, especially the terrible trade in child labour and child trafficking originating in the West African subregion. These worst forms of child labour in Nigeria foster forced labour and child trafficking in the subregion. According to the Women's Consortium of Nigeria (WOCON), a Nigerian NGO, it is estimated that around 12 million Nigerian children are forced to work, and roughly 80 per cent of these Nigerian children in forced labour may be victims of trafficking.

Gangs and syndicates engage in grotesque human trafficking operations in West Africa, with Nigeria being a very active hub and trading centre. Women and children are trafficked and traded as commodities. We know that human trafficking is a global industry generating US\$150 billion in profits. The borders and maritime routes in the West African subregion have been used to transport children, mainly girls and women, within countries and to Europe, where they are used as sex slaves, and others end up as domestic workers or on farms. Therefore, to effectively stop those who commit such lucrative criminal activities, formidable countermeasures must be developed to crush them. This means that investigations, prosecutions and penalties must be robust and imaginative. As parents, we must act collectively and quickly.

We therefore urge the Committee and this Organization to help the Government join forces with similar organizations to step up preventive and remedial actions against child trafficking. The Government must be helped to improve its capacities to monitor, arrest, prosecute and punish perpetrators, while successfully rehabilitating and reintegrating victims of trafficking into society.

Worker member, Senegal – I am taking the floor on behalf of the trade union organizations of West Africa to commend the work of the Committee of Experts on the case of Nigeria concerning the Convention. We have noted with interest the information provided by the Government, while deploring the absence of reliable statistics on the matter at hand. The Government has announced that it has taken measures to combat the scourge of the worst forms of child labour, and we congratulate it on its actions.

However, it should be noted that the situation of children is only deteriorating: over 10 million children are not in education and many of them beg on the streets of the country, but predominantly in the northern part of the country. Some of these children have been forced into begging by guardians, who have collected the children's earnings from street begging. There are also cases of many children, particularly girls, being married off early, while others have been victims of sexual exploitation.



As a Senegalese, I am familiar with the challenges involved in combating child begging. Our experience with *talibé* children has shown that constant and tireless efforts to monitor, control and realign must be aimed at ensuring that efforts produce the desired outcomes and that previous gains are not undone.

Based on our experience, we would urge the Government to develop an effective monitoring and evaluation plan to monitor and evaluate the actions that it has taken. The absence of an effective monitoring and evaluation system may lead to actions that are merely symbolic and self-serving.

It is also essential for the Government to review existing legislation so that revisions are made to provide for tougher penalties for perpetrators of child labour. The Government must also expand information and awareness-raising campaigns for parents and the community on the high risks to which street children are exposed and continue to work with them to reduce such risks.

In our view, a policy of quality education and learning, which is accessible to all, inclusive, and which does not discriminate, including against *almajiri* children, is proven to be effective. This policy must take into account the gender dimension and the educational needs of the community, so as to ensure that girl children receive the special care and attention they need. This education and learning policy must include health and nutrition at school and in workshops. The Government must demonstrate a genuine and continued commitment to removing children from the streets and returning them to schools and playgrounds. A true demonstration of this commitment will be the development and implementation of practical and effective ways of using social protection provisions to combat poverty and social inequality.

Interpretation from Russian: **Government Member, Belarus** – We are grateful to the delegation of Nigeria for having provided a thorough report which gives detailed comments about the issues facing the Nigerian Government in eradicating the worst forms of child labour.

From the report it is clear that this practice, including using children as soldiers, is something that you see exclusively in the areas under the control of Boko Haram. The Government is doing what it can to reintegrate these children into society once they are released. We feel that to eradicate the problem of child labour and to bring those responsible for it before the courts, the authorities first need to eradicate the root cause for the continuation of this practice, that means stopping the activity of the previously mentioned terrorist organization. We urge the international community to give Nigeria every assistance in doing that.

Interpretation from Arabic: **Government member, Tunisia** – Tunisia thanks the Nigerian delegation for the report, which indicates that Nigeria has respected its obligations, and we also welcome the measures that have been undertaken by the Government to ensure that it brings its legislation into conformity with the Convention.

We also welcome the efforts deployed to improve access to education through a national policy of education and an initiative for safe schools and an education campaign.

We encourage the Government to continue to work with this Committee through the provision of the information required on the cases of trafficked children.

Government member, Algeria – The Algerian delegation welcomes the efforts made by Nigeria to apply the Convention and encourages it to pursue the reforms under way in that



regard. My delegation notes the different measures adopted as part of the review of its legislative and regulatory framework to align it with the Convention.

In my delegation's view, these measures constitute positive steps in the right direction, despite the complexity of the situation on the ground and the presence of armed groups, particularly in the North East of the country. It was against this background that a strategy was established to prevent and combat the worst forms of child labour, which aims in particular to end and prevent the recruitment and use of children in armed conflict.

Moreover, the abolition of forced labour, the increase in school enrolment rates and the reduction in school drop-out rates will also undoubtedly help to eradicate the worst forms of child labour in Nigeria.

For that reason, the Algerian delegation calls on the Committee to take into account the considerable effort made by Nigeria to prevent and combat terrorism, as well as its determination and commitment to strengthening dialogue with the social partners and other stakeholders as part of its legislative reform.

My delegation therefore welcomes the commitment of Nigeria to continuing to work with the social partners, and with the Office, to give effect to the principles set out in the Convention.

Lastly, for all these reasons, my delegation encourages the Office to continue to provide technical assistance to supplement the efforts of the Government so as to strengthen school curricula and eradicate the worst forms of child labour, particularly in the agricultural sector and domestic work, but also in small-scale mining, and to build the capacities of the country's labour inspection system to ensure that it applies the Convention fully.

Government member, Malawi – Malawi has taken note of the information provided by Nigeria on the efforts being made as regards to the implementation of the provisions of the Convention, which Nigeria ratified on 2 October 2002.

We acknowledge and we commend the efforts of the Government, embarked upon through the Minister of Defence, including carrying out regular sensitization workshops and ensuring the registration of members of vigilante groups, who are also closely monitored by the Nigerian Security and Civil Defence Corps. Also, the rescue and/or release of child victims from the enclaves of Boko Haram is another welcome development which the Government must continue implementing.

Malawi urges the Government of Nigeria to ensure that the Child Rights Bill is signed into law by all states of the company for effective implementation and the protection of the children, along with the Trafficking in Persons (Prohibition) Enforcement and Administration Act, No. 4, 2015, and to continue programmes on access to education for all children.

Government member, Ghana – The Convention was ratified by the Government of the Federal Republic of Nigeria as far back as 2 October 2002. It is important for this Committee to acknowledge the efforts that the Government has put in place to ensure that its legal system and other policies address the major requirements under the Convention. It is refreshing to note that the Government has gone further to initiate reforms towards the elimination of the worst forms of child labour within its borders, including deploying military assistance to identified affected States within the Federal Republic. The Government has intensified sensitization and awareness-raising for the registration of members of vigilante groups. It has also increased its efforts to rehabilitate victims of terrorism and ensured the enforcement of laws prohibiting forced and compulsory recruitment of children and



trafficking persons. We support the honest admission by the Government on the concerns raised by the Committee of Experts and the commitments addressed in the minutes. The Government of Ghana supports any attempt to eliminate the worst forms of child labour in Nigeria, the West African subregion and in Africa as a whole. We urge the Government to continue to seek technical assistance from the ILO and cooperation from social partners in its quest to reform its laws in line with the requirements of the Convention. It is the conviction of the Government of Ghana that the Government of Nigeria will be able to sustain the fight to eliminate significantly the worst forms of child labour within the identified states in the Republic.

Government member, Namibia – We want to thank the Government of Nigeria for their comments. I have taken note of the Government's reaction to the comments by the Worker members. We want to urge the Government to take the comments in good faith, including comments relating to challenges faced regarding labour inspections and to work together with the tripartite constituents to address all these challenges. We thank other speakers for their interventions.

The Government must indeed redouble its efforts to tackle the phenomenon of the worst forms of child labour in Nigeria. The Government must continue in its efforts to provide a safe, peaceful and secure environment for children to go to school. Other measures such as school feeding programmes and health checks in schools, must be provided to attract children to stay in school and reduce the burden on parents. The required support must also be provided to the teachers. The Government must bring an end to the insurgency and conflict.

We want to urge the Government to seek and enhance the technical assistance of the ILO to address the specific observations of the Committee of Experts, but also to seek international cooperation and the assistance of other Member States with material and expert support, including for addressing cross-border and internal trafficking for labour and sexual exploitation.

Interpretation from Arabic: **Government member, Egypt** – We have taken note of the measures and efforts undertaken by the Government of Nigeria to achieve compatibility between national legislation and the provisions of the Convention with regards to the worst forms of child labour. The Government has set up strong political and institutional and legal frameworks to protect children and to prevent them from being used or aggressed so that they can develop fully and the Government also adopted a law to protect children in the workplace and define the minimum age for children to work and has imposed sanctions on those who do not respect the law. The Government has also ensured that children have access to education and that they are not involved in dangerous work and has been mindful to ensure non-discrimination between boys and girls in education. It also adopted a national strategy which will be part of the five-year plan in Nigeria and carried out a survey with regards with child labour and combating child labour as part of the ACCEL Africa Project. It also established a monitoring network to ensure compliance in the workplace. The Government has been mindful to protect children and ensure that they do not become involved in conflicts and war and has rehabilitated them and integrated them into their communities once again and has put in place monitoring mechanisms. Finally, we value the efforts undertaken by the Government of Nigeria to ensure compatibility between the legislation and the Convention and we hope that the Committee will take into consideration the efforts undertaken by the Government.



Observer, Education International (EI) – On behalf of teachers’ unions, Education International expresses deep concern regarding the issue of child labour in Nigeria. Child labour whether in its worst forms or not, deprives children of their basic right to education.

Education is a fundamental right that should be protected and promoted for every child. It is positive that the representative of the Government has mentioned initiatives related to education. Indeed, it is well documented that investing in free, quality public education contributes to eradicating child labour. However, education does not happen in a vacuum. Education does not grow on trees. It requires well-trained and well-supported teachers.

The Worker member of the Nigeria Labour Congress already deplored the reduction in the share of funding of education. He also referenced the dismissals of teachers and irregular payment of teachers’ wages. We therefore strongly encourage the Government to increase the funding for education and to support teachers to welcome working children and to keep children in school, particularly girls.

The 2022 Durban Call to Action to end child labour, which was mentioned earlier, is very specific in its recommendation entitled “Realizing children’s right to education”. It requests expanding education infrastructure for schools and safe commuting solutions, particularly in rural and remote areas.

Paragraph 30 of the Durban Call to Action requests an improvement in teaching and learning outcomes, including by recruiting qualified teachers in sufficient numbers to close the teacher gap, providing them with good conditions of work and supporting teachers’ unions.

Education International firmly believes that addressing child labour requires collaborative efforts and a comprehensive approach. Therefore, the Government, trade unions, employers, civil society organizations and other education stakeholders must work together to eradicate child labour and provide a safe and nurturing environment for children to learn and grow.

Government representative – Let me first express appreciation to the countries for your input, for your statements, for your comments. I would like to say thank you especially to those who have acknowledged the efforts of the Government of Nigeria. I thank you for your encouraging words.

Let me seize the opportunity also to address the workers’ representative from Nigeria who made certain statements. He acknowledged that insecurity is a challenge, which everybody knows, and then he made a statement about the state of labour inspection and labour inspection in Nigeria being non-existent. That is news to me. Considering the fact that labour inspection is directly under my department, the Inspectorate Department, and on a monthly basis we get robust reports from the states. To further enhance this fight against child labour, we have even developed a child-labour specific template to help us with identification – because one of the challenges is that you see a child, who looks like a child, but how do you prove this is a child? Sometimes they are not children. So, we are trying to look at innovative ways of identifying children. Labour inspection is not non-existent. As a matter of fact, it has become more robust because we have trained and re-trained our labour officers and more labour officers have been recruited in recent times. The worker representative also made a statement that the worst forms of child labour are normalized and I really do not know what that means. Why are we here if we have normalized the worst forms of child labour? Why are we fighting child labour? Why are we expending resources in the fight against child labour? It is curious because we work in collaboration with our social



partners, the Nigeria Labour Congress and the Trade Union Congress of Nigeria, as well as the Nigeria Employers' Consultative Association (NECA), and they are members of our steering committee at the national level – the National Steering Committee on the Elimination of Child Labour – as well as other states, and they have been very cooperative in the fight against child labour. So when a workers' representative makes a statement that we have normalized child labour – this is not the case.

The agricultural sector has been identified as the sector with the greatest number of child labourers in Nigeria and there are various projects taking place there now, in specific stages in the global supply chain, for instance in Ondo State. All over Nigeria we have even trained agricultural extension officers to be child labour desk officers because obviously labour officers cannot be everywhere. Nigeria is a vast country, with a large population. We have trained these agricultural extension officers to be able to identify child labour victims and report them to the Federal Ministry of Labour and Employment. The steering committee is made up of so many ministries, departments and agencies, so that we have that collaboration, that synergy, to tackle this issue. When it comes to education, the Federal Ministry of Education is on the steering committee as well. In relation to the concerns about the education of the girl child, even the boy child in some communities, you have to take into consideration that some of these things are socio-cultural and ethno-religious issues. The Government has provided schools. Some people, because of their belief system, think that school is not necessary for the girl child. For some, it is the boy child. The boy child is expected to go out and work and make money. That is why we have put in place such measures as the National Orientation Agency, which is the arm of Government that sensitizes the citizenry on issues. We are trying to change their mindsets for them to realize the benefits of education.

There is a recession and poverty in Nigeria which was exacerbated by the COVID-19 pandemic and it is something that the Government is working on to bring the country out of recession. As for one or two countries who spoke about the level of child labour in Nigeria, this is also curious to me because Togo in particular, while we are talking about cross-border trafficking of children, Togo is a great supply country for Nigeria. There are a lot of Togolese children in Nigeria. This is an issue for domestic work and this is an issue that concerns all the countries. From the statistics, whereas the child labour rate is going down in other parts of the world, it is going up in Africa. It is not for other countries to criticize those who are making efforts to deal with this problem. We should all work together, and there is the Regional Action Plan in West Africa through which there is collaboration to fight this scourge. Even the African Union (AU) has a plan for us to eliminate child labour by the year 2030. This is a widespread problem that is not just a problem for Nigeria and I thank the people who acknowledge Nigeria's efforts. There are so many other efforts undertaken that I did not have time to talk about, but the employers' association has been very key in the fight against child labour. They have supported us in many ways and, specifically, they have established a code of conduct for employers to sensitize other employers on the ills of child labour and to encourage them not to employ child labourers.

We work with faith-based organizations and community organizations to talk to the people. One of the things we are doing is sensitizing the communities, sensitizing the citizenry on the ills of child labour. We have heard several people talk about children being recruited by Boko Haram. The insurgency is something that nobody wished for, it has caused a lot of problems for the country, it is something that the Government continues to fight on a daily basis. The insurgents did a lot of things, they even occupied some territory in Nigeria, but they have since been dislodged and the incidents and episodes of children being



strapped with explosive devices – I do not think that this happens anymore. I have personally not heard of it taking place in the last two years. The Nigerian Government is putting all its efforts towards fighting this scourge. We would request and require assistance, obviously we cannot do it by ourselves, we request a lot of assistance, technical support in whichever way that support can be given, but Nigeria is doing a lot to end child labour.

On the issue of education, the schools are there. Definitely the schools could be better, definitely some schools need to be better positioned so that the children will have easy access to the schools, but the schools are there, and we are encouraging them through our actions and our activities. Let me acknowledge the assistance through the ACCEL Africa Project – accelerating action in the elimination of child labour in global supply chains. They have even helped in reorganizing some schools for children from those communities – and their enrolment figures have shot up astronomically – and as I said earlier, the main issue is to reorganize and reorientate a lot of people on the benefits of education so that they see the delayed gratification when you send your child to school. They look at it in terms of “this child could be bringing in income” but when you let them know that the delayed gratification, when you send your child to school, later on that child has a better standard of living, that child is better able to provide for the family.

Well let me go back to the phenomenon of *almajiri* children. As I mentioned earlier, it is a socio-cultural and ethno-religious phenomenon that cannot be eradicated in one day. It is not something that can be done easily. It is something that requires advocacy, it requires sensitization, it requires just talking to these people and that is why we work with all the religious organizations, the top religious organizations in Nigeria. For the Christians we have the Christian Association of Nigeria, for the Muslims, we have the Nigerian Supreme Council on Islamic Affairs. We interact with all these people; we call them the gatekeepers. We interact with traditional rulers. In some communities this scourge has been eradicated just because the traditional rulers were brought onboard. There is a community in Ondo State in which the regent, who is female, took this fight to the community and now their children go to school. All I can say is that Nigeria is doing its best. We could do better, there is no doubt about it, there is always room for improvement in any activity and we have a new Government. I forgot to mention one thing. Last year we brought in the first ladies, we have 36 states in Nigeria, and we reached out to the first ladies, that is wives of the governors because we see them as the mothers of the nation, as somebody said “if you educate a woman, you have educated a whole nation”. When you bring women into a project, you know that they are going to take it and run with it. So, we reached out to them, even the First Lady of Nigeria was represented, for the World Day Against Child Labour, and they have all promised to take up this fight.

In closing, I think we have done a lot. We have more work to do, and we are asking for the collaboration of our fellow African nations, nations of the world, the ILO, and other partners, to help us in this fight.

Employer members – The Employer members would like to thank the various speakers who took the floor and expressed their views on this matter, including the Government representative of Nigeria.

We can only trust that the Government representative will take on all of the comments made during the debate, which were all intended to constructively assist the Government to address the real scourge of child labour, especially its worst forms, in Nigeria. While we acknowledge that the Government is indeed taking some measures to address the grave



concerns regarding the situation of children in the country, we reiterate that, in line with the Committee of Experts' observations, more needs to be done.

We take note of the information shared by the Government representative on the efforts of the Government to deal with child labour. However, we note ongoing reports, including from the UN on continued grave violations of children's rights. Accordingly, the Employer members insist on the importance of the Convention as a fundamental Convention of which the universal ratification reflects a universal consensus and a strong tripartite commitment to eliminate the worst forms of child labour.

While acknowledging the complexity of the situation prevailing on the ground and the presence of armed groups and conflict in Nigeria, we share the concerns expressed by the Committee of Experts regarding the persistence of children being recruited and used by armed groups which also results in other serious violations of children's rights, such as abductions, murders and sexual violence.

In the light of the Committee of Experts' observations and today's debate, the Employer members would like to recommend that the Government should do the following:

- Firstly, continue to take measures using all available means to ensure the full and immediate demobilization of all children and put a stop in practice to their forced recruitment into armed groups. Ensure the thorough investigation, prosecution and penalization of all perpetrators of forced recruitment of children for use in armed conflict as well as ensure the rehabilitation and social integration of child victims of forced recruitment.
- Secondly, strengthen its efforts to combat child trafficking by ensuring that the perpetrators of these acts are identified and prosecuted, and that sufficiently effective and dissuasive sanctions are imposed.
- Thirdly, intensify its efforts to improve the functioning of the education system and to facilitate access for all children to free basic education, in particular for girls and children in the war-affected areas of North East Nigeria.
- Fourthly, take effective and time-bound measures to protect all street children, including *almajiri*, from the worst forms of child labour and to provide for their rehabilitation and reintegration as well as provide information on measures taken and the number of children integrated.

Finally, the Employer members call on the Government to continue availing itself of ILO technical assistance to implement the above-mentioned recommendations and future reporting obligations. We also count on the Government's continued efforts to implement concrete measures to ensure the demobilization of all children who have been forcibly recruited or are used by armed groups and to ensure the protection of all boys and girls who remain vulnerable to such risk and to the risk of being trafficked.

Worker members – We want to thank the Government for their comments. I have taken note of the Government's reaction to the comments by the Worker members. We want to urge the Government to take the comments in good faith, including comments relating to challenges faced regarding labour inspections and to work together with the tripartite constituents to address all these challenges. We thank the other speakers for their interventions.

The Government must indeed redouble its efforts to tackle the phenomenon of the worst forms of child labour in Nigeria. The Government must continue in its efforts to provide



a safe, peaceful and secure environment for children to go to school. Other measures, such as school feeding programmes and health checks in schools, must be provided to attract children to stay in school and reduce the burden on parents. The necessary support must also be provided to the teachers. The Government must bring an end to the insurgency and conflict.

The Worker members urge the Government to seek and enhance the technical assistance of the ILO to address the specific observations of the Committee of Experts, and also to seek international cooperation and the assistance of other Member States with material and expert support, including for addressing cross-border and internal trafficking for labour and sexual exploitation.

Conclusions of the Committee

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

While acknowledging the complexity of the situation prevailing on the ground and the presence of armed groups in the country, the Committee deeply deplored the current situation where children are being forcibly recruited by armed groups for use in armed conflict, which also results in other serious violations of children's rights, such as abductions, murder and sexual violence.

The Committee noted with deep concern the situation of children, in particular girls, children in war-affected areas and street/*Almajiri* children, who continue to be deprived of basic education.

The Committee also expressed concern at the persistence of child trafficking, particularly of girls for the purpose of domestic servitude and sexual exploitation and boys for the purpose of child begging.

Taking into account the discussion of the case, the Committee urges the Government of Nigeria to take effective and time-bound measures to:

- ensure the full and immediate demobilization of all children and to put a stop, in law and practice, to the forced recruitment or use of children into armed groups;
- ensure that thorough investigations and prosecutions of all persons who forcibly recruit children for use in armed conflict are carried out and sufficiently effective and dissuasive penalties are imposed in law and practice;
- improve the functioning of the education system to facilitate access to free quality basic education for all children, particularly girls and street children, and security and safety of children in war-affected areas, and to take measures to increase the school enrolment and attendance rates at the primary and secondary levels and to decrease the school drop-out rates, and provide information to the Committee of Experts on the measures taken in this regard, and on the results achieved.
- provide for the rehabilitation and social integration of street children and children who are forced to join armed groups, and provide information to the Committee of Experts on the measures taken in this regard, including by the *Almajiri* Special Education Project, and on the results achieved.
- combat child trafficking by ensuring that the perpetrators of these acts are identified and prosecuted, and that sufficiently effective and dissuasive sanctions are imposed



in law and practice, and provide information to the Committee of Experts on the measures taken in this regard, including by the National Agency for the Prohibition of Trafficking in Persons, and on the results achieved.

The Committee requests the Government to continue to avail itself of ongoing ILO technical assistance to give full implementation to the above-mentioned measures and progress towards the full eradication of the worst forms of child labour in accordance with the Convention.

The Committee also requests the Government to submit a report to the Committee of Experts by 1 September 2023 with the relevant information, in consultation with the social partners.

Government representative – We appreciate the discussions on this important subject towards improving the overall situation of children globally and specifically in Nigeria. We acknowledge that this Convention can be considered the most important among all the core Conventions as it deals with children who are the future of society. It can also be considered a reflection of a nation's soul as the state of its humanity is portrayed by how well the children are protected and given a good life for a hopeful future. In the light of the content of this conclusion, we recommit to strengthening the ongoing efforts and interventions in this area through the instrumentality of the relevant organs of the Government together with robust consultations with our social partners and the ILO. This implies a continued implementation of interventions in line with the provisions of Convention No. 182 and mainstreaming with a very high place and consideration the recommendations made by this Committee towards eliminating child labour in its worst forms.

However, regarding the time frame given for reporting on the progress made, the Committee is invited to kindly note that Nigeria is in transition at the moment and therefore, would appreciate reasonable time for the new administration to settle down and coordinate with constituents to address the observed lapses and implement the recommendations. We are committed and prepared to cooperate with the Office and relevant stakeholders to achieve this.

North Macedonia (ratification: 1991)

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

Discussion by the Committee

Chairperson – We will now start the second case on our agenda, which is North Macedonia on the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Government representative – After a long period of preparation of the new Law on Labour Relations and after ten public debates that have been carried out across the country, the process is now in the final phase. Before going through the governmental procedure, the draft law will be placed on the electronic national register of regulations, where the public and all the stakeholders will be able to provide their last comments on it.

The draft law was prepared in line with the technical memorandum of the ILO, including the areas of collective bargaining and conclusion of collective agreements. I would like to point out that for the drafting of the law, a broad working group was formed that included representatives from all trade unions regardless of their representativeness. All of them, in this five-year period, were able to contribute to the concept of the draft law, as well as to the



conformity of its provisions, in line with their interests. For this process to go as smoothly as possible we received technical assistance from the ILO Office.

We realize that some public enterprises do not act in accordance with the Law on Labour Relations regarding collective bargaining and especially with respect to the legally established protection of trade union representatives and, to this end, we plan to further sensitize the appropriate structures in public enterprises and legal entities. According to the activities planned, the Government plans to work, until the end of 2025, on improving the legal framework for the peaceful resolution of labour disputes as the ILO self-assessment tool, designed for this purpose, highlighted certain weaknesses in several areas of the legislation in this regard. At the same time, special attention will be paid to the area of individual labour disputes, also by further raising awareness about the advantages for both workers and employers in applying this mechanism, taking into account the dismissals of union representatives that can take place.

Also, with the adoption of the new Law on Labour Relations, we plan to have training on its application for labour inspectors and judges, because we consider them as significant in the protection of collective bargaining rights and of trade union representatives. For this, we will again rely on the technical assistance of the ILO that can be obtained.

Finally, in relation to the allegations of the complainant, regarding the Commission for Representativeness and its functioning, the Government's procedure and information will enable the formation of a new Commission for Representativeness and the adoption of our procedure would make it impossible for a member of the Commission to block its functioning.

Worker members – Convention No. 98 is at the heart of social dialogue in that it enshrines the right to organize and bargain collectively. This Convention recalls the fundamental principle of the need for workers to enjoy adequate protection against all acts of discrimination aimed at undermining freedom of association. It also provides that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration. However, it has come to our attention that acts of interference in the activities of trade unions have been observed in certain companies, consisting of encouraging certain workers and trade unionists to join another trade union in contravention of the Convention. Article 4 of the Convention provides that 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' and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. North Macedonia ratified the Convention in 1991. However, we have to note several shortcomings in North Macedonia with regard to the principles enshrined in the Convention, thus raising serious questions as to the conformity of legislation and practice in North Macedonia with the Convention. The Committee of Experts has in the past made 13 observations to the Macedonian Government concerning the application of the Convention, indicating the persistence of the Committee of Experts' questions about the situation in the country.

The Confederation of Free Trade Unions of Macedonia (KSS), reported a large number of acts of anti-union discrimination in 2021. Numerous dismissals of trade union representatives have been recorded in many sectors. For instance, we were informed of interference by management of a number of companies in mainly state-owned sectors, by pressing workers to change trade union affiliation, to establish a new union, or to stop being



active in a trade union. Managers were questioning outcomes of elections and refusing to recognize leaders authorized by trade unions to represent their organization. Check-off facilities of trade union dues were sometimes withdrawn, KSS leaders and members were dismissed or forcibly transferred to other regions far from home.

The court procedures to contest unlawful dismissals of trade union leaders are lengthy and cumbersome, but even when a court rules in favour, the implementation of its decision is not streamlined. However, under the Convention, Member States are under the obligation to take specific measures to ensure the adequate protection of workers against any acts of anti-union discrimination, both at the time of taking up employment and in the course of employment, including at the time of termination of the employment relationship. Such adequate protection is particularly necessary for trade unionists.

The unions also inform about the non-application of collective agreements. The results of collective bargaining do not receive the support of the Government, which does not take the budgetary measures needed to implement these agreements for the public sector, thereby in fact, violating the minimal salary act. In this context, we think it is worth pointing out that the Convention covers all workers and employers and their respective organizations in both the private and public sectors. In true collective bargaining on wages, the parties find the best solutions to mitigate consequences of the Covid, energy and cost of living crises.

Finally, the KSS pointed to the inability of the Commission for Representativeness to rule on its representativeness in the public sector. Although the application was lodged in 2018, the KSS is still faced with the Government's refusal to recognize its representativeness in the public sector, therefore obstructing the KSS's full participation in social dialogue and its members' right to organize collectively, in contravention of the Convention.

The Committee of Experts' observation also raises the question of the coverage of Macedonian workers by collective bargaining. It appears that the coverage rate is 68.7 per cent in the private sector and 31.35 per cent in the public sector. While not the panacea, the rate of coverage by collective bargaining is a good indicator of the quality of the collective bargaining system applicable in the country. We can only encourage the Government to continue efforts and to take all useful measures to increase the rate of coverage of workers by collective bargaining.

The EU recently adopted a new directive on the promotion of collective bargaining and the adequacy of minimum wages. The directive sets a target of 80 per cent collective bargaining coverage. Below this threshold new Member States will have to put in place an action plan to increase their collective bargaining coverage. As North Macedonia is currently in the process of negotiating its accession to the EU, we can only encourage the Macedonian Government to work as of now, to increase the rate of collective bargaining coverage in the country, in accordance with EU legislation and thus promote development of collective bargaining, as provided for in Article 4 of the Convention. We hope that the EU will support the Government's efforts to rapidly reach the 80 per cent threshold for collective bargaining coverage.

Research has indicated that countries with highly coordinated collective bargaining, tend to have less inequality in wages, lower and less persistent unemployment and fewer and shorter strikes, than countries where collective bargaining is less established. The low wage exploitative model promoted by North Macedonia has already led to a massive outflow of workers. Nonetheless, instead of improving working conditions, promoting decent salaries and encouraging collective bargaining, the Government is looking to legalize exploitative working environments by making dangerous labour law changes and bypassing national



social dialogue mechanisms under pressure from foreign companies. That is not what is expected from the country that adheres to international and European standards. We can, therefore, only encourage the Government to further promote collective bargaining in the country in full compliance with the Convention.

Employer members – We thank the Government of North Macedonia for the information provided in the intervention, of which we have fully taken note. The Employer members stress the importance of States' compliance with the Convention, which is one of the ten ILO core Conventions. More specifically, we believe that this case is about the essential nurturing of social dialogue, independence of social partners and their ability to exercise the rights provided for in the Convention without interference by the State. This is the first time the case of North Macedonia's compliance with the Convention is discussed by this Committee. North Macedonia ratified the Convention in 1991. Since then, 13 observations have been issued by the Committee of Experts. This indicates the existence of persistent compliance issues with the obligations set forth in the Convention by the country. The Employer members would like to highlight that the Government has received ILO technical assistance regarding the adoption of the new draft labour law and a special Law on Workers' and Employers' Organizations and Collective Bargaining. The Office has provided comments on both.

Before delving into the key issues of this case, let me provide some information on the country's context. On the political context, presidential elections were held in North Macedonia in spring 2019 and early parliamentary elections in July 2020, which saw the ruling party securing a narrow victory over the main opposition party. Regarding the freedom of association and assembly, such rights are implemented in law by the Constitution. Moreover, the law for citizens' associations and foundations, which was adopted in 1998 and amended in 2007 and 2009, enables citizens to form and join independent political or civic groups.

Let me now turn to the key issues of this case. The Committee of Experts, in its 2022 observations, identified two main elements of concern regarding North Macedonia's compliance with the Convention. These issues concern compliance with Article 4 of the Convention.

The Employer members would like to point out that, since 2018, social dialogue is being nurtured and developed. However, the Law on Labour Relations is still not fully harmonized and completed despite six years of negotiations and formal dialogue. Concerning this Law, according to the Government's information, it was finally decided to include the sections relating to the organization of workers and employers, as well as collective bargaining within its framework. We also take note that, according to the Government, the process of preparing this Law will be finalized. However, we believe that it would be advisable that the process of adoption of the new Law on Labour Relations be accelerated and concluded without undue delay.

We ask the Government to take due account of the comments made by the Office and to ensure that the new Labour Law is developed in line with the Convention. We further request the Government to provide information on any progress made in this regard. On the promotion of collective bargaining in practice, the Employer members take note of the sharp rise in the collective bargaining covered between 2019 and 2021. Notably, for the first quarter of 2021, the State Statistical Office reports that the general collective agreement in the private sector covered nearly 450,000 employees, that is 68.7 per cent of the employees in the country. Furthermore, the general collective agreement in the public sector covered



almost 205,000 employees, corresponding to 31.3 per cent of the total number of employees in the country.

In light of this information, we request the Government to:

- first, indicate the factors that have led to this increase;
- second, provide information on the provisions regulating the relationship between general and specific collective agreements in private and public sectors; and
- third, continue providing information on the application of the Convention in practice, including statistical data concerning the number of collective agreements concluded in both public and private sectors and the number of workers covered.

Finally, we take note that, according to the Committee of Experts' observations, the Government is not responding to a series of allegations made by the KSS in 2021 concerning:

- acts of anti-union discrimination including dismissal, against trade union representatives;
- the non-application of collective agreements by the Ministry of Education, as well as;
- the inability of the Commission for Representativeness to decide on the representativeness of the KSS in the public sector.

We request the Government to provide its comments on these allegations.

Worker member, North Macedonia – The implementation of the Convention is very problematic and under attack by the Government and members of Parliament of the ruling majority given that, with fast-track amendments to the labour law, we now have a 72-hour working week in North Macedonia. The Confederation of Macedonia as the only representative trade union and national social partner was not consulted during the adoption of the special law on determining public interest and nominating a strategic partner for implementation of the project for the construction of the pan-European corridors VIII and X, although it is an obligation according to the ILO Convention concerning labour clauses. It is also an obligation for the Government to consult the representatives of the workers and employers. The Federation of Trade Unions of Macedonia (SSM), has not been consulted or familiarized with the proposed amendments to the Law on Labour Relations. These amendments were submitted to Parliament in a fast-tracked procedure even though a new law on labour relations has been under negotiation for more than five years. During these five years of negotiations, these proposals and fast-track amendments were not considered nor mentioned by the Government

This only indicates to us that the entire negotiation process is fractured and not conducted on honest and correct grounds. But the views of the unions involved in the civil sector and the scientific community in the country are not respected at all, with a single goal to satisfy a foreign consortium to determine not only the situation of the workers but the entire state. Last year, SSM, together with the construction union, SJB, launched an initiative regarding the provisions of the 72-hour working week. For the construction of corridor VIII, this provision was ruled as unconstitutional and illegal by the Constitutional Court of Macedonia.

Section 12 of the Law on determining public interest in nominating a strategic partner for the implementation of the projects of the construction of the infrastructure corridor VIII was denied by the Constitutional Court. SSM and SJP submitted an amendment request to the Minister of Parliament, which was rejected. This was extremely unfair to the workers. A certain group of ministers of Parliament who were worried about the decision of the



Constitutional Court in order to avoid the position of the constitutional court proposed the arrangement of such a provision in the Law on Labour Relations labour law relation by which workers will now work 72 hours on average per week, which is a 50 per cent increase in working time with overtime, compared to the current law on working hours of 40 hours per week, eight hours per day. This discredits the Constitution, the laws, collective agreements, decisions of the Constitutional Court, international labour standards, the working time Convention, EU directives and other international documents; it directly violates decent working hours and decent jobs, as one of the greatest benefits of our civilization. At the same time, we use the opportunity to inform you that the Constitutional Court reached decision N4/2022. It did not initiate a procedure for the violation of the constitutionality of the law, amendments and supplements of the Law on Labour Relations.

In relation to the initiative of the Chamber of Commerce concerning Sunday as a non-working day, the unions provided as a workers' right, from January 2022 and the Constitutional Court decided that the Law on Labour Relations prescribes a favourable solution with a significant impact on the material and social position in the realization of rights of workers.

In relation to the non-working days in the week and the compensations for work on Sundays and holidays, the Government and members of Parliament want to satisfy one foreign employer consortium for business interests, against the lives and health of the workers, which for the unions is illogical, inhumane, extremely unprincipled and contrary to the interests of workers. We pointed out to the Government and the ministers of Parliament that 1 May is marked precisely as a sign of respect for the victims of the strike that took place from 1 May to 4 May in 1886 in Chicago, which was organized in order to introduce an eight-hour working day. With the proposals for the amendments and supplements to the Law on Labour Relations after a short procedure without social dialogue, without consultation, a small group of ministers of Parliament managed to trample the fundamental rights to decent working hours and decent work which dated back to 1886 and put the Macedonian workers back by 157 years.

In the name of solidarity and humanity, we must not allow these amendments to the Law on Labour Relations to prevail. This inhuman provision will take human lives and we have no lives to spare. This is also contrary to our Constitution, under which the workers cannot waive their rights to daily, weekly and annual rest days because this is a fundamental constitutional right that workers must enjoy.

To put salt on an open wound, these amendments to the labour legislation passed in Parliament in a fast-track procedure and the Government put an EU flag on them to ensure they passed even though the European Commission and the EU delegation in North Macedonia openly criticized the Government and were against this flag because there are no EU values in the provisions of the law.

We must not allow anyone to play with the lives and health of workers. SSM and the SJB will therefore use all the mechanisms at their disposal to preserve decent working time, which is a pillar of workers' rights that has to apply to the Macedonian workers as it applies to EU workers.

At the same time, the Government and Ministry of Labour enacted the regulation that bans the signing of collective agreements with the public sector without exclusive written consent from the Minister of Finance. This is contrary to the labour law, the Constitution of North Macedonia and the ILO Conventions enacted in Macedonia.



Regarding the wage agreements made through the collective agreement, we have been in open negotiations for four years to find a new collective agreement for the workers in the public sector. Since those negotiations started, the Government has increased the salary of every public official in the country by 78 per cent or, to be precise, more than €1,000 per month for public officials, and it still refuses to increase the salaries of the public sector workers.

As the Worker members already stated in their opening statements, we are facing an exodus of public sector workers, who are going to the private sector and into the EU countries.

Interpretation from German: Worker member, Germany – With a distinct sense of unease, we have been monitoring a number of recent events taking place in the Republic of North Macedonia, including the freedom of association and the right to collective bargaining. The Committee of Experts', in its report, quite rightly calls for the new labour law to be adapted in line with the Convention and to enshrine the rights therein. After five years without any significant progress being made in the reform process, at the end of last month, all of a sudden, profound changes were introduced to the labour legislation, which went in the wrong direction and have caused us grave concerns.

Amendments passed by Parliament on 25 May 2023 allow exceptions to national legislation on maximum working hours, provided they affect the, so-called and unspecified, "national interest". The timing and the rushed nature of this reform suggest that this is to accelerate the completion of the motorway project by a joint venture with the United States and Turkey. These construction projects are a key element in the planning of the transport community between the EU and the western Balkan countries. The North Macedonian infrastructure project aims to bring the regions between the Black Sea and the Adriatic Sea closer.

During the legislative process, the trade unions were not substantially involved. The well-established system of tripartite social dialogue, through the Economic and Social Council, has been circumvented by the Government. This is all the more serious because of the fundamental interference in labour law. The new legislation would make it possible in theory for a 72-hour working week, which affects workers in the construction sector. This would call into question the 170-year-old eight-hour working day, which was historically fought and enshrined. We also see that the EU has a responsibility here with these infrastructure projects. They must ensure that there is fair trade union participation. These projects must, under no circumstances, lead to a weakening of fundamental labour laws.

In the case at hand, we see the consequences of the omnipresent shortage of skilled labour. In North Macedonia there is a shortage of 10,000 skilled labourers every year. This is due to the large-scale emigration to the EU Member States and the unsatisfactory working conditions are often pinpointed as a reason for the emigration. A weakening of the rules on the maximum working time also represents a further weakening of labour law.

Furthermore, the EU and its Member States as well as North Macedonia, have a duty to develop a socially responsible workforce policy. We fully support the trade unions in North Macedonia to enjoy their rights in full.

Worker member, Belgium – As a workers' representative from a country where different trade union organizations coexist, I would like to express my concern at the anti-union discrimination by public officials and public institutions in North Macedonia, in violation of the Convention.



The request for representation of the KSS has been pending before the authorities for several years. De facto, this request has been rejected. The trade union has therefore been refused full participation in national social dialogue, prevented from participating in the economic and social policymaking process, and deprived of the opportunity to represent the interests and promote the rights of its members within national tripartite bodies.

In addition, it has been clearly established that the management of a number of mainly state-owned enterprises have put pressure on workers to change the union they belong to, form a new union or end their activity in a union. Managers have questioned election results. They have refused to recognize leaders authorized by unions to represent their organizations. Mechanisms for the deduction of trade union dues have sometimes been withdrawn. KSS leaders and members have been dismissed or forcibly transferred to other regions, far from their homes. These measures have led to a drastic reduction in the number of KSS members.

It is very concerning that this is happening with the Government's blessing, as it relates mainly to public enterprises. The information provided by the KSS to the Committee of Experts contains very clear examples of all this interference.

We expect the Government to create the conditions for workers to join or not join any trade union of their free choice, without using coercion and without establishing preferential conditions. We also expect that appropriate inquiries are led into the cases of interference and discrimination, and that the penalties imposed on the perpetrators of this interference will dissuade such behaviour in the public or private sector. Lastly, we expect that the Government will not hamper the participation of the KSS in the national social dialogue by manipulating the procedures for the certification of representativeness.

Government representative – I have some additional explanation regarding the procedure of giving the representativeness certification for KSS. In fact, the Commission for Representativeness has ruled in accordance with the procedure of determining the representative unions for the national territory of the Republic of Macedonia, including for the public sector. According to the decision from December 2021, SSM, which is a federation of trade unions, gained the representativeness on the territory of the Republic of Macedonia for the public sector. Previously, KSS had this certification. So, it lost its certification the same year that they submitted their allegations. They can submit a new request when it is time for that according to the law. The amendments to the Law on Labour Relations only concern work on projects of strategic national importance established by law. The exceptions from the legally set framework for full working time or weekly working time or overtime which are allowed are only for projects of strategic and national importance, which is established by law. This means that these provisions could not be in place when this is not confirmed by law, which, you will agree, is really harder to establish just in any case. Work over 40-hours per week is considered overtime with mandatory consent of the worker and with respect to the provisions for daily and weekly rest according to the law.

Employer members – The Employer members thank the various speakers who took the floor, notably the Government of North Macedonia for the interventions and detailed information provided. The Employer members reiterate the importance of states' compliance with the Convention, which is one of the ten ILO core Conventions.

In light of today's discussion, the Employer members recommend that the Government, firstly, provides information on any progress on the new Law on Labour Relations; second, indicates the factors that have led to the rise in the collective bargaining coverage between 2019 and 2021; and third, provide information on the provisions regulating the relationship



between general and specific collective agreements in the private and public sector. Finally, the Government should provide further comments as to allegations of acts of anti-union discrimination, the non-application of collective agreements by the Ministry of Education and the inability of the Commission for Representativeness to decide on the representativeness of the KSS in the public sector.

Worker members – In the first place, I would like to thank the Government of North Macedonia for the information provided. I would also express my appreciation for the fact that the workers' representative from North Macedonia was there to take the floor and we regret the fact that no employer from North Macedonia has taken this opportunity to inform the Committee on their respective views.

The situation in North Macedonia continues to be of concern to the Worker members. There are still many indications of serious breaches of the Convention. Numerous acts of anti-union discrimination have been reported by the KSS. In response to these shortcomings, the Government will have to ensure that workers are adequately protected against all acts of discrimination aimed at undermining workers' freedom of association. It is also useful to remind the Government that it must ensure the implementation of rapid and effective procedures, as well as effective and sufficiently dissuasive sanctions that ensure the practical application of the protections provided against acts of anti-union discrimination.

We have received reports of interference in the organization of trade unions. It is important for the Government to ensure that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other, or each other's agents or members in their establishment, functioning or administration.

We ask the Government to provide all relevant information to the Committee of Experts concerning the provisions on the organization of workers and employers, as well as on collective bargaining which have been included in the new Law on Labour Relations, and to indicate to what extent these provisions resolved the shortcomings discussed and the status of this legislation, as well as any other legal acts that were not at the ILO's disposal. We also invite the Government to actively promote the results of collective bargaining by respecting the agreements reached between social partners in both the private and public sectors, and by taking all measures to implement the results of collective bargaining. The Government should also ensure that the procedures for recognizing the representativeness of the KSS in the public sector are activated as soon as possible, in accordance with national legislation, in order to ensure the full participation of the KSS in social dialogue and guarantee the right of its members to organize collectively.

We also invite the Government to continue its efforts to promote collective bargaining in the country, in particular by adopting measures that will further increase the rate of coverage of workers by collective bargaining. We also invite the Government to communicate to the Committee of Experts the factors that have led to the increase in the rate of coverage by collective bargaining, as well as information on the provisions regulating the relationship between general and specific collective agreements in the private and public sectors.

We also invite the Government to continue to provide the Committee of Experts with information on the application of the Convention in practice including statistical data on the number of collective agreements concluded in public and private sectors and the number of workers covered.



Finally, in order to implement all these recommendations, we invite the Government of North Macedonia to avail itself of ILO technical assistance and to accept a direct contacts mission in order to give full effect to these recommendations

Conclusions of the Committee

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

The Committee noted with concern the multiple acts of anti-union discrimination reported in the country.

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

- ensure that workers enjoy their rights under the Convention and are protected against acts of anti-union discrimination;
- ensure that workers' and employers' organizations enjoy adequate protection against any external acts of interference in their establishment, functioning or administration;
- ensure that existing and prospective legislation is in conformity with the Convention; respect the collective agreements reached between social partners, in both the private and public sectors, and take appropriate measures to implement their results;
- ensure the proper functioning of the Commission for representativeness so that the procedures for recognizing the Confederation of Free Trade Unions of Macedonia (KSS) in the public sector are activated as soon as possible in accordance with national legislation. This is in order to ensure the full participation of the KSS in social dialogue and to guarantee the right of its members to organize collectively;
- communicate to the Committee of Experts the factors that have led to the increase in the rate of coverage by collective bargaining, as well as information on the provisions regulating the relationship between general and specific collective agreements in private and public sectors;
- continue to provide the Committee of Experts with information on the application of the Convention in practice, including statistical data on the number of collective agreements concluded in public and private sectors and the number of workers covered.

The Committee invites the Government to avail itself of ILO technical assistance to ensure full compliance with its obligations under the Convention in law and practice.

The Committee invites the Government to accept a direct contacts mission in order to best support the Government and social partners to implement these recommendations.



Peru (ratification: 1960)

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

Written information provided by the Government

Written information sent on 22 May 2023

Legislative developments. The Committee requests information to be provided on the impact of the application of Presidential Decree No. 014-2022-TR. In this regard, the Ministry of Labour and Employment Promotion (Ministry of Labour) attaches statistical tables with definitive figures on labour disputes (strikes and/or stoppages in the private sector) presented and recorded in February 2023, as well as during January and February 2023 in comparison with January and February 2022, drawn up by the General Office for Statistics and Technologies at the Ministry of Labour.

These tables show, among other data, that both the number of strikes (2022: three; 2023: one), the number of workers covered by the measure (2022: 245; 2023: 23) and the hours of work lost (2022: 234,320; 2023: 4,416) all show figures much higher than those reported for the same months in 2023, when Presidential Decree No. 014-2022-TR was not yet in force. This illustrates the fact that the level of disputes has decreased as a result of the aforementioned legislation coming into force.

Moreover, during 2022, after the decision of the employers' unions to suspend their participation in the National Labour and Employment Promotion Council (CNTPE) and its dialogue forums, communicated in July 2022, the Ministry of Labour made efforts to resume the dialogue, inviting them to attend various bilateral meetings with the Ministerial Office but without receiving any response. However, in the context of the current period of government, bilateral meetings were held between the Ministerial Office and employers' organizations such as the National Confederation of Private Business' Institutions (CONFIEP), the National Society of Industry (SNI), the Chamber of Commerce of Lima (CCL) and the Exporters' Association, between December 2022 and May 2023, at which the employers' unions expressed their concerns regarding Presidential Decree No. 014-2022-TR.

Furthermore, between December 2022 and May 2023, bilateral meetings were held between the Ministerial Office and the trade union confederations (the General Confederation of Workers of Peru (CGTP), the Single Confederation of Workers of Peru (CUT-Peru), the Confederation of Workers of Peru (CTP), and the Autonomous Workers' Confederation of Peru (CATP)), which in turn expressed their support for Presidential Decree No. 014-2022-TR.

It is hoped to follow up on the readiness to engage in dialogue expressed by the employers' organizations during these recent meetings and to achieve a rapprochement with the workers' confederations with a view to re-establishing trust so that it is possible to achieve a quorum in a future plenary meeting of the CNTPE and accordingly proceed with the processes and procedures of tripartite consultation.

Article 2 of the Convention. Recognition of the right to organize of managerial personnel and employees in positions of trust in the public administration. The Ministry of Labour indicates that Presidential Decree No. 014-2022-TR, amending the Regulations implementing



the Collective Labour Relations Act, which is applicable in a subsidiary capacity to the public sector, provides as follows:

Managerial personnel and employees in positions of trust shall not be represented by the trade union or included in the total number of workers for the purposes of determining whether the requirement of the absolute majority referred to in the previous section has been achieved, unless the rules of the organization specifically permit their membership.

Accordingly, the right to freedom of association of managerial personnel and employees in positions of trust is recognized in terms of their being able to be members of a trade union provided that the rules of the union explicitly allow their membership.

It should also be recalled that section 4 of the Regulations provides that the State shall recognize and guarantee for workers, without distinction or previous authorization, the right to establish and join organizations of their own choosing, and to engage in trade union activities to defend and further their economic and social interests.

Moreover, Ministerial Decision No. 92-2022-TR provided for the pre-publication of the preliminary draft of the Labour Code, which contains a proposal for the specific regulation of vocational training schemes, defining the service provider as a worker and indicating that training schemes constitute labour contracts.

The Ministry of Labour proposed to initiate a process of tripartite dialogue in the CNTPE on the preliminary draft text, on the basis of which at ordinary session No. 127 on 13 May 2022, the plenary of the CNTPE decided that the process of dialogue on the preliminary draft text of the Labour Code would be evaluated by the social partners once the pre-publication period had elapsed.

It was accordingly decided on a tripartite basis to include the definition of the characteristics of the process of dialogue in the agenda of ordinary session No. 128 of the CNTPE plenary, which was held on 18 July 2022. However, that session was suspended, following three hours of discussions on another subject, and the preliminary draft text was not discussed.

Subsequently, on 26 July 2022, the employers' representatives suspended their participation in the CNTPE, expressing disagreement with Presidential Decrees Nos 001-2022-TR (outsourcing) and 014-2022-TR (industrial relations).

An extraordinary session of the CNTPE plenary was then convened on 3 November 2022 to determine the process of dialogue on the preliminary draft text of the Labour Code, but it was only possible to hold an information session due to the absence of a quorum as a result of the almost total absence of employers' representatives, although all the workers' representatives attended the session.

In the context of the action taken by the current Government, between December 2022 and May 2023, bilateral meetings were held between the Ministerial Office, on the one hand, and the employers' organizations and workers' confederations, on the other.

It is hoped to follow up on the readiness to engage in dialogue expressed by the employers' organizations during these recent meetings and to achieve a rapprochement with the workers' confederations with a view to re-establishing trust so that it is possible to achieve a quorum in a future plenary meeting of the CNTPE and accordingly proceed with the processes and procedures of tripartite consultation.

It should also be noted that in April 2023, members of the Congress of the Republic of Peru put forward Bill No. 4483/2022-CR issuing the Labour Code, which includes in full the



content of the proposed text of the preliminary draft of the Labour Code published by the Ministry of Labour in April 2022.

The judiciary has also indicated that it is important to take into account that, while article 28 of the Political Constitution of Peru provides that “the State shall recognize the right to organize, collective bargaining and to strike. It shall ensure its democratic exercise: (i) it shall guarantee freedom of association ...”. Article 153 adds that “judges and prosecutors shall be prohibited from participating in politics, joining unions and calling strikes”.

These prohibitions were also envisaged in the 1979 Constitution in the chapter on the judicial authorities, which is taken up in the 1993 Constitution. The purpose is to ensure that the judicial authorities and the whole justice system are not connected with political circles, as nothing is more harmful for the justice system than the exercise of political activities by judges and/or prosecutors.

While it is clear that the Constitution provides that those officials may not be members of unions, such public officials may nevertheless establish and join associations, on condition that their purpose is “the defence of the professional interests of their members in all matters and activities intended to be of service to justice in general”, as seen in section 35(12) of Act No. 29277 on judicial careers:

Judges shall have the right to:

...

freedom of association. Associations of judges shall be established and undertake their activities in accordance with the requirements set out in the Civil Code and shall be regulated by their internal rules.

It is clear that neither judges nor prosecutors are considered to be workers by labour law, under which they are not bound to their employer by an employment contract. Moreover, the employer to which they provide services is not another private person, but the State itself. It should also be noted that freedom of association is effective if it is surrounded by the usual accompanying procedures, which are its true pillars, namely collective bargaining and the right to strike.

Judges, magistrates and prosecutors have to maintain impartiality in relation to positions that could undermine the constitutional balance of powers.

Nevertheless, professional associations, as substitutes for unions, have up to now fulfilled their function of offering a channel for the appropriate expression of the concerns and claims of certain professionals who are as deserving of this right as any other group.

Article 3. Determining the unlawfulness of strikes. In accordance with the above, under the current governmental administration, between December 2022 and May 2023, bilateral meetings were held between the Ministerial Office and, initially, the employers’ organizations and, subsequently, with the trade union confederations.

It is hoped that dialogue will be resumed in order to achieve a quorum at the next CNTPE plenary meeting and thus re-establish the processes and procedures of tripartite consultation.



► **Strikes initiated, settled and pending; workers involved and working hours lost in the private sector from 1 to 28 February 2023**

Economic activity/ business name	Date		Workers involved	Working hours lost	Reasons	Location	Time period Art. 76 of single consolidated text of Presidential Decree No. 010-2003-TR
	Start	End					
Wholesale and retail trade *			23	4 416			
Salem Corporation (SAC)							
Single Union of the Salem Corporation	1 Feb.	Ongoing	23	4 416	List of claims	Lima Metropolitan	Indefinite strike
Total *			23	4 416			

* The indefinite strike by the Single Union of the Salem Corporation began on 13 January 2023. It is considered to have begun on 1 February 2023 because it was not recorded in the labour reports for January 2023.

► **Comparative table of strikes, workers involved and working hours lost in the private sector each year by economic activity from 1 to 28 February 2022 and 2023**

Economic activity	Strikes		Workers involved		Working hours lost	
	2022	2023	2022	2023	2022	2023
Mining and quarrying	1	–	165	–	46 520	–
Gas, electricity and water supplies	1	–	169	–	2 704	–
Wholesale and retail trade	–	1	–	23	–	4 416
Transport, storage and communications	1	–	76	–	1 216	–
Health and social services	–	–	–	–	230 400 *	–
Total	3	1	245	23	234 320	4 416

* Working hours lost due to strikes from the previous month.

► **Comparative table of strikes, workers involved and working hours lost in the private sector each year by the reason for the strike from 1 to 28 February 2022 and 2023**

Reason for the strike	Strikes		Workers covered		Working hours lost	
	2022	2023	2022	2023	2022	2023
Collective bargaining	1	1	169	23	13 584	4 416
Comprehensive solution for the list of claims	1	1	169	23	13 584	4 416
Non-compliance with legal standards or provisions of agreements	1	–	76	–	1 216	–
Non-compliance with occupational safety and health standards, other	1	–	76	–	1 216	–
Dismissal or threat of dismissal	1	–	165	–	35 640	–

Reason for the strike	Strikes		Workers covered		Working hours lost	
	2022	2023	2022	2023	2022	2023
Demand for the full reinstatement of the workers involved in the total suspension of work and not the collective work stoppage, that the protocol established in the golf camps and plant be respected as there are six people living in each room, and for a change of canteen due to the deplorable service for staff	1	–	165	–	35 640	–
Other reasons	–	–	–	–	230 400	–
Implementation of a medical technology management unit in EsSalud, for an end to discrimination and harassment, protection of social security, against the merging of EsSalud and the Ministry of Health	–	–	–	–	230 400 *	–
Total	3	1	410	23	280 840	4 416

* Working hours lost due to strikes from the previous month.

► **Comparative table of strikes, workers involved and working hours lost in the private sector each year, by month in 2022 and 2023**

Month	Strikes		Workers involved		Working hours lost	
	2022	2023	2022	2023	2022	2023
January	3	–	2 441	–	285 544	10 728
February *	3	1	410	23	280 840	4 416
Total	3	1	2 441	23	285 544	15 144

* Reference period for both years from 1 to 28 February (2022 and 2023).

Source: Ministry of Labour and Employment Promotion, Directorate for the Prevention and Resolution of Labour Disputes and Corporate Social Responsibility.

Additional written information sent on 30 May 2023

Article 2. The right of all workers, without distinction, to establish and join organizations. The National Civil Service Authority (SERVIR) indicates that Peru recognizes the Convention's guiding principle as the exercise of freedom of association and collective bargaining, which are fundamental rights aimed at ensuring workers' full and free participation in the labour market, thus embodying a guarantee of democracy and social progress. All possible improvements to labour law therefore take place within a framework of dialogue between representative workers' organizations and the State. It must be highlighted at the outset, however, that although the Political Constitution guarantees the exercise of the right to freedom of association, that right, like any other, is not unrestricted, but is subject to certain limits established by rules with the force of law.

The guarantees that protect workers' rights are based on respect for international labour standards given that Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), both of which address the protection of the right to



organize in general, as well as the Labour Relations (Public Service) Convention, 1978 (No. 151), which protects, inter alia, public officials' right to organize and which forms a basis for the right to strike. Moreover, article 42 of the Political Constitution states that "[p]ublic officials' rights to organize and to strike are recognized". Similarly, under article 28 of the Constitution, the State recognizes the rights to organize, to collective bargaining and to strike, ensuring that they are exercised democratically. As a consequence, therefore, of the recognition of these rights, civil servants' freedom of association ¹ and right to strike, among other things, are guaranteed.

The right to organize in the public sector in Peru is regulated by section 41 ² of the Civil Service Act (Act No. 30057), under which civil servants enjoy the right to organize for the purpose of defending their interests. Civil servants' organizations must contribute to the continuous improvement of services for citizens and refrain from hindering the efficient functioning of a body or the provision of a service, while the authorities must not promote acts that limit the formation of trade union bodies or the exercise of the right to organize.

It is also important to note that Title V, Chapter I, of the General Regulations relating to the Civil Service Act, adopted through Presidential Decree No. 040-2014-PCM, regulates the exercise of the right to organize and contains provisions on, inter alia, freedom of association, ³ protection from anti-union discrimination, protection from acts of interference, the formation of trade unions, trade union registration and trade union leave.

Article 3. Rights of organizations to organize their activities and formulate their programmes. Voting to declare a strike. With respect to the right to strike, SERVIR indicates that this is regulated in sections 79 to 85 of the General Regulations of the Civil Service Act, which provide that one of the requirements for a strike is that the decision must be adopted in the manner expressly stated by the union rules and that it must represent the will of the majority of workers covered by its scope. Likewise, section 13.2(e) of Act No. 31188 on collective bargaining in the public sector states that public sector workers may declare a strike under the provisions of the single consolidated text of the Collective Labour Relations Act, approved by Presidential Decree No. 010-2003-TR, and its regulations. Lastly, the single

¹ Freedom of association is a human right that is at the core of ILO values. It is enshrined in the [ILO Constitution](#), the [ILO Declaration of Philadelphia](#) and the [ILO Declaration on Fundamental Principles and Rights at Work \(1998\)](#); and it is proclaimed in the [Universal Declaration of Human Rights](#) (see: https://www.ilo.org/empent/areas/business-helpdesk/WCMS_DOC_ENT_HLP_FOA_EN/lang-en/index.htm).

² With regard to the validity of this section, it should be clarified that although the sole repealing provision of the Act on collective bargaining in the state sector (Collective Bargaining Act – Act No. 31188) provided for the nullification of sections 40, 41, 42, 43, 44 and 45 of the Civil Service Act, the Collective Bargaining Act, according to its section 1, is intended solely to “regulate the exercise of the right to collective bargaining by trade union organizations of state workers, in accordance with article 28 of the Political Constitution and the provisions of ILO Conventions Nos 98 and 151”. Consequently, based on an interpretation that aligns with the Constitution and on the *pro homine* principle, the nullification of the above-mentioned sections of the Civil Service Act relating to collective rights should be understood to apply only to the exercise of collective bargaining in the public sector, to which, precisely, the provisions of the Collective Bargaining Act (on which the nullification with respect to such collective bargaining is based) are applicable. The above-mentioned sections therefore remain valid in relation to the exercise of the rights to organize and to strike in the public sector, in accordance with the conclusions of technical report No. 001762-2021-SERVIR-GPGSC.

³ Furthermore, section 51 of the General Regulations relating to the Civil Service Act, adopted through Presidential Decree No. 040-2014-PCM, establishes that freedom of association includes the right of civil servants to form, join and leave trade union organizations of their choosing. Moreover, trade union organizations have the right to elect their representatives, draw up their constitutions, form part of higher-level trade union organizations, dissolve, organize their administration and activities, and formulate their programmes. Freedom of association also grants civil servants the right to carry out their trade union activities freely in order to defend their interests.



consolidated text of the Collective Labour Relations Act and its regulations apply supplementarily to any aspects not regulated in the previous provisions.

Right of trade union organizations to hold meetings and have access to workplaces. The Ministry of Education states that according to section 66 of the General Education Act (Act No. 28044), the goal of educational institutions is to ensure the learning and comprehensive training of their students. Likewise, as a physical environment, they provide facilities for conducting extracurricular and community activities, upholding the educational goals and objectives, as well as the specific functions, of the institutional premises.

Under article 28 of our Constitution, the State guarantees freedom of association. Article 6 of the Convention No. 151, establishes that such facilities shall be afforded to the representatives of recognized public employees' organizations as may be appropriate in order to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work, without impairing the efficient operation of the administration.

In this context, having reviewed the only final complementary provision of Presidential Decree No. 017-2007-ED, referring to the fact that the director or deputy director of a public educational institution providing regular basic education must guarantee the functioning of his/her educational centre, and so "facilitating the use of school premises for union meetings" is a serious offence. We consider that this provision is in line with the Constitution and international agreements, as educational institutions are intended to provide an education service, which under Act No. 28988 constitutes an essential public service.

Discussion by the Committee

Chairperson – I invite the Government representative of Peru, the Minister of Labour, to take the floor.

Government representative (Minister of Labour and Employment Promotion) – It is an honour to address you today during the 111th Session of the International Labour Conference to convey the warm greetings of the Constitutional President of the Republic of Peru, Ms Dina Ercilia Boluarte Zegarra and the Peruvian people.

Historically, the Peruvian State has assumed with great responsibility its commitment to protect and defend fundamental labour rights, implementing at every opportunity the recommendations formulated by the various bodies of the International Labour Organization's standards supervisory system.

In that vein, we will now provide information on the observations contained in the 2023 report of the Committee of Experts related to the Convention.

The first observation of the Committee of Experts related to its request for information on the impact of the application of Presidential Decree No. 014-2022-TR and on the resumption of social dialogue in the CNTPE to ensure that concerns regarding the Decree are discussed in this space and that any circumstances hindering the functioning of this body are swiftly resolved.

In this respect, it should be noted that the Ministry of Labour submitted statistical information to this Committee on the labour disputes filed and registered during the months of January and February 2023, in other words, after the issuance of Presidential Decree No. 014-2022-TR, including figures on strikes, workers involved and working hours lost.

With regard to the resumption of social dialogue, suspended in July 2022, allow me to specify that with the change of Government, the mechanisms to resume rapprochement



between the social partners were strengthened through bilateral meetings with the ministerial office.

During my current term as Minister of Labour and Employment Promotion, since 24 April 2023, we have held bilateral working meetings with the trade unions and employers' associations, which has allowed them to present their contributions and issues of concern, all agreeing on the need to strengthen social dialogue as an opportunity to achieve continuous improvement in the labour sector.

The Ministry of Labour has set up eight working groups with trade unions such as the CGTP, the General Confederation of Workers (CUT), the CTP and the 'CATP, and with employers' associations such as 'CONFIEP, the CCL, the Association of Exporters (ADEX) and the SNI.

It should be noted that spaces for tripartite social dialogue, such as the National Council on Occupational Safety and Health (CONSSAT), the National Committee for the Prevention and Eradication of Child Labour (CPETI) and the National Committee on Combating Forced Labour (CNLCTF), remained active and met on a continuing basis due to the willingness of the social actors involved.

In its second observation the Committee hoped that the preliminary draft of the Labour Code would be the subject of tripartite consultation and that, during that process of dialogue, consideration would be given to the revision of the legislation so as to recognize the right to freedom of association of workers engaged under training schemes.

In this regard, allow me to point out that Ministerial Resolution No. 232-2021-TR established a temporary sectoral commission to prepare a proposal for a preliminary draft Labour Code, to be submitted to a broad tripartite social dialogue process in the National Labour Council, also taking into account the contributions of civil society.

Through the bilateral meetings that the previous Government held with workers and employers on 13 and 18 April 2022, respectively, the Ministry of Labour informed the social partners of the content of the preliminary draft.

Subsequently, Ministerial Resolution No. 92-2022-TR ordered the pre-publication of the preliminary draft, which contains a proposal for a specific regulation on workers under training schemes.

During the 127th ordinary session of the CNTPE on 13 May 2022, the plenary agreed that the process of dialogue on the preliminary draft of the Labour Code would be evaluated by the social actors after the pre-publication period.

Thus, the definition of the process of dialogue on the preliminary draft was included in the agenda of the 128th ordinary session of the plenary of the Council, held on 18 July 2022. However, this session was suspended, and it was not possible to address the preliminary draft.

An extraordinary session of the CNTPE plenary was then called for 3 November 2022 to define the process of dialogue on the preliminary draft, but there was a lack of quorum so only an information session was held.

It should therefore be taken into consideration that the above-mentioned preliminary draft has not yet been debated in the CNTPE, nor has it been approved by the Council of Ministers, so it is only a regulatory proposal that is in the process of being drafted and validated. It does not form part of the Peruvian State's legal system, and therefore it is not



appropriate to issue an opinion on the possible discrepancies that may exist between its sections 75 and 76, regarding the recognition of freedom of association for training schemes.

However, we are willing to continue the dialogue established with the employers' associations and trade unions at the bilateral meetings held during this administration, in order to make it feasible to resume tripartite dialogue within the CNTPE.

In the third observation the Government is urged to take the necessary measures to revise the relevant provisions of the legislation in order to secure the right to organize, in law and practice, of judges and prosecutors, and of employees in positions of trust or leadership in the public administration.

In this respect, it should be borne in mind that article 153 of the Peruvian Constitution states that "judges and prosecutors are prohibited from participating in politics, from joining trade unions and from going on strike", so the Constitution would have to be amended in order to address the observation of the Committee of Experts.

However, section 35(12) of Act No. 29277, the Judicial Profession Act, recognizes the right of judges "to free association. Judges' associations are established and carry out their activities in accordance with the rules established in the Civil Code and are regulated in accordance with their statutory provisions".

On the other hand, we must point out that article 42 of the Political Constitution of Peru "recognizes the rights of public servants to organize and strike. State officials with decision-making powers and those who hold positions of trust or management are not included [...]".

The fourth observation relates to the determination of the unlawfulness of a strike in the private sector not lying with the labour administration but with an independent body that has the trust of the parties; and the Committee of Experts' hopes that the proposed amendment contained in the preliminary draft of the Labour Code will be the subject of extensive tripartite consultations.

In this respect, section 84 of the single consolidated text of the Industrial Relations Act, approved by Presidential Decree No. 010-2003-TR, establishes the grounds for declaring a strike illegal. These criteria are in line with the provisions of article 28 of the Constitution, insofar as the State not only recognizes the right to strike, but also safeguards its democratic exercise, determining that it be exercised in keeping with the interests of society.

The classification of strikes is in line with the ruling of the Constitutional Court in Case No. 02211-2009-PA/TC, which states that the exercise of the right to strike is not absolute and can be limited by law, so that it is exercised in keeping with the public interest.

This is in line with paragraph 114 of Advisory Opinion OC 27/21 of the Inter-American Court of Human Rights, according to which: "[...] the exercise of the right to freedom of association, the right to collective bargaining and the right to strike may be subject only to restrictions established by law, provided that such restrictions are characteristic of a democratic society and necessary for safeguarding public order for protecting public health or morals or the rights and freedoms of others. Any such restrictions set on the exercise of these rights, however, must be interpreted restrictively, applying the pro persona principle, and must never be stripped of their essential contents or reduced such as to deprive them of any practical value."

In this sense, there would be no basis for asserting a priori that determining the unlawfulness of a strike in the private sector should not be the responsibility of the labour administration, but of a body independent of the parties and trusted by them.



With regard to the content of the preliminary draft, we reiterate that it has not been debated in the CNTPE, nor has it been approved by the Council of Ministers, so it is only a regulatory proposal that is at the drafting and validation stage, which does not form part of the legal system of the Peruvian State.

We also express our willingness to continue the dialogue established with the employers' associations and trade unions at the bilateral meetings held during this administration, in order to make it feasible to resume the tripartite dialogue within the CNTPE.

The fifth observation concerns the establishment, without further delay, of the Civil Service Support Commission as a truly independent body, and the examination and resolution by an independent body of disputes between the parties on the number and occupation of minimum service workers in essential public services. In this regard, given that the Civil Service Support Commission referred to in section 86 of the general regulations of Act No. 30057, the Civil Service Act, has not been implemented to date, the resolution of conflicts and disputes between public bodies or between those bodies and civil servants would be the responsibility of the Ministry of Labour, in accordance with the provisions of General Directive No. 01-20216-MTPE/2/14, "General Directive regulating the actions of the administrative labour authority in the process of collective bargaining in the public sector", approved by Ministerial Resolution No. 156-2016-TR.

It should be noted that, in the current context, the General Labour Directorate of the Ministry of Labour is responsible for handling the procedure on disagreement regarding minimum services in the public sector. For this purpose, the Directorate is legally entitled to the support of an independent body. With regard to the sixth observation, it should be noted that Article 6 of Convention No. 151, provides that such facilities shall be afforded to the representatives of public employees' organizations as may be appropriate in order to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work, without impairing the efficient operation of the administration.

It should be borne in mind that according to section 66 of Act No. 28044: "[...] the purpose of the educational institution is to pursue the schooling and the comprehensive training of its students. [...] The educational institution, as a physical and social environment, establishes links with the different bodies in its surroundings and makes its facilities available for the development of extracurricular and community activities, preserving the educational aims and objectives, as well as the specific functions of the institutional premises [...]."

In this regard, we attach particular importance to the balanced and conventional interpretation of these norms, in accordance with the fourth of the final transitional provisions of the Political Constitution of Peru, which establishes that the norms relating to the rights and freedoms that the Constitution recognizes, such as the right to organize, are interpreted in accordance with the Universal Declaration of Human Rights and the international treaties and agreements on the same subjects ratified by Peru.

Employer members – In this regard, I would like to state that Presidential Decree No. 014-2022-TR, issued on 24 July 2022, amended the Regulations of the Collective Labour Relations Act in Peru.

The first aspect to which I would like to refer concerns social dialogue and tripartite consultation. As the Peruvian Government itself has acknowledged, when giving explanations to the Committee of Experts, a unilateral modification of the regulations on collective labour



relations took place in Peru without respect for the process of dialogue and consultation with workers' and, particularly, employers' organizations.

Although the Government sought to justify these actions based on the alleged seriousness of the situation of the right to organize in the country, the following should be borne in mind: first, the existence of a low rate of trade union membership in a country cannot serve as a justification for the violation of international standards on consultation and social dialogue; and second, the Government has not provided any significant evidence that the legal amendments adopted unilaterally or arbitrarily are the most appropriate and proportional measure to solve the alleged problems identified.

A fundamental principle of respect for international labour standards has to do with the effective and genuine promotion of consultation with the representative actors of workers and employers; this guiding principle has immediate effect arising from the foundational character of tripartism in the ILO.

Dialogue and contrasting opinions among the actors that determine wages is imperative in order to achieve open and democratic labour relations. This obviously does not mean that agreement is necessary in all cases, but it does mean that there must be a mutual rapprochement in an environment of trust and exchange in good faith that encourages such agreement. This guarantees a better social balance in a country and provides the necessary legitimacy to the rules that regulate labour relations.

Notwithstanding the above, the Peruvian employer sector recognizes and welcomes the willingness expressed by the current Government administration to resume dialogue and expresses its hope that this dialogue will allow for the amendment of regulations that may be particularly complex or conflictive for enterprises to implement.

A second point I would like to consider concerns negative freedom of association. Presidential Decree No. 014-2022-TR provides for employers to unilaterally extend the effects of a collective agreement concluded by a trade union that does not cover a majority of the workers in a field. The explanatory memorandum of the Decree seeks to justify the measure by referring to the opinion of the Committee on Freedom of Association that the recognition of the most representative union should not prevent minority unions from operating or presenting their demands.

In this respect, it is clear that there is no logical connection between the above-mentioned decision of the Committee on Freedom of Association and the new regulatory framework established. The severe shortcomings in the reasoning applied are the result of a lack of adequate reflection in the context of social dialogue with the actors concerned, but beyond that it is paradoxical that the alleged incompatibility of the previous regulation with the development of the rights to freedom of association and collective bargaining should be the basis for this measure.

The Government fails to refer to concrete decisions in which other supervisory bodies have indicated that the extension of a collective agreement by an employer is valid. Thus, it is false that the supervisory bodies of international labour standards state that extending the effects of a collective agreement signed with a minority union is an anti-union practice. What is true and clear is that forcing workers to unionize in order to obtain basic economic benefits with a general pay rise affects the right of workers not to join a union, which is contrary to the Convention.

Freedom of association is both positive and negative, positive in that the right of workers to form or join trade unions cannot be prohibited or hindered, but negative in that



no worker can be forced to join a trade union in order to work or access benefits provided by the enterprise in which he or she provides services.

It is also necessary to refer to the arbitrary inequality in access to optional arbitration (*arbitraje potestativo*): the Decree only empowers trade unions to request — meaning that it is optional — compulsory arbitration excluding employers from this possibility, which had a clear impact on the equality between the parties, creating an imbalance that affects the free and voluntary nature of collective bargaining. This is particularly serious if we take into account that arbitration is usually a settlement mechanism used in the event of disagreement over the level of bargaining, that is to say that the Decree has vetoed the possibility for employers to have recourse to this settlement mechanism in this type of conflict, opening up the possibility that a change in the level of bargaining can only be discussed or challenged by the workers.

The rule creates a complex incentive for trade unions that could lead to bargaining collectively being a kind of first instance for the achievement of their demands with the certainty that they could subsequently resort unilaterally to arbitration in the expectation that the arbitration board would grant them greater benefits, thus collective bargaining could end up losing relevance and becoming a mere formality.

Finally, one aspect that I would like to consider relates to the issue of strikes. The right to strike is an issue that the Committee of Experts has repeatedly commented on in this case. In this respect, we consider it very important to point out that the labour laws, and even the Peruvian Constitution, recognize the right to strike as part of collective bargaining. Nevertheless, we, as Employer members and as part of the International Organisation of Employers, fully stand by the position that we have reiterated when there have been attempts to address this issue in the Committee.

In this respect, we have pointed out the following: the Employers recall their disagreement with the Committee of Experts on the Convention and the right to strike, they wish to underline that neither the Convention nor any other ILO Convention contains rules on the right to strike. This fact was also underlined by the Government group in its position statement of March 2015, according to which the scope of the status of this right is regulated at the national level.

Consequently, Governments legitimately intend to determine their own approach to the right to strike, freely guided by their national needs and priorities and not bound by the recommendations of the Committee of Experts.

For this reason, we will refrain from commenting further on this matter in this Committee and with respect to our dispute regarding its regulation as contemplated in Presidential Decree No. 014-2022-TR, we hope to be able to address this in Peru in keeping with the willingness to engage in dialogue expressed by the current Government authorities.

Worker members – I would like to start by commemorating Carlos Ledezma, a recently deceased legal adviser to our trade union confederations, who coordinated the affiliates of our region, the Americas, in this Committee. Peruvian by birth, he was a generous colleague and a tireless defender of trade union and human rights and that is why we wish to pay tribute to him.

The report of the Committee of Experts on the case of Peru notes a series of worrying situations of restrictions on trade union activity which must be addressed in order to guarantee the effective exercise of the fundamental rights at work protected under the Convention. The report also identifies some progress that should be sustained, especially in



the difficult political situation in the country. We refer in particular to certain changes brought about by Presidential Decree No. 014-2022-TR of 24 July 2022, which, among other things, expressly recognizes workers' right to direct membership in federations and confederations. The right to form trade unions of groups of enterprises and production chains or subcontracting networks, in turn, prohibits the direct or indirect replacement of workers who are exercising the right to strike, as well as any other act that might impede or obstruct the exercise of the right to strike.

The regulation is an appropriate response to the observations made by the ILO supervisory bodies on labour relations legislation and practice in Peru.

What is striking in this case is the reaction of the employers to this new legislation: they opposed it because it supposedly, as they argue, increases unionization.

Far from any negative connotation, we consider, on the contrary, that the promotion of trade union activity is a means of widening democratic spaces in modern societies, in such a way as to enable the representation of workers' interests in line with Article 10 of the Convention.

We must insist that strong and independent trade unions are essential to redress the imbalance of access to judicial and economic power for workers. The Committee of Experts is therefore right when it "expresses the hope that the implementation of the Presidential Decree, which, according to the Government, has its origins in concerns at the situation of freedom of association in the country, will contribute to ensuring the full enjoyment and exercise of the rights set out in the Convention and requests the Government to provide information on the impact of the Decree's application."

With regard to the central aspect that we wish to address, the report of the Committee of Experts notes in the national legislation a series of limitations to the recognition of freedom of association for certain categories of workers, such as those who work as judges, prosecutors and employees in positions of trust and leadership in the public administration.

It is well known that the Convention applies to all workers without any distinction, and that mention alone is sufficient to mandate the urgent restitution of the right to freedom of association for those who are illegally deprived of it.

The report also addresses the problem of the restrictive action of the labour authority in relation to the right to freedom of association, in particular, the labour authority exercises control over the legality of strikes, both in the private and public sectors. For more than six years, the Government has failed to set up the Civil Service Support Commission, which would lend impartiality to the process of declaring and carrying out strikes.

The lack of guarantees is such that, for example, according to data reported in 2020, the administration declared 100 per cent of strikes illegal. Moreover, the Peruvian Government maintains ambiguous regulations regarding the scope of the opinion of the independent technical body that rules in cases of disagreement on minimum services in the event of a strike.

The uncertainty and legal insecurity are such that it is not even clear whether there is a positive obligation for the labour authority to convene this body.

This is a crucial issue and we urge the Government to commit itself to amending its legislation in this regard in order to provide sufficient guarantees for the exercise of the fundamental right to strike. To further illustrate this point, we can cite as an example the case of an enterprise in the beverage sector of which the trade union, SITRACORLinsa, initiated a



dispute procedure in which it questioned the determination of minimum services, due to the fact that every year the enterprise increased the number of posts qualified as minimum services, to such an extent that if, in 2022, a strike had been declared and this formula had been applied to the list of minimum services presented by the enterprise, more than 70 per cent of its workers would have been deprived of their rights because they were considered to occupy indispensable posts.

These and other limitations to freedom of association are the result of excessive state interference in trade union activity, contrary to the principle of autonomy enshrined in Article 3 of the Convention, as well as the failure to comply with regulations that could overcome these obstacles, such as the implementation of the Civil Service Support Commission, which has never materialized, and the determination of essential services by an independent body.

Finally, the present appearance of the Government before the Committee is conducive to promoting a review of the final provisions of Presidential Decree No. 017-2007-ED, which defines as serious offences by head teachers and deputy head teachers in schools the act of providing school premises for trade union meetings. We believe that the freedom and autonomy of the social partners, both head teachers and trade unions, to agree on the terms of use of premises for the exercise of trade union activity should be respected, without hindering the functioning of certain institutions.

As we have briefly outlined, the accumulation of violations of trade union activity in Peru requires a series of actions that include both legislative changes and the implementation of some mechanisms provided for in positive law that the Government has failed to implement, so that the fundamental right to freedom of association is fully complied with.

We would like to say that we stand by the mandate of the Committee of Experts, and in this respect, the Workers' group reaffirms its position that the right to strike is covered by the Convention without there being grounds in this context to take this decision as simply a protest by our group.

Employer member, Peru – Allow me to set out the position of the employers of Peru, represented by 'CONFIEP. We wish to refer to the violations of the Convention which our Government has committed by adopting Presidential Decree No. 014-2022-TR, amending the Regulations of the Collective Labour Relations Act. This Decree was adopted with total disregard for the opinion and input of the employers, despite the fact that the issues it regulates are included in the preliminary draft of the Labour Code that was being discussed by the social partners in the CNTPE, as the Government has acknowledged today.

By doing this, the Government not only violated social dialogue but also did not act in accordance with the information it had provided to the ILO, where it had indicated through a memorandum that the Labour Code would be revised, guaranteeing constructive social dialogue. However, it arbitrarily regulated matters that were still to be discussed.

The issuance of this text without consultation was strongly opposed by the employer unions – as we rejected the unilateral decision of the Government that fractured the CNTPE. We were therefore forced to withdraw from this council in protest.

It is important to take into account that this Presidential Decree was not an isolated measure, but part of an agenda with a title and specific measures agreed exclusively with the workers. That is to say, it was a state policy that not only disregarded but even rejected the role of employers in the creation of decent work through the development of responsible and sustainable enterprises.



The Government indicated that the absence of participation and dialogue with the social actors representing the employers was justified because the text contained minor amendments on procedural aspects. This is totally false – the amendment made affected 43 per cent of this regulation.

It has also been said that it was necessary to resolve the apparent incompatibility of the regulation in question with international labour standards. In this regard, there were only two particular observations made by the ILO on our regulation: one on union registration and the other on union dissolution. It is clear that these two observations could not justify the arbitrary amendment without consultation to over 40 per cent of our regulation on collective labour relations.

On the contrary, the progress made in responding to the ILO's previous observations has been reversed. In 2003, an Act was passed in Peru effectively named the Act to respond to the observations of the ILO Committee on Freedom of Association, through which the regulation on collective labour relations was amended. This 2003 Act had been subject to broad discussion among the social actors. The draft was discussed in the National Labour Council in 13 meetings, leading to consensus on 12 issues. In other words, we had a regulation that was the product of consensus, which has been destroyed by authoritarian action.

We recognize the efforts being carried out by the Government under the current direction of the Ministry of Labour to re-establish social dialogue. We welcome the fact that, as a first step, bilateral working groups have been set up, in which we are actively participating. However, this new effort does not undo the previous breach to tripartism inflicted by the adoption of Presidential Decree No. 014-2022-TR.

Hence why we request the derogation of this text and a resumption of the discussion on the regulation on collective labour relations. To that end, we hope to have the valuable technical assistance and support of the ILO.

With respect to the amendments carried out, I would like to highlight certain points that violate the fundamental rights of the employers and workers.

First, a general prohibition was established against extending the effects of a signed collective agreement with a minority trade union to unaffiliated workers. In an international economic context of high inflation and low growth, the impossibility of extending a collective agreement to those who are not members of a trade union may be to the detriment of unaffiliated workers, who make up the majority of workers in Peru.

The way in which this provision affects workers' freedom of association is serious. It is contrary to freedom of association and to the principles of the Convention, and of free and voluntary affiliation, to seek to raise the rate of affiliation by forcing workers to join unions in order to access benefits.

For a long time, Peru has had a rule according to which a collective agreement of a minority trade union applies only to its members, but the free and voluntary extension to workers who were not trade union members was not prohibited. On the contrary, this was a frequent practice and has been recognized as valid by other bodies of this Organization.

Even national labour case law had established as a majority criterion that an extension of this type of benefits was possible. By prohibiting this extension, the Government is contravening the decisions of the national case law and the ILO. It is striking that, when faced



with any problem, the Government has always decided to resort to the most drastic prohibition or restriction.

We request the ILO to assist us in assessing alternative solutions to this situation with an international expert who is familiar with comparative systems of collective labour relations and who can act as a facilitator in the context of the progressive re-establishment of social dialogue promoted by the current Government.

Second, it is alarming that the Presidential Decree exclusively empowers trade union organizations to request compulsory arbitration, affording a privilege to one of the parties to the bargaining. It should be recalled that Peruvian legislation authorizes access to compulsory arbitration as a mechanism for collective conflict resolution in a wide range of cases, including the determination of the bargaining level, ignoring the fact that this recourse should be extraordinary and used only in extreme situations.

In this context, it is obvious that facilitating arbitration exclusively for the benefit of workers undermines free and voluntary collective bargaining. In light of the foregoing, I must highlight that our comments on this regulation are not based on the fact that it supposedly increases union membership, but rather on the lack of consultation around it and its breach of the fundamental rights of employers and workers. The objective of increasing union membership in no case justifies the absence of tripartite consultation and the breach of fundamental rights.

In view of these violations to freedom of association and respect for social dialogue as the cement of the democratic model of labour relations, we reiterate our request to recommend that Presidential Decree No. 014-2022-TR be annulled, in order that the social actors may resume the dialogue that must be the basis of any reform to our labour relations system.

Worker member, Peru – Allow us to begin by stating that the current Peruvian Government is not the popular and legitimate Government that won the elections in 2021, and does not represent the ongoing structural change for the benefit of the poorest that was initiated by President Pedro Castillo, who was removed from office on 7 December 2022. Our country is currently governed by those who abandoned their commitments to the people and allied themselves with right-wing and extreme right-wing political groups that lost the elections in 2021. Since the 1990s, under a similar dictatorship regime, a legal framework has been imposed on us that has generated the most extreme poverty with the application of capitalist processes and neoliberal measures that have been disguised as speeches and deceptive results of economic growth, while millions of workers are thrown onto the streets and their families forced to abandon any plans for a decent life.

May I present some results: at the end of the 1980s, formality was 70 per cent and informality 30 per cent; now informality is 75 per cent and formality 25 per cent. The trade union membership rate fell from 40 per cent of the economically active population to now 5 per cent in the private sector. National industry has been destroyed, we are a primary exporting country with no added value, we are last in the region of the Americas in terms of quality health and education services, with extreme loss of purchasing power and an increase of monetary poverty, among others.

The human right to freedom of association has been deliberately relaxed in the Peruvian legal framework. The State is not fulfilling its role of guaranteeing and promoting the working class's right to organize. On the contrary, registrations of trade unions are being destroyed by administrative orders. Laws have been drawn up without social dialogue, such



as special rules on workers' contracts, which only serve as an obstacle to the right to organize.

In the private sector we have, for example, systems of agro-industry and export of non-traditional products; and in the public sector we have, for example, rules for service administrative contracts, outsourcing to third parties, and contractual modifications that fundamentally alter the original proposal (*desnaturalizados*). Trade union registers are destroyed under administrative orders and millions of men and women are subjected to precarious working conditions, where their main concern is to keep their job and provide for their families because, if they organize in trade unions they know that means they will lose their jobs.

The right to collective bargaining is another pillar of freedom of association that the Peruvian State does not guarantee, as it passes laws without social dialogue that allow employers to protract settlement of workers' claims indefinitely and impose their unwillingness to seek settlement. The State itself and its protective institutions have been enshrined in laws as mere observers of what is happening between the parties and does not exercise its competence to intervene and find solutions when the dialogue is stalled by the intransigent positions of the employers to provide tangible solutions.

The right to strike has been deliberately hampered for the workers through requirements that in effect serve to deny this right. For example, the requirement to designate a minimum of essential workers to ensure the safety of facilities and the resumption of normal activities after the strike, but which is used by employers to designate any worker without reasonable technical justification, in addition to the persecution and threats that the leaders and trade union members receive for announcing the strike and the penalties that they would receive, if it is carried out.

How long does it take for employers to dismiss a worker in Peru? The time it takes them to sign the dismissal letter. How long does it take for a worker to receive justice and be reinstated? Five to six years, after going through a gruelling judicial process.

Regarding the legitimate right to social protest, this right was violated in my country when the decision was taken to cruelly punish the citizens who have protested since 7 December against the current regime, and we demanded that new general elections be called for the positions of President and congressmen and women, and that these elections included consultation on a new Constitution.

The poorest and most discriminated people of my country have been victims of a brutal repression, excessive use of force imposed by the police and military forces, a crackdown that left 70 citizens dead – most of them executed extrajudicially by bullets and tear gas bombs fired directly into the group of demonstrators, as affirmed in the reports of the United Nations – the Organization of American States and Amnesty International, among others.

Moreover, there is obviously no social dialogue in Peru. The labour legislation governing individual and collective labour relations was, in substance, imposed without any dialogue or consultation in the 1990s by the dictator Alberto Fujimori. What did occur were crimes against union leaders, including of Mr Pedro Huilca, Secretary-General of the CGTP, whose case was settled by the Inter-American Court of Human Rights.

Since that date, there has been no labour law that has been the result of social dialogue. The Collective Labour Relations Act is a decree law, that is, a law issued by the President himself who had just dissolved Congress in 1992. The Act that established the private pension system, and has allowed for employer groups to get richer at the expense of extremely poor



pensions for retired workers, was not subject to social dialogue. The laws that established the special labour regimes, such as for the agrarian sector in 2000 and for micro and small enterprises in 2003, diminishing working conditions, were not subject to social dialogue. The 2007 Act on outsourcing, making the working conditions for millions of people more precarious, was also not subject to social dialogue.

Why only now are the employers demanding social dialogue? Peruvian workers have an explanation: because workers can form unions with outsourced workers and among workers from the same group of enterprises; workers can directly join federations and confederations; bureaucratic obstacles for union registration are removed; and workers can exercise the right to information for purposes of collective bargaining (among many other reasons that we have already detailed).

Is it possible that all these provisions are not aligned with the principles affirmed over time by the Committee of Experts and the Committee on Freedom of Association? Yes, we workers want social dialogue but, as the ILO says, we want dialogue with full respect for freedom of association and civil and political liberties, because dialogue in an atmosphere where these basic rights are not respected is not social dialogue but rather undercover authoritarianism.

This is why we formally request the establishment of a high-level contacts mission to visit Peru as soon as possible in order to:

- examine in situ the innumerable violations of freedom of association committed in Peru. The trade union confederations have technical reports and documented cases with indications of the employers responsible, some of which were included in our comments in reports on the Convention in question and Convention No. 98;
- examine in situ the reasons for the excessive delays in the judicial procedures, note the delaying tactics used by the defendants to draw out those procedures, and verify the regrettable labour justice situation in Peru;
- investigate the reasons why the observations made by the supervisory bodies have not been addressed by successive Governments;
- examine why comprehensive labour legislation reform has not been achieved through social dialogue, and which actors caused obstacles or delays to prevent results;
- analyse and verify the close relationship between the recent human, political and civil rights violations reported by reliable and independent bodies such as, inter alia, the Inter-American Commission on Human Rights and Amnesty International, committed by the current Government, related to the free exercise of freedom of association in Peru.

Government member, Colombia, speaking on behalf of a significant majority of Latin American and Caribbean countries. We welcome the information provided by the Republic of Peru in relation to the observations made by the Committee of Experts on the Convention.

We highlight the information provided by the Government of Peru on strengthening social dialogue in the country, including employers' associations and trade unions. We also appreciate the Government's indication that bilateral meetings have been held in which employers' and workers' associations have had the opportunity to express their concerns with a view to constructive solutions. The Government indicates very positively that these actions have had a favourable impact on reducing labour conflicts and strengthening labour relations.



As to recognition of the right to organize of employees in positions of trust or leadership in the public administration, we recognize, as indicated by the Government, the importance of the necessary balance and impartiality in the exercise of the functions of judges and prosecutors. In the light of the above, we appreciate the information on the Peruvian Government's commitment to promoting social dialogue and tripartism. Lastly, we urge the ILO Office to continue providing technical cooperation to the Government of Peru.

Government member, Switzerland – Switzerland wishes to reiterate that freedom of association and social dialogue are essential to guaranteeing the rights of workers' and employers' organizations and contributing to the economic and social development of countries. The fundamental right to establish organizations of their own choosing, freely, independently and autonomously, should be guaranteed for all workers, including trainees, judges and prosecutors, and employees in positions of trust or leadership in the public administration.

Switzerland notes with interest that Peru has initiated encouraging legislative amendments. We hope that employers' and workers' organizations will be consulted in these processes, and that the reforms will be effectively implemented.

Switzerland encourages the Peruvian Government to continue its efforts and to follow the recommendations of the Committee of Experts with a view to guaranteeing freedom of association in law and in practice. It invites the Government to provide all the information requested and, if necessary, to seek technical assistance from the Office. This will help to create an environment conducive to the development and promotion of constructive social dialogue.

Employer member, Colombia – International labour standards and the reiterated comments of the Committee of Experts refer to the commitment to engaging in effective consultations, which are founded on social dialogue, as an essential tool for the development of joint proposals between workers, employers and government to promote growth, peace and general well-being.

Achieving true dialogue and thus effective consultations requires a climate of trust based on respect for employers' and workers' organizations. It is therefore concerning that the Peruvian Government has unilaterally adopted Presidential Decree No. 014-2022-TR, which comprehensively amends the regulatory regime on collective labour relations, without any kind of tripartite consultation or social dialogue.

It is important to note that the purpose of this Decree, according to its preamble, is to "bring the provisions in force into line [...] with the observations of the ILO Committee of Experts on the Application of Conventions and Recommendations". I emphasize this because it is clear to everyone that tripartism is one of the key principles of this House, and it is therefore inadmissible to invoke the observations of the Committee of Experts only to disregard the importance of social dialogue with the social partners. Second, this same Decree develops regulatory aspects that are of vital importance not only for collective bargaining, but also for all social dialogue scenarios. The Presidential Decree regulates the conditions for the recognition, exercise and enforceability of the right to union association, union representativeness, union guarantees, scope of collective bargaining agreements, arbitration and other matters. In several of its provisions, the Presidential Decree imposes limitations to the freedom of enterprise, limitations that, although they may be reasonable, should not be decided unilaterally by the Executive Branch.



Against this backdrop, I would like to emphasize that, in democratic contexts, the end does not justify the means; on the contrary, in the House of tripartism, social dialogue is the means that gives meaning to common objectives. Therefore, the lack of tripartite consultation cannot be legitimated through laudable supposed ends, such as an attempt to improve the low rate of unionization.

Lastly, we call for all draft regulations to be duly consulted in the Peruvian CNTPE, so that this body can actively assume its competence.

Worker member, Portugal – Labour legislation in Peru has been in force for decades. The matter analysed in this case is a Presidential Decree that in no way alters this legislation.

In fact, with the change of Government and the unlawful dismissal of the elected President, it is clear that the right of association is being questioned. Without the right to strike, to demonstrate or free association, compliance with this Convention and the principles of social dialogue are at stake. We know that, in recent months, workers have been killed during demonstrations, union leaders have been persecuted, and workers have been dismissed for joining unions and arrested for striking.

We also know that the country's business sector denied the right to collective bargaining by branch of activity, denying a fundamental right to Peruvian workers. We also know that, despite President Castillo's efforts to develop a collective labour agreement in the public sector that would benefit 600,000 workers, the current Government is turning a deaf ear to these workers by denying them a solution that would benefit them.

Therefore, it seems clear to us that social dialogue cannot be guaranteed if the agreements, namely those implemented by the previous Government, are not respected, just as the right to collective bargaining is not guaranteed. It also seems to us that, without the right to strike and demonstrate and the rights of trade unions and freedom of association, the application of the Convention is not guaranteed.

In this context, it seems to us that rights such as the right to strike and demonstrate, trade union rights and the effective recognition of the right to collective bargaining are not being upheld. In this sense, we call for efforts to analyse the various violations of trade union rights that are taking place in Peru, as well as to contribute to full respect for the right to freedom of association and free bargaining.

We therefore support the call of the Peruvian trade union confederations, led by the CGTP, for a high-level ILO commission to be sent to Peru to verify the serious violations that are detrimental to workers.

Employer member, Costa Rica – As has been explained in this forum, the regulation on collective labour relations is a result of the consensus reached by the social actors in the National Labour Council.

In this regard, it is very serious that this system has been broken by a unilateral text, approved without consultation or social dialogue. We must emphasize the importance of labour relations systems being established through democratic mechanisms that include consultation and dialogue with employers and workers, particularly on such core issues as freedom of association and collective bargaining.

In this context, we welcome the interest of the current Ministry of Labour of Peru in re-establishing social dialogue mechanisms, and hope that all obstacles will be removed so that they can be resumed as soon as possible, in respect for the principle of good faith.



As you can see, we are confronted with a clear incompatibility with international labour standards, by allowing workers exclusively to submit collective disputes to arbitration.

Lastly, we wish to draw attention to the need to eliminate any limitation to negative freedom of association, which also falls under the scope of protection of the Convention. In no case should the promotion of collective bargaining be confused with compelling workers to join unions.

Employer member, Plurinational State of Bolivia – As has been the tradition in this House, social dialogue and the capacity to develop tripartism have always been promoted as a way of seeking comprehensive solutions to the various problems and legitimate interests of all stakeholders, both employers and workers.

In this context, it is at the very least questionable that the Government of Peru unilaterally decided to amend a regulation that was in fact the product of the social dialogue that is being promulgated and of consensus between employers and workers. It is essential to remedy this situation as soon as possible.

In addition, it is notable that, as explained by the employer representative of Peru, this Presidential Decree prohibits unaffiliated workers from receiving the benefits agreed upon in a collective agreement with a minority trade union. This situation is frankly unacceptable as it in effect forces unaffiliated workers to join trade unions, thus affecting their right to choose to join a trade union or not.

While the Government may have issued this text alleging that the extension of benefits to workers not affiliated to a trade union would be an anti-union act, this conclusion is erroneous because, as we know, internal ILO bodies have already commented on other occasions that it is totally legitimate that collective bargaining agreements apply not only to the contracting parties and their members but also that their scope may cover all workers, including those not members of unions. Both options are absolutely legitimate and either alternative may be adopted in national legislation.

Further, we consider it important to highlight that, while it is possible to develop a general guiding rule that sets out whether or not a collective agreement extends to workers who are not members of a union, such a possibility cannot be twisted to impose an absolute prohibition on the extension of the effects of the agreement, as this affects and contravenes the principle of respect for the will of the parties, and disregards employers' competence to maintain comprehensive wage scales and balanced benefits.

To this end, taking into account that the legal amendment in question has been adopted without consultation or the employers' participation, the amendment should be annulled and the discussion resumed via social dialogue.

Worker member, Spain – Since the beginning of the 1990s, Peru has experienced a period of over 30 years of regressive labour reforms. The result of this damaging process has been a clear deterioration of poverty and precariousness, owing to radical labour deregulation and the development of special rules based on the limitation of labour and trade union rights.

In 2021, the Peruvian trade union organizations presented the incoming Government with a series of proposals on the reform of the Peruvian labour regulatory framework. Presidential Decree No. 014-2022-TR of July 2022 amended the Regulations of the Collective Labour Relations Act. The Committee of Experts observed, in its report, the progress sought through the Presidential Decree with respect to the right to form trade unions and the



improvements to safeguard the exercise of the right to strike. All these issues are directly related to the provisions of the Convention.

It is important to highlight, as even the Government has recognized, that Presidential Decree No. 014-2022-TR has stirred up a concerning situation regarding freedom of association in the country. The Committee of Experts has expressed its hope that the implementation of the Presidential Decree will help to ensure the full enjoyment and exercise of the rights enshrined in the Convention. And it is very important to point this out, as it appears that, in the employers' comments included in the report of the Committee of Experts, the Convention is expressly disregarded, as the employers literally state that the Presidential Decree will affect labour relations between workers and employers, as it broadens the form of trade union organization.

To sum up, the position expressed by the employers is an explicit affront against the broadening of the form of trade union organization. The employers themselves have also expressed that the Presidential Decree prevents employers from unilaterally extending the coverage of a collective agreement to workers not included in its scope of application. That is to say that the employers are demanding the power to unilaterally decide on the extension of collective agreements to prevent trade union affiliation.

It is surprising that, in the house of tripartism, demands are being made for unilateral rights with anti-union effects. We must remember that these anti-union positions of employers are held in a country like Peru, where trade union membership is not higher than 5 per cent and the rate of collective bargaining coverage is not higher than 3 per cent, according to ILOSTAT data.

We therefore request the Committee to clearly demand that the Government effectively implement the Presidential Decree and duly develop other labour standards to ensure compliance with the Convention.

Lastly, I wish to recall that the Convention is not a Convention on positive or negative freedom of association. It is the Convention on freedom of association and protection of the right to organize without adjectives, which guarantees and protects this fundamental right, which must be respected.

Worker member, Bolivarian Republic of Venezuela – We, the Bolivarian Socialist Confederation of Workers (CBST), in the case of the application of the Convention in Peru, stand against the serious violations currently being committed against Peruvian workers, especially education workers.

The Regional Labour and Employment Promotion Directorate is annulling the registration of the National Federation of Education Workers of Peru (FENATE-PERU), which was accepted on 22 July 2021.

Strikes are considered illegal, thereby disregarding the independent body set up through a decree and failing to comply with the Constitution and labour laws. The right of trade union organizations to hold meetings and review labour laws is being abolished. The right of trade union organizations to hold meetings and visit workplaces is also being abolished, and replacements are found for those on strike.

Education workers reject an improper procedure that seeks to privatize education in Peru, which amounts to manipulation of education.

We also reject the persecution and detention of workers, education workers and rural workers, and other sectors of the economy, especially those belonging to FENATE-PERU.



We support the organization of Peruvian workers to oppose the violation of Conventions Nos 87, 98 and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

The current situation of those deciding Peru's fate entails the non-recognition of the Constitution, labour laws and ILO Conventions.

We suggest that this Committee make greater efforts so that employers and those who currently administer the Peruvian State comply with Convention Nos 87, 98 and 111.

Today we can say that the right to strike and to protest is being violated in Peru. The executive and congress are not legitimate, because Pedro Castillo is the legitimate President of Peru. Indeed, they reach agreements for a dialogue by convening 700 marines in order that they engage in dialogue against the Peruvian people. We therefore vehemently reject those who currently administer the Peruvian State, who are going against the people of Peru and all its workers.

Worker member, Netherlands – The Committee of Experts notes in its report that the Peruvian trade union confederations consider that Presidential Decree No. 014-2022-TR may contribute to mitigating the serious trade union rights situation in the country and indicate that the fact that it explicitly recognizes the right to form trade unions for groups of enterprises and production chains or outsourcing networks may be particularly important in the case of outsourced workers.

We agree, however, even if currently the capacity for outsourced workers to form trade union organizations is recognized at the regulatory level, in practice the law is not applied, which amounts to a violation not only of the decree but also of the Convention, ratified in 1960 by Peru.

According to a recent survey carried out in Peru by CNV International of the Netherlands, 46.3 per cent of respondents indicate that their contracts will not be renewed in cases of trade union participation. Furthermore, 63 per cent feel that their manager is hostile with respect to trade union membership, and 49.6 per cent indicate that they are not covered by a collective agreement.

A court case has been brought by a group of employers against the Presidential Decree in order to have it declared null and void. This judicial action is in process and there is still no outcome, but the judiciary's hard work is needed to support the full validity and legitimacy of this text.

In addition, previously, some sections of Presidential Decree No. 001 (regarding outsourced workers and their rights) were declared null and void by the judiciary. One of those such articles allowed outsourced workers to enter into a permanent employment relationship, thereby promoting their right to freedom of association, as outsourced workers with temporary contracts – those that are renewed every three months – do not join unions, despite the fact that Presidential Decree No. 014-2022-TR expressly refers to this.

The real and effective protection of the rights of unionized workers has been weakened by what has been indicated here. It is therefore important that the Ministry of Labour continues to defend the validity of Presidential Decree No. 001 in its entirety and to be attentive to the results of the judicial process concerning Presidential Decree No. 014-2022-TR.

Worker member, Argentina – The case of Peru reveals once again the double standard regarding freedom of association, to which employers are not accustomed. They are basically



calling into question Presidential Decree No. 014-2022-TR, amending the Regulations of the Collective Labour Relations Act, adopted by President Castillo.

At the outset, it should be highlighted that this Presidential Decree represented substantial progress in terms of freedom of association in Peru; and this is no small issue given that for many years the Committee of Experts has been noting the serious failures regarding freedom of association in this country.

For example, the Presidential Decree expressly recognizes workers' right to directly join federations and confederations, and also recognizes the right to form trade unions of enterprise groups, production chains or subcontracting networks, in accordance with Article 2 of the Convention. It also facilitates the collection of union dues for federations and confederations and abolishes section 63 of the Regulations on the Act, which established a requirement, not envisaged in the law, for strikes in defence of labour rights to be declared. It expressly prohibits employers from replacing, directly or indirectly, workers on strike, and any act that prevents or obstructs the exercise of the right to strike. It streamlines the procedural requirements for the administrative procedure for communicating the strike declaration, and also extends and strengthens trade union protection.

With regard to the right to strike, we cannot help but notice the contradiction the employers have come into, in that they are calling into question a strike, as a right protected under the Convention, and the interpretation therein by the Committee of Experts. The same employers, however, have no problems with contradiction in order to align themselves with the Committee of Experts and the Convention, if it is in their interests.

Furthermore, as the Peruvian trade union confederations have underscored, this Presidential Decree can help to mitigate the serious situation of trade union rights in the country. They indicate, inter alia, that the recognition of the right to form trade unions for groups of enterprises, production chains or subcontracting networks can be especially important for subcontracted workers.

For its part, the Committee of Experts expressed the hope that the implementation of the Presidential Decree, which stems from the concerning situation of freedom of association in the country, will help to ensure the full enjoyment and exercise of the rights enshrined in the Convention and requested the Government to provide information on the impact of its application.

Those who are currently responsible for reporting progress with regard to freedom of association have not only usurped power but have also developed a policy that entails a real regression in terms of both freedom of association and collective bargaining, quashing public freedoms, going so far as the murders of 70 citizens.

Observer, IndustriALL Global Union – I am speaking on behalf of IndustriALL Global Union to highlight the serious violations of freedom of association faced by our members in Peru.

First, we must note the abuse of the employment relationship – particularly outsourcing and temporary contracts – to escape responsibilities to workers.

Our affiliate in the manufacturing sector, the Federation of Workers in the Manufacturing and Allied Industries of Peru (FETRIMAP), faces a constant battle to get members in enterprises where most workers are on temporary contracts, hired under Decree Law No. 728, and are afraid that if they join, their contracts will not be renewed.



These violations are even starker in the textile and garment sector where our affiliate, the National Federation of Textile Workers of Peru (FNTTP) operates. The Act on the so-called “non-traditional exports” (Decree Law No. 22342) allows employers to treat workers as if they are on a trial period for their whole lives. There are workers who are about to retire who have signed over 200 employment contracts for the same post throughout their lives. It should not come as a surprise to us therefore that only 5 per cent of the sector’s workers are in trade unions.

In the mining sector, outsourced workers represent 60 per cent or more of the workforce, even in the commercial activities of enterprises. Caught between the enterprise that gives them work and the subcontractor that pays them, they do not have much possibility to join a trade union or engage in collective bargaining. They are therefore treated as second class citizens and run an even greater risk of having an accident, to the point of considering themselves cannon fodder.

Second, we must note that these abuses of the employment relationship result in the exploitation not only of temporary workers but also of the minority of fixed-term workers because, for obvious reasons, their trade unions have little bargaining power. When they try to join a trade union, they are subjected to attempts at bribery and dismissal and are even prosecuted in the criminal courts, as is the case of the Miners’ Federation.

Our affiliates work tirelessly to amend the legislation and have filed innumerable complaints with the Ministry of Labour, the National Labour Inspection Authority (SUNAFIL) and the courts. But even when the authorities or the courts rule in favour of the workers, it is not possible to implement these decisions because the enterprises repeatedly appeal.

IndustriALL Global Union therefore urges the Government of Peru to step up its efforts to align the legislation and practice with international standards, including the right to freedom of association, and to take measures to ensure the implementation of the labour laws.

Government representative – I would like to begin my final intervention by stating that on 7 December 2022, a coup d’état took place in Peru. After the coup, there was an immediate reaction from the democratic institutions, which forcefully rejected the breach of the constitutional order, including the judiciary, the Constitutional Court, the Congress of the Republic and the Office of the Ombudsman, among others. Those who perpetrated this coup d’état must assume the legal responsibilities of their anti-democratic felony. Immediately afterwards, a perfect constitutional succession took place, through which the current President of the Republic, Ms Dina Boluarte, took office, therefore, the current Peruvian Government is legal, legitimate and enjoys wide national and international recognition. Any assertion to the contrary is a distortion of the truth.

Finally, I would like to emphasize the deep commitment of the Government of Peru to the process of monitoring standards. During this process of analysis of the Convention, we have shown the progress made in the area of freedom of association, responding to each of the requests for information made in recent months by the ILO.

We have also shown our interest in pursuing continuous improvement through tripartite social dialogue. Along these lines, the Government, considering the observation on the establishment of the Civil Service Support Commission, will reinforce its efforts for its prompt implementation. In addition to this, and considering the relevance of Presidential Decree No. 014-2022-TR, we must point out that this regulation is currently before the courts, with 85 *amparo* (protection of constitutional rights) actions and 5 popular actions, which provides



an opportunity for the parties to seek consensus on the improvement of the regulation in the CNTPE.

We look forward to the recognition in this forum of our assurances that, as Employers, Workers and Government, we will continue to move forward together.

Worker members – Peru has taken a positive step by issuing Presidential Decree No. 014-2022-TR, which amended the Regulations of the Collective Labour Relations Act.

The Act has taken into consideration the long-standing recommendations of the Committee of Experts concerning restrictions on freedom of association and collective bargaining.

The Presidential Decree explicitly recognizes the right of workers to join federations and confederations directly, to allow the establishment of trade unions in groups of enterprises and supply chains and prohibits employers from replacing striking workers. These are undoubtedly important measures that provide a basis for compliance with the Convention, as recognized by the Committee of Experts.

Despite these positive developments that were enacted before December 2022, the Workers' group is very concerned about the restrictions that exist in practice and prevent the effective exercise of the Convention in Peru. First of all, we have emphasized the need to restore freedom of action for certain categories of workers, such as persons recruited under training schemes, judges, prosecutors and employees in positions of trust and leadership in the public administration.

We have also highlighted issues related to the excessive intervention of the administrative labour authority. This includes the lack of guarantees for workers affiliated to trade unions and the corresponding action of the authorities to declare strikes illegal. The ambiguity of regulations and excessive state interference undermine trade union activity and the autonomy of workers' organizations.

Finally, we also express our concern about Presidential Decree No. 017-2017-ED, which defines as serious offences certain actions of head teachers and deputy head teachers in educational institutions, such as allowing union and political advocacy meetings in schools.

In view of these issues, we call on the Government to implement the following actions: firstly, to continue to promote and develop the implementation of Presidential Decree No. 014-2022-TR, particularly regarding the above-mentioned aspects related to the exercise of freedom of association and collective bargaining.

But as far as adjustments to legislation are concerned, we echo the Committee of Experts in urging the Government to put in place concrete measures to revise legislation so that it explicitly recognizes the freedom of association of workers employed under training schemes.

We also strongly support the position of the Committee of Experts in urging the Government to review the relevant provisions of its legal system to ensure the exercise of the right to organize in law and practice for judges and prosecutors, as well as for employees in positions of trust and leadership in the public administration.

We urge the Government to repeal the provisions of Presidential Decree No. 017-2007-TR, so that the head teachers of educational institutions can agree, with the trade union organizations concerned, on arrangements for accessing workplaces that do not prejudice the efficient functioning of those establishments.



Finally, in line with Article 3 of the Convention, the Government should take the necessary measures to ensure that the responsibility for determining the legality of strikes in the public and private sector does not lie with the labour administration but with an impartial body that enjoys the confidence of all parties concerned.

As a member of the ILO, we urge the Government of Peru to be led by the expert guidance of the ILO supervisory bodies in the context of its dialogue with Member States on the application of Conventions and Recommendations, in this case the Convention.

We recall that the February 2015 Government group statement on the right to strike is clear in stating that, “the Government group recognizes that the right to strike is linked to freedom of association which is a fundamental principle and right at work of the ILO”.

The Government group specifically recognizes that, without the protection of the right to strike, freedom of association, in particular the right to organize activities for the purpose of promoting and protecting the interests of workers, cannot be fully realized. The Government should be guided by the Committee of Experts in its quest for full compliance with its obligations under the Convention, including the right to strike.

As the Workers’ group, we call on the Government of Peru to accept an ILO direct contacts mission.

Employer members – Considering all that has been said today, there is no doubt that the Peruvian Government approved, without consultation and without respecting social dialogue, a law that substantially modified the regulation of collective labour relations.

In view of this situation, we support the requests of the Peruvian employers to: first, recommend that Presidential Decree No. 14-2022-TR be repealed; and second, provide technical assistance to the Government of Peru through an international specialist with knowledge of comparative collective relations systems who can act as a facilitator in the context of the progressive resumption of social dialogue promoted by the current Government.

With regard to the need to repeal the Presidential Decree in question and to ensure that any reform of the regulation of collective labour relations is carried out in accordance with the principles of social dialogue and tripartism, we recall that, in analysing the present case, the Committee of Experts recalled the crucial importance of social dialogue and consultation with employers’ and workers’ groups in the preparation and drafting of legislation on collective labour relations and indicated that it strongly hoped that in the future the Government would ensure that such consultations were carried out.

We also agree with the Committee of Experts, as we hope that the concerns regarding the Presidential Decree will be duly addressed in the framework of the tripartite social dialogue within the CNTPE.

Finally, we acknowledge the interest of the current administration of the Government of Peru in resuming social dialogue, which we hope will be achieved in an atmosphere of trust and good faith. Without prejudice to this, bearing in mind that Peru currently has a preliminary draft Labour Code, we request and reiterate to the Government that, in line with the opinion of the Committee of Experts, the preliminary draft should be the subject of exhaustive tripartite consultations; such consultations should be extended not only to the preliminary draft itself, but also to any matter contained therein that may be subject to separate or independent regulation.



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 welcomed legislative developments addressing certain previous observations of the Committee of Experts but expressed concern with ongoing restrictions in law and practice on the right to freedom of association and the right to organize.

Taking the discussion into account, the Committee requests the Government, in consultation with the social partners, to adopt time-bound measures to:

- ensure that existing and prospective legislation is in conformity with the Convention;
- ensure that public servants, including judges, prosecutors and employees in positions of trust and leadership in the public administration, without distinction whatsoever, have the right in law and practice to establish and join workers' organizations of their own choosing;
- ensure the proper functioning of the National Labour and Employment Promotion Council (CNTPE) with a view to facilitating social dialogue and consultation with the social partners on labour law reform; and
- ensure in law and practice the right of workers' and employers' organizations to organize their activities and formulate their programmes in full freedom.

The Committee requests the Government to provide information, in consultation with the social partners, on the application of the Convention in law and in practice before 1 September 2023.

The Committee invites the Government to accept a direct contacts mission in order to fully implement these recommendations.

Government representative (Minister of Labour and Employment Promotion) – We thank this Committee for the proposed recommendations and reiterate Peru's willingness to strengthen social dialogue with the social partners in order to reinstate the CNTPE as soon as possible. We are absolutely certain that the trade unions and employers' associations, which are important actors in this tripartite council, will be our main allies in achieving this objective.

We also express our full conviction that a specialist from the ILO Country Office for the Andean Countries, based in Lima, will be able to monitor compliance with the recommendations proposed by the Committee.



Philippines (ratification: 1953)

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

Written information provided by the Government

The Government has provided the following written information as well as copies of Executive Order No. 23; the organizational structure and tentative identification of focal

persons and offices from each of the concerned agencies; and the framework for the evolving draft of the road map.

This report, submitted by the Department of Labor and Employment (DOLE) on behalf of the Government, pertains to the report of the high-level tripartite mission (HLTM) which visited the Philippines from 23 to 26 January 2023 to inquire into allegations and reports arising from the implementation of the Convention.

The HLTM report substantially reiterates the findings and recommendations in previous reports of the ILO's supervisory mechanisms, particularly of the Conference Committee, the Committee on Freedom of Association, and the Committee of Experts, as well as the premises on which the ILO Governing Body and the International Labour Conference (ILC) created the HLTM. The issues raised date back from those inquired into during the first high-level ILO mission to the Philippines in 2009, the direct contacts mission in 2017, and the tripartite high-level virtual meeting in 2021.

The HLTM report expresses concerns on the Government's perceived slow action in carrying out previous ILO recommendations. It appears to put much reliance on the views expressed in a report submitted to the HLTM by a group of unions.

Even prior to the HLTM, the Government took several actions in response to the outstanding issues, in some cases acting jointly with the social partners. These actions are anchored on past ILO reports and missions and have been previously reported to the ILO and its supervisory bodies.

For the record, the Government reiterates some of these major actions: (i) creation of national and regional mechanisms to monitor compliance with Conventions Nos. 87 and 98; (ii) issuance of operational guidelines of tripartite monitoring bodies; (iii) designation of focal persons to facilitate reporting and immediate intervention in cases of violations; (iv) adoption of two guidelines governing the conduct of stakeholders in relation to the exercise of workers' rights and concerted activities; (v) legislation of laws strengthening alternative dispute resolution and further institutionalizing tripartism; (vi) inclusion of DOLE as an observer in the Inter-Agency Committee created under Administrative Order No. 135 [2012]; and (vii) dialogue with the Supreme Court resulting in the issuance of Administrative Matter No. 21-06-08-SC which stopped the alleged "wholesale" issuance of cross-border search and arrest warrants that led to most of the reported incidents of arrest of trade unionists. After the tripartite high-level virtual exchange in September 2021 and before the HLTM in January 2023, the Government has also: (i) initiated consultations with labour and employer representatives on developing a tripartite time-bound road map and plan of action; (ii) initiated review of the two guidelines governing the conduct of stakeholders relative to the exercise of workers' rights and concerted activities; and (iii) conducted capacity-building activities for Regional Tripartite Monitoring Bodies (RTMBs) and partner agencies.

The Government believes that the HLTM report should have given due attention to these actions for a fuller and more objective context in appreciating the efforts toward implementing the recommendations. This would have allowed the HLTM to appreciate more fully the significance of the view expressed by the Government during the debriefing session on 26 January 2023 that resolving and bringing closure to the issues raised requires commitments not only from the Government but from the social partners as well. Be that as it may, the Government nevertheless welcomes the report. Within the framework of the Philippine Constitution and the laws, and as a sovereign and equal member in the community of nations, it has seriously considered all the recommendations with a view to using these as constructive guidance in ensuring the country's continuing progress to



promote freedom of association and the right to collective bargaining as instruments of social justice.

Actions taken on the HLTM recommendations

The HLTM report has six recommendations:

- (i) greater coordination and consistency across varying arms of government to better guard against serious threats to freedom of association;
- (ii) engagement with the social partners to make genuine progress on the concerns raised by the CEACR and the CAS to prevent future violations of freedom of association, including through the finalization before the June 2023 ILC of a road map on the way forward to address the identified concerns, with agreed timelines;
- (iii) establishment of a single presidentially mandated body to comprehensively identify and address all outstanding cases of alleged labour-related extrajudicial killings and abductions with priority emphasis on criminal investigation and prompt prosecution and accountability;
- (iv) establishment of a specialized, eminent, independent non-judicial body to review cases referred by the presidential commission with a view to receiving and documenting testimony and making proposals for compensation;
- (v) strengthening of the role of NTIPC-MB and incorporation of improvements recommended by the presidential body to identify and ensure rapid and effective protection measures with regard to imminent and/or emerging threats to the life, security or safety of trade unionists;
- (vi) full implementation of all previous recommendations.

On strengthening coordination and consistency across various arms of the Government and establishment of a presidentially mandated body

The administration and enforcement of laws and investigation and prosecution of cases in the Philippines, as in every modern government structure, is allocated to various executive agencies with specific legal mandates. Efficient and effective inter-agency coordination among these agencies is indispensable for the structure to function. To ensure such coordination in the country's presidential system of government, the executive agencies all fall under the control and supervision of the President of the Republic.

Recognizing the mandates of the relevant agencies involved, the Government has acted swiftly and decisively on the recommendation to strengthen inter-agency coordination and to set up a presidentially driven body that will monitor the status of cases arising from the exercise of freedom of association. On 30 April 2023, the President signed Executive Order No. 23 constituting an Inter-Agency Committee (EO 23-IAC), copy of which is Annex A, to strengthen coordination, develop a road map, monitor actions taken, and expedite the investigation, prosecution and resolution of cases involving violations of freedom of association and the right to organize. Its salient features are:

- EO 23-IAC is chaired by the Executive Secretary with DOLE as Vice-Chairperson, and the following members: the Departments of Justice (DOJ), Interior and Local Government (DILG), National Defense (DND), Trade and Industry (DTI), National Security Council (NSC) and the Philippine National Police (PNP). The Civil Service Commission (CSC) and the Commission on Human Rights (CHR) may be invited whenever necessary.



- EO 23-IAC is tasked to: (i) consolidate and evaluate reports of concerned agencies and submit to the President a comprehensive report on its findings and recommendations; (ii) develop a road map consistent with the HLTM recommendations; and (iii) monitor the progress of implementation of action plans and the close coordination among concerned agencies.
- Member agencies are required to submit to EO 23-IAC: (i) an inventory of cases and incidents within their jurisdiction involving trade unionists whose rights to freedom of association, to organize, and to collectively bargain have been allegedly violated; (ii) an inventory of community-based programmes affecting trade unions, employers and workers; (iii) an inventory of cases related to freedom of association involving agency personnel and state agents arising from the exercise of their official functions; (iv) measures being undertaken or proposals to strengthen agency programmes to address outstanding issues and promote and protect freedom of association; and (v) a comprehensive education and capacity-building programme and a communication plan to promote common understanding within and among agencies of the principles, policies, laws, and regulations on freedom of association.

Directly under the Office of the President, all the substantive functions of EO 23- IAC relate to the performance of governmental powers lodged with specific agencies that cannot be shared with or delegated to non-government organizations. Utilizing existing structures, expertise and resources, EO 23-IAC is immediately functional. It convened its first organizational meeting on 22 May 2023 where it was agreed that priority would be given to the inventory and facilitated action on pending cases, and to the adoption of a road map consistent with the recommendations in the HLTM report. It also agreed on its working structure and arrangements, including the setting up of a secretariat and adoption of reporting forms.

With the establishment of EO 23-IAC, the Government now has a functional mechanism to address all the issues raised and carry out the relevant recommendations in the HLTM report.

On development of the tripartite road map

The main aim of the road map is to create or provide an enabling environment for the free and responsible exercise of freedom of association and right to organize. As presently being drafted, the road map is structured along the four areas of action identified at the 2019 Conference, namely:

- prevention of violence in relation to legitimate activities of workers' and employers' organizations;
- immediate and effective investigation into allegations of violence against members of workers' organizations;
- operationalization of monitoring bodies, including the provision of adequate resources;
- ensuring that all workers are able to form and join unions of their own choosing.

Prior to the HLTM, DOLE called three tripartite and two bilateral meetings with the labour and employer sectors at the national level. In February 2023, post-HLTM, DOLE primarily engaged the Leaders' Forum toward developing the road map. With support from ILO Manila, DOLE also conducted three area-wide consultations in Luzon, Visayas and Mindanao involving the Regional Tripartite Industrial Peace Councils (RTIPCs) and the RTMBs.



On 20 April 2023, the Leaders' Forum agreed to create a technical working group (TWG) that will seek to incorporate further specific inputs from the social partners to the evolving road map.

In the meantime, within the framework of Executive Order No. 23, the Government is proceeding to implement activities that will eventually form part of the road map, particularly the following:

- completion of an inventory of cases and agency programmes relating to freedom of association;
- institutionalization of information-sharing arrangements;
- operationalization of the Memorandum of Agreement (MOA) between DOLE, the DTI, and the Philippine Economic Zone Authority (PEZA), signed on 30 April 2023, to pave the way for the establishment of tripartite committees in special economic zones;
- completion of the review of the Joint Guidelines between DOLE, DILG, DND, DOJ, and PNP, and the Joint Guidelines between DOLE, PEZA and PNP on terms of engagement between uniformed personnel and workers engaged in trade union activities, such as strikes;
- adoption of implementing mechanics on the requirement of DOLE clearance before DOJ prosecutors can file cases for acts arising from the exercise of trade union rights;
- setting up of regional counterparts of EO 23-IAC;
- provision of paralegal and related training and other assistance for trade unionists and workers, especially on the legal remedies, case build-up, and evidence gathering;
- holding of sharing sessions among civilian and uniformed personnel, at national and regional levels, to promote common understanding on freedom of association;
- incorporation of the road map with the Labor and Employment Plan 2023–2028 which DOLE aims to launch by July 2023.

On other matters arising from the recommendations

On the establishment of a specialized, eminent, independent non-judicial body to review cases, the Government has seriously considered this recommendation. But with the issuance of Executive Order No. 23 and the existence of agencies already mandated to perform the same functions, such a body may simply be a superfluity.

On the establishment of a compensation fund for victims, there is already a board of claims under the DOJ for victims of unjust imprisonment or detention. This was established by Republic Act No. 7309, enacted in 1992. Further, remedies and claims for compensation based on proven human rights violations are already within the purview of the Commission on Human Rights.

Discussion by the Committee

Chairperson – We will now proceed to the second case on our agenda, which is the Philippines on Convention No. 87. I wish to inform the Committee members and delegates that we have more than 17 speakers registered. Therefore, the reduction of time from 5 to 3 minutes will apply to the delegates concerned. I invite the Government representative of the Philippines, to take the floor.



Government representative – Before the Committee is Case No. 3185 on the application and implementation of the Philippines of the Convention. This case involves several reported incidents of alleged acts of harassment, interference, labelling, intimidation, coercion and judicial killings committed against trade unionists, allegedly by reason of, in connection with, or arising from the legitimate exercise of the rights to freedom of association and to organize. The main thrust of the complaint is the alleged inaction, or lack of effective action, by the Philippine Government in investigating these incidents and in prosecuting and bringing to justice the alleged perpetrators.

These reported incidents took place over a period spanning different political administrations. The Conference had previously decided to send three missions to the Philippines: a high-level mission in 2009, a direct contacts mission in 2016 and a high-level tripartite mission (HLTM) in 2019, which eventually took place in Manila in January 2023.

Each of these missions resulted in reports and recommendations aimed at addressing the concerns that were raised. Certain actions were taken by the Philippine Government on these recommendations, all of which have been duly reported to the ILO supervisory bodies, including to the Committee. In this regard, the Philippine Government expresses its appreciation to the ILO for its ongoing technical assistance and guidance on addressing the concerns that were raised.

It appears, however, that these actions have not fully satisfied the expectations of the Committee. The picture being presented, not only to the Committee, but unfairly to the rest of the world, is that the Philippine Government, through its policies and agents has perpetrated a culture of repression, violence and impunity specifically directed at trade unionists. Allegedly there is a prevailing climate of fear in the country that discourages the effective and meaningful exercise of freedom of association and the right to organize.

This year, the Philippines marks its 75th year of membership, in good standing, to the ILO. The Philippine Government deeply regrets that the unfavourable picture of the country's situation in relation to the implementation of the Convention has led to the inclusion of the Philippines in the agenda of this year's session of the Committee, with potential repercussions on the country's standing in the larger international order. Nevertheless, giving full respect to the ILO's supervisory mechanism and affirming the principle of multilateralism which it embodies, the Philippine Government now comes to the Committee with the conviction that open, reasonable and constructive discussion will lead to full appreciation of the facts and of the real situation of freedom of association and the right to organize in the Philippines.

As mentioned earlier, the reported incidents constituting the case before the Committee took place over a period spanning different political administrations. The present political administration of President of Ferdinand Romualdez Marcos Jr, which assumed office on 30 June 2022, is firmly committed to taking action on these incidents and to bringing justice to all concerned parties. It will continue to build upon and enhance previous actions initiated by the Philippine Government in relation to the ILO's earlier recommendations, as previously reported, including the following: (i) continuous capacity-building for national and regional tripartite monitoring bodies; (ii) continuing implementation of the two joint guidelines relating to the terms of engagement between uniformed personnel and workers exercising their legitimate collective rights; (iii) continuing implementation of the law institutionalizing and strengthening tripartism; (iv) continuing improvement in operationalizing the Inter-Agency Committee created to address extrajudicial killings and enforced disappearances, torture and other grave violations; and (v) effective observance of the Supreme Court's order



to stop the alleged wholesale issuance of cross-border search and arrest warrants that led to most of the reported incidents of arrest of trade unionists in the past.

I will now focus on actions and developments that have taken place since June 2022. When the administration of President Marcos took office on 30 June 2022, the Philippine Government promptly expressed its readiness to accept the HLTM authorized during the 2019 Conference. While awaiting the HLTM, the Philippine Government took the following actions: (i) it resumed consultations with labour and employer representatives on developing a tripartite time-bound road map and plan of action consistent with the recommendations of the 2019 Conference; (ii) it initiated the review, with possible integration, of the two guidelines governing the conduct of stakeholders related to the exercise of the workers' rights to organize and to other concerted activities, as mentioned earlier; (iii) it conducted capacity-building activities for national and regional tripartite monitoring bodies and agencies with technical assistance from the ILO; (iv) it conducted consultations leading to the development of a Philippine Labor and Employment Plan, which will include protection and promotion of the fundamental principles and rights at work, including freedom of association and the right to organize, as one of the priority outcomes; and (v) it reconstituted the various tripartite bodies, including the National Tripartite Industrial Peace Council and the tripartite wage boards, to ensure genuine sectoral representation. From August 2022 to present, 42 worker and 37 employer representatives have been appointed by the President of the Philippines to various tripartite bodies, all of whom have been nominated by their respective sectors. The Philippines also conducted dialogues with labour and employer groups on their priority areas of concern, including but not limited to concerns related to the exercise of freedom of association, security at work, training and retraining, among others.

The HLTM took place in the Philippines from 23 to 26 January 2023. The members of the HLTM can confirm that the government agencies which were invited to participate were represented by their agency heads and top-level senior officials, indicating the level of importance that the Philippine Government gave to the objectives of the HLTM. The HLTM report was received by the Philippine Government on 30 March 2023. It contained six recommendations for the Philippine Government. Within the framework of the Constitution and existing administrative structures, institutions, laws and jurisprudence, the Philippine Government has responded to these recommendations with concrete and specific actions.

On 30 April 2023, President Marcos signed Executive Order No. 23 creating an Inter-Agency Committee to protect and promote the rights of workers to freedom of association and to organize. The order seeks to strengthen coordination among concerned agencies, develop a road map in consultation with the social partners, monitor actions taken and expedite the investigation, prosecution and resolution of cases involving violations of freedom of association and the right to organize. The Inter-Agency Committee is under the office of the President and is chaired by the Executive Secretary with the Secretary of Labour as Vice-Chairperson. It includes other departments of concern, such as the Department of Justice, the Department of Interior and Local Government, the Department of National Defence, the Department of Trade and Industry, the National Security Council and the Philippine National Police. The Civil Service Commission and the Commission on Human Rights may be invited whenever necessary. The Inter-Agency Committee is tasked with consolidating and evaluating reports of concerned agencies and submitting to the President a comprehensive report on its findings and recommendations, including the development of a road map consistent with the HLTM recommendations. Its member agencies are required to submit an inventory of cases and incidents, an inventory of community-based programmes, an inventory of cases related to freedom of association involving agency



personnel and state agents, measures being undertaken or proposals to strengthen agency programmes to address outstanding issues and promote freedom of association, and a comprehensive education and capacity-building programme and communication plan to promote common understanding within and among the agencies of the principles, policies, laws and regulations on freedom of association.

The Inter-Agency Committee is now fully functioning. It held its first meeting on 22 May 2023 with the designation of agency focal questions and DOLE as its secretariat. The Inter-Agency Committee aims to have its second meeting this month, at which it hopes to invite and engage the worker and employer sectors for their inputs in moving forward.

The action of the Philippine Government in issuing Executive Order No. 23 fully implements the HLTM's first recommendation, which is to strengthen coordination between various government agencies on matters relating to the protection and promotion of freedom of association and the right to organize, and also the HLTM's third recommendation to set up a presidentially driven body that will monitor the status of cases arising from the exercise of freedom of association.

Even more important is that Executive Order No. 23 provides the foundation and enabling mechanism for the Government to carry out three other recommendations of the HLTM, namely, the second recommendation to engage the social partners to make genuine progress on the concerns raised by the Committee of Experts and the Committee, the fifth recommendation to strengthen the role of the national tripartite monitoring councils and to incorporate improvements recommended by the Inter-Agency Committee, and the sixth recommendation to fully implement all previous recommendations.

In relation to the road map, there is currently a tripartite technical working group that is drafting the road map. In his ministerial statement delivered in the plenary session of the Conference on 6 June 2023, the Philippines Secretary of Labor and Employment, Bienvenido Laguesma, emphasized that the Government, as the duty bearer, is predominately responsible for addressing the concerns raised, but that the social partners also have a shared responsibility in helping resolve these concerns, not only in words, but more importantly through their own concrete actions. The challenge now lies in the concrete time-bound actions that each sector is willing to commit and be responsible for as part of the road map.

While the tripartite partners are formulating the road map, the Philippine Government is clear on what it will pursue. In the meeting of the Inter-Agency Committee of 22 May 2023, the latter agreed to pursue the following: (i) to continuously strengthen implementation and to review and amend as necessary the Joint Guidelines on terms of engagement in the event of strikes and other mass actions of workers and their unions; (ii) to emphasize that there is no Government policy of extrajudicial killing, terrorist-tagging or red-tagging; (iii) to effectively operationalize the clearance requirement from DOLE before the Department of Justice prosecutors in file cases arising from trade union related activities, to immediately and effectively operationalize the DOLE-DTI-PEZA Memorandum of Agreement to promote industrial peace in the economic zones; (iv) to set up regional counterparts of the Inter-Agency Committee to conduct paralegal and related training and other assistance for trade unionists and workers, especially on the legal remedies, case build-up and evidence gathering; (v) to conduct sharing sessions among civilian and uniformed personnel at national and regional levels to promote common understanding on freedom of association; and (vi) to incorporate the road map with the Labor and Employment Plan 2023-2028, which DOLE aims to announce by July 2023.



The HLTM has one remaining recommendation, which establishes a specialized, eminent, independent non-judicial body to review cases referred by the Presidential Commission with a view to receiving and documenting testimony and making proposals for compensation. The Philippine Government urges the Committee and the HLTM to rethink this recommendation on the following grounds. First, it will be superfluous with the creation of the Inter-Agency Committee under Executive Order No. 23. Second, there are existing laws and institutions where compensation claims may be filed and determined. The Republic Act No. 7309, established a board of claims under the Department of Justice. The Republic Act No. 9851 defines and penalizes crimes under humanitarian law and provides rules of reparations for victims. Remedies and claims for compensation based on proven human rights violations are also within the purview of the Commission on Human Rights, which is a body created under the Constitution. Third, the setting up of such an independent body has to take into account existing jurisprudence that interprets the Philippine Constitution. The Committee may not be aware that a similar body, albeit for a different purpose, was established in 2010, also through an executive order, but this was declared unconstitutional by the Supreme Court for being violative of the equal protection clause of the Constitution. And lastly, the concept of an independent body as proposed by the HLTM appears to be lifted from the recommendation of some Philippine trade unions for the establishment of a truth commission. From international experience, truth commissions have been established in countries recovering from widespread and systemic internal conflicts that have severely damaged political and social institutions to the point where these are no longer functioning. The Philippines is currently far from such a situation.

The Government is following a whole-of-government approach that incorporates the values of social dialogue and democratic consultation in continuously enhancing the enabling environment for the promotion and exercise of the workers' freedom of association and right to organize. The Government gives its assurance to the Committee that it will exert all possible efforts and use all legal mechanisms within the bounds of its Constitution and the laws as well as within the bounds of international laws to see to it that the issues before the Committee are resolved quickly, reasonably and with justice to all. The Government holds this not only as an obligation to being a Member of the ILO, but more importantly as an obligation to all Filipinos.

Employer members – The Employer members would like to thank the Government for its very full statement and the information it has provided.

Just by way of context, the Convention is a fundamental Convention; the Philippines ratified it in 1953. This case has also been submitted previously to the Committee on Freedom of Association on a number of occasions. It has been examined in this Committee six times; the last time was in 2019, which was when the HLTM was first established. It has been the subject of 18 observations by the Committee of Experts since 2000, so this is not a new situation. This is a long-standing case with multiple features. It is also a case involving the Convention which, as we all know, the Employers' group has expressed concerns about over the years.

On its face, this case is a case of systemic discrimination by the State against workers' organizations and their members. I say "on its face" advisedly, because on closer examination, it suggests that the case of the Philippines is actually not one story, but two. The first is the specifics of the complaints of the workers and unions, and the second is the Government's responses, and the context of those responses. I will take each of those stories, if you will, in turn.



Before I turn to these stories, I would like to speak about the recent development since our last examination in 2019.

First, we note that the new Government has been in power since June 2022.

Second, the Government accepted and received a HLTM, as recommended by the Committee in 2019.

This mission took place in January this year, due to a delay caused by the COVID-19 pandemic. We have been informed that the HLTM was extremely fruitful and the mission provided six recommendations in its report, namely:

- greater coordination and consistency across the varying arms of the Government to better guard against serious threats to freedom of association;
- engagement with the social partners to make genuine progress on the concerns raised by the Committee of Experts and the Committee to prevent future violations of freedom of association, including through the finalization before the June 2023 Conference of a road map on the way forward to address the identified concerns, with agreed timeframes;
- establishment of a single presidentially mandated body to comprehensively identify and address all outstanding cases of alleged labour-related issues and abductions with the priority emphasis being on criminal investigation and prompt prosecution and accountability;
- establishment of a specialized, eminent, independent non-judicial body to review cases referred by the presidential commission with a view to receiving and documenting testimony and making proposals for compensation;
- strengthening of the role of the National Tripartite Industrial Peace Council-Monitoring Body (NTIPC-MB) and incorporation of improvements recommended by the presidential body in order to identify and ensure rapid and effective protection measures with regard to imminent and/or emerging threats to the life, security or safety of trade unionists;
- full implementation of all previous recommendations.

Since then, we have seen some promising developments in the country. In particular, on 12 May, the Government created a tripartite advisory council between the Department of Trade and Industry and the Philippines Economic Zone Authority to address labour-related issues.

Furthermore, the President has signed an executive order to create an Inter-Agency Committee to examine the violations of freedom of association and to develop a tripartite road map focusing on the four areas identified.

We welcome this progress and the efforts made by the new Government. We also consider that this road map should be regularly reviewed to take into account recommendations from the concerned agencies and inputs from other relevant stakeholders, including the most representative organizations. However, we note that the Inter-Agency Commission itself does not include worker and employer representation. We consider this to be a deficiency, as social partnership and freedom of association are indicative of the need to have a fully cooperative dialogue between these groups, and the establishment of a commission that is purely government agencies stops short of that ideal. We would urge, in that respect, that full participation be granted to the workers' and employers' organizations of the Philippines in that process.



For many years, the Committee has received complaints of violations of trade union rights and worse, including the alleged killing of trade union leaders, arrests and false criminal charges filed against trade union leaders and physical assaults of striking workers. There are far too many to detail, due to the history, to discuss here today.

Once again, observations concern serious allegations of human rights violations, including:

- the killings and attempted assassination of trade union officials;
- violent suppression of strikes and other collective actions by the police and the armed forces;
- harassment of unionists and prevention of people from joining trade unions in export processing zones.

Let me be clear: the Employer members in no way denigrate the seriousness of the issues brought to the attention of the Committee. However, it is important to note that these are not just issues of freedom of association, which is the subject of this case. They also include issues of human rights. By definition, they are also issues of law and order.

Cases such as these cannot go unchallenged, but we have to be careful that we challenge them here in the context of freedom of association. We have no jurisdiction in this Committee in the matters of law and order in particular, nor arguably human rights, although there are inevitable overlaps.

Many of the details of this case are unfortunately the same as we have heard in the past. The murders referred to occurred in 2016 and have been discussed before, so we need to examine not just the details, but also whether the situation is getting better or worse, and which parts are better or worse. This year, it seems that there are just as many issues, but also that the Government is even further behind in dealing with them. We urge the Government to step up and strengthen its efforts. Despite what we have heard about the progress that they are trying to make, what we want to see is progress that we can “see”.

We regret to note the new allegations of violence and intimidation against workers and their representatives in two particular incidents. While the investigations into the alleged acts against union members and officials are serious issues in their own right, so is the context in which the Government must investigate these allegations. This makes the Philippines’ Human Security Act perhaps the heart of the second story. This Act reflects the Government’s commitment to preserving the security of its citizens against a long-standing background of political and civil instability, including armed insurrection. It is this background that the Employers believe has not been given sufficient weight in the consideration of this case, both now and in the past.

This is important because the Inter-Agency Committee’s operational guidelines define extrajudicial killings so as to include cases where the victim was a member of or was affiliated with a labour organization, or was apparently mistaken or identified to be so, and the victim was targeted and killed because of the actual or perceived membership.

Not every human rights violation is a breach of labour rights. This is especially true if the person against whom the violation was committed was committing an unlawful or criminal act at the time. It is therefore vital to the consideration of cases that it be made clear that the law was being transgressed and how, and whether that law conforms to international standards. This is not always clear, and any lack of clarity can only inhibit a fair consideration of the case. In the context of freedom of association, it is important to distinguish between



cases where union members were specific targets because of their union membership or activities or simply became victims, alongside other citizens, of more generally directed violence. We have a mandate in the first respect, but not the second.

Unions have expressed concerns that the Human Security Act can be misused. For its part, the Government has stated that this Act cannot be used against the exercise of trade union rights, and that guidelines exist to ensure that the armed forces and the police may only intervene in trade union activities if expressly requested to do so by the authorities.

In terms of monitoring and investigation, the Employers welcomed the establishment of the Inter-Agency Committee. The trouble is that, while initially active, it seems to have fallen into disuse. We hope that the Government's assurances have been reactivated and that they are realized. We urge the Government to address these issues as soon as possible.

As previously indicated, the Government has engaged with ILO Manila in a Technical Cooperation Programme. With respect, we uphold and support that. We request the Government to provide an update on the status of this work.

With respect to the Labor Code changes, we note the Government's proposals. They are welcome, but once again, they need to be fully implemented, and the Employers urge the Government to do just that.

I want to conclude with the observation that the report of the HLTM essentially confirmed the reality of everything we have discussed in the past. It reinforces the need to, as we say in New Zealand, to "get a move on". We accept that the Government is relatively new, but it is now June 2023 and the honeymoon is over.

So, in conclusion, what we want to see from the Employers' perspective is the Government of the Philippines doing the following:

- implement all of the recommendations of the HLTM report;
- amend the Labor Code to bring it into full conformity with the Convention, including with respect to the right of all workers and employers without distinction to form and operate organizations of their own choosing;
- ensure that workers are not penalized for exercising lawful rights, provide information on any developments on the outstanding issues before the next meeting of the Committee of Experts, which means providing that information by 1 September this year; and
- ensure that the Inter-Agency Committee is established in such a way that it involves full participation by the social partners.

Worker members – Over the last 15 years, the Philippines has been under regular supervision of the Committee, and its failure to comply with the Convention has already been mentioned by the Employer members. Indeed, in January this year, a long-delayed HLTM to the Philippines, requested by the Committee in 2019, took place to follow up on reports of extremely serious violations of freedom of association and civil liberties in the country, including threats and harassment, surveillance, arbitrary arrests and detention and extrajudicial killings of union members for their legitimate union activity. The mission met government, labour and employer representatives and made six recommendations, including calling on the Government to finally comply with the previous recommendations of the Committee.

Among the recommendations was the finalization before this Conference of a time-bound road map on the way forward to address the identified concerns. I understand that



such a road map is now being finalized, which is a positive step, but we are concerned that in line with previous practice, the Government will not fully implement the recommendations, as was the case with respect to the 2019 conclusions of the Committee. Our concerns of continued violations are well-founded. Indeed, not long after the mission concluded, so this year, Alex Dolorosa, a paralegal officer of the BPO Industry Employees Network (BIEN) in Bacolod City was murdered. Mr Dolorosa joins a long list of trade unionists who have been murdered.

I will now briefly touch upon the major issues for the Workers' group, which will be developed in greater detail by my Worker colleagues later on. Since the last discussion on the Philippines in the Committee in 2019, our Philippines trade union colleagues have documented 16 killings of trade unionists, 2 cases of enforced disappearances, 68 cases of arrests and detention, 90 cases of forced disaffiliation, state interference with the right to self-organization through threats, harassment and intimidation, 58 cases of red-tagging or terrorist-tagging, 127 cases of intimidation, threats, harassment of union leaders and members, and 19 cases of other anti-union activities. These numbers are shocking and underscore a prevailing culture of anti-unionism in the country. Few cases are investigated and even fewer result in any one being held responsible for these crimes. The so-called red-tagging continues. This is when state actors make baseless accusations and stigmatize specifically the unions and union activists as members of so-called communist, terrorist organizations. This accusation is enough to be detained and questioned by the military and police. Red-tagging serves to discourage workers from supporting legitimate unions or to encourage them to withdraw from one out of fear. It also creates a potent weapon by employers to rid their workplaces of trade unions they do not like. Red-tagging is also done by high-level government officials with disastrous consequences. This cannot continue. Mechanisms put in place to address these serious violations, such as the NTIPC-MB and the Regional Tripartite Monitoring Bodies (RTMBs), have also failed. The NTIPC-MB is supposed to have oversight on the RTMBs' profiling and monitoring work, and the Bureau of Labour Relations is tasked with monitoring the freedom of association of trade union rights violation cases; but without independent funding, or without human resource allocations, the lack of full-time sectoral representatives and regional technical staff devoted to monitoring and promotion work and the lack of fully funded programmes on promotion of human rights and trade union rights have hampered the RTMBs' monitoring work. The NTIPC-MB has stopped meeting on a regular basis since 2016. The Inter-Agency Committee on extrajudicial killings, enforced disappearances, torture and other grave violations of the right to life, liberty and security of persons created under Administrative Order No. 35 was supposed to address the grave human rights violations, including labour-related killings. However, unions have little understanding of its workings and despite its resources, few cases have progressed or have been resolved, and the 9 resolved cases out of 65 extrajudicial killings were all prior to its establishment. An ILO-commissioned review of the mechanisms found that the characterization of cases was among the major obstacles in the prosecution of cases.

On May Day 2023, Executive Order No. 23 was enacted in an apparent effort to address one of the recommendations of the HLTM to establish a presidentially mandated body to address violations of the Convention. However, it fell short in several fundamental aspects. The Inter-Agency Committee does not include representation from social partners, and they were not consulted in its drafting. Trade unions had a legitimate expectation that they would be consulted, and indeed had also called for such consultation and had submitted proposals well in advance. The Executive Order also fails to connect the Committee's work or output with that of a specialized, eminent, independent, non-judicial body or to provide dedicated funding. We fully agree with the Committee of Experts and echo the expectation that the



Government takes measures to ensure that all allegations of killings, red-tagging, harassment and other serious forms of violence against trade unionists previously reported and so on are properly investigated and lead to concrete results so as to establish the facts, including any links between the violence and trade union activities, determine culpability, punish the perpetrators and continue to prevent and combat impunity.

In addition to acts of violence in a climate of impunity, we must highlight that the freedom to organize, protected by the Convention, is also undermined by a variety of insecure employment arrangements which undermine stability and empower employers to easily dismiss workers for their union activity.

Finally, I note that the Committee of Experts has raised a number of legislative issues over the years. While previous governments have introduced legislation, no amendments have been enacted to address these long-standing concerns. Also, in Belgium, we have a saying “that the Government must move on” just like in New Zealand. The Worker members expect the Government to take concrete measures to revise the Labor Code to finally bring it into conformity with the Convention.

Employer member, Philippines – Let me just state that in our legislature, we have about 20 per cent of congressmen who represent specific concerns. These are called Party List congressmen. Out of the 20 per cent, there are about 24 who are identified with, or sympathetic to, the labour sector. We therefore implore those congressmen to speed up the judicial process to the best of their ability. In fact, they have a mandate to do so. We believe that tripartism and bipartism at the national, sectoral and enterprise levels is robust. Dialogue mechanisms to engage with social partners exist in practice. Stable industrial relations are operational and, more importantly, the new Government has veered away from the policy of the previous administration that was blamed for the occurrence of the essentially drug-related extrajudicial killings, from which some of the complaints on the exercise of freedom of association have been linked. We are here today to express our satisfaction over efforts toward the protection and promotion of freedom of association in our country. The Government of the Philippines, through DOLE, is cognizant of the challenges faced by labour and is actively working towards addressing issues to the best of its ability.

On the part of employers, the Employers’ Confederation of the Philippines (ECOP), has been taking concrete steps since 2018 to institutionalize the establishment of a buffer-type dialogue mechanism, called the Leaders Forum, where the country’s largest business employers’ organizations and labour federations are represented, so that any matter affecting social and industrial relations may be addressed. We reiterate our commitment to the joint statement issued by the Leaders Forum during the visit of the HLTM on the Convention in the Philippines, early this year. This addresses two main issues: respect of workers’ rights to freedom of association and collective bargaining; and to continue the investigation, prosecution and disposition of all true labour-related cases affecting freedom of association and collective bargaining without delay.

In the interests of justice, the employers and their affiliated organizations and sectors do not condone any attempt to undermine the exercise of freedom of association and collective bargaining. The Government has taken decisive actions since the official report of the HLTM, was received on 30 March 2023. The tripartite bodies have been established within economic zones, providing a platform for meaningful dialogue and collaboration between the Government, employers and workers. In the commission that was recently established, however, we at least hope that the labour and employer sectors would be invited as



observers, at the very least. Furthermore, in this field, the Government has recognized the importance of strengthening investigations by empowering labour organizations through paralegal training, as mentioned by the good undersecretary. This capacity-building initiative will undoubtedly enhance the ability of labour organizations to effectively advocate for the rights and interests of workers. The Government should be given an opportunity to complete the process of consultation with the social partners. Along this line, the National Tripartite Industrial Peace Council (NTIPC) and other tripartite bodies have been reconstituted towards genuine representation with sectoral members directly nominated by the social partners. This collaborative approach allows all stakeholders to collectively address the observations made by the HLTM.

All these recent actions taken by the Government demonstrate its willingness to work towards creating an environment that enables workers to freely associate and collectively bargain. Such an environment is essential for the protection of workers' rights and the advancement of their interests. We, in the employers' sector, will remain vigilant in ensuring respect among our constituents in the business sector of these fundamental rights of workers based on ILO Conventions, the Philippine Constitution and, more importantly and more recently, our national laws and regulations related to the Labor Code.

In conclusion, I wholeheartedly support the Philippines' efforts to protect and promote freedom of association. The Government's proactive approach, exemplified by the creation of tripartite bodies, the strengthening of the investigations and the ongoing consultation process, deserves recognition and your encouragement and active support.

Let us acknowledge the progress made thus far and provide the necessary space and support for the Government and social partners to collaboratively address the recommendations of the HLTM, the formulation of a tripartite roadmap on freedom of association, which is a work in progress admittedly, and the Labor and Employment Programme for the period 2023–2028. These are steps in the right direction. Together, we can achieve a brighter future for the workers of the Philippines, built on the principles of freedom, fairness and justice, which are essential to business, viability and sustainability.

Worker member, Philippines – Within the Workers' group of the Philippines, our stand is unified on the issue at hand with that of all Philippine trade unions, including the affiliates of the ITUC in the Philippines: the Federation of Free Workers (FFW), the Kilusang Mayo Uno (KMU), the Sentro ng mga Nagkakaisa at Progresibong Manggagawa (SENTRO), and Trade Union Congress of the Philippines (TUCP). Our country is under examination for compliance with the Convention. The Philippines received a HTML in January 2023. The ILO mission had submitted recommendations, and our good undersecretary acknowledged receipt of that on 30 March 2023. We note the action undertaken by the Government to address freedom of association violations. We are willing to engage in the constructive discussion as suggested by the good undersecretary. With all due respect, however, the Government, it seems, is "cherry-picking" among the recent recommendations. The Government has yet to adopt a joint implementation road map with the social partners, which falls short of compliance with the recommendations. We do not have a joint implementation report before the Committee at this 111th Session of the Conference.

We note the recent issuance of Executive Order No. 23, intended to reinforce and protect freedom of association and the right of workers to organize by constituting an Executive Department Inter-Agency Committee to coordinate and expedite investigations and prosecutions of violations related to the Convention. On its face, Executive Order No. 23 would seemingly respond to the HLTM's recommendation to establish a presidentially



mandated body to address violations related to the Convention. A closer reading, however, reveals that it falls short in several fundamental aspects.

The Inter-Agency Committee does not include representation from trade unions and even from employers' organizations. Neither workers' nor employers' organizations were consulted in the drafting. It is silent on any intent to relate the Inter-Agency Committee's work with that of the specialized, eminent, independent non-judicial body to be established for reviewing cases that the Inter-Agency Committee refers to that body, for testimonial documentation and potential compensation. We disagree with the inaugural undersecretary that the creation of these bodies is unconstitutional because a number of bodies created by the President in the Philippines have been found unconstitutional, like the Presidential Anti-Graft Commission and the Philippines Employees Labour Union Commission, among others.

It falls silent or does not specifically provide a mechanism or road map for resolving with finality all outstanding 68 documented cases of labour-related extra-judicial killings that have since been submitted to authorities that were included in the report. It does not specifically provide the Inter-Agency Committee and its secretariat with a dedicated operating budget. It is dependent on the budget of DOLE, effectively setting it up for potential failure. Existing compensation scheme under the law that the Government mentioned is severely inadequate, with those being wrongly incarcerated getting only PHP1,000 pesos a month, which is equivalent to US\$19. When those killed can get no more than PHP10,000 pesos, or US\$181, is that the value of life? Now, we look at the realities on the ground: a number of us have experienced our union organizing work being equated with criminal activity, insurgency or terrorism. On the eve of the visit of the HLTM, the Department of Justice threw out a case filed against 17 police officers involved in the killing of labour leader Mr Manuel Asuncion. The Department of Justice said Asuncion's wife failed to directly identify the killers and the police operation was legitimate. Asuncion was killed in his office at the Workers' Assistance Centre during a police operation in Cavite.

In the same month, the abduction of union organizers Armand Dayoha and Dyan Gumanao in Cebu was captured on video. Dayoha is an organizer for the Alliance of Health Workers (AHW), while Gumanao is a coordinator for the Alliance of Concerned Teachers (ACT). The two survived their harrowing experience and are now given the runaround in their quest to bring the culprits to justice.

Criminalizing union activities in practice is contrary to the Convention. Regarding the 68 reported killings, we disagree with the employers from the Philippines. There is no drug-related case in those reported killings. The killings of trade union organizers, along with approximately 400 cases of trade union rights violations since President Rodrigo Duterte assumed office in 2016 were submitted to the ILO mission.

This pattern of violence continues into the first year of the Marcos administration, with the recent murder of union organizer Alex Dolorosa marking the 69th case. Of the 69 cases that have occurred since 2016, nobody has been prosecuted or penalized by the court.

Despite the Philippine Government's portrayal of a human rights and union-friendly nation which upholds freedom of association and tripartism, the realities we experience contradict this narrative. Abductions, murders and an intimidating police presence during union events, among others, during the first year of the Marcos administration illustrate a persistent culture of impunity that puts every labour organization at risk. As a result, the persistent violence has reduced union density to about 7 per cent of the workforce, and fewer are covered by collective bargaining agreements. The widespread layoffs and termination of regular employment across numerous companies are resulting in a significant



reduction in union membership. This phenomenon, which is particularly evident in organizations or companies like the De Los Santos Medical Centres, Wyeth-Nestle and Duty-Free Philippines, affects hundreds of regular employees because of their union membership.

The public sector unions are not spared. An essential issue in the public sector is the forced disaffiliation of members due to ongoing pressure from their public employers. A significant example is the non-uniformed personnel union affiliated with the Public Services Labor Independent Confederation (PSLINK) in the bargaining unit of the Philippine National Police, which weakens the union and infringes on the rights of our members. In order to further demonstrate the scale of freedom of association violations, let us consider the following examples: the surveillance of a SENTRO leader in Davao from February to May 2023; the public red-tagging of the ACT by the Secretary of the Department of Education; the red-tagging of migrant workers abroad; the harassment of a female trade union secretary of the FFW by charging her with criminal offence after she won her illegal dismissal case and was reinstated back to work in a garments factory in Clark Ecozones; and most recently, in the middle of a certification campaign against a union created in a multinational company, the red-tagging of a leader of the Associated Labour Unions (ALU). The new Defence Chief has said that there was nothing wrong with red-tagging, but being red-tagged makes you a target for murder, abduction or a serious threat to your life and your family. Nothing wrong indeed!

We reiterate again the urgency for the Government to consult social partners to: (i) revise Executive Order No. 23, as it is not compliant with the ILO recommendation to include workers' and employers' representatives; (ii) form an independent, non-judicial body to document testimonies, review cases and propose compensation measures for affected parties; (iii) strengthen the National Tripartite Monitoring Council establishing tripartite validation teams that will act on reported killings of trade unionists and other blatant freedom of association violations with dispatch; and (iv) adopt the Presidential Executive Order outlining joint guidelines on the conduct of state security forces, thereby ensuring proper observance of trade union rights. These are among the recommendations of the trade unions. Lastly, we are willing to cooperate with the Government and the Employers' group to improve freedom of association and the situation regarding the killings and impunity, as organizing a union is not a crime. We insist that the time for action is now.

Government member, Sweden – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The candidate countries – **Albania, Bosnia and Herzegovina, North Macedonia, Republic of Moldova, Montenegro**, and the European Free Trade Association (EFTA) countries **Iceland and Norway**, members of the European Economic Area, align themselves with this statement. We actively promote the universal ratification of ILO fundamental Conventions. We call on all countries to protect, promote and respect all human rights, including labour rights. We attach great importance to freedom of association and the right to organize. The Philippines is an important partner, including in support of multilateralism and the international rules-based order. Within the framework of the Generalized Scheme of Preferences Plus, and the Framework Agreement on Partnership and Cooperation with the EU, the Philippines committed to ratifying and effectively implementing international conventions on human rights, labour rights included. The case discussed today is a long-standing and serious case. At its 29th Session, the Committee noted with concern the many allegations of murders of trade unionists and anti-union violence, as well as the lack of investigation in relation to these allegations. The Conference Committee also called on the Government to accept a HLTM mission before the 2020 Conference, and to elaborate, in consultation with the representative workers' and employers' organizations, a



report on progress to the Committee of Experts by 29 September. An exchange in September 2021 with the ILO, the Government and the social partners was held virtually due to the COVID-19 pandemic. One of the recommendations of this exchange was that the Government should adopt a time-bound plan of action in consultation with the social partners and with support from the ITUC and the International Organisation of Employers (IOE). This addressed the four areas of concern.

We welcome the fact that the Philippines received the HLTM in January 2023. The mission made a number of recommendations, and while it observed some progress, it remains largely insufficient in view of the very serious nature of the issues. We very much regret that the Government did not make available a joint implementation report by the tripartite partners to the ILO prior to the 2023 Committee in order to show tangible actions towards implementing these recommendations. We wish to underline that tripartite actions are crucial for progress. We nevertheless welcome the joint statement of the Leaders Forum, which could serve as a strong and positive foundation to pursue discussions on the tripartite road map.

Under the new administration, we see an improvement in the human rights area. We hope that this trend will continue. The dialogue with the EU is open, even on the most sensitive issues. However, areas of concern remain, including the allegation of serious violence and intimidation against trade unionists. Serious violations against workers and their representatives regarding civil liberties and freedom of association where authorities, in some cases, are preventing the lawful activities of trade unions. We are also worried about the pending cases of alleged killings of trade union leaders and members, where despite the efforts by the Government, no apparent progress has been made. We want to highlight the need for investigations into the killings of trade unionists to shed full light on the facts and circumstances in which such actions occurred. We wish to determine responsibility, punish the perpetrators and prevent the repetition of similar events in order to combat impunity.

We are concerned about the practice of red-tagging of trade union representatives and members, and allegations of links to terrorist organizations by security forces to create a climate of fear so that workers are impeded from exercising their rights. We welcome the intentions of the Government to combat impunity and secure the application of the Convention. However, we regret that very little policy or legislative action has been taken effectively to address the significant and long-standing concerns of the Committee of Experts and the Committee. We note with concern the lack of progress regarding the adoption of several legislative proposals to bring national legislation into conformity with the commitments and assurances made in recent years to do so. The absence of effective action to address areas of concern due to the lack of resources and incoordination in different areas, such as the effective functioning of monitoring mechanisms and Administrative Order No. 35, is of particular concern; this, despite the EU-funded ILO technical assistance since 2016, in view of the institutional strengthening of the tripartite partners.

While we welcome the President's Executive Order to create an Inter-Agency Committee to examine the violation of freedom of association and develop a road map, we regret that the Executive Order falls short of the HLTM recommendation, and that it appears that it was not consulted with the social partners. On the economic zones, we understand that the programmes of the Joint Industrial Peace and Concerned Office and the Alliance for Industrial Peace and Program Office have been put on hold, and we welcome that. We have, however, urged the Government to secure the trade unions' rights by continuing to promote comprehensive training activities on freedom of association and collective bargaining, and revising guidelines on the conduct of stakeholders relating to the exercise of trade union



rights. We furthermore stress our comments from previous years to urge the Government to adopt legislative amendments to pursue the revision of the Labor Code without additional delay. We agree with the HLTM report that the serious and pressing concerns could only be addressed by genuine social dialogue. We encourage the Government to constructively engage social partners in order to finalize a tripartite road map with clear deliverables and timelines, and to incorporate it in the Labor and Employment Plan 2023–2028, as indicated by the Government. We hope that the effective implementation of the road map will be reflected in a joint employment report. We encourage the Government to continue to collaborate with the ILO on this issue.

Government member, Brunei Darussalam, speaking on behalf of the members of the Association of Southeast Asian Nations (ASEAN). The ASEAN acknowledges the numerous endeavours and initiatives undertaken by the Philippines to adhere to the Convention. We welcome the continuing efforts and concrete measures taken by the Government since July of last year to address the issues raised in a proactive and comprehensive manner.

The Government of the Philippines has demonstrated its responsiveness to the concerns raised by various stakeholders, including the labour sector, by taking significant steps towards implementing the recommendations put forth by the HLTM in January 2023. We recognize the notable progress made thus far in compliance with these recommendations. The issuance of Executive Order No. 23 creating the Inter-Agency Committee to protect freedom of association is a clear indicator of the seriousness of the Government to fulfil its obligations.

We firmly believe in the importance of giving the Government an opportunity to complete the process of consultation in collaboration with the social partners. This inclusive approach ensures that all relevant stakeholders, including the worker, employer and government representatives, collectively address the observations highlighted by the HLTM. By engaging in a comprehensive and collaborative dialogue, the Government can build trust and work towards mutually beneficial solutions that advance the interests of all stakeholders.

We encourage the Government to continue its efforts to uphold the principles of freedom of association and ensure that the voices of workers and their representatives are heard and respected. It is a non-negotiable fact that we need to protect trade union rights. It is vital to understand that instances pertaining to acts solely of a criminal nature should be entrusted to appropriate law enforcement agencies and judicial systems. The classification of such cases should be determined through a thorough evaluation of alleged actions, taking into account both the rights of the individuals and the need for societal order and security. This approach guarantees that only matters genuinely linked to the exercise of freedom of association and the right to organize are brought under the scrutiny of the Committee.

ASEAN acknowledges that the Philippines, just like the other ASEAN states, should continue to benefit from the technical assistance of the ILO. In this regard, we express our unwavering support for the continuous technical assistance provided to the Philippines in order to resolve to these long-standing issues.

In conclusion, we reiterate our strong support for the Philippines' commitment to protecting and promoting freedom of association. We believe in the Government's dedication to addressing labour-related challenges and its sincere efforts to comply with the recommendations of the HLTM. We urge all stakeholders to engage in a constructive dialogue, embracing the principles of inclusivity, cooperation and respect, to collectively address the observations made and ensure the effective protection of the rights of workers.



Employer member, Thailand – The Employers’ Confederation of Thailand is making this statement on behalf of the ASEAN Confederation of Employers. It associates itself with the position of ECOP in respect of the case of the Philippines in the Committee. This is in line with its thrust to promote stable, harmonious and productive industrial relations, and generation of employment in pursuit of national development across all the countries it represents. It recognizes that ECOP’s commitment to social development through tripartism and bipartism in resolving issues and challenges in industrial and labour relations is cognizant of ECOP’s passion in promoting freedom of association and collective bargaining in the Philippines. The underlying principle behind ECOP’s advocacies and services is founded on respect for workers’ rights and protection of welfare. It hopes that the governments, employers and workers in the Philippines will continue working together to address the recommendations of the HLTM.

Worker member, Guatemala – I am speaking on behalf of the workers of Guatemala and the National Union of Workers (UNT) of Mexico.

The violation of civil liberties and trade union rights in the Philippines is long-standing. Since 2006, Philippine trade unions have alleged murders and serious threats. The most recent fatal incidents involved Mr Alex Dolorosa, Mr Marlon Ornido and his wife Ms Fe Ornido, with no progress having been made in the investigation, bringing the total number of murdered trade unionists to 69. Such unfortunate events also occur in my country, Guatemala.

A climate of violence that results in the murder and disappearance of union leaders and acts of aggression against workers’ organizations is a serious obstacle to the exercise of trade union rights. Such acts require severe measures from the authorities.

The Committee on Freedom of Association has called on the Philippine Government to ensure that killings of trade unionists are investigated and has observed with regret that “despite continued monitoring and investigation reported by the Government, no substantial progress appears to have been achieved in bringing the perpetrators to justice or clarifying the circumstances of these incidents”.

The existing climate of pressure, fear and extreme physical violence undermines the ability of workers to exercise their rights under the Convention. Although the Convention was ratified by the Philippines 70 years ago, the Government has struggled to comply with it.

Various actions to overcome these serious obstacles to the exercise of trade union freedoms have been taken, including high-level missions, a direct contacts mission, as well as a high-level virtual tripartite meeting. In January of this year, an HLTM visited the country to investigate trade union allegations and government reports on the application of the Convention.

The report of the tripartite mission expressed concern over the perceived slow implementation by the Philippine Government of the recommendations made by the ILO, and reiterated the conclusions and recommendations contained in previous reports of the supervisory bodies on the application of standards.

Furthermore, the Government of the Philippines reported the creation of national and regional mechanisms regarding compliance with the Convention and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), as well as other actions. However, in every case, there is evidence of dilatory behaviour, and it persists in simulating advances to maintain that progress has been made that only appear in the official discourse.



The assassination of trade unionists calls for judicial investigations that must be conducted independently to fully clarify, as quickly as possible, the facts and circumstances surrounding these assassinations, determine responsibilities, punish the perpetrators and prevent their repetition.

The Committee should urge the Government to take the necessary actions and put an end to the practices that violate freedom of association, which have been taking place in the Philippines for years.

Government member, United States of America – We thank the Government of the Philippines for providing additional information to the Committee in response to the report of the HLTM which visited the Philippines in January this year.

The Government reports on various measures it has taken to address long-standing concerns expressed by ILO supervisory bodies regarding its implementation of the Convention and actions it is now taking in response to recommendations in this report. We welcome these measures as initial, partial steps. We, however, remain concerned about the Government's response to continued alleged violations of workers' civil liberties and right to freedom of association.

To that end, the United States urges the Philippine Government to immediately accept the report of the tripartite mission in full and implement all its recommendations, including establishing a presidentially mandated body to address all cases of alleged labour-related extrajudicial killings and abductions, as well as implementing rapid and effective protection measures to address imminent and/or emerging threats to the life, security, or safety of trade unionists.

The Committee of Experts noted with concern new allegations of violence and intimidation against workers and their representatives and observed with regret that no substantial progress appeared to have been achieved in bringing the perpetrators to justice.

The United States remains focused on the April murder of Alex Dolorosa, a trade union leader and LGBTQI+ activist with BIEN, an organization that helps call centre workers exercise their rights and organize to improve their job conditions. We welcome the Philippine Government's condemnation of his murder and its commitment to thoroughly investigate and to hold the perpetrators accountable.

We note the HLTM's call for any suspicion of criminal acts and/or suspected illegal links to the communist insurgency to be brought before appropriate judicial bodies with assurances of due process and respect for the presumption of innocence.

We reaffirm the importance of the HLTM's recommendation of engagement with the social partners to make genuine progress on the concerns raised by the Committee of Experts and the Committee to prevent future violations of freedom of association. The United States emphasizes that democratic and independent trade unions are essential to healthy, inclusive democracies and thriving economies.

The United States remains committed to engaging with the Government to advance workers' rights in the Philippines.

Employer member, United States of America – We note that in June 2019, the Committee requested a HLTM to the country, which was completed in early in 2023. This Mission, along with an intervening virtual exchange, reflects steps that presaged a plan of action to detail – relevant here – how the Philippines can effectively implement the Convention.



In this spirit, we view this case as forward-looking and, by extension, aspirational. It is an opportunity to revisit the essence of the Convention, and the full concept of freedom of association under international law. We note that freedom of association is one of the most fundamental principles of international labour law. Article 2 of the Convention provides that “[w]orkers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation”. The language here is critical, as the Convention applies in equal parts to “workers” and “employers” – “without distinction” – to associate and, by extension, not associate or disassociate, consistent with their own wishes. We recall that workers and employers, and their informed wishes, are at the very heart of the Convention, and that governments are obliged to create legislation and to foster practices that help workers and employers to make free and informed choices about their working lives.

Governments must not enable or authorize, and this cannot be understated, any conduct that interferes with these rights. That would include, of course, at least some of the examples of the legitimate concerns referenced by the Committee in this case. In this case, we recall that determining the underlying facts and context of alleged events and concerns is of the utmost importance and express our sincere hope that the Government take steps, along with the ILO and social partners, to conduct all necessary and appropriate inquiries most thoroughly. We should not craft policy, nor prejudice whether actions are consistent with the Convention, until meaningful inquiries have been completed. If obstacles exist or if they arise, the Government, along with the social partners, should nonetheless patiently persist.

We also recall that governments should not take any position or provide any measure of favouritism towards any particular group and recall that this is also a fundamental concept within international labour law.

Governments are meant, at the most fundamental level, to be unbiased and a facilitative partner to enable workers and employers to make free and informed choices about their working lives. We wish for the Philippine Government, as it moves forward through its plan of action, to keep these maxims well in mind.

Worker member, Norway – Trade unions in the Nordic countries, France, Germany, the United Kingdom of Great Britain and Northern Ireland, Italy, the Netherlands, and Spain, and the Confederation of Christian Trade Unions of Belgium (ACV/CSC), deplore the interference of the Philippine police and armed forces in the workplace. We have not seen positive signs that the Philippines’ national security agents have withdrawn from industrial relations.

On 2 June, the police entered the workplace of a container company in Meycauyan, Bulacan, on the day when DOLE Region 3 was conducting the certification of the trade union election. Workers were made to cast their vote under the presence of the military.

Until today, the Philippine’s police and the armed forces in Governor Generoso of Davaos continue to smear and label the trade union, which was created a year ago to provide labour rights education and organize workers in a plantation company. The armed officers call the trade union “a communist and terrorist organization connected to the communist party and ISIS.” The company has been notorious for wage exploitation, discrimination and unfair dismissals.

These are just two examples of military interference reported in the past months since the HLTM conducted a visit to the Philippines. It is just the tip of the iceberg of the



militarization of industrial relations. For a decade, it has been justified under the banner of the National Task Force to End Local Communist Conflicts.

The same national security agencies form the majority in the Inter-Agency Committee under the Presidential Office. The Inter-Agency Committee was announced to lead the protection of freedom of association and the right to organize workers. Trade unions have not been informed about the formation of this Inter-Agency Committee.

We cannot be convinced that the same agencies which have been actively red-tagging, profiling and intimidating trade unionists and alleging infiltrations of the workplace by communism could assume independence and protect the right to freedom of association. It cannot be an adequate response to implement the recommendations of the HLTM to end the culture of impunity.

Organizing trade unions is not a direct threat to national security. The Government must engage with trade unions and social partners to adopt a joint implementation road map of the HLTM's recommendations.

Worker member, the United States of America – The Worker delegates from **Australia, Japan, Republic of Korea** and the **International Transport Workers' Federation (ITF)** align themselves with this statement. Once again, this body is discussing the case of the Philippines' non-compliance with the Convention.

We welcome the findings of the January 2023 HLTM, which found that very little was done by the Government to implement the recommendations of the Committee and the Committee of Experts from 2009, 2017 and 2019 regarding the extrajudicial killings of trade unionists and other violations of freedom of association in the country. Unfortunately, despite the attention from the HLTM, threats, attacks, and even murder of trade union activists continue in the Philippines.

We are saddened and outraged by the cruel and violent murder of Alex Dolorosa, a union organizer and a paralegal with BIEN who worked tirelessly to improve the working conditions in the call centre industry. Unfortunately, his murder only reinforces the reason that the Philippines is repeatedly ranked as one of the world's deadliest countries for trade unionists. Alex's tragic murder follows years of being surveilled and "red-tagged" by the Government of the Philippines. It has become common in the Philippines for the military and the Government to target unions, union leaders and workers attempting to organize with red-tagging – falsely labelling union activists and organizers as communist insurgents and enemies of the State, resulting in aggressive surveillance, imprisonment, and even murder.

We strongly regret that Government has not sent, before the Committee, a joint implementation report, by tripartite partners to carry out the recommendations of the HLTM.

We urge the Government of Philippines to consult with social partners without further delay to:

- Revise Executive Order No. 23 and include workers' and employers' representatives' perspectives.
- Establish an independent, non-judicial body to document testimonies, review cases, and propose compensation measures for affected parties.
- Adopt a time-bound road map in consultation with social partners to fully realize all the recommendations of the HLTM.



Once again, we are demanding that President Marcos and his administration take immediate action in full consultation with the social partners to end the practice of red-tagging and the broader culture of impunity for cases of threats and violence against trade unionists in the Philippines.

Government member, Islamic Republic of Iran – My delegation supports the commendable efforts made by the Government of the Philippines to address the recommendations put forth by the HLTM, which they received in January of this year. We must acknowledge the concrete outcomes already achieved by the Philippine Government. True to the spirit of tripartism, extensive consultations were conducted for the realization of a tripartite workable plan that is realistic and achievable.

In recognition of the complexity of the issues at hand, the Philippine Government should be given a fair opportunity to complete the process of consultation with the social partners.

We understand that for cases to be resolved, acknowledging achievements is of the utmost importance. Thus, we recognize the need to support the strengthening of the RTMBs, with technical assistance from the ILO, as may be necessary.

In conclusion, we acknowledge the efforts made by the Philippine Government and understand that time is need to complete their plan of action towards resolving issues related to freedom of association.

Worker member, Indonesia – I am speaking on behalf of Indonesian workers. My statement is supported by the workers of **Malaysia, Singapore and Cambodia**, and **Education International (EI)**. We stand in solidarity with workers and the teachers in the Philippines. Teachers should not be labelled as insurgents or subjected to violence and discrimination because they are members of trade unions. This is still happening in the Philippines. In March, Vice President Sara Duterte, who also serves as the Secretary of Education, publicly labelled the ACT as a communist terrorist organization due its support for a transport workers' strike. At that time, the ACT was advocating for increased government investment in the construction of 50,000 additional classrooms and the hiring of more teachers. National security agents under the National Task Force to End Local Communist Armed Conflict target and interfere in schools where teachers are unionized and affiliated with the ACT. The national security agents organize so-called peace and order forums in these schools with the aim of identifying the unionized teachers and members of the ACT.

In regions where the ACT's regional unions are accredited, the Department of Education uses "postpone and delay" tactics to block a collective agreement from being reached. In region 11, for instance, the Regional Director of the Department of Education has made it clear that negotiation on a collective agreement could resume if the union shares the full list of its members.

In region 5, where trade unions managed to reach a collective agreement after a two-year delay, union members' pictures were displayed in front of schools and they were falsely associated with the New People's Army. In the province of Camarines Sur, the police even visited schools and pressured teachers to remove their signatures endorsing the collective agreement.

Teachers in the Philippines cannot freely choose the unions with which they wish to associate to defend their occupational interests. Instead, they are forced by national security agents to disaffiliate and withdraw from the collective agreement their union has negotiated. This is unacceptable and it must be stopped. We urge the Government to engage with social



partners to develop a joint implementation road map of the HLTM's report under the oversight of a presidential commission with trade union participation.

Interpretation from Arabic: **Government member, Morocco** – First of all, I would like to thank the Government of the Philippines for the information and clarifications provided. We also welcome the efforts made to address the challenges and respond to the various observations of the Committee of Experts, which we would like to commend on its efforts to implement international labour standards and monitor implementation.

We also welcome the tripartite road map to implement the 2019 conclusions of the Committee and to achieve full compliance with the Convention through the HLTM.

We have taken note of the Philippine Government's responses to the various observations. We also welcome all the measures that have been taken in response to the Committee's recommendations, including the tripartite road map to promote freedom of association, civil liberties and the revision of the guidelines on trade union action.

We also strongly commend the Government of the Philippines for its consultation with the social partners to promote tripartite social dialogue to find solutions to fundamental rights at work in an inclusive manner for workers in economic zones.

Lastly, we would like to recommend that the Government continue its efforts to find the right national solutions for the implementation of international labour standards and conclude the national vision on comprehensive reform as soon as possible, taking into account the observations of the Committee of Experts.

Government member, China – China thanks the representative of the Philippines for the information provided. We carefully read the report of the Committee of Experts as well as the updated information submitted by the Philippine Government. The Government of the Philippines is working closely with the ILO to submit information on time, actively promote tripartite dialogue and show a constructive dialogue. China appreciates that effort. We note that the Government, working towards the promotion and protection of freedom of association, places importance on the concerns of stakeholders and tries to work for sustainable solutions to labour issues. The Government is taking effective measures to implement the recommendations of the HLTM which took place in January this year, establish national and regional monitoring mechanisms on the Convention and Convention No. 98, issue guidelines for the tripartite monitoring bodies, and resolve issues through legislative frameworks. We think this should be valued by the Committee. We think that only through extensive collaboration and dialogue can we help the Government to better improve its capacity to implement the Convention and promote trust. We encourage the Philippine Government to continue to implement the recommendations of the HLTM and avail itself of the technical assistance of the ILO, and further resolve disputes and solve problems. We hope the stakeholders can reach consensus and make constructive decisions in a pragmatic and cooperative spirit to jointly protect workers' rights.

Interpretation from Arabic: **Government member, Saudi Arabia** – My delegation has taken note of the Committee's report and we welcome the efforts that have been undertaken by the Philippines to strengthen its legislation, bring it into line with international labour standards and guarantee labour rights. We also welcome the actions of the country to enter into dialogue with stakeholders. There is no doubt that all dialogue requires a constructive approach with the country concerned in order to build its capacities. That is why we reaffirm the importance of continuing the efforts of the Philippines to strengthen the provisions relating to the Convention and the protection of rights and to pursue dialogue.



Observer, Building and Wood Workers International (BWI) – This statement is also supported by the **IndustriALL Global Union**. I would like to state today the tremendous difficulties for workers in the Philippines to exercise their rights to self-organization and collective bargaining and, in particular, how labour-only contractualization undermines the right to association and collective bargaining.

Philippine labour law has an explicit requirement for an employer-employee relationship before workers can organize unions. Section 243 of the Philippine Labor Code limits its coverage to persons employed in commercial, industrial and agricultural enterprises and in religious, charitable, medical or educational institutions, whether operating for profit or not.

In addition, there are several institutional causes of the systemic violations of freedom of association. Apart from trade union repression, one of the biggest barriers to the exercise of freedom of association is the precariousness of work. This prevents the vast majority of workers from accessing their constitutional rights to organize, bargain collectively and strike. Compounding the problem is the fact that there is no official data on the number of contractual workers in the private sector. Estimates would range anywhere from 6.7 million to as many as 20 million contractual workers.

Philippine labour law explicitly provides that all workers have the right to join unions after working for one day. But if you are a contractual worker or employee, you will not dare exercise this right for fear of having your contract rescinded or no longer renewed. This is why there are millions of workers who have been working for several years at the same company but are not yet considered regular employees and therefore not able to join unions. However, the biggest culprit is the Government itself. It is the biggest employer of non-regular workers. As of June 2022, there were 642,000 non-permanent government workers out of 2.5 million.

In 2019, despite the passage in both Houses of Congress of a Security of Tenure Bill that would have addressed contractualization, former President Duterte vetoed this legislation. This problem on contractualization must stop. We call on the Philippine Government to earnestly address the issue of contractualization and the precarity of work. We urge President Ferdinand Marcos Jr. to certify as urgent the passage of the Security of Tenure Bill, which would finally plug the loopholes in the Labor Code that permit these problems.

Observer, Public Services International (PSI) – I am speaking on behalf of PSI and the nine organizations in the Philippines affiliated with us. PSI echoes the very serious concerns raised by the HLTM, the ILO supervisory mechanisms, and others relating to the extrajudicial killings of trade unionists, as well as a failure to bring any cases to justice or to provide any other remedies to victims and their families.

The Government continues to deny that the police and military are engaged in the practice of “red-tagging”, despite the findings of the HLTM and of the National Commission on Human Rights. The latter has found that “red-tagging” has been normalized and continues with impunity. The experience of PSI-affiliated organizations is that this sustained climate of intimidation and fear makes it impossible for workers in general to enjoy the rights afforded under the Convention. Workers are fearful of joining unions and becoming delegates speaking in support of other unions. Employers are emboldened to attack unions and can easily dissuade workers from joining unions by insinuating that they are linked to communism. This is particularly clear in the public service, where workers risk their careers if they are “red-tagged”. In addition, as previously noted by the Committee, the Government has made many commitments to adopt and amend industrial laws to improve compliance with labour standards. Yet, the proposed bills have failed to be transposed into law. This is,



for instance, the case of the Public Sector Labor Relations Bill, which aims to address labour rights in the delivery of public services and was tabled for a second time, having languished under the previous administration. This bill addresses several omissions that impact public sector workers under the existing laws, such as the formation of a public sector labour relations board, freedom of association, collective bargaining, dispute resolution and the right to strike. Without these amendments, many Philippine workers continue to be denied their fundamental labour rights.

Therefore, we urge the Government of the Philippines to consult with social partners to revise Executive Order No. 23 and include the workers' and employers' representatives, establish an independent non-judicial body to commend testimonies, review cases and propose compensation measures for affected parties, adopt a time-bound road map in consultation with social partners, fully realize all the recommendations of the HLTM, and make sure that the Public Sector Labor Relations Bill is adopted without further delay.

Government representative – First of all, I thank all the speakers from the Government, Employers' and the Workers' groups for their comments on the updates that were given by the Philippines – not only today, but also on the updates that were submitted to the supervisory bodies of the ILO in the previous months.

There are five points that I would like to talk about in response to the various issues raised. The first is on Executive Order No. 23. The second is the road map. The third is the distinction, or the need to properly categorize, where there is a violation or where a criminal act is related to the exercise of the right to self-organization. The fourth is the strengthening of the monitoring bodies. The fifth is the legislative measures that were put forward by the various speakers. I think that these five areas summarize the various substantial comments of the various speakers.

If I may go back to Executive Order No. 23, the main concerns that we have heard from the labour sector are that: (i) there was a lack of consultation prior to the issuance of Executive Order No. 23; and (ii) there is lack of sectoral representation, particularly of the employer and the labour sectors, in the Committee.

With respect to the first observation, let me put on record that right after the HLTM was completed, we had already convened the leaders of the forum, as mentioned earlier by the Employers' and Workers' groups from the Philippines, to discuss the possible ways to move forward. One of the inputs of the labour sector was a draft presidential directive or seeking to implement the recommendation of the HLTM of a presidentially driven body. We note that the recommendation does not provide for the inclusion of sectoral representatives. The nature of that body is that it is a combination of prosecutorial, enforcement and investigative authorities, which are purely governmental functions. We would be very happy to see a model from anywhere in which prosecutorial bodies or investigative authorities have sectoral representation and we would be thus guided if such a model exists.

With respect to the lack of consultation, it is not necessarily the case that all consultations have to be held face to face. We, DOLE, met with the Leaders Forum. We were in touch with the Leaders Forum right after the HLTM was concluded, as I have mentioned earlier, and asked for directions to move forward. As I have said earlier, the labour sector – and I must acknowledge this – submitted a draft presidential directive to set up a presidential commission. That draft was taken into account in the drafting of what became Executive Order No. 23. As a matter of fact, the Executive Order, if we compare it to the draft submitted by the labour sector, is much more detailed and contains specific functions and areas of action that the original draft by the labour sector did not contain.



This is one of the circumstances that has to be taken into account in appreciating the context under which the Executive Order was issued. As I said, we are open to looking for ways to improve the Inter-Agency Committee, especially with the guidance of the international community if there is indeed such a committee anywhere that is mandated to undertake investigative and prosecutorial activities that includes sectoral representation. In relation to the Inter-Agency Committee, as I have mentioned earlier, it is setting a second meeting with the idea of inviting the sectoral representatives to a dialogue in order to receive more input on, among others, ways to improve prosecution and ways to move forward with the formulation of a time-bound tripartite road map.

With respect to the tripartite road map that the Conference and the Committee have recommended that the Philippines formulate, we take note of the recommendation of the two sectors, and also the government sector, about the formulation of a joint implementation plan, but first, we need to have the road map. As I said earlier, there is a technical working group composed of tripartite representatives that is formulating the road map even as we speak. The difficulty that has been confronted by the tripartite working group is the matter of identifying what are the time-bound commitments that each sector might include in the road map. The other challenge would be the scope. On one hand, it would be good to have a very broad scope for the road map, but on the other hand, it might also be equally good to have a focused scope so that the tripartite road map can be better monitored and can be more efficiently implemented. These are matters that the technical working group will have to thrash out.

Insofar as the NTIPC is concerned, the draft road map will have to be submitted to that Council for approval or for adoption. In this regard, I would like to request the patience of the Committee, particularly in giving the tripartite sectors more time to come up with a really specific and doable road map that is agreeable to everybody. Incidentally, it was actually the labour sector who asked for an extension to look at the detailed inputs to the road map, which we feel is a very reasonable request. Even so, we realize the importance of having a road map as soon as possible. We feel that there is no need to have another mechanism to monitor the joint implementation of this road map because right now we have the NTIP, which is already specifically mandated to do that.

Now the third item is the distinction between criminal acts that are to be processed through the regular courts and criminal acts that are directly related or arise from the exercise of the right to self-organization and freedom of association. This point has been made clear by several of the speakers. Let it be clear that the Philippine Government does not condone any criminal act one way or the other. No criminal act can be condoned and must be acted upon immediately, at the soonest possible time. The point that we wish to stress, however, is that there must be a clear distinction between criminal acts that involve directly, or that arise out of, the exercise of freedom of association and the right to self-organization and what we call regular or ordinary crimes. A case in point, as it was mentioned earlier, is the case of Alex Dolorosa. It has been spread over the media that Alex Dolorosa was a trade union organizer, but that is only a description of what he did when he was still alive. It appears that the current investigation of the police into the killing has nothing to do with trade union organizing. According to police reports, a suspect has been identified and evidence has been gathered pointing to the motive of the killing, something that is not related to trade union organizing but to robbery. While we commiserate and sympathize with the family of Alex Dolorosa, we would also like to state that his case should not be used unless there is clear and convincing evidence that the killing was trade union related. His case should not be used in the Committee or elsewhere as an example that in the Philippines



there is impunity against trade union organizers. Indeed, he may have been one when he was alive, but according to the investigation thus far, it would appear that this killing was not union related. We would be happy to provide updates on this as we go along but with the caveat that, again, as the previous speakers have recalled, we ought to be careful not to immediately associate the killings with trade union organizing. The important point is the strengthening of regional tripartite mechanisms which is ongoing, and as I mentioned earlier, there is a good opportunity for the Philippines and for the tripartite partners to be involved in this because, in DOLE, we are actually allocating a programme called the Workers' Organization and Development Program (WODP), which is funded to be used for the purpose of supporting the strengthening of these mechanisms, with of course the continuing assistance of the ILO.

Lastly, with respect to legislative measures, we are aware that there are legislative measures that have been filed and refiled in previous congresses and these legislative measures have not progressed. DOLE and the Executive Branch defer to the wisdom of Congress on the adoption of legislative measures, but, having said that, they will always insist that any mandatory legislation ought to conform with international labour standards that the Philippines has ratified. We are aware that one of the proposals pending in Congress with a view to facilitating the growth of unions is to have an amendment that will allow, or that will authorize, a union to be formed without regard to any minimum membership. That is one of the proposals in Congress. You can evaluate that proposal for yourselves: a union without any minimum membership requirement.

Second, there is also a bill that proposes abolishing all forms of short-term employment. We are not aware of any country in the world that does not have short-term employment, even in the most advanced economies. Therefore, we ought to be realistic about what to expect with the bills that are being filed. Also, with regard to the limitation on the right to organize, as mentioned earlier, there is no limitation on the provision in the Labor Code: workers, without distinction whatsoever, whether they are working for a non-profit religious charitable institution or not, are all allowed to organize. This is not an exclusionary provision in the Labor Code; it is an inclusionary provision. Let it be clear that there is no such limitation.

With respect to the public sector, the Philippines has just ratified the Labour Relations (Public Service) Convention, 1978 (No. 151), and we are aware that there have been many suggestions or many proposals to legislate and put into law and practice the principles under that Convention. We do have an existing Executive Order that regulates the right of public sector workers to join associations. We recognize the fact, insofar as economic terms and conditions of employment are concerned, that there is a limitation on the right to negotiate or to bargain, but then again, the legislative framework needs to be amended in order for the rapid expansion of the rights of public sector unions to organize, and we will be willing to participate in the debates in Congress in relation to the proposed measures.

Worker members – I thank the Government for the information provided and everyone who has contributed to the discussion today. What remains clear is that there remain serious and systemic violations of the right to freedom of association in the Philippines. We need to draw to the Government's attention that the HLTM is tripartite, and that a mission into any country, by the way, involves extensive tripartite consultations and takes recommendations from social partners, regarding how best to address the concerns raised. Extremely serious violations of freedom of association have been highlighted today. We must recall that labour rights are human rights, and the Committee is within its mandate to supervise violations of these labour-related murders and violence. It is up to a court to decide if there is any relation



or not. The Government is clearly responsible. Whether it has directly perpetrated these violations through state security forces, or because it has created an environment of impunity by its failure to prevent violence against trade unions or to investigate and prosecute those ultimately responsible when it occurs. In addition to this, we must also reiterate the serious impacts of the proliferation of insecure forms of employment, which are being used without limitation, despite their clear disabling impact on the exercise of the rights protected by the Convention. To this we add, of course, several aspects of the Labor Code, which have been identified by the Committee of Experts for years as needing reform in order to comply with the Convention, without any action. Indeed, it is this inaction in the face of repeated supervisions, which is why we are here today. As I mentioned in my opening remarks, the HLTM has issued six recommendations, which include the incorporation of all previous recommendations from supervisory bodies, including the recommendations of this Committee in 2019. The HLTM report also recommends that a joint implementation report by the tripartite partners should be made available to the ILO prior to the 2023 sitting of the Committee. This has not been done. We fully expect the Government to comply with these recommendations and to do so in full consultation with the social partners. We take note of the proposed road map and urge the Government to finalize this road map, in consultation with social partners and with the support of the ILO, so that it fully addresses the HLTM's recommendations and also sets specific deadlines for its implementation. This is the only way forward.

In closing, we must concur with the conclusion of the HLTM that while some progress may be observed in recent years, this remains largely insufficient in view of the very serious issues which have been raised with and by the ILO supervisory bodies over an extended period. We urge the Government to waste no more time and to finalize and fully implement the road map on priority areas of action, and in accordance with agreed time frames, and we would urge the Government to accept the technical assistance of the Office with the implementation of legal and institutional reforms necessary to give full effect to the road map on time. This is, in our view, the surest way to avoid the case returning to the Committee.

Employer members – I will make just two points. Regarding the HLTM's recommendation for the establishment of a single presidentially mandated body, having spoken to members of the mission, I can say that there was no expectation, either express or implied, that this was going to be a Government-only body. There was simply a request, or a recommendation, for a presidentially mandated body and, to that end, I would echo the views expressed by many on ensuring that there is tripartite participation in that process because it is that process which will effectively be the oversight of all other aspects of progress.

With that, I am just turning to the basic conclusions. The things we want to see from the Government are, as the workers have said, early and quick progress on all the recommendations from the tripartite mission, amending the Labor Code to bring it into full conformity with the Convention, ensuring that workers are not penalized for exercising their lawful rights to associate and to form organizations, providing the information requested on any developments on the outstanding issues before the next session of the Committee of Experts, and, lastly, ensuring that the Inter-Agency Committee is in fact tripartite in nature so that full and open dialogue can occur on all these issues.

Chairperson – I want to thank the Government of the Philippines, the delegation here, once again for participating in the work of this Committee and for sharing this information.



Conclusions by the Committee

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

The Committee noted the long-standing nature and the prior discussion of this case in the Committee, most recently in 2019.

The Committee noted with deep concern the numerous allegations of murders of trade unionists and anti-union violence, allegations of serious and systemic violations of the right to freedom of association as well as of lack of investigation in relation to these allegations.

The Committee noted the concerns raised by the social partners regarding the failure of the Government to submit a joint implementation report with them as recommended by the high-level tripartite mission that took place on 23–26 January 2023.

The Committee noted that the Government has taken some steps to implement the recommendations set out in the report of the high-level tripartite mission but regretted that many recommendations remain unaddressed.

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

- put an immediate end to any act of violence and intimidation against union members for the legitimate exercise of their rights under the Convention as well as violations of freedom of association, in line with the recommendations of the ILO high-level tripartite mission;
- immediately and effectively undertake investigations into the allegations of violence in relation to members of workers' organizations with a view to establishing the facts, determining culpability and punishing the perpetrators;
- operationalize the monitoring bodies, including by providing adequate resources, and provide regular information on these mechanisms and on progress on the cases assigned to them; and
- ensure that all workers without distinction are able to form and join organizations of their choosing in accordance with Article 2 of the Convention.

The Committee urges the Government to take decisive and effective measures to promote a climate of non-violence, as well as constructive social dialogue and labour relations at all levels in the country.

The Committee requests the Government to finalize, with ILO technical assistance and in consultation with the social partners, the roadmap on effectively addressing all outstanding issues and transmit a report on progress made to the Committee of Experts by 1 September 2023.

Government representative – The Philippine Government expresses its appreciation for this opportunity to make a statement on the proposed conclusions of this Committee in relation to the case of the Philippines arising from the application and implementation of the Convention.

The Government draws attention to the statement in the conclusion noting that the Government has taken some steps to implement the recommendations set out in the report



of the high-level tripartite mission (HLTM) but that regrettably many of the recommendations remain unaddressed.

To put into context the actions taken by the Government, the HLTM came to the Philippines on 23–26 January 2023. Its final report and recommendations were made available to the Philippine Government on 30 March 2023. Within this short period of time the Government was able to set up an Inter-Agency Committee composed of the major agencies of the Government that are directly involved in the investigation, prosecution and resolution of the cases that have been reported to this Committee, with the view of promoting and protecting the principles under Convention No. 87. The Inter-Agency Committee, as the Government stated in its opening statement, is a necessary enabling mechanism to ensure that the cases in question are finally resolved.

The Government expresses deep concern that the formulation of the proposed conclusion tends to devalue, rather than encourage, the Inter-Agency Committee to do its work. Nevertheless, the Government, through the Inter-Agency Committee and the National Tripartite Industrial Peace Council, assures this Committee of its continued commitment to bringing a just resolution enclosure to all pertinent issues raised. The proposed conclusions also note the concerns raised by the social partners regarding the failure of the Government to submit a joint implementation report with them, as recommended by the HLTM. To call this a failure on the part of the Government is false and has no factual basis. The Government has earlier stated its commitment to formulating a tripartite road map to resolve the issues raised. The road map will necessarily contain a joint implementation strategy of an action plan consistent with the recommendations of the HLTM. The Tripartite Working Group agreed upon by the tripartite partnership themselves is currently completing the road map. Recognizing the inherent challenges in working out the details of the road map, the social partners in the Philippines, some of whom are in this Committee, have themselves requested more time to provide input. The Government finds this request reasonable. Allowing more time for tripartite consensus on such critical matters can never be characterized as a failure. On these specific cases, particularly allegations of murder, violence and so on, the Government reiterates that it does not condone any murder or violence committed against any person. We reiterate the need to ensure proper categorization of these cases so that only cases that arise out of or have causal connection with trade union activity should be placed under the scrutiny of the Committee.

The Government gives assurance that it remains committed to promoting respect for international labour standards and will continue to work with the ILO in this regard.

Lastly, on behalf of the Philippine Government and the social partners of the Philippines, as well as on my personal behalf, let me take this opportunity to thank you, for the discipline, leadership and statesmanship that you have shown in ensuring the full conclusion of these proceedings. As we conclude this session let me wish all the distinguished delegates continuing inspiration in leading their sectors in the individual and collective pursuit of advancing social justice. May you all have safe travels back home.



Turkmenistan (ratification: 1997)

Abolition of Forced Labour Convention, 1957 (No. 105)

Written information provided by the Government

As a member of the ILO since 1993, Turkmenistan is committed to its policy of creating conditions for decent work and social justice for all, including preventing and eliminating the risks of forced labour, in particular in the cotton sector, to confirm its compliance with the principles set out in the Convention. This is evidenced by the continuing active cooperation with the ILO in improving the legislative and regulatory framework governing labour, employment and social protection.

During the visit of the ILO mission to Turkmenistan on 9 March 2023, the Ministry of Foreign Affairs of Turkmenistan hosted a round table with representatives of the Parliament of Turkmenistan, ministries, departments, the National Trade Union Centre of Turkmenistan, and the Union of Industrialists and Entrepreneurs of Turkmenistan to discuss the Legislative Review on the prevention and prohibition of forced labour.

The joint work resulted in the adoption in March 2023 of the Roadmap for Cooperation between the ILO and the Government for 2023. This Roadmap includes the following activities:

- completion of a complete list of activities for the components of the draft concept note, Promoting fair employment during the cotton harvest in Turkmenistan;
- follow-up action on the results of the ILO review of Turkmenistan's legislation;
- situation analysis on recruitment for cotton picking;
- regulation of seasonal work and contractual arrangements;
- technical assistance to improve labour inspection;
- ILO-Turkmenistan review of the 2023 cotton harvest;
- enhancing the dialogue between the Government of Turkmenistan and the ILO.

1. Policy review and administrative framework governing the cotton harvest

In light of the ILO recommendations presented in the Review of Turkmenistan's legislation on preventing and prohibiting forced labour, the Parliament, the ministries and departments concerned, and also the social partners represented by the National Trade Union Centre of Turkmenistan and the Union of Industrialists and Entrepreneurs of Turkmenistan, have carried out an analysis of the current legislation and regulatory framework with regard to application of the standards contained in the Convention.

As a result of the analysis, the relevant ministries and departments have drafted Bills to amend and supplement, in particular, article 8 of the Labour Code in terms of eliminating discrepancies in the concept of forced labour on the list of occupations excluded from the concept of forced labour, and also exempting from the concept of forced labour minor work of a social nature. On article 23 of the Labour Code, on hiring children for employment or other work, clarification has been provided of the procedure for their dismissal. In addition, a clarification was made in the regulatory legal act developed in accordance with article 255 of



the Labour Code of on employment of children in harmful or hazardous working conditions, in particular, in agricultural work relating to the cotton harvest.

It should be noted that in March 2023, regular elections of deputies to the Parliament of the new convocation were held, and the composition of its Committees, determined. Consideration is currently being given to submitting the Bills to the working groups established by the relevant Parliamentary Committees.

2. Improvement of labour inspection and law enforcement

Turkmenistan previously provided information on the situation in the country with regard to labour inspection. Specifically, according to the labour legislation, state oversight and monitoring of compliance with Turkmenistan's labour and related legislation are carried out by:

- the Ministry of Labour and Social Protection;
- the main state service, Turkmenstandartlary, and other state bodies active in the area of occupational safety;
- ministries and departments, within the limits of their competence in relation to their subordinate enterprises;
- local state authorities and local government bodies;
- trade unions, as well as technical and legal labour inspectorates under their authority.

Pursuant to the Labour Code and the Act of Turkmenistan on Employment, persons guilty of violating the law, or obstructing the activities of bodies overseeing and monitoring compliance with legislation, shall be liable in the manner established by national legislation.

The Code of Administrative Offences establishes administrative liability and provides for the imposition of penalties and sanctions for an administrative offence.

Certain articles of the Criminal Code of Turkmenistan provide for criminal liability for violations of labour relations legislation.

Consideration is currently being given to the expediency of Turkmenistan's accession to the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection Convention, 1947 (No. 81), which has been submitted for discussion at the regular meeting of the Tripartite Commission for the Regulation of Social and Labour Relations.

In this context, in early April 2023, the Ministry of Labour and Social Protection hosted an online meeting of stakeholders with Mr Nikita Lyutov, an international expert in international standards in Central Asia and Eastern Europe at the ILO. Emphasis was placed on an analysis of compliance of Turkmenistan's legislation and law enforcement practices with Conventions Nos 81 and 129 concerning labour inspection.

In order to provide effective technical assistance from the ILO in improving labour inspections and preparing relevant analysis, the international expert requested information on the questionnaire he had submitted to familiarize himself with the legal instruments regulating labour inspections, as well as data on the actual situation regarding the functioning of labour inspections in Turkmenistan.

Discussion of the information received is expected to be held in a tripartite format with representatives of the Ministry of Labour and Social Protection and the social partners



represented by the National Trade Union Centre of Turkmenistan and the Union of Industrialists and Entrepreneurs of Turkmenistan.

3. Promotion of full, productive and freely chosen employment in the cotton sector

Work is currently under way with ILO representatives on the implementation of item 3, Situation analysis on recruitment for cotton picking, of the Roadmap for Cooperation between the ILO and the Government for 2023, regarding a qualitative study on recruitment practices for the cotton harvest in Turkmenistan. The terms of reference for this study have been prepared, the main objectives of which are to understand the hiring practices and procedures used in the cotton industry, and also to study cotton pickers' experience and perceptions of the hiring process, including the factors influencing their decision to work in the cotton fields.

In accordance with the terms of reference, there are plans to hire a national consultant who will begin work shortly on the above study. The ILO mission is expected to arrive in Turkmenistan in early-July this year to advise on the situation analysis on recruitment for cotton picking.

A quantitative study is planned as part of the household survey to assess the trends in the cotton harvest over the past five years. On 19 May 2023, an online meeting was held with ILO representatives with the participation of specialists from the State Statistics Committee on the issue of conducting a quantitative and qualitative study on the topic under consideration, at which further steps to conduct the above studies were discussed, and these issues will also be considered during the forthcoming ILO mission in early-July this year.

In accordance with item 6 of the Roadmap (a review of Turkmenistan's cotton harvest), a discussion is also taking place with ILO representatives on the Concept Note, the main purpose of which is to establish a joint mechanism to improve working conditions and prevent forced labour during Turkmenistan's cotton harvest. The review includes visits to the cotton fields during the harvesting period to monitor working conditions systematically.

4. Improvement of cotton production and harvesting

The widespread use of the latest generations of cotton harvesters in the country's agricultural sector, with little change in the area of cotton fields under cultivation and volume of cotton harvested, has contributed to a significant reduction in the rates of manual harvesting. At the same time, Turkmenistan is committed to its policy of creating conditions for decent work and social justice for all, including those engaged in the cotton harvest.

The amount of agricultural machinery in use has increased significantly, from 464 machines in 2016 (2017 – 948, 2018 – 1,076, 2019 – 1,322, 2020 – 1,322, and 2021 – 1,600), to 11,600 in 2022. This bears testimony to the fact that the State is prioritizing the use of mechanized cotton harvesting.

The country's efforts are also focused on training and educating 1,710 machine operators.

5. Design and implementation of awareness-raising activities

The Parliament, represented by the deputies, is actively engaged in awareness-raising activities aimed at, inter alia, raising public awareness of the prevention and prohibition of forced labour.



The activities conducted by the trade unions in the *etrap*s [districts] also include awareness-raising workshops involving stakeholders and civil society focused on national and local tripartite stakeholders and civil society, to ensure an open dialogue on the problems, frameworks and response mechanisms to resolve issues relating to fair employment of workers. For example, in 2021–22, more than 200 awareness-raising meetings and round-table seminars were held throughout the country on this issue, with broad participation. Forty articles and publications were issued on the topic of legal regulation of labour relations in various sectors, including agriculture.

6. Promotion of social dialogue in cotton production

As a party to the Tripartite Commission for the Regulation of Social and Labour Relations, the trade unions of Turkmenistan exercise public oversight and monitoring of the observance and implementation of labour standards. Tripartite consultations enhance cooperation between the partners and help to find necessary common ground.

Trade unions work systematically to assist the Government in implementing ILO Conventions and international labour standards. In this regard, we would like to note the increased activity of trade unions in developing a system of social partnership in the field of labour, and in implementing the principles of tripartite cooperation between trade unions, employers and the Government.

As part of their statutory tasks, trade unions shall take the necessary measures to prevent violations of labour standards. Public monitoring measures exercised by trade unions include inspections and the issuance of appropriate instructions by the legal and technical inspectorates. In addition, trade unions also act as third-party interveners on behalf of employees in the courts, protecting workers' rights and interests.

Despite the lack of official complaints from citizens about the use of forced labour in the agricultural production and processing sectors, trade unions carry out monitoring, and conduct special courses, training sessions and seminars for specialists of various levels, as well as producers and processors of agricultural products.

Most of the seminars are currently held by territorial trade union associations in local authorities and dehkan farmers' associations, with tenants, entrepreneurs and agricultural producers. The seminars and meetings are attended by representatives of territorial trade union bodies, local representative state authorities, executive and local government authorities, local labour and employment bodies, law enforcement agencies, etc.

Discussion by the Committee

Chairperson – We move now to the individual cases and the first case on the agenda is Turkmenistan on the Abolition of Forced Labour Convention, 1957 (No. 105). I verified and we have 15 speakers registered, so there will be no reduction of speaking time.

Government representative – Having studied in detail the criteria for selection of cases, I would like to note that Turkmenistan adheres to their principles. In particular, as a Member of the ILO, in its policy, Turkmenistan is committed to creating conditions for decent work and social justice for all, including the prevention and elimination of the risks of forced labour, in particular in the cotton industry, to confirm its adherence to the standards set forth in the Convention. This is evidenced by the ongoing active cooperation with the ILO, including the improvement of legislative and regulatory legal acts, regulating issues of labour, employment and social protection of the population. My delegation studied the



report of the Committee of Experts to the 111th Session of the Conference in terms of the implementation of the provisions of the above-mentioned Convention. In our opinion, the conclusions of the Committee of Experts are based on the information received from unverified sources which includes a biased opinion on the situation in the country. Unfortunately, specific arguments from the state bodies are not taken into account. Turkmenistan was heard in the Committee in 2021 during the 109th online Session on the implementation of the provisions of the Convention during which Turkmenistan accepted the recommendation to invite a high-level mission of the ILO to provide technical assistance. The terms of objectives of the mission were discussed by the Government of Turkmenistan and the ILO, which resulted in a visit to Ashgabat in February 2022.

I would also like to inform you about the high-level ILO mission visit to Turkmenistan in September 2022, during which issues related to the analysis of legislation as well as the preparation of the second phase of the mission were discussed. During the next mission in November 2022, the issue of the draft Roadmap for Cooperation with the ILO for 2023 was considered. At the same time, during this visit, field visits were organized in two regions of the country with the participation of representatives of state bodies and local governments. It should be noted that during the regular ILO mission in March of this year, the activities provided for by the Roadmap were considered. During the mission, various meetings were held with the participation of the representatives of the Parliament of Turkmenistan, members of ministries and respective governmental bodies including the National Trade Union Centre of Turkmenistan and the Union of Industrialists and Entrepreneurs of Turkmenistan.

The result of the joint work was the adoption in March 2023 of the Roadmap for Cooperation between the ILO and the Government of Turkmenistan for 2023. This Roadmap includes the following activities: completion of a complete list of activities for the components of the draft concept note "Promoting fair employment during the cotton harvest in Turkmenistan"; follow-up action on the results of the ILO review of Turkmenistan's legislation; situation analysis on recruitment for cotton picking; regulation of seasonal work and contractual arrangements; technical assistance to improve labour inspection; the ILO-Turkmenistan review of the 2023 cotton harvest; and enhancing the dialogue between Turkmenistan and the ILO. Here I would like to refer to the issues raised by the Committee of Experts and provide the following information.

Regarding the review of the policy and administrative structure governing the cotton harvest, I would like to note that taking into account the recommendations of the ILO regarding the review of the legislation on prevention and prohibition of forced labour, the Parliament, the ministries and the departments concerned and also the social partners represented by the National Trade Union Centre of Turkmenistan and the Union of Industrialists and Entrepreneurs of Turkmenistan have carried out an analysis of the current legislation and regulatory framework with regard to the application of the standards contained in the Convention. Based on the results of the analysis, relevant ministries and departments of the country have drafted Bills to amend and supplement relevant legislations.

It should be noted that in March 2023, regular elections of deputies to the Parliament of the new convocation were held and the composition of its committees were determined. Consideration is currently being given to submitting the Bills to the working groups established by the relevant parliamentary committees. In particular, draft legislation has been prepared to introduce amendments and additions to the Labour Code and the law on "Employment of the Population" arising from the Convention which has been submitted for



consideration by the working group of the Committee on Social Issues of the Parliament of Turkmenistan.

On the issue of improving labour inspection, we note that Turkmenistan previously provided information on the situation in the country with regard to labour inspection. Specifically, according to the labour legislation, State oversight and monitoring of compliance with Turkmenistan's labour and related legislation is carried out by the Ministry of Labour and Social Protection of the Population of Turkmenistan; the main State service Turkmenistan "Turkmenstandartlary" and other state bodies active in the area of occupational safety; the Ministries and departments within the limits of their competence in relation to their subordinate enterprises; local state authorities and local government bodies; trade unions as well as technical and legal labour inspectorates under their authority. The institutions indicated above within the limits of their authority exercise supervision and control over compliance with the law and the application of measures of administrative responsibility in the manner prescribed by the legislation.

I would like to share the following data which reflects the effectiveness of the activities of control and supervision bodies by the legislation in the field of labour and employment. If in 2021, more than 3.6 thousand individuals, officials and legal entities were brought to administrative responsibility for violations of labour legislation and employment, including in the field of labour protection, then in 2022, their number decreased to 2.6 thousand individuals. At the same time in case of violations of the law in terms of the use of forced labour, those responsible for their admission may also be subject to administrative measures provided for in Article 304 of the Code of Administrative Offences. Consideration is currently being given to the expediency of Turkmenistan's accession to the Labour Inspection (Agriculture) Convention, 1969 (No. 129) and the Labour Inspection Convention, 1947 (No. 81) which have been submitted for discussion at the regular meeting of the Tripartite Commission for the Regulation of Social and Labour Relations. In this context, in early April 2023, the Minister of Labour and Social Protection hosted an online meeting of stakeholders with the international expert on international standards in Central Asia and Eastern Europe at the ILO. Emphasis was placed on an analysis for compliance of Turkmenistan's legislation and law enforcement practices with the provisions of Conventions Nos 81 and 129 concerning labour inspection. In order to provide effective technical assistance from the ILO in improving labour inspections and preparing relevant analysis, the international expert requested information on the questionnaire he had submitted to familiarize himself with the legal instruments regulating labour inspections as well as data on the actual situation regarding the functioning of labour inspections in Turkmenistan. Discussion of the information received is expected to be held in a tripartite format with the representative of the Minister of Labour and Social Protection and social partners represented by the National Trade Union Centre of Turkmenistan and the Union of Industrialists and Entrepreneurs of Turkmenistan.

On the promotion of full, productive and freely chosen employment in the cotton sector, work is currently under way with the ILO representatives on the implementation of Item 3 of the Roadmap for Cooperation between the ILO and the Government for 2023, on the situation analysis on recruitment for cotton picking, which includes a qualitative study on recruitment practices for the cotton harvest in Turkmenistan. The terms of reference for this study have been prepared, the main objectives of which are to understand the hiring practices and procedures used in the cotton industry and also to study cotton pickers' experience and perceptions of the hiring process, including the factors influencing their decision to work in the cotton fields. At the same time, the methodology and the process of conducting the study are being studied. In accordance with the terms of reference, there are



plans to hire a national consultant who will begin work shortly on the involved study. I want to point out that the ILO mission is expected to arrive in Turkmenistan in early July this year to advise on the situation analysis on recruitment for cotton picking. The quantitative study is planned as a part of the household survey to assess the trends in the cotton harvest over the past five years. On 19 May 2023, an online meeting was held with the ILO representatives with the participation of the specialists from the State Statistics Committee on the issue of conducting quantitative and qualitative studies on the topic under consideration, at which further steps to conduct the above studies were discussed, and these issues will also be considered during the forthcoming ILO mission in early July this year.

In accordance with Item 6 of the Roadmap – a review of Turkmenistan’s cotton harvest – a discussion is also taking place with ILO representatives on the Concept Note, the main purpose of which is to establish a joint mechanism to improve working conditions and prevent forced labour during Turkmenistan’s cotton harvest. The review includes visits to the cotton fields during the harvesting period to monitor working conditions systematically.

On the issue of improvement of cotton production and harvesting, it is worth mentioning the widespread use of the latest generations of cotton harvesters in the country’s agricultural sector, with little change in the area of cotton fields under cultivation and volume of cotton harvested which has contributed to the significant reduction in the rates of manual harvesting. At the same time, Turkmenistan is committed to its policy of creating conditions for decent work and social justice for all, including those engaged in the cotton harvest.

The number of used agricultural machinery in 2022 increased significantly compared to 2016, by 25 times. This indicates that Turkmenistan prioritizes policies for the use of mechanized cotton harvesting, including the training and education of machine operators.

On the issue of design and implementation of awareness-raising activities, it should be noted that Parliament is actively engaged in awareness-raising activities aimed at, inter alia, raising public awareness on the prevention and prohibition of forced labour. The activities conducted by the trade unions in the *etraps* (districts) also include awareness-raising workshops involving stakeholders and civil society focused on national and local tripartite stakeholders and civil society, to ensure an open dialogue on the problems, frameworks, response mechanisms to resolve issues relating to fair employment of workers. For example, in 2021 and 2022, more than 200 awareness-raising meetings and round-table seminars were held throughout the country on this issue with broad participation. 40 articles and publications were issued on the topic of legal regulation of labour relations in various sectors, including agriculture.

On the issue of promotion of social dialogue in cotton production and processing, I would like to note that as a party to the Tripartite Commission for the Regulation of Social and Labour Relations, the trade unions exercise public oversight and monitoring of the observance and the implementation of labour standards. Trade unions work systematically to assist the Government in implementing ILO Conventions and international labour standards.

The information provided indicates genuine progress in Turkmenistan on the issues considered during the current meeting. In this regard, the inclusion of Turkmenistan on the shortlist of countries does not correspond to the spirit of bilateral cooperation. That being said, we express hope for mutual understanding on the part of the Committee of Experts and their objective assessment of the current situation in the country. Turkmenistan, for its part, is always ready for dialogue and any technical assistance from the ILO.



Employer members – First of all, we would like to thank the Government of Turkmenistan for the written and oral information provided. What is at stake in this case is the compliance with another ILO fundamental Convention, namely Convention No. 105 on the Abolition of Forced Labour. From the outset, the Employer members wish to stress their deep commitment towards the eradication of forced labour and the great importance attached to the Convention. We are firmly convinced that no relevant stakeholder should turn a blind eye on any of such practices, especially if they are planned, conducted or tolerated by the central authorities. Moving to the procedural aspects, we note that Turkmenistan ratified the Convention in 1997. We also take note that between 2015 and 2022, six observations have been provided by the Committee of Experts on this case, highlighting the persistence of compliance issues.

The application of the Convention by Turkmenistan has been discussed three times in this tripartite setting, the last time in 2021. We are aware that the Government submitted written information in advance of the Conference, which we have taken into due consideration and on which I will come back later.

Let me start with some contextual information on the country. Turkmenistan's economy is almost fully state-driven; the private sector remains small and closely regulated by the State. At the political level, in February 2022, after 17 years in power, the Prime Minister announced preliminary elections. These resulted in the election of the exiting Prime Minister's son as leader of the country. Several media reported that no election since the country became independent in 1991 has been genuinely competitive. It is also reported that civil and political rights are highly denied in practice, leaving no space to opposition to develop. According to the 2023 observations by the Committee of Experts regarding Turkmenistan's implementation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), doubts have been raised regarding the independence of the trade union movement and there appear to be significant legal restrictions of the autonomy of employers' and workers' organizations in the country.

Turning to the legal issues, in its 2022 observations, the Committee of Experts highlighted several aspects entailing a violation of the Convention by Turkmenistan, notably of Article 1(b) of the Convention on using forced or compulsory labour as a method of mobilizing and for purposing of economic development. We note that, in 2021, the Committee of Experts had noted with deep concern the continued practice of forced labour in the cotton sector and had urged the Government to take measures to ensure that no one is forced to work for the state-sponsored cotton harvest.

With a view to implementing the conclusions of the Committee of 2021, a two-phase ILO high-level mission took place in Turkmenistan throughout 2022. The high-level mission also undertook visits to Mary and Lebap provinces, during which it met with the regional authorities and visited the cotton fields. The main outcome of the high-level mission was an agreement on a draft Roadmap for Cooperation between the ILO and the Government for 2023, with a focus on the cotton harvesting sector. The Employer members note that the Roadmap provides for the elaboration of activities in a series of areas, including revision of legislative, policy and administrative frameworks; strengthening of labour inspection; conduct of situational assessment and analysis; and enhancement of social dialogue. As a follow-up, an ILO technical mission took place in Turkmenistan in March 2023 to support the implementation of the activities identified in the Roadmap, while the next ILO technical mission is scheduled for 3 to 7 July 2023.



However, the Employer members also take note of the observations formulated by the ITUC in 2022, alleging: first of all, the continued recourse by the State to the use of forced labour in picking cotton; secondly, the poor conditions and abusive practices which workers have been subjected to, notably during the 2021 harvest; as well as thirdly, the forced employment of the most vulnerable categories of workers, including migrants and students. Finally, we note that the Government, in its report, remarks that no allegation of the use of forced labour in the cotton sector has been reported to state bodies, judicial authorities, representative organizations of employers and workers, or the Ombudsman's Office. It is instead highlighted that the latter made recommendations to various ministries and other public authorities to strengthen monitoring to prevent forced labour. In its written information, the Government also highlights the ILO mission to Turkmenistan of this year and the Roadmap for Cooperation between the ILO and the Government. We take note that the Roadmap focuses on six activities and some efforts have been made towards completing these activities.

The Employer members are clear on their position regarding forced labour and the Convention, we cannot tolerate any of such practices. Forced labour becomes even more intolerable when it emanates from the Government or other central authorities and is specifically designed to serve the economic development of the State. In this regard, we note with interest the steps taken by the Government to address the issues raised in collaboration with the Office. Encouraging steps forward have been the 2022 high-level mission, which led to an agreed Roadmap, as well as the further Government's commitment to such collaboration, as signaled by the ILO technical mission scheduled for July this year. We trust that more concrete action will follow. In light of these developments, the Employer members request the Government of Turkmenistan to pursue its efforts to ensure the complete elimination of the use of compulsory labour of public and private sector workers, as well as students in cotton production.

We also encourage the Government to continue engaging in cooperation with the ILO within the framework of the Roadmap for Cooperation between the ILO and the Government. In this context, we would stress the importance of the involvement of fully independent and autonomous employers' and workers' organizations for a sustained and proper application of the Convention in practice. We request the Government to provide information on concrete measures taken, including on the activities indicated in the Roadmap. We look forward to hearing the views of the other groups on this case.

Worker members – We have already discussed the case of Turkmenistan twice before in the Committee, in 2016 and again in 2021. Following the last review, a high-level ILO mission visited the country in 2022 with a view to reaching agreement on the parameters of a development cooperation project and immediate activities for cooperation between the ILO and the Turkmen constituents.

At the end of that mission, an agreement was reached on a draft Roadmap for Cooperation for 2023 between the ILO and the Government. This Roadmap provides for the development of activities in various fields, such as the review of the policy and administrative framework governing the cotton harvest, the improvement of labour inspection and law enforcement, the promotion of full, productive and freely chosen employment in the cotton sector, the improvement of cotton production and harvesting, the design and implementation of awareness-raising activities and the promotion of social dialogue in cotton production.

The Roadmap also includes activities aimed at:



- the improvement of the legislative framework for the prevention and prohibition of forced labour;
- the undertaking of a situation analysis on recruitment for cotton picking;
- the improvement of the regulation of seasonal work in agriculture and contractual arrangements;
- the improvement of labour inspection to strengthen oversight;
- the undertaking of field visits during the 2023 cotton harvest; and
- the further enhancement of dialogue between the ILO and the Government.

It will be essential to start work as soon as possible on these various areas of activity. The Worker members regret however, that this process did not involve tripartite constituencies of this Organization as we had hoped for when we discussed the case in 2021. We also regret that, despite the many initiatives put in place following the recommendations made by the Committee to Turkmenistan, forced labour practices in cotton production are nevertheless still prevalent on a massive scale in the country.

In 2021, we reported on the institutionalized nature of these practices in Turkmenistan. The persistence of this phenomenon demonstrates the difficulties faced by the Government in putting an end to it. We can only join the Committee of Experts in expressing our deep concern at the continuation of these practices. The Government of Turkmenistan continues to be accused of serious breaches.

Forced labour in cotton harvesting, and likewise in silk harvesting, is organized by the Turkmen authorities. This system is implemented directly by the State, which produces cotton production quotas centrally and uses local administrators to force farmers to grow cotton and local populations to harvest it, all under the threat of penalty. The authorities are thus creating an environment conducive to abuse throughout the country's cotton and silk production chain. Many workers are forcibly mobilized for the cotton and silk harvests and forced to give up their jobs. Many students, some of them very young, are also requisitioned. Public sector employees constitute the main workforce to pick cotton, especially at the initial stage. Women are especially vulnerable in this situation, since they constitute the majority of the lower-paid public sector workforce involved in the cotton harvest. During the 2021 harvest, authorities also mobilized other vulnerable segments of the population, including migrant workers, people receiving treatment for addiction and people accused of prostitution or of alimony delinquency.

This forced mobilization leads some workers to pay a replacement or even send their own children to work in the cotton or silk fields. We understand that while child labour was not directly organized by the State, it nonetheless still exists, driven by both poverty and the current forced labour system. As well as being forcibly mobilized, these workers and students must often work without decent or adequate healthy and safe working conditions. They are subjected to pressure and threats. They are forced to work excessively long hours and are denied personal protective equipment.

Article 1 of the Convention provides that ratifying Member States undertake to suppress and not to make use of any form of forced or compulsory labour, particularly as a method of mobilizing labour for purposes of economic development. However, section 7 of the Act on the legal regime governing emergencies of 1990 allows the State and government authorities to mobilize the workforce for the purposes of economic development and to



prevent emergencies. Under article 19 of the Labour Code, an employer may in cases specified by law, require a worker to undertake work which is not associated with his or her employment. This provision is likely to allow abuses of concern in the examination of the Convention. Even though Turkmen legislation also contains provisions prohibiting the use of forced labour, it is clear that these legal provisions remain purely and simply a dead letter in practice.

Moreover, the lack of press freedom and the non-existence of independent trade unions in Turkmenistan makes it very difficult to monitor the practical application of these laws. The Government has even never acknowledged the existence of widespread, state-sponsored forced labour practices in the cotton and silk industries.

Despite the Government's efforts to keep it hidden, independent monitors were able to document systemic, government-mobilized forced labour in the agricultural sector of Turkmenistan, not just in cotton, but in silk production as well. Gaspar Matalayev was sentenced to three years imprisonment in October 2016 for his attempt to report the working conditions in cotton fields and was made to serve the entirety of his term. The warrant for his arrest was issued just a few months after the Committee examined the issue of forced labour in Turkmenistan for the first time. Those who report on labour exploitation continue to be punished.

It appears from the ITUC's latest observations in 2022, which are based on independent reports, that the forced mobilization of workers in many sectors of activity continued during the 2021 harvest. We are aware of similar reports about the 2022 harvest which confirm that forced labour practices still persist. Other international bodies have also made the same observations and are concerned about the situation in the country, notably the United Nations Committee on Economic, Social and Cultural Rights and the United Nations Human Rights Council. The involvement of these bodies in the case of Turkmenistan also testifies to the lack of respect for many fundamental rights in the country.

Of course, the establishment of the Roadmap following the high-level mission is a good thing. It demonstrates the intentions of the Government to work with the ILO, an important and necessary step toward ending the practice of forced labour. However, the Government must ensure that this process is credible and transparent, by allowing monitors, independent journalists and human rights defenders to document and report concerns about the use of forced labour without fear of reprisals. It also needs to involve constituencies of this house. Otherwise, we take the risk that the effective implementation of the many projects it contains will not address the core of issues.

It is insufficient to simply adjust the cotton production system without solutions grounded in a rights-based approach for the farmers and workers in that system. Lasting and robust solutions to state-imposed forced labour require enabling the exercise of labour rights and civil rights, including freedom of association, assembly, and collective bargaining. The success of such an approach will depend on the guarantee of genuine trade union freedom, the involvement of independent trade unions and the freedom of action of civil society organizations.

Interpretation from Russian: **Employer member, Turkmenistan** – I would also like to comment on the recommendations of the Committee of Experts, in particular, with reference to the implementation by Turkmenistan of the Convention. We should note that cotton cultivation in our country is an age-old activity. Indeed, in our agricultural sector, we have tenant farmers, farmers who own their land and private homesteads. They are given privileges and compensation from the State. This makes it possible for them to manage



effectively, profitably and independently their business. I therefore cannot agree with the idea that private agricultural businesses are compelled to grow cotton and to enter into agreements to that effect. Here I would like to note the following:

- cotton cultivation in our country is profitable. Yes, we have a state order for cotton, but that's very interesting for businesses to be involved in. Why is it so profitable? Well, they get loans for ten years, with an Annual Percentage Rate (APR) of 1 per cent which allows them to acquire equipment and they are able therefore to invest in their business. At present more than 3,000 pieces of John Deere equipment have been purchased, in other words tractors, and we are also working allowing people now to purchase agricultural machines "Case" and "CLAAS";
- secondly, they are exempt from all taxes and fees if they are involved in cotton cultivation;
- further, if you are involved in the cultivation of wheat, cotton, and other agricultural products, again you do not have to pay the lease fees;
- another point is that excess production over the State quota can be used as you wish.

At present in Turkmenistan, we have more than 500 peasant farmer associations. 35 per cent of them have already moved into the private sector, and by 2025 they will all be in the private sector. As it has been said before, in our country, businesses are considered as being very important. Businesses invest a lot in its lands to enrich the soil when it comes to cultivation. We must bear in mind the fact that people who want to make profits are clearly going to do what is in their own interests and they have no need then to have recourse to any kind of forced labour. It is in everyone's interest to be involved in cotton cultivation. I myself, am a regional leader within the Union of Industrialists and Entrepreneurs of Turkmenistan, and I can tell you with certainty that at all stages of cotton cultivation and harvest, there is no use of forced labour whatsoever.

The Union of Industrialists and Entrepreneurs of Turkmenistan brings together an enormous number of private employers within our country. In the course of any given year, we look at thousands of complaints that come to us. However, we have never received one complaint of forced labour in cotton companies and in any kind of cotton trading posts. We have never received any such complaint, neither within our union nor in terms of the authorities in our country. I would like therefore to note that there are unofficial sources on the alleged use of forced labour by cotton companies and we are willing to look at them on a case-by-case basis if we have objective and concrete information submitted in the appropriate form. We respect the opinion expressed by the Committee of Experts, but we do call for our views and arguments to be taken into account. I would like to point out also, that our union is actively involved in a number of the events foreseen by the Roadmap for Cooperation between Turkmenistan and the ILO, which was referred to in the Government's report and that will include field visits.

Interpretation from Russian: Worker member, Turkmenistan – As everybody knows, the unions of any country, in tackling the problems that the trade union movement shares around the world, work within its national circumstances. Each country has its own history, culture, specific structure of the State and structure within which it has economic development as well as spiritual traditions and social attitudes. Trade unions cannot be set up or operate without taking these particular features into account because they, to a very great extent, determine the strategy for future development of the trade union movement in each individual country. The unions of Turkmenistan fully support the Convention, including



its requirements to ensure the fundamental principles of decent work. We support tripartism and support social dialogue and the principles of social justice.

It is very important for us that in 2018, the Turkmen Parliament adopted a law on a tripartite committee to govern social and labour relations. In almost every state body and private enterprise there are collective agreements signed which regulate social and economic relations on the ground.

At the moment, the national union of Turkmenistan is focusing its work on the following fundamental areas: (i) further strengthening of our national economy through active support to businesses, organizations and enterprises, irrespective of their legal structure or status; (ii) improving implementation and monitoring of collective agreements; (iii) ensuring the rights of workers to decent work, which means having a job, having a decent salary, having healthy and safe working conditions, enjoying social protection and engaging in social dialogue.

Here we very actively support the far-reaching changes which are taking place at the moment in Turkmenistan. The position of Turkmen's unions has frequently been outlined in various international fora. Over the last few years, there has been a considerable increase in the role of trade unions in dealing with issues of labour protection at all levels. Technical and legal inspections carried out by the Labour Inspection Service of the unions in Turkmenistan has meant that specialists have monitored the way employers are complying with legal and other legal provisions to protect labour.

As far as the Convention is concerned, we strive to ensure decent working conditions without forced labour and without exploitation and we are working hard to cooperate with the Government, with regional authorities and to ensure that they all comply with international labour standards. Measures taken by the unions to bring this about include checking that technical and legal inspection conclusions are being complied with. Furthermore, we protect the rights and interests of workers and inter alia by supporting workers when issues come to courts and there are legal proceedings.

We have not received any complaints about forced labour in our union offices, but nonetheless, we are still carrying out careful monitoring and we hold training courses, seminars and briefings for specialists in various areas and from various levels, including workers and employers in our agricultural sector. Most of the seminars at the moment are being held in the regions, together with the local authorities, and they involve the associations of peasant farmers which have been referred to often in the agricultural sector. In these, we involve the local authorities, the Government, the local employment service, the police force and other private and state structures.

We attach enormous importance to cooperation with the ILO in Turkmenistan and our cooperation with the Organization is increasing each year. We hold consultations with ILO representatives on various questions which are of mutual interest. Representatives of Turkmenistan's unions also participate actively in measures in defence which are organized within their framework and under the aegis of the ILO.

In March last year, high-level ILO representatives visited Turkmenistan and our unions participated actively in drawing up a Roadmap to prevent forced labour. That has been referred to in the statement just made by our Government's representative.

The social partners and unions have been working together and continue to on implementing this Roadmap. We have carried out analysis for example, of our existing legislation to see whether it is fully in accordance with the provisions of the Convention. At the same time, we are working actively with our regional and local trade unions as well as



local and regional authorities and other parties which have an interest in ensuring that we comply with international labour standards in all our economy and particularly in agriculture and in cotton farming.

In conclusion, Turkmen trade unions are actively involved in all the measures included in the Roadmap. We are cooperating with our Government and with the ILO this year as well, and we will continue to give support to the ILO in tackling this issue.

Government member, United States of America – We thank the Government of Turkmenistan for providing additional information to this Committee in response to the recent observations of the Committee of Experts, as well as for accepting the high-level mission to Turkmenistan in November 2022.

We welcome that an agreement was reached on a Roadmap for Cooperation between the ILO and the Government in 2023, which focuses on six priority areas and includes activities on the improvement of the legislative framework for the prevention and prohibition of forced labour; the undertaking of a situation analysis on recruitment for cotton picking; improvement of the regulation of seasonal work in agriculture and contractual arrangements; improvement of labour inspection to strengthen oversight; monitoring by the ILO of the 2023 cotton harvest; as well as further enhancement of dialogue between the ILO and the Government.

We encourage the Government to continue to actively pursue its efforts to ensure the complete elimination of the use of compulsory labour in cotton production. We note with interest the Government's report that it has carried out an analysis of the current legislation and regulatory framework with regard to application of the standards contained in the Convention, and consideration is currently being given to submitting the Bills to the working groups established by the relevant parliamentary committees. We encourage the Government to continue to work with the ILO to ensure revisions are fully in line with international labour standards.

We recall independent workers' representatives will be essential partners for building new legal and policy approaches to the cotton sector that eliminate the root causes of forced labour and urge the Government to amend provisions in the Trade Union Law and Law on Public Associations that enable the Government to exert undue control over union activities, including over the selection of trade union leadership.

We note with concern the continued reports of forced labour in the sector and policies that perpetuated the mobilization of workers for forced labour. We recall that the high-level mission's conclusions recognized persistent difficulties in openly discussing the existence or practices of compulsory labour in the cotton harvest and that many persons during the mission indicated the practice existed, albeit without direct or tangible proof of the extent due to limited access to cotton fields.

We encourage the Government to regularly make public, high-level policy statements condemning forced labour, specifically including forced labour in the cotton sector, and as part of awareness-raising activities under the Roadmap.

The United States remains committed in engaging with the Government to advance worker rights in Turkmenistan.

Worker member, Sweden – I have the honour of speaking on behalf of the trade unions of the Nordic countries. Turkmenistan is discussed under the Convention today, but before I talk about that, I would like us to, for a minute, think about what we actually know



about Turkmenistan. I assume not very much. There is a reason for that. Turkmenistan is a very closed country. The authorities exercise strict control over the flow of information and all media. Turkmenistan is a Central Asian country not far from here and cotton is grown and harvested, at least partly, by forced labour, something that the Government consistently denies. The extreme limitations on free expression and association make it difficult to document and report anything that is going on within Turkmenistan. One thing we know is that people who have shared information with international media might be persecuted and some have received long prison sentences. But with that said, the consistency of reports about Turkmenistan year after year, including the last year, leave no room for doubt when it comes to the use of systemic, state-organized forced labour.

Turkmen News and the Turkmen Initiative for Human Rights conduct independently monitoring of the cotton harvest, compiling monitoring reports supported by additional documentary evidence. Their joint report indicates that tens of thousands of workers from various state bodies were mobilized during the 2021 harvest. The reports from 2022 harvest give the same grim picture. While denying forced labour, the State is continuing to mobilize workers in forced labour in violation of its commitments under the Convention and also under the National Action Plan for Human Rights in Turkmenistan for 2021-2025.

In fact, government authorities began forcibly mobilizing workers for the cotton harvest only four months after the Action Plan was signed in April 2021. A mere denial from the Government is far from enough. Given the lack of transparency, free media, independent trade unions, civil society organizations, and real freedom of association, Government reports are not credible. The Turkmenistan Government should stop the use of forced labour in the country and continue cooperating with the ILO but also with the social partners within the ILO.

The Government should guarantee freedom of association in Turkmenistan, including freedom for independent trade unions and civil society organizations. We know that forced labour flourishes when freedom of association is suppressed.

Worker member, United States of America – Since this Committee last discussed this case in 2019, independent monitors and news outlets have continued to document the systematic use of state-sponsored forced labour in all cotton-growing regions of Turkmenistan. Indeed, in some ways the 2022 harvest, the first presided over by President Serdar Berdimuhamedow, was worse than previous years given the political pressure to make his first harvest appear successful. An independent monitoring report noted that state employees were once again mobilized en masse and that some children were paid to work as “replacement pickers” by public employees. Alarming, the Government of Turkmenistan continues to deny the existence of forced labour in its annual cotton harvest. In 2022, the Government reported to the Committee of Experts that it had not received a single allegation of forced labour with regard to the last cotton harvest. This kind of blanket denial strains credulity and suggests to us the Government is ready to ignore what it does not want to see.

Indeed, the only way to solve the forced labour problem in Turkmenistan is for the Government to finally acknowledge the root causes of the problems and ensure Turkmen workers have the means to combat it with the fundamental tools of effective grievance and remedy mechanisms.

Accordingly, we call on the Government to fully implement the Roadmap negotiated with the ILO and to ensure full access for the high-level mission and independent civil society to the 2023 cotton harvest.



Interpretation from Russian: Worker member, Russian Federation – The report from the Committee of Experts this year is based on information from 2021. In an analysis of the real situation with reference to the Convention on the part of Turkmenistan, we base ourselves on more recent data, that is to say, data for 2022, submitted by independent, non-governmental organizations with reference to the cotton harvest in 2022.

We believe that this is convincing and representative information. We are grateful to the Government of Turkmenistan for the material submitted. The monitoring shows that practice of the use of different forms of forced labour in the cotton harvest continues on a massive and systemic scale. Large groups of public centre workers are sent to the cotton fields, including teachers, people from nurseries, schools, from health centres, from other kinds of state institutions and utilities. There is a lot of evidence from workers to the fact that in the course of this mobilization there are threats of people losing their jobs or losing part of their wages if they don't comply. Other restrictions are also used to force them to work on the cotton harvest. When it comes to the cotton harvest, those workers who stay in their regular jobs, tell us that they are compelled to pay part of the wages of the pickers and also to incur additional expenses relating to the cotton harvest. Experts provide information on the fact that government bodies establish quotas for cotton production and there are threats of penalties and fines as well as loss of land if you do not meet these quotas. As well as that, they establish the purchase price for the cotton unilaterally.

The working conditions under which mobilised pickers are forced to work, in our view, are also clear evidence of the coercive nature of recruitment. They work in open fields without shelter, they often do not have enough drinking water, and there are reports to the effect that they are obliged to pay for food, water, transport, and accommodation. They do not receive personal protective equipment for their work in the cotton fields when they are exposed to chemicals and fertilizers. The Government asserts that a lot of the manual work is now being done mechanically, but that is not confirmed by independent experts. When cotton is gathered by hand, it is of a higher quality and can be sold at a higher price. We also know that equipment is expensive, and that the very system itself means that certain public officials have financial interests in keeping the system going as it is right now.

We must note the fact that experts have noted the use of child labour in cotton production, although the specific mobilization of children is not noted. In interacting with the supervisory bodies of the ILO and other international organizations, the Government continues to deny the mass use of forced labour and one of the arguments that they put forward is that there are no complaints about this. However, in the country you do not have the conditions for there to be appropriate monitoring of the situation by the authorities. Nor do you have unions who could act in a way that could respond to any such complaints and cooperate with international organizations appropriately, in order to defend the conditions of workers.

We are, however, willing to look positively at the recent signing of the recent Roadmap between Turkmenistan and ILO. This is intended to eradicate forced labour in the country as you know, but sadly, we must note that the Government was prepared without the participation of the workers and without the expertise that the trade unions could have brought to bear on the situation.

We believe, however, that a number of the measures could have a significant impact on the situation, but if the changes are going to be real and irreversible, we need to ensure that the whole system of cotton production in Turkmenistan is brought into line with universal standards for the protection of rights of citizens and ensuring decent work for all at a decent



wage. On behalf of the delegation of the workers of the Russian Federation, we call upon the Government of the Republic of Turkmenistan, to cooperate with the ILO on the issue of bringing their legislation into line with international standards, in particular with the provisions of the Convention. This work, as we see it, is essential, but it can only be successful if we see genuine implementation by the country of the core Conventions of the ILO and the fundamental rights of workers, foremost among them the right to freedom of association within the overall context in which the human rights of people in Turkmenistan are protected.

Worker member, Netherlands – Year after year during the cotton harvest, which takes place between August and December, the Turkmen Government forces tens of thousands of public sector workers to pick cotton or pay for replacement pickers under threat of penalty, including loss of employment, reduction of work hours or pay, and extorts money from the same workers to pay expenses related to the harvest. In Turkmenistan, harvesting cotton using forced labour is not an anomaly, but an integral part of a command system of agricultural production that drives both rural poverty and child labour. The system of state control and coercion is so entrenched that farmers plant according to State dictates, instead of the soil, water and climate conditions. To comply with the systems, farmers have been forced to plant crops before fields are ready or in places with inadequate irrigation, ensuring the crops will fail, while the farmers themselves remain at the mercy of the government authorities.

Forced labour of public sector employees to pick cotton is and was widespread and systematic in all regions that were monitored by independent researchers. Teachers, doctors, cultural workers and other civil servants reported mobilizations by mid-August. By December, despite temperatures below freezing, about 25 per cent of public sector employees were forced to pick cotton or pay for replacements during the week, and all employees were sent to the fields on the weekend. The Government continues to deny the use of forced labour in the cotton harvest. The recently signed Roadmap and intention to work with the ILO is an important and necessary step toward ending this practice. However, it is also insufficient to simply adjust the cotton production system without grounding solutions in a rights-based approach for farmers and workers in that system. When going for the eradication of forced labour and child labour, the exercise of fundamental labour rights like freedom of association and collective bargaining are key and indispensable.

When working on solutions, independent workers' organizations must be involved in the whole process. It cannot be the case that Government representatives of Turkmenistan present plans to the ILO, without involving any of the social partners. As previous speakers said, we also urge the authorities from Turkmenistan to fully cooperate with and implement recommendations from the ILO Supervisory Mechanisms. Under the framework of ILO technical advice, the Government of Turkmenistan should establish, monitor and report on clear benchmarks to fulfill its obligations under all fundamental labour Conventions of the ILO.

Observer, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) – On behalf of the IUF, the Global Union of Agriculture Workers, I support the voiced earlier comments indicating that forced labour in Turkmenistan's cotton sector continues to be widespread and systematic. Each year during the cotton harvest, the Government forces tens of thousands of public and private sector workers to pick cotton, or pay a bribe, or hire a replacement worker to pick cotton instead of them. 2022 was no exception. Independent monitoring conducted during that cotton season found that the forced labour of public sector employees to pick cotton was widespread and



systematic in all regions where it was monitored. Conducting this work in secret, the monitors put themselves at great personal risk. The Government takes extensive measures to prevent documentation and the cotton fields are under strict surveillance by the police and security services.

Workers in the fields faced difficult and sometimes abusive or dangerous working and living conditions to meet mandatory daily quotas of cotton. Their forced participation in the harvest was organized and enforced by the government. People are intimidated, publicly censured, and threatened with wage deductions and loss of jobs in order to ensure compliance. Poverty and the pressure to fulfil quotas leads to child labour, with children picking cotton alongside parents, or to earn money as replacement workers hired by people forced to pick.

We welcome the Government's recent engagement with the ILO. But at the same time, the Government continues to publicly deny the use of forced labour in the harvest – most recently during its review by the UN Human Rights Committee in March 2023 – and to harass and attack anyone who dares to speak out about human and labour rights abuses. Long-lasting solutions to ending forced labour in Turkmenistan must be grounded in a rights-based approach for the farmers and workers in that system – and require the enabling of freedom of association, freedom of assembly, and freedom of collective bargaining. As it stands, in two months' time, tens of thousands of people will once again be forced to work in the fields, picking cotton under threat of punishment, under government orders. The 2022 independent monitoring findings show that the Government has not taken meaningful steps to eradicate this practice since the last review. Change is long-overdue.

We urge the Government to take urgent action to end the practice of state-sponsored forced labour in the cotton sector. The Government must enforce national laws that prohibit the use of forced and child labour; take action to hold officials to account for forcing citizens to work; and fully cooperate with and implement recommendations from UN treaty bodies, special procedures, and first of all ILO supervisory mechanisms. It must enable monitors, journalists, human rights organizations and labour rights defenders to operate freely and without the threat of reprisal, and allow workers to organize, form and join independent trade unions, and bargain collectively.

Government representative – Allow me, on behalf of the governmental delegation of Turkmenistan, to express gratitude to the Committee for the work done and constructive dialogue, as well as to the Governments and Employer and Worker members for their statements addressed to Turkmenistan.

Here, of course, we have listened to so much information regarding Turkmenistan. We took note of some of them. Some delegations' approaches were very constructive and took into account the materials provided by Turkmenistan in the process of preparing this meeting.

As noted in the main speech of our delegation, a lot of work has been done and is being done to implement the norms of the Convention, not only at the level of legislation, but also in practice. In this context, I would like to once again urge the Worker members and Employer members to pay more careful attention to the Government's comments. Some of the information provided is basically untrue, even there was a concern of the democratic elections held in our country. I want to reassure that elections are being held in Turkmenistan with the active participation of international observers. The criticism of my country's leadership is unacceptable and unprofessional and should not be used at this event. We explicitly declare that the information about legalization of the forced cotton



harvest by the State is unfounded and does not reflect the real situation on the ground. The policy of my country in this area is aimed at mechanization of the cotton harvest, as indicated in my main report.

All constructive proposals and recommendations of international experts in the context of the issue under consideration, will be carefully studied and analysed. On behalf of my Government, I want to note with confidence that we seek cooperation with the ILO on a systematic basis. The Roadmap of our partnership is solving the tasks of fulfilling the universally recognized norms of international law and is aimed at implementing a mechanism of improving both the legislative framework and its law enforcement practice.

This interaction can be carried out through technical cooperation on the implementation of the relevant Conventions in national legislation, awareness-raising, and capacity-building of specialists, as well as through a system for monitoring the implementation of the provisions of the Convention using the mechanisms of tripartite cooperation.

After successful implementation of the short-term Roadmap for 2023, Turkmenistan will be ready to discuss the prospects for long-term cooperation and interaction with the ILO.

Worker members – We would like to thank the Government representative for the information they provided during the discussion. We would also like to thank the speakers for their contributions. It is undeniable that Turkmenistan still uses forced labour on a massive scale to harvest cotton and silk. Please allow me to respond to a comment made by the Government representative regarding the supposedly unverified sources reporting practices of forced labour in the country. In a situation when there are no independent social partners, nor any genuine form of functioning civil society, we cannot consider information by the Government wholly credible. If the Government wishes to contest critical information provided by non-governmental sources and the ITUC and insists instead on its own alternative narrative of greater progress, we are compelled to ask why does it continue closed door policies? Why does it not engage with reputable global workers' organizations, or the media or with human rights groups? We share the Committee of Experts' deep concern at the persistence of forced labour practices and the poor working conditions of those forced to work in the cotton and silk sector, in clear violation of the Convention.

We request the Government to ensure the full implementation of the recommendations made following the review of its case by our Committee in 2021. The Government must also ensure that the implementation of the Roadmap is made in cooperation with the social partners and in a time-bound manner. In particular, it is essential that the Government takes all measures, in law and practice, to eliminate the use of forced labour by workers in the public and private sectors, as well as students, in particular by ensuring that the State of Emergency Act, the Emergency Intervention Act, the Act on the preparation and implementation of mobilization in Turkmenistan, Article 7 of the Emergency Legal Regime Act 1990 and section 19 of the Labour Code cannot be used as legal bases for forced labour in cotton and silk fields. The Government must stop threatening those who fail to meet the quotas set by the authorities. It must also make public, high-level policy statements condemning forced labour, specifically including forced labour in the cotton sector and making clear that all work should be voluntary and fairly compensated. The pressure exerted on the authorities at all levels to meet these quotas leads to numerous abuses of which workers are the first victims.

The Government should act in accordance with the Convention and national legislation against the use of forced labour by issuing clear instructions on the prohibition of the use of forced labour and by prosecuting and punishing any civil servants who nevertheless resort to



it. Strengthening labour inspection and law enforcement is essential if these practices are finally to be eradicated. The Government must work with the social partners to develop a national action plan to sustainably eliminate forced labour in the state-organized cotton and silk harvest. This plan must be time-bound and address the root causes of forced labour in agriculture. It will be essential for the Government to guarantee access to the cotton and silk fields for the social partners, monitors, independent journalists and human rights defenders who should be free to document and report their findings without fear of reprisals. It is further clear that the involvement of the social partners in the development and implementation of the Roadmap will require full recognition of trade union freedom in the country, so that the country's workers and employers can be represented. We expect that Turkmenistan implements all fundamental labour rights, especially the prohibition of the use of forced and child labour, freedom of association and the right to collective bargaining, in alignment with the ratified ILO Conventions. To guarantee the achievement of all these objectives, we invite the Government of Turkmenistan to continue to avail itself of the ongoing ILO technical assistance and to accept the arrival of a high-level tripartite mission from the ILO, which must be given every facility to be able to carry out its mission.

Employer members – The Employer members would like to thank all the speakers who have taken the floor. In particular, we thank the Government of Turkmenistan for its intervention, as well as the oral and written information it provided, as it helps build a more comprehensive picture regarding the developments on the ground.

In closing, we would like to stress once again that the Employer members consider unacceptable, any forms of forced labour and other abusive practices amounting to forced labour. Notably, when they target the most vulnerable categories of society and are orchestrated by central authorities. Our position aligns in this regard with that of the Committee of Experts, the Office and the Worker members. While we welcome the efforts undertaken to address the issues raised by the Committee of Experts in 2022, in particular the collaboration started with the ILO, we also take note of reports of continued recourse to practices of forced labour by the State in the cotton harvesting sector. In light of the discussion we have had on this case in this Committee, the Employer members request – even urge – the Government to first of all, pursue its efforts to ensure the complete elimination of the use of compulsory labour of public and private sector workers, as well as students in cotton production. Secondly, continue engaging in cooperation with the ILO and independent social partners, to ensure the full application of the Convention in practice, including within the framework of the Roadmap for Cooperation between the ILO and the Government. Thirdly, and lastly, provide information on concrete measures taken in this respect, including on all activities indicated in the Roadmap.

We trust that the Government will implement such recommendations in a timely manner, to achieve full compliance with the Convention, both in law and practice.

Conclusions of the Committee

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

While taking due note of the Government's explanations regarding collaboration with the ILO to address the issue of forced labour in cotton harvesting, the Committee deplored the persistence of the widespread use of forced labour in relation to the annual state-sponsored cotton harvest in Turkmenistan and the Government's failure



to make any meaningful progress on the matter since the Committee discussed the case in 2016 and 2021.

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

- ensure the full implementation of the Committee's recommendations of 2021 and of the roadmap for cooperation between the ILO and the Government;
- reinforce its efforts to ensure the complete elimination of the use of compulsory labour of public and private sector workers, as well as students, in state-sponsored cotton production by developing, in consultation with the social partners and in the context of the ongoing ILO assistance, an action plan aimed at eliminating, in law and practice, forced labour in connection with state-sponsored cotton harvesting, and improving recruitment and working conditions in the cotton sector in line with International Labour Standards;
- eliminate the compulsory quota system for production and harvesting of cotton and ensure that no one is threatened with punishment for the lack of fulfilment of production quotas in line with the Convention;
- issue clear instructions on the prohibition of the use of forced labour and strengthen labour inspection and law enforcement;
- prosecute and sanction appropriately any public official who participates in the forced mobilization of workers for the cultivation or harvest of cotton;
- ensure that, in line with the Convention, the State of Emergency Act, the Emergency Response Act, the Act on preparation for and carrying out of mobilization in Turkmenistan and article 19 of the Labour Code are not used as a legal basis or pretext for forced labour;
- promote social dialogue in cotton production and continue engaging in cooperation with the ILO and relevant organisations of workers and employers to ensure the full application of the Convention in practice, including within the framework of the road map and to monitor and document any incidences of forced labour in cotton harvest without fear of reprisals.

The Committee requests the Government to provide a report containing information on concrete measures taken, including on the activities indicated in the road map, and respective progress made, to the Committee of Experts by 1 September 2023.

Government representative – I would like to take this opportunity to express gratitude to all participants on the case of Turkmenistan including the social partners and representatives of Governments and non-governmental organizations. We take note of the conclusions and express our willingness to cooperate with the social partners and the ILO on the legislation relating to the application of the Convention and its application. I would like to reiterate that the Government of Turkmenistan has already done and will continue to make a great effort to apply the Convention in law and in practice.

With regard to the Rules of Procedure of the Committee, we would appreciate the communication of the text of the draft conclusions well in advance and not one hour before their adoption in order to give the Government the possibility to fully review the document and its implications for our domestic and international obligations.



Once again, we would like to note that the comments on the broad use of forced labour in the cotton harvest are unfounded. We note, unfortunately, that the Committee has not taken into account the great efforts made by Turkmenistan with regard to the mechanisation of the cotton harvest and the elimination of forced labour, including child labour.

In conclusion, once again, I would like to reassure the Committee that the Government is looking forward to regular and systematic cooperation with the ILO in order to effectively implement the measures provided for in the road map in 2023 and on a longer-term basis.

United Kingdom of Great Britain and Northern Ireland (ratification: 1949)

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

Written information provided by the Government

1. The Committee expects that the enquiry will be concluded in the very near future and requests the Government to provide information on any conclusions arrived at in relation to the above-mentioned allegations.

The Undercover Policing Inquiry's investigations are ongoing and it would therefore not be appropriate for the Government to comment further at this time. The Inquiry will publish its interim report for Tranche 1, the first three sets of evidence hearings, on 29 June 2023. The full details of the Inquiry's approach and plans, including summaries of evidence hearings and a timetable of its milestones, can be found on its website.

2. Article 3 of the Convention. Right of workers' organizations to organize their activities and formulate their programmes. The Committee trusts that this work will be finalized without further delay and that the Government will provide information thereon in its next report.

The Government is now finalizing its consideration of Sir Ken Knight's recommendations on electronic balloting for trade union industrial action ballots and will respond in due course. We are unable to provide more details to the Committee at this stage, before our consideration and our response are complete.

3. The Committee urges the Government to review section 3 of the Trade Union Act with the social partners without further delay in order to ensure that the support of 40 per cent of all workers is not required for a strike ballot in the education and transport services.

The Government intends to commence the review of the Trade Union Act shortly. This will include reviewing the ballot thresholds. The review of the Act will consider the views of social partners. We anticipate that this review will conclude in time for the next UK report to the ILO.

4. The Committee once again requests the Government to provide information on the application of this notification in practice, including any complaints made in relation to the handling of this information or its impact on lawful industrial action, and any information on the blacklisting of individuals engaged in lawful picketing. It also requests the Government to provide information on the additional restrictions planned, if any.

The Government reiterates the response it provided last year. The Government intends to commence the review of the Trade Union Act shortly which we anticipate will conclude in time for the next UK report to the ILO. The review of the Act will consider the views of the social partners. The questions asked by the Committee of Experts will be considered as part



of that review. The Government would like to stress that blacklisting is completely unacceptable and has no place in modern employment relations in the UK. The Employment Relations Act 1999 (Blacklists) Regulations 2010 made it unlawful for an individual or organization to compile, sell or make use of a blacklist of trade union members or those who have taken part in trade union activities.

5. *The Committee requests the Government to provide its comments on the Trades Union Congress (TUC) observations, as well as detailed information on the reform implemented with regard to the Certification Officer's new investigatory powers, financial penalties that may be imposed, the amount of any penalties that have been imposed since April 2022, and the ceiling on the levy introduced.*

Certification Officer reforms: The Government implemented the Certification Officer reforms in April 2022. There were three aspects to these reforms, as follows:

Enhanced investigatory powers: Until April 2022, the Certification Officer (CO) could only make enquiries following a complaint from a trade union member. Since April 2022, the CO has been given further investigatory powers in relation to political funds, union mergers, internal leadership elections and appointing or failing to remove from a union office a person who has been convicted of certain financial offences. The CO now has the power to appoint an inspector and request documents and information. The CO is also able to investigate without a formal complaint being made, including in response to information and concerns raised by third parties.

There are important safeguards. Under the Trade Union Act, the CO will only be able to request the production of documents where there is a good reason to do so and will only be able to appoint an inspector where a higher test has been met; that is, the CO must have reasonable grounds to suspect that a union has failed to comply with a statutory duty. As a public authority, the CO is required to act reasonably. Where representations from third parties are groundless or vexatious, the Government would not expect the CO to spend much time on these. The CO will also be required to give a union the opportunity to make representations before taking any enforcement action.

Though the Government would expect unions to cooperate as a matter of course with the CO's investigations, should a union believe that a request for documents is unreasonable or that the CO is acting unreasonably, it can challenge the investigatory process by seeking a judicial review. Alternatively, should the CO need to enforce a request for documents, and so on, then the CO will need to demonstrate to the court that they have acted reasonably.

Financial penalties: Where the CO has the power to issue enforcement orders, she is now able to impose financial penalties and conditional financial penalties. Details of the financial penalty amounts are set by regulations, within the maximum (£20,000) and minimum (£200) limits set out in the Act.

The regulations divide the statutory obligations placed on unions into three broad groups, according to importance, and set the maximum financial penalty that may be imposed for each group. The minimum financial penalty for all groups is £200. The CO is able to set the penalty anywhere within these ranges, depending on the circumstances.

"Level 1" financial penalties relate to obligations regarding political funding, the management of political funds, the proper conduct of union elections and personal propriety considerations (for example, making sure no one who has a criminal record serves in a senior union position). The maximum financial penalty for Level 1 is set at £20,000.



“Level 2” financial penalties relate to the obligation to keep a union’s membership register up to date. The maximum financial penalty for Level 2 is set at £10,000.

“Level 3” financial penalties relate to obligations for unions to comply with a member’s request for access to accounting records, to provide the requisite details in their annual return to the CO and to comply with investigatory requirements. The maximum financial penalty for Level 3 is set at £5,000.

For each group, the regulations halve the maximum penalty for unions whose membership is less than 100,000. If a financial penalty is imposed on an individual (such as for failing to comply with investigatory requirements), the maximum penalty is set at £1,000.

An organization may appeal an enforcement decision by the CO to the Employment Appeal Tribunal. The Trade Union Act 2016 also provides for greater judicial oversight of the CO’s decisions by allowing appeals on points of fact as well as law and, crucially on the reasonableness of any financial penalty imposed.

The CO has confirmed that at the time of writing, no financial penalties have been issued under her new enforcement powers.

Levy: The introduction of a levy will bring the CO in line with a number of other regulators, such as the Pensions Regulator and the Groceries Code Adjudicator. The Government has taken steps to ensure the levy is fair and affordable. This includes provisions for exempting lower-income organizations from the levy entirely, and ensuring no organization pays more than 2.5 per cent of its income. In implementing the levy, the Government decided that it will also continue to fund variable costs of the CO, ensuring that the levy is stable. This will help trade unions when budgeting for the levy by preventing large, unexpected increases.

The levy regulations provide that an organization has an obligation to pay the levy once they receive a notice from the CO. They provide for when each year’s notice may be issued, from when a new organization may be considered in scope to be charged and the information that the CO needs to include in the notice.

They identify the expenses which the CO may recover for the levy. The cost of any external inspectors or external legal advice is excluded (so will continue to be funded by Government). Both anticipated and actual expenses may be considered when calculating the levy, provided they are in respect of the financial year to which the levy relates.

The regulations set the rules within which the CO must set the specific levy amounts. The regulations provide for the following:

- The CO must aim to ensure the total amount levied over any three-year period does not exceed actual expenses.
- The CO must aim to ensure the total amount levied on a category of organization (federated trade union, non-federated trade union, federated employers’ association or non-federated employers’ association) broadly reflects the cost of the functions that each category uses. This is because the CO’s functions are focused on different categories of organization; for example, investigations are currently only carried out on non-federated unions, while the administration of annual returns covers all organizations. In practice, the CO will be able to combine categories if they broadly use the same functions.
- For each category of organization, the regulations stipulate that the CO must aim to establish organizations that are exempt from the levy, and then two levels of levy. In this



way, the CO will establish three income bands for each category (or combination of categories): lower-income organizations that are exempt from the levy, organizations that will pay one level of levy and higher-income organizations that will pay a higher level of levy. There is a further income band for trade unions to take account of the additional services provided by the CO in their regulation. Details on how the levy should be calculated by the CO can be found in the Trade Union (Levy payable to the Certification Officer) Regulations 2022.

- No organization can pay more than 2.5 per cent of its income.

It is for the CO, the regulator of trade unions and employer associations, to set the levy amounts and income bands within the framework of the CO levy regulations.

The CO has recently issued a levy notice that relates to the first levy period, running from 1 April 2022 to 31 March 2023. In that period, the CO eligible expenses were £656,672. The notice sets out the amounts payable as follows:

- All trade unions, federated trade unions and employers' associations with an annual income under £81,574 are exempt from paying the levy.
- Every organization with an income over £81,574 will be liable for the basic levy of £2,039.35.
- All trade unions (except the three federated trade unions) with an income exceeding £191,019 will also be liable for the additional levy of £2,736.13 per organization; this means that trade unions charged the basic and additional levies will pay a total of £4,775.48.
- Employers' associations and federated trade unions with income over £151,657 and trade unions with an income exceeding £261,103 will also be liable for the enhanced levy of £1,752.08. This means that trade unions paying the basic, additional and enhanced levies will be charged a total of £6,527.56. Employers' associations and federated trade unions paying the basic and enhanced levies will be charged a total of £3,791.43.



Discussion by the Committee

Chairperson – The third and last case on our agenda today is the United Kingdom of Great Britain and Northern Ireland on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). We have more than 17 delegates registered to take the floor; therefore, the reduction of time from 5 to 3 minutes will apply to the delegates concerned. I now invite the Government representative of the United Kingdom to take the floor.

Government representative – On behalf of His Majesty's Government, I am pleased to present the formal response of Great Britain to the Committee concerning Convention No. 87 on freedom of association and protection of the right to organize.

Let me begin by reiterating the United Kingdom's commitment to this process. I would like to thank the Committee of Experts for its careful consideration of our legislation as it relates to the Convention. As a nation committed to upholding and advancing international labour standards, domestically and globally, the United Kingdom highly values the role of the ILO. Most recently, for example, we have led the way in negotiating and ratifying the Violence and Harassment Convention, 2019 (No. 190) – the first international treaty to recognize the right of everyone to work free from violence and harassment. Protecting and enhancing workers' rights whilst supporting businesses to grow, and balancing the interests of the wider public, is a key priority for this Government. We are seeking to find the right balance

between workers' and unions' rights on the one hand, and the rights of employers and members of the public on the other. This is a principle that is well understood and in line with international Conventions.

The United Kingdom is confident that the balanced reforms under the Trade Union Act 2016 are in line with our international obligations on trade union rights. Specifically, our introduction of ballot thresholds, requiring at least 40 per cent support for striking in important public services, addresses the fact that industrial action affects large numbers of members of the public who do not get a say in a strike ballot and are not associated with the relevant trade dispute. The United Kingdom is seeking to balance the rights of people who take industrial action and those who are affected by that action. The Trade Union Act aims to modernize industrial relations whilst promoting a more effective, collaborative approach to resolving industrial disputes.

As there are widespread consequences for the public when industrial action adversely affects public services, the Trade Union Act establishes that strikes in specified "important public services" require the support of at least 40 per cent of those who voted, with a 50 per cent turnout requirement on strike ballots. This is to ensure that where industrial action takes place it has the necessary democratic legitimacy and enjoys the clear support of union members.

The Trade Union Act does not intend to, nor does it, prevent industrial action. Rather, it ensures that there is a reasonable level of participation and support to the benefit of union members, employers, and members of the public. We welcome the opportunity to address the issues raised in the Committee of Experts' observations, and will now do so in turn:

First, the Committee of Experts followed up on their previous request for the Government to comment on the allegations relating to police surveillance of trade unions. The Undercover Policing Inquiry is ongoing, and so it would be inappropriate for the Government to comment further at this point. The interim report for Tranche 1 of the inquiry will be published later this month, on 29 June 2023.

Second, the Committee of Experts previously requested an update on the measures taken to facilitate electronic balloting. The United Kingdom has said it agrees in principle with the concept of electronic balloting, however, it has concerns about some practicalities. We need to be satisfied that any method of electronic balloting ensures that those entitled to vote have an opportunity to do so, that votes cast are secret and are secure and that the risk of any intimidation, unfairness or malpractice is minimized. The United Kingdom has set up an independent review of electronic balloting for industrial action ballots. We consulted a group of experts and held a round table with trade unions following the review on 23 January 2020, seeking their views on the independent review's recommendations. The United Kingdom is now finalizing its consideration of those recommendations and will respond in due course. I am sorry, therefore, that at this point in time I am unable to provide more details to the Committee.

Third, I can confirm that the United Kingdom intends to commence a review of the Trade Union Act shortly. This will include reviewing the ballot thresholds. The review of the Act will include consultations with social partners. We anticipate that this review will conclude in time for the United Kingdom's next report to the ILO.

Fourth, I would like to stress that the United Kingdom takes the firm view that blacklisting is completely unacceptable and has no place in modern employment relations. The 2010 blacklisting regulations make it unlawful for an individual or organization to



compile, sell or make use of a blacklist of trade union members or those who have taken part in trade union activities. The review of the Trade Union Act will shortly include a review of picketing requirements. I can confirm that questions asked by the Committee of Experts will be incorporated as part of that review, which we anticipate will conclude in time for the United Kingdom's next report to the ILO.

And finally, in April 2022, the United Kingdom implemented reforms to the role of the Certification Officer, who is the regulator of trade unions and employer associations. The review of the Trade Union Act will shortly include a review of picketing requirements. I can confirm that questions asked by the Committee of Experts will be incorporated as part of that review, which we anticipate will conclude in time for the United Kingdom's next report to the ILO.

To conclude, the United Kingdom is confident that the provisions in the Trade Union Act pursue a balanced approach and are reasonable and proportionate. The Act strikes a fair balance between the rights of unions and their responsibilities and modernizes trade union law to the benefit of everyone. We look forward to hearing the views of the other Governments, the United Kingdom's Worker and Employer delegations and other Employers' and Workers' representatives during this session. I conclude my opening remarks at this point.

Worker members – In this 75th year of the Convention, it is worth noting that the United Kingdom was the first ILO Member State to ratify it and that our Committee last examined the United Kingdom's application of it in 2016.

No significant improvement has been recorded since. On the contrary, there has been an acute decline ever since, and this raises serious concerns. While the Government has provided some information to the Committee of Experts on the covert investigatory powers of the police and details of ongoing audits and enquiries, it has failed to comment on the specific allegations made by the Trades Union Congress (TUC) in relation to police surveillance of trade unions and trade unionists. As the Metropolitan Police's own records show, the United Kingdom has a long history of covert surveillance of trade unions, and for this reason alone the Government must address the TUC's concerns in full.

Turning to electronic balloting for industrial action, we regret that no progress has been made since we last discussed this in 2016. Unions are prohibited from using means other than postal ballots, such as workplace or electronic voting. This is in spite of unions increasingly using electronic balloting technology for indicative votes on pay claims, for instance. Six years on from a review of e-balloting that recommended pilots as a first step, there has been no formal response to the review.

The fact that unions are required to give seven days' notice of balloting and then spend time conducting a postal ballot gives a huge amount of time for employers to take measures to reduce the impact of industrial action, and we understand that ministers are proposing now further procedural requirements which would further hinder unions' ability to take effective industrial action. Is it conceivable that in 2023 trade unions only have the option of postal ballots?

Moving on to the Trade Union Act, we deeply regret that the Government has failed to review section 3 of the Act to ensure that the support of 40 per cent of all workers is not required for a strike ballot in relation to education and transport services, which are, of course, non-essential sectors in the strict sense of the term. Not only has the Government



ignored the Committee of Experts, but ministers have also indicated an intention to raise the threshold from 40 per cent to 50 per cent and extend it to all sectors.

In relation to picketing, the Government has again failed to provide the information requested by the Committee of Experts. The picketing requirements under the Trade Union Act discriminate by placing obligations on trade unions that other organizations do not face. In particular, unions are required to disclose the identity and contact details of activists to the police, which may expose them to blacklisting. Given the history of blacklisting in the United Kingdom, this remains a significant risk, and we are also concerned by ministers' stated plans to place additional restrictions on picketing by setting a limit of six pickets at points of "critical national infrastructure". All this at a time when further legal restrictions have been placed on the right to protest. These restrictions on freedom of expression, assembly and association are excessive to say the least.

With respect to the powers of the Certification Officer, who is responsible for statutory functions relating to trade unions and employers' associations, the Government has again failed to review the impact of these provisions with the social partners, as called for by the Committee of Experts. Not only did the review not take place with the social partners in 2021, but the Certification Officer was also given additional powers. These new powers could end up causing unions to get tied up responding to complaints made by hostile employers or campaign groups, particularly during industrial disputes. New investigatory powers will also allow the Certification Officer to demand documents with sensitive information on the slimmest of basis.

Protection for trade union members who take lawful industrial action only extends to 12 weeks, with no guarantee of reinstatement and no prohibition on hiring replacements. Despite an explicit request by the Committee of Experts, the Government has not reviewed sections 8 and 9 of the Trade Union Act. To add insult to injury, last year the Government adopted legislation allowing employment businesses to supply agency workers to replace workers taking industrial action in non-essential sectors, overturning a practice that had been banned since 1973.

It is worth noting that this change was opposed by both employment agency businesses and trade unions alike. There is simply no defensible reason to repeal the ban on using agency workers as strike-breakers. Allowing it could have no other purpose than to weaken and to prevent workers from exercising their right to take action. It would also make it far more difficult for parties in a dispute to resolve their differences and create resentment among workers which would last long after the dispute had ended. It would also put agency workers in a difficult, if not impossible, position.

If the current restrictions were not restrictive enough, a bill requiring minimum services in certain sectors is currently being debated in the Houses of Parliament. The Minimum Services Bill covers the same list from the Trade Union Act corresponding to the important public services. This legislation gives a Secretary of State unlimited power to determine what a minimum level of service should be in these sectors and therefore the circumstances in which, and the extent to which, workers in these sectors can exercise their right to strike. If a strike takes place, an employer will have the power to requisition workers and issue "return to work" orders. The legislation would also remove significant protection for individual workers, exposing them to the risk of dismissal and victimization.

Trade unions will also be required to take reasonable steps to ensure that workers comply with the work notice. This means that unions will be required to take steps to undermine their own actions, not to mention in sectors like rail, where most workers have



some critical safety elements to their roles and rely on close teamworking with colleagues to deliver services. Compelling staff to cross picket lines or be dismissed will bring increased risks because a workforce that depends on cooperation for safe working could be demoralized and divided.

Finally, we also note the TUC's serious concerns relating to the inadequacy of the compensatory mechanisms in place for prison workers and the denial of trade union access by enterprises in the hospitality and other sectors which undermines the right to organize under the Convention.

We urge the Government to halt the introduction of new anti-trade union legislation and immediately undertake a thorough review of its law with the technical support of the ILO in order to ensure full compliance with the right to freedom of association and the right to organize under the Convention. As I said earlier, the first country to ratify this Convention was the United Kingdom, so we would welcome exemplary behaviour from it.

Employer members – The Employer members stress the importance of States' compliance with the Convention, which, as we know, is one of the ten fundamental Conventions.

The United Kingdom, as we have just heard, was the first to ratify the Convention in 1949. We note that, so far, the Committee of Experts has provided 21 observations since 1989. Today is the tenth time that the Committee has examined the application of the Convention by the Government of the United Kingdom; the last time was in 2016. Since the Committee's last discussion, the Government of the United Kingdom has undergone a number of leadership changes, something which is not always conducive to systemic stability. Nevertheless, the United Kingdom has long-established and adequate frameworks that allow for matters covered by the Convention to be managed. There are several technical issues relating to this case.

In its 2023 report, the Committee of Experts repeated their earlier request to the Government to review section 3 of the Trade Union Act with the social partners to ensure that the requirement of the support of 40 per cent of workers in strike ballots did not apply to the education and transport sectors. We note that the Government had provided written information to the effect that the Act, including in relation to the ballot thresholds, will be reviewed with the social partners in the future. We urge the Government to complete this work without delay.

We similarly urge the Government to complete the implementation of the recommendations arising from the review of e-balloting conducted in 2017. While, according to the Government, round-table consultations on the recommendations were held with experts and with trade unions, there is otherwise little apparent progress. The Government has indicated that details will be provided after the finalization of its consideration of the recommendations. This should occur without further delay.

Last year, the Committee of Experts requested the Government to provide information on the practice of notifying the police of the identity of activists, the details of any complaints regarding the handling of this information or its impact on lawful industrial action; and information on the blacklisting of individuals engaged in lawful picketing. The Employer members note the Government's indication that the Trade Union Act, including provisions on picketing requirements, will be reviewed in the future, and that the Government will take into consideration the comments of the Committee of Experts. The Employer members echo this request and ask that the Government provide information on the TUC's allegations on the



progress of this review and whether or not there are any additional restrictions being planned.

On a more general level, let me be very clear about what is stated in Article 3 of the Convention:

“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.

The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof”.

This is the most important element of the Convention, and it is the one that underpins all of the rights that flow from it. However, as for the rest of the observations insofar as they affect or relate to the right to strike, we would remind you that the Employers and many governments, including those on the Governing Body, have on numerous occasions stated that a right to strike is not regulated in, and is not part of, the obligations under the Convention. This being so, we would simply point out that the Government is not actually obliged to take actions requested by the Committee of Experts that are not backed up by the provisions of the Conventions it has ratified. That said, there is nothing wrong with the Government reviewing its own policies on such matters, but any such work should be carried out via social dialogue with the social partners.

Employer member, United Kingdom of Great Britain and Northern Ireland – The UK Employers note the multiple different issues that have been raised in this case both by the Committee of Experts and by Worker members. Unlike many cases heard in the Committee, this one appears to be an effort to encourage the Committee to draw broad conclusions about the practice of freedom of association in the United Kingdom based on a wide range of observations, rather than one specific complaint. That is not a criticism, but it does make the work of the Committee more complex and raises the prospect of the supervisory mechanism being drawn into multiple areas, where the picture may vary.

With that caution in mind, we wish to make the following observations. Let us begin with the obvious. Trade unions have been recognized as lawful in the United Kingdom for over 150 years. As has already been noted, the United Kingdom had no problem ratifying the Convention. The United Kingdom has a strong and free trade union movement and frameworks that allow for the matters covered in the Articles of the Convention to be complied with.

We also note the increased prominence of trade unions in our national debate over the cost of living. The UK Employers’ core position, therefore, is that there is no fundamental issue with the application of the Convention in the United Kingdom. There are, however, some specifics of the case where we feel there may be merit, and I will come to these later. Before we do that, we wish to recall discussions in previous years on the issue of the Committee of Experts making observations regarding the right to strike in the context of the Convention. It is not necessary to repeat those at length, but we will limit ourselves to noting that:

- There remains no consensus as to whether the Convention includes a right to strike. The Employer group position on this is well-known, and we align with the position expressed a moment ago by the Employer Vice-Chairperson, particularly in relation to conclusions from this Committee.



- We do support the consensus between the social partners, as expressed in their joint statement of February 2015, that: “[t]he right to take industrial action by workers and employers in support of their legitimate industrial interest is recognized by the constituents of the ILO”.
- The position held by many in the Government group has been that the right to strike is to be regulated at the national level. We agree with this, and we note that the national-level regulation of the right to strike in the United Kingdom has not stopped the past year having the most strike days of any year of the previous 30.
- We express our concern again at the fact that the Committee of Experts continues to make observations on the right to strike under the heading of the Convention and urge the Committee of Experts to reflect upon the tension that such observations continue to create given that it has led the Governing Body to consider a new Article 37(1) of the ILO’s Constitution referral process to definitively determine this issue.

The work of the Conference Committee is the apex of the ILO supervisory machinery. We believe it is of critical importance that the Committee of Experts, the social partners and Governments continue to affirm and take steps to ensure that this role is not replaced by referral to the International Court of Justice.

We draw the Committee’s attention to the comments of the (then) Employer Vice-Chairperson of this Committee at paragraph 20 of the General Report. We align ourselves with this view and underline the importance of not creating new obligations that are not reflected in the text of the Conventions. We regard the elements of this case concerning the existence of strike ballot thresholds and industrial action e-balloting as being right-to-strike issues, and we anticipate that there will not be a conclusion on these matters in line with convention within the Committee.

But I turn now to matters more specifically related to freedom of association and protection of the right to organize as set out in the Convention. Like our Worker colleague from the United Kingdom, we agree that the regulation of trade unions and employers’ organizations by Governments must be balanced. We note with interest the points that have been raised by the Worker members on the surveillance of unions and the potential link to more recent legislation around protests. We believe more information from the UK Government on these issues – including the reporting of the results of any reviews in a timely fashion – would be worthwhile.

Likewise, a number of points raised in the Committee of Experts’ observations reflect a concern that the UK Government may over-reach itself in trying to regulate free associations, in this case of workers – but the same could equally be said of employers’ organizations. We note the lack of progress on decisions around e-balloting for internal union elections and the concern raised about the scope of the powers given to the CO. These are both areas which would benefit from further social partner discussion at the national level and reporting by the UK Government to the ILO supervisory structures. In both of these areas, we do not necessarily agree with the position of our Worker colleagues from the United Kingdom, but they are proper grounds for national social partner discussions, and these have not meaningfully taken place. The UK Government should rectify this.

There are other examples of this lack of consultation. The Worker Vice-Chairperson mentioned one of them. In the summer of last year, the UK Government removed the ban on agency workers replacing striking workers without consultation of the relevant trade union or sector employer bodies. This happened despite the domestic law requiring that



consultation to happen and is now subject to a judicial review in a UK court. A decision is pending on that.

The Worker Vice-Chairperson also mentioned some further issues not included in the Committee of Experts' observations. I have already referred to one that may come up, being the agency workers and strikes issue. The other major one is the current Minimum Service Levels Bill. We note that this is prospective legislation and is still subject to the Parliamentary process. It would not be proper to take a position on it at this time, and its interaction – if any – with the Convention.

Overall, Chairperson, we remain of the view that the Convention, as drafted by the ILO constituents, is correctly applied in the United Kingdom. Countries vary in implementation legitimately. The Employer members accept that the Worker members have tabled some legitimate issues around social partner consultation and certainly we, as UK Employers, accept that, and that regulation and operation of the system in the United Kingdom does merit more domestic discussion and reporting to the Committee. While we do not necessarily share the starting point of the Workers on each of the issues which have been raised, there is room for meaningful discussion and further information from the UK Government, delivered to the supervisory structures of the ILO.

Worker member, United Kingdom of Great Britain and Northern Ireland – Sadly, it is clear that the UK Government sees unions as a problem, not partners. This does not have to be the case, during the pandemic the Government worked with workers' and employers' organizations to create the furlough scheme, which prevented an unemployment disaster. But when it passed, they returned to hostile language and a refusal to consult. They introduce oppressive legislation, on top of the most restrictive trade union laws in Western Europe, that seeks to undermine the fundamental right to strike, interferes with union independence, and they do nothing to promote a climate in which the right to organize can thrive. But, as we sit here in a tripartite committee in the ILO, we would like to remind the Government that we are social partners, not a social problem.

Strikes were at a historical low when the Trade Union Act of 2016 became law, and the United Kingdom ranked well below the OECD average for days lost to strikes. It was introduced to remedy a problem that did not exist. The review of the Trade Union Act promised by the Government comes as a surprise to us, as the information sent to the Committee was the first we had heard about it. It comes just as the Government is trying to push through yet another bill to restrict the right to strike of British workers: another bill which involved no formal consultation with the social partners. What hope do we have, in this context, that any review will be conducted in better faith and with meaningful engagement with workers' and employers' organizations?

The Committee of Experts has repeatedly, since 2016, requested that the Government engages with the social partners to remove ballot thresholds in transport and education, mandated by the Trade Union Act, that require 40 per cent support from all those entitled to vote in a workplace for a strike to be legal. No such discussions have taken place. Ministers instead suggested they might consider raising the minimum threshold from 40 to 50 per cent.

The ILO guidance on interpreting the right to strike is clear: it should not be restricted for non-essential services. But the Government is hazy on ILO guidance. Last year, the Secretary of State for Business announced in Parliament that his proposals for minimum service levels (MSLs) were consistent with ILO rules. But the plans are completely at odds with the Committee on Freedom of Association decisions on MSLs, and ministers ignore the



context of a highly restrictive environment in the United Kingdom. They plan for ministers to determine exactly what the minimum service will be, a centralized power grab that clearly goes against all Committee on Freedom of Association guidance. In their dedication to not speaking formally to unions, they have ensured that their new legislation cannot possibly pass the test of compliance with the Committee on Freedom of Association, and we look forward to submitting a complaint in the near future. And if Government saw unions as partners, not as problems, it would know workers already take steps to ensure that life-and-limb cover is in place during industrial action. Neither workers' nor employers' organizations were adequately consulted before, as my colleague mentioned. The Government abruptly abolished a long-standing prohibition against agency workers being hired to replace strikers. Unions and the employer association for the recruitment industry, issued a joint public statement condemning the law change as "counter-productive, impractical and [putting] workers at risk" our advice should have been sought through formal consultation with the social partners when the idea was first mooted.

Industrial disputes in the United Kingdom are occurring against a backdrop of a cost-of-living crisis unprecedented in recent decades, with inflation averaging over 10 per cent since March 2022.

Union action has won pay rises for workers across the economy that have helped them survive the crisis. Through collective bargaining, firefighters gained a 7 per cent rise. Tanker drivers gained pay rises of 13.5 per cent. Nurses will get a rise of 5 per cent plus a one-off payment of more than £1,500. Lower-paid workers at an insurance firm got 10 per cent rises; more than the better-off after members agreed to prioritize those most in need. Some of these rises were achieved with strikes. Still more were achieved simply because strikes were possible. The alternative to workers exercising their power to increase their share of funds is the recent advice of the Bank of England, which advised British workers to "accept you're poorer."

We know the right of workers to strike is crucial to our ability to refuse to accept that we are poorer, when we know record profits are being recorded in our country. Returning to the MSL Bill – in their desperation to reduce the power of workers to defend their own interests, the Government proposes grossly abusing union independence. To plug obvious gaps in its unworkable law – which the Government's own analysis states will lead to more strikes – the Bill requires unions to take "reasonable steps" to ensure that their members – even those who have voted democratically for strike action – go to work. If they do not, the strike would become illegal, risking ruinous fines for the union: the cap for damages was raised last year to £1 million. And legal protections would be withdrawn from all those taking part in the strike action – whether or not they had been ordered into work.

The 2016 Committee asked the Government to review increased investigatory powers for the Certification Officer – the regulator for trade unions and employer associations – to ensure they were in conformity with the Convention. Although they delayed their implementation for several years, no significant changes have been made. And, once again, no formal consultation with the social partners took place before its surprise introduction in 2021.

We would say the Government was using a sledgehammer to crack a nut, but perhaps in this case they are using a steamroller to crack a sesame seed. Complaints against unions totalled just 30 last year, of which only 4 were upheld. This is the situation that the Government seeks to remedy by introducing a process that will deprive unions of their members' money to the tune of more than £1 million. We fear that could be deliberately used



to tie unions up in time consuming and expensive processes. Promising, as the Government did in its submission to the Committee, that if this happens vexatiously, we can resort to a judicial review – a time consuming and expensive process – is not, perhaps, the reassurance the Government thinks it is. The Convention is very clear: we have the right to elect our representatives without interference. The law – since 1989 – says that all general secretaries, presidents and executive members of trade unions must be elected. Although we should have the right to draw up our own constitutions, as democratic organizations we have no issue with that. However, it goes further and dictates the way in which these elections take place, namely that they should be conducted by post.

The landscape for democratic participation is very different 34 years after this provision was drafted. According to the UK Office of National Statistics, 92 per cent of people in the United Kingdom use the internet. Use of the postal service however is not, for many, a daily experience, and for some it carries many difficulties. It is worth noting that in 2022 the Prime Minister of the United Kingdom was effectively, through a vote of Conservative Party members, elected by an electronic ballot. Subjecting unions to stricter controls than the Prime Minister through an archaic ban on our right to elect our representatives in full freedom is unacceptable. And yet, the Government says of the 2017 Sir Ken Knight review into all forms of union e-balloting, that it “is now finalizing its consideration of [the] recommendations.”

This would be more encouraging if they had not used almost the exact same phrase in a letter to the TUC 14 months ago. Given they have now had Sir Ken’s review for 6 years, we respectfully request that the Government finalizes its considerations with more urgency.

Sadly – as the Committee of Experts note – the United Kingdom has a long and sorry history of surveillance and blacklisting of trade unionists. A welcome inquiry into the issue of “Spycops” infiltrating unions is ongoing.

With this in mind, we hoped to have legislative guarantees that no such interference would happen again. But when the Government introduced the Covert Human Intelligence Sources (Criminal Conduct) Bill (2021), it opposed an amendment specifically excluding trade unions from its main provisions – namely that undercover agents of the security services can be authorized to commit crimes. It is also in view of this that we have concerns over Trade Union Act stipulations that picket coordinators must hand their details to the police, and that the CO can request sensitive documents.

Viewing unions as a problem perhaps explains why the United Kingdom does not take “all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise”, as set out in the Convention. While we note also that the Committee on Freedom of Association has said: “Governments should guarantee the access of trade union representatives to workplaces... so that trade unions can communicate with workers in order to apprise them of the potential advantages of unionization”, in practice in the United Kingdom no such guarantees exist. Paranoia about the intentions of unions, perhaps encouraged by intemperate language of the Government, has resulted in companies in the hospitality and online retail sectors taking extreme measures when they know unions are trying to speak to workers and in one bizarre case, refusing to let real union reps speak to staff, but offering to hire actors to pretend to be union reps to see if workers were interested in unions without actually exposing them to the real thing.

We are frustrated that we have had to return to the Committee to discuss long-standing issues relating not just to the right to strike, but to basic principles of the independence of the social partners.



As the Convention and accompanying guidance make clear, a government's role is to create conditions necessary for workers and employers to form organizations, including by promoting the benefits of doing so. But it is not their role to choose, in any way, what form these organizations decide to take, and it cannot seek to control them. But it can, and should, engage with them, in formal, structured social dialogue, especially on issues connected to the ILO Conventions, including the industrial relations framework in which we operate.

Finally, we hope the UK Government will have listened carefully to our arguments and accept that perhaps there are things it could do better if it was prepared to work with, rather than against, its social partners, and to seek their advice – and that of the ILO – in keeping within the bounds of its international commitments.

Worker member, Italy – The Committee of Experts has shared concerns over the lack of clarity regarding the application of minimum service levels under the Minimum Services Bill. This legislation would place severe and unacceptable restrictions on the fundamental right of a worker to take industrial action to defend their pay and conditions. It would allow the ministers, by regulation, to impose minimum service levels on services within six sectors.

Italian workers believe that negotiation, sectoral bargaining, and social partnership are always the best way of resolving a dispute. In the framework of the UK industrial relations systems, imposed minimum services levels would, instead, aggravate and prolong disputes.

The UK Government has declared that the MSL Bill would align national legislation with that of the other European countries. We would like to disprove this. Unlike workers in the UK, workers in Italy enjoy the protection of national sectoral collective bargaining agreements, setting minimum standards on workers' rights for whole industries, covering more than 90 per cent of the workforce in the public and private sectors. These agreements are underpinned by the freedom to take strike action without disproportionate restrictions.

In fact, in Italy Law No. 46 of 1990 provides a general definition of the concept of "essential public service", by focusing on the list of personal rights that should be unfailingly guaranteed through the provision of essential public services. But it is the social partners, through collective agreements, that define the list of minimum services during industrial action. In the event of a disagreement, a national and independent committee examines and assesses breaches of the provision after having heard social partners.

As enshrined in the Convention and clearly outlined in the digest of the cases of the ILO Committee on Freedom of Association, "the determination of minimum services and the minimum number of workers providing them should involve not only the public authorities, but also the relevant employers' and workers' organizations".

We therefore urge the UK Government to repeal the Minimum Services Bill and create an environment where social partners can discuss and negotiate the terms of the industrial action in a climate free from interference and intimidation.

Worker member, Spain – I am also speaking on behalf of the General Federation of Labour of Belgium. The United Kingdom has some of the harshest anti-union legislation in Western Europe, meaning that workers in the United Kingdom cannot exercise their legitimate right to protest in the manner they deem appropriate. Moreover, we can see how this Government wishes to curtail that right even further and limit the capacity for action of representatives of the working class, that is, their trade unions, prompting the Conference Committee to make numerous requests of the executive of the United Kingdom, including in relation to the Trade Union Act.



It is shameful to witness realities such as blacklists, which, unfortunately, this Committee has addressed on other occasions. Blacklists like those seen in Guatemala, in Colombia, in Belarus. Blacklists like those used in Spain by the dictatorship that forced my organization into exile. Blacklists that sully the Declaration of Philadelphia as recalled in the Preamble to the Convention, which states that “freedom of expression and of association are essential to sustained progress.”

In this seat of tripartism, of negotiation and of agreement, at the ILO, it is difficult to understand a Government that legislates unilaterally on key labour relations matters, including industrial action, without considering the opinions of the stakeholders, avoiding the social dialogue that brings such excellent results, even in relation to such a sacred fundamental Convention as this one. As rightly expressed by the Director-General of the ILO on this very case, social dialogue is particularly important during the current economic downturn. Here we can see exactly the opposite approach.

Form is content. The way in which authority is asserted expresses will. I mentioned some bad examples earlier, now allow me to talk about some good ones, about how in Spain we have succeeded, through tripartite social dialogue, in rolling back pernicious legislation such as laws that also criminalized strikes. Again, I emphasize the value of the words of the Director-General, Mr Hounghbo, to describe how in a series of interconnected crises such as those that we have experienced in my country, not only have we survived, but we have made progress. Negotiating, with the will of the constituents, working together to secure success and social justice.

The desire that we can see to limit the right to strike and weaken the rights of persons who exercise that right jeopardizes the Trade and Cooperation Agreement between the United Kingdom and the EU which requires respect for freedom of association. That Agreement requires the UK Government to fulfil its obligations towards the ILO and the Council of Europe. Should it fail to do so, there will be very negative consequences for businesses and for jobs. Despite the benefits of negotiation, in this case the Government has opted for a vacuum.

This case, which relates to the violation of a fundamental Convention, should serve to encourage the UK Government to put things right and support the spirit of the ILO to promote the progress, peace and social justice that it itself decided to ratify almost 100 years ago.

Employer member, United States of America – Let me please begin by noting my sincere appreciation for the rich and diverse comments and written submissions in this case. I will keep my comments both brief and targeted. This case involving the United Kingdom raises a well-worn matter: whether the right to strike is contained within the text or understanding of Convention No. 87. We wish to reiterate the reality that the text of the Convention does not contain any rules, nor any mention at all, of the right to strike. We also wish to note the reality that including language on the right to strike was quite clearly contemplated by the Convention’s drafters and also that those drafters made the unequivocal and considered decision to leave out any mention of the right to strike in the Convention.

As the applicable report from the 1948 ILC states: “the proposed Convention [87] relates only to the freedom of association and not to the right to strike, a question which will be considered in connection with Item VIII (conciliation and arbitration) on the agenda of the Conference. In these circumstances it has appeared to the Office to be preferable not to include a provision on this point in the proposed Convention concerning freedom of



association". The text and legislative history of the Convention are thus eminently clear: the Convention does not, and deliberately so, include the right to strike because, as the Government group shared in their position statement of March 2015, "[t]he scope and conditions of this right are regulated at the national level."

We note our agreement with the Government group. We also thus must recall our disagreement with the Committee of Experts' views concerning the Convention and the right to strike. National governments can, and should, legitimately determine their own approach to the right to strike, freely guided by their national needs and priorities, and not be held to follow the Committee of Experts' recommendations. This right need not, and should not, be prescriptive at the global level, as national governments should – consistent with their sovereign authority – craft regulation that honours this right in a manner that best suits their domestic contexts and within the confines of existing law and practice.

Worker member, Canada – I am speaking today on behalf of the Commonwealth Trade Union group in addition to Canadian unions. Convention No. 87 is vitally important to ensuring the right of workers' and employers' organizations to arrange and administer their internal affairs without interference from the public authorities. Despite assurances of the Government, we remain concerned with the potential for interference in the internal affairs of trade unions contained in the expanded investigatory powers of the Certification Officer.

The Officer's investigatory powers will now extend to political funds, union mergers, internal leadership elections and appointing or failing to remove from union office a person who has been convicted of specific financial offences. We note that the Officer can investigate without a formal application or complaint being made, including in response to information and concerns raised by third parties. We are concerned that this provides an opportunity for groups motivated by political animus towards unions or individual union leaders to harass and compel unions to expend energy and resources responding to complaints, particularly, during legitimate industrial disputes. The appointed inspector can require the production of any documents and information the inspector believes may in some way, be relevant to union compliance with an obligation.

We are also concerned that the new levy imposed on unions to cover the expenses of the Officer creates perverse incentives that promote interference in internal trade union affairs. Since the levy is structured to cover the Officer's expenses, the level and rate of increase of resources available to hire staff, pay remuneration and provide accommodation, equipment and other means are directly tied to the number of investigations undertaken. The Government also allows financial penalties of up to £20,000 to be summarily imposed in the case of statutory breaches. There are no published criteria for the specific level of penalties to be imposed, with this left completely to the discretion of the Officer.

These changes were implemented in April 2022, without warning and after minimal engagement with social partners. We call on the Government of the United Kingdom to engage with the social partners without delay in order to address these concerns and to ensure the Government fully complies with its obligations under the Convention.

Worker member, Finland – I have the honour to speak on behalf of the Nordic trade unions. Unfortunately, the issues under the scrutiny of this Committee today are nothing new. The case covered by the report of the Committee of Experts continues the sad story of anti-union legislation, obstacles for genuine collective bargaining, excessive regulation of industrial actions and even hostility on the part of the authorities towards trade unions, the same story we have been hearing from over the years.



Many of the points raised by the Committee of Experts deserve attention in their own right. For example, the Government recently increased the maximum amount of fines that can be imposed on unions in relation to strikes that are considered unlawful, in a manner that can only be described as excessive. Fines up to £1 million are more than capable of generating an intimidating effect and inhibit legitimate trade union activities.

Nevertheless, here I would specifically like to address one key aspect of the freedom of association, that is, the consultation of trade unions – or in this case, the lack of it.

As it has been emphasized by the Committee on Freedom of Association on multiple occasions, the freedom of association should not be interfered with by States. At the very heart of the right is that the social partners should be able to carry out their activities in full freedom. What can, and should, be encouraged by the States is the principle of consultation and cooperation between public authorities and employers' and workers' organizations alike. The most representative employers' and workers' organizations should be consulted at length on matters of mutual interest, including everything relating to the preparation and application of legislation concerning matters relating to them.

This is something we in the Nordic countries are very accustomed to. We share a common experience that genuine trust between the social partners and the Government, along with the enabling atmosphere for collective bargaining, is something that should be pursued instead of being discouraged. Genuine consultation of social partners and mutual respect among all parties is not a threat. It is an opportunity.

Therefore, we are deeply worried about the prevailing circumstances in the United Kingdom. The retained EU Law Bill, which was enacted without a due consultation process, allows for the deletion of secondary legislation derived from EU law with little Parliamentary oversight or influence – not to mention any consultation or direct engagement with the social partners. A significant part of the legislation that is now set out to be brutally eradicated or rewritten deals with matters affecting trade unions: consultation and union recognition in relation to collective redundancies and transfers of undertakings, just to name a few.

What we find the most concerning is that if such plans are set into motion without due concern for proper consultation with the social partners, such excessive reforms will easily result in incompatibilities with ILO Conventions. We urge the Government to proceed with ultimate caution and to ensure that fundamental rights of workers are still complied with.

Worker member, United States of America – In the United Kingdom unions are legally required to conduct key votes, such as elections of union leaders and whether to take industrial action, by postal ballot alone. As the Committee of Experts' report notes, this restriction is plainly at odds with Article 3 of the Convention which "guarantees the right of workers' organizations to select their representatives in full freedom, organize their activities and formulate their programmes". In our modern digital age, there is no reasonable justification for maintaining this antiquated restriction on unions' internal balloting procedures. The postal ballot requirement also suppresses turnout among young workers or those who are simply away from home for long periods of time. A 2017 government-commissioned review recommended a pilot e-balloting programme, but the UK Government has yet to take any action despite repeated calls by the Committee of Experts.

I would also like to address the steady stream of anti-union comments that have come from high-ranking officials in several UK Governments over the past few years. In response to UK trade unions exercising their legal right to strike, several ministers have publicly compared trade unions to terrorists "holding the country hostage" or gangsters "bribing"



their members to go on strike. Chair, this kind of anti-union rhetoric poisons the well of social discourse and undermines the spirit of the Convention.

The Sunak Government would do well to end the name-calling and legislative attacks and instead treat UK trade unions like the essential social partner they are. In the United States, we have seen the benefits of a different approach first-hand. The Biden Administration has created a formal task force to promote worker organizing and collective bargaining across the Federal Government and appointed trade unions to a range of advisory bodies, from trade policy to artificial intelligence. The result has been unmistakably positive, with a rise in public opinion of trade unions and greater willingness by the private sector to engage in social dialogue and collective bargaining. To conclude, we call on the UK Government to adhere to the recommendations in the Committee of Experts' report and abandon any legislative proposals that would undermine workers' fundamental rights under the Convention.

Worker member, Colombia – I am speaking on behalf of the Colombian trade union movement and the Trade Union Confederation of the Americas. We wish to recall that freedom of association is a fundamental right intended to promote and defend workers' economic and social interests.

As a corollary of that fundamental right, striking is a right, not a fact. Democratic States, regardless of their level of development, recognize that conflict is natural in a pluralist society and must not restrict it in an authoritarian manner, but ensure that the mechanisms required to resolve it are in place. That is, they must guarantee workers' and unions' effective exercise of the right to strike, free from sanctions of any kind.

Therefore, given that freedom of association is a fundamental right recognized by international human rights instruments, it is inconceivable that its exercise should be subject to a range of police checks and restrictions that hinder it and instil fear in activists.

Specifically, there is no legitimate reason to subject trade union activities to police surveillance or to require trade union members' identities to be communicated, a practice that could facilitate the use of blacklists and absolute discretion for the public authorities.

Moreover, the Committee of Experts has made repeated observations on the need to review article 3 of the Trade Union Act to amend the requirement for the support of 40 per cent of all workers in strike ballots in education and transport services, which promotes excessive interventionism in the independence of trade union organizations. The UK Government should eliminate these restrictions.

Worker member, Zimbabwe – We are so worried about the intentions of the UK Government to unilaterally make changes to the United Kingdom's strike law by introducing the minimum service regulations. These regulations have the effect of reducing the power of UK workers in making an effective strike. The TUC has estimated that one in every five workers in the United Kingdom will have their right to strike limited. According to the Joint Committee on Human Rights, UK Parliament, "[t]he Strike Minimum Services Bill will place limitations on the right to strike in the relevant services, by requiring that trade unions take reasonable steps to ensure that the persons identified in a work notice given by an employer, do not take part or continue to take part in a strike.

Workers who are identified in a work notice and ignore that work notice by going on strike would lose their automatic protection against dismissal for taking part in strike action. The law will also obligate trade unions to take what they call "reasonable steps" to ensure that all its members identified in the work notice do not take part in the strike action. If it



does not, unions could face an injunction to stop the strike or have to pay huge damages. The ILO principles regarding minimum services require that the determination of minimum services and the minimum number of workers providing them should involve not only the public authorities, but also the relevant employers' and workers' organizations. This allows a careful exchange of viewpoints on what in a given situation can be considered to be the minimum services that are strictly necessary. In this matter, we see the Government's clear intentions to move forward despite opposition from trade unions. The Government does not care about what is being said by the trade unions, which are key partners in the United Kingdom's economy. I urge the UK Government to engage with its social partners to resolve the current impasse.

Worker member, Philippines – The workers of the Philippines strongly advocate for trade union representatives to have access to workplaces in the United Kingdom. This access would greatly benefit our Overseas Filipino Workers, especially the approximately 40,000 health workers in the country. With a Filipino population of around 200,000 in the United Kingdom, it is crucial for our workers to have the opportunity to be part of trade unions. The Convention, which states that the Government must ensure the freedom to organize, reinforces the importance of granting workers and employers the ability to exercise this right. Unfortunately, in the United Kingdom, this freedom is hindered by the absence of a framework that allows unions to access workplaces, even for the purpose of addressing workers or engaging in organizing activities.

Without adequate protections, employers who are hostile to unions can easily dismiss their efforts. Union representatives are regularly denied access to workplaces and are even ordered to leave public spaces near workplaces when attempting to distribute leaflets at the end of the working day. Workers face threats simply for accepting a union leaflet. We would like to highlight that the Committee on Freedom of Association has emphasized that governments should guarantee the access of trade union representatives to workplaces, respecting of course the rights of property and management. This access is crucial for trade unions to communicate with workers and inform them about the potential advantages of unionization. However, in the United Kingdom, unions are kept at a distance and have no legal right to engage with workers. An example of this restriction is evident in a situation where a hotel chain called the police on organizers who were distributing union information outside its gates. Similarly, another employer denied access and instead promised to send a senior manager to question staff about their concerns if they requested to speak to a union officer. Within the building, all union material is prohibited, and workers are actively discouraged from discussing unions. Electronic signage throughout the facility is utilized to dissuade trade union membership.

Worker member, Australia – I am speaking on behalf of the Australian Union Movement and the Commonwealth Trade Union regarding the practice of surveillance and blacklisting of unions in the United Kingdom, an egregious violation of the Convention. The Government has previously indicated to the Committee of Experts that the exercise of covert investigatory powers under the Investigatory Powers Act, 2016 (IPA) and the Regulation of Investigatory Powers Act, 2000 (RIPA) are subject to numerous stringent safeguards and robust independent oversight. The Government points out that it would therefore never be necessary and proportionate to use investigatory powers merely to interfere with legitimate trade union activity. We note, however, the long-standing practice of surveillance of trade unions and unionists in the United Kingdom by the Government's security service and police and evidence that this intelligence has been passed on to employers and used to blacklist



workers, leading to workers being dismissed and refused work due to their trade union activities.

Following scandals involving the raid of a blacklisting employers' association in 2009 and the subsequent unmasking of a number of spies during 2010–2014, the Government established the Undercover Policing Inquiry in 2015, which is yet to hand down its report. The surveillance and blacklisting of unions were significant enough to warrant the inquiry creating a specific category to investigate hidden State surveillance of trade unions, with the Fire Brigades Union, the National Union of Mineworkers, UNITE and the rank-and-file campaign and the Blacklist Support Group as "core participants." There is evidence that the practice of blacklisting is still current – for example, it was revealed in 2019 that senior managers at a large publicly funded rail project hired a corporate security company to monitor trade unionists who were campaigning against blacklisting across the construction industry. So it is in this context that we note with grave concern that the Government has recently passed the Covert Human Intelligence Sources (Criminal Conduct) Act 2021, which authorizes the police, the security and intelligence services and the armed forces to infiltrate lawful organizations and to authorize those infiltrated to commit criminal offences. The Act allows for criminal conduct authorizations: (a) in the interests of national security; (b) for the purpose of preventing or detecting crime or of preventing disorder or (c) in the interests of the economic well-being of the United Kingdom. It is clear that these statutory reasons for authorizations could enable the surveillance of trade unions and trade union members. An amendment intended to exclude trade unions from the reach of the Bill was defeated by 59 votes after the Government refused to support it – the UK Parliament effectively repudiating this specific limitation on the powers of the police and security services. Given the evidence of the widespread practice of the surveillance of independent workers' organizations in the United Kingdom, leading to the blacklisting of trade unionists, we express our serious concerns that the progress claimed by the Government in response to the Committee of Experts' observations in 2018 is vulnerable to future abuses.

Neither trade unions nor trade union members should be subject to the surveillance of the State. We call on the Government to immediately amend the Act to explicitly exclude trade unions and immediately cease the practice of surveillance of trade unions in order to comply with the Convention. We further call on the Government to prohibit the surveillance of trade unions and trade union members by the State and its officials due to their trade union membership or activities and punish with severe criminal sanctions State officials engaging in such activity.

Government representative – I would like to thank all those who have spoken in today's session and who have engaged constructively with this process. The United Kingdom welcomes the scrutiny of the Committee of Experts and this Committee, and we have listened carefully to all the views expressed today and will be taking them forward with relevant colleagues across the UK Government. The United Kingdom is committed to all ILO Conventions we have ratified, including Convention No. 87, and we have a long-established regulatory framework protecting this fundamental Convention. We believe the Trade Union Act takes a measured and proportionate approach that balances the rights of people who take industrial action and those who are affected by that action. It aims to modernize industrial relations while promoting a more effective, collaborative approach to resolving industrial disputes and protecting the continuation of vital services for all in our society.

The United Kingdom intends to commence the review of the Trade Union Act shortly and we anticipate it will conclude in time for the next UK report to the ILO. The review, which will include the ballot threshold and picketing requirements, will consider the views of the social



partners, and the questions asked by this Committee, and its conclusions will also be part of that review. We thank speakers for their comments on the Certification Officer reforms. This role is critical in ensuring trade unions and employers' associations are held to the highest standards of governance. The Certification Officer is fully independent of Government, and the reform specifies this explicitly. There are clear limitations as to how the Certification Officer can use her investigatory powers. She has to act reasonably and cannot launch investigations against unions on a whim. She can only launch an investigation where they suspect there has been a breach of a statutory obligation. Furthermore, the Certification Officer can only request documents from a union when there is good reason to do so. Our new measures have strengthened safeguards, including by increasing judicial oversight of her decisions, as we detailed in our written response to the Committee of Experts. The reforms have modernized trade union regulation, bringing it into line with other regulators. This is important for securing the confidence of workers, employers and the general public.

I am aware that the Committee of Experts did not ask about the Strikes (Minimum Service Levels) Bill, but I noted it was raised by several delegates, and so I just wanted to reiterate the United Kingdom's principal position that the ability to strike is an important part of industrial relations in the United Kingdom, rightly protected by law, and the Government understands that an element of disruption is inherent in any strike. We thank the Workers' and Employers' delegates and members for their comments on the repeal of Regulation 7, on consultations with social partners, and on wider legislative reforms relating to protests, and we will pass these on to the relevant government departments in the United Kingdom. In conclusion, the Government is confident that the UK Trade Union Act is compatible with our international obligations under the United Nations, the ILO and the European Social Charter. The Trade Union Act does not intend to, nor does it, prevent industrial action but ensures it is supported by a reasonable democratic level of participation and support. The Government is confident that the Trade Union Act strikes a fair balance between the rights of unions and their responsibilities towards the rest of society and modernizes trade union law to the benefit of everyone. So let me just end by reiterating the United Kingdom's commitment to continuously improving labour standards and by thanking the Committee and its contributors for their valuable time.

Employer members – We thank the Government of the United Kingdom for its comments and all of the information and, in fact, all participants for a rich and varied discussion. We are just taking note of the Government's comments around Certification Officers and balloting and urge them to continue the work that they have begun. I think the primary issue, given that the view of the Employers is that the right to strike per se is not regulated by the Convention, that the issues that have been raised are of a practical nature for the Government to deal with. But that being said, they are practical issues, and they should be given the attention that has been requested. With that in mind, we would simply like to recommend that the Government of the UK report to the Committee of Experts in time for the next Committee of Experts' session with information on the application of the Convention in law and practice and with all of the information requested by the Committee of Experts.

Worker members – We thank the Government representative of the United Kingdom for the information provided to our Committee, and we also thank all the speakers for their contributions. The infringements on the right to freedom of association and the right to organize in the United Kingdom must be seen in the context of a system in which trade unions are already very highly regulated, as a result of a number of restrictions on trade union freedoms introduced over the last 45 years. The Committee of Experts and the



Committee on Freedom of Association have also already critically examined many of these restrictions over the years. This afternoon, we have talked extensively about the inability of unions to use electronic ballots for strikes or even leadership elections, while other civil society organizations – and even political parties – are permitted to ballot electronically. This highlights an encroachment on the autonomy of trade unions to draw up their own rules and decide on their own activities.

If we consider restrictions on the right to strike in transport and education, we must also recall other limitations on the right in law and practice. For example, the United Kingdom still has a blanket ban on secondary action. The impact of the ban was made apparent when last year a major ferry company summarily dismissed 786 of its workers and replaced them with agency workers. It was dismissal by ambush. There was no prior consultation with the unions, and since the dismissals were instantaneous, the possibility of industrial action by the workers was denied to them. This, coupled with the fact that unions are absolutely prohibited from calling on other workers to take solidarity action in support of those dismissed, meant that the seafarers were left with no legal or industrial recourse. The plethora of restrictions on the right to strike and actions undermining the autonomy of trade unions and civil liberties of trade unionists amount to serious violations of Articles 2 and 3 of the Convention, read together with Articles 7, 8 and 10, and the principles of Freedom of Association.

Our group is always looking for constructive ways to ensure governments fully comply with their obligations under ratified Conventions. Anti-union statements from government ministers and not engaging in formal consultations is not the way to go; social dialogue is the solution. Indeed, almost every observation made by the Committee of Experts in this case highlighted the lack of meaningful consultation with the social partners. This needs to change urgently. We believe that the Government should avail itself of ILO technical assistance, in close cooperation and consultation with the social partners to help bring its existing and proposed legislation into conformity with the Convention and to implement the recommendations of the Committee of Experts and our Committee. Social dialogue is at the core of the ILO Constitution, and its realization gives meaning to the application of the Convention. In conclusion, we would like to reiterate the critical importance of the fundamental right to strike. For the avoidance of doubt, allow me to say that for the Workers' group, there can be no compromise on the unconditional recognition of the right to strike based on the Convention. This is a fundamental right which is indispensable for ensuring the effectiveness of the rights and freedoms enshrined in international labour standards.

As a responsible Member of the ILO and the international community as is the United Kingdom, respecting, promoting and fulfilling the expert guidance of its supervisory bodies within the context of their dialogue with Member States regarding the application of ratified Conventions is paramount and fundamental, and we recall that the Government group's 2015 statement was clear that "[t]he Government group recognizes that the right to strike is linked to freedom of association which is a fundamental principle and right at work of the ILO. The Government group specifically recognizes that without protecting a right to strike, Freedom of Association, in particular the right to organize activities for the purpose of promoting and protecting workers' interests cannot be fully realized". We urge the Government to be guided by the long-standing guidance of the supervisory bodies, including the Committee of Experts, with respect to the full exercise of the rights protected in the Convention by workers, including on the right to strike. We urge the Government to engage in meaningful social dialogue on all the issues raised by the Committee of Experts and address them in line with the Convention.



Conclusions by the Committee

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

The Committee noted the centrality of social dialogue to freedom of association and thus to the meaningful application of the Convention.

- Taking into account the discussion of the case, the Committee requests the Government to provide information to and facilitate the dialogue between and with the social partners with a view to:
- report on the results of the 2015 Undercover Policing Inquiry and the 2018 Trades Union Confederation (TUC) allegations regarding surveillance of trade unions and trade unionists;
- ensure that existing and prospective legislation is in conformity with the Convention;
- limit and define the investigatory powers of the Certification Officer to ensure that these powers do not interfere with the autonomy and functioning of workers' and employers' organizations;
- facilitate electronic balloting (e-balloting); and
- improve consultation of the social partners on legislation of relevance to them.

The Committee invites the Government to avail itself of technical assistance of the ILO and requests the Government to provide information on progress made on all the above issues by 1 September 2023 to the Committee of Experts.

Government representative – Let me begin by reaffirming the United Kingdom's commitment to this process and the supervisory system as a whole. As a nation committed to upholding and advancing international labour standards domestically and globally, the United Kingdom highly values the role of the ILO. We thank the Committee for its careful and thorough examination of this case and the issues that have been raised. We take due note of the Committee's conclusions and undertake to report back to the Committee of Experts accordingly.



Appendix I. Table of reports on ratified Conventions due for 2022 and received since the last session of the CEACR (as of 16 June 2023) (articles 22 and 35 of the Constitution)

The table published in the Report of the Committee of Experts, page 985, should be brought up to date in the following manner:

*Note: First reports are indicated in parentheses.
Paragraph numbers indicate a modification in the lists of countries mentioned in Part One (General Report) of the Report of the Committee of Experts.*

Albania	12 reports requested
(Paragraph 98)	
· 9 reports received: Conventions Nos. 81, 97, 100, 111, 129, 143, 156, 177, (MLC) · 3 reports not received: Conventions Nos. 77, 78, 185	
Argentina	8 reports requested
(Paragraph 98)	
· All reports received: Conventions Nos. 81, 100, 111, 129, 156, 169, 177, 189	
Belize	12 reports requested
· All reports received: Conventions Nos. 29, 81, 87, 88, 98, 115, 138, 140, 144, 151, 154, 155	
Central African Republic	21 reports requested
· 3 reports received: Conventions Nos. 150, 155, 182 · 18 reports not received: Conventions Nos. 3, 13, 14, 17, 18, 19, 52, 62, 81, 95, 100, 101, 111, 118, 119, 120, 131, 158	
Congo	17 reports requested
· 2 reports received: Conventions Nos. 87, 144 · 15 reports not received: Conventions Nos. 13, 14, 26, 89, 95, 98, 100, 105, 111, 119, 138, 149, (185), (MLC), 188	
Croatia	24 reports requested
(Paragraph 98)	
· 11 reports received: Conventions Nos. 13, 14, 45, 81, 100, 106, 111, 129, 132, 136, 144 · 13 reports not received: Conventions Nos. 12, 19, 24, 25, 102, 103, 119, 121, 139, 148, 155, 161, 162	
El Salvador	11 reports requested
(Paragraph 98)	
· All reports received: Conventions Nos. 12, 81, 99, 100, 111, 129, 131, 144, 150, 155, 160	
Equatorial Guinea	8 reports requested
(Paragraph 98)	
· 6 reports received: Conventions Nos. 1, 14, 30, 87, 98, 100 · 2 reports not received: Conventions Nos. (68), (92)	
Gabon	16 reports requested
(Paragraphs 90 and 98)	
· All reports received: Conventions Nos. 6, 11, 29, 81, 87, 98, 105, 123, 124, 135, 138, 144, 151, 154, 182, (MLC)	



Guyana	10 reports requested
<i>(Paragraph 98)</i>	
· All reports received: Conventions Nos. 11, 29, 81, 105, 129, 135, 138, 141, 151, 182	
Kenya	13 reports requested
<i>(Paragraph 98)</i>	
· 12 reports received: Conventions Nos. 11, 29, 81, 98, 129, 135, 138, 141, 142, 144, 182, MLC	
· 1 report not received: Convention No. 105	
Lao People's Democratic Republic	4 reports requested
<i>(Paragraph 98)</i>	
· All reports received: Conventions Nos. 6, 29, 138, 182	
Liberia	9 reports requested
<i>(Paragraph 98)</i>	
· All reports received: Conventions Nos. 29, 87, 105, 108, 112, 113, 114, 182, MLC	
Mongolia	6 reports requested
<i>(Paragraph 98)</i>	
· All reports received: Conventions Nos. 29, 105, 138, 167, 181, 182	
Morocco	34 reports requested
· All reports received: Conventions Nos. 12, 13, 14, 17, 19, 27, 29, 30, 42, 45, 52, 81, (97), 98, 99, 101, (102), 105, 106, 108, 119, 129, 131, 136, 138, 144, 150, 162, 176, 182, 183, MLC, (187), 188	
Netherlands - Aruba	11 reports requested
<i>(Paragraph 98)</i>	
· All reports received: Conventions Nos. 22, 23, 29, 69, 105, 113, 114, 138, 146, 147, 182	
Samoa	6 reports requested
<i>(Paragraph 98)</i>	
· 4 reports received: Conventions Nos. 87, 98, (144), MLC	
· 2 reports not received: Conventions Nos. 100, 111	
Sao Tome and Principe	11 reports requested
<i>(Paragraph 98)</i>	
· All reports received: Conventions Nos. 87, 98, 100, 111, 135, 138, 144, 151, 154, 182, (183)	
Singapore	5 reports requested
· 3 reports received: Conventions Nos. 98, 144, (155)	
· 2 reports not received: Conventions Nos. 11, 100	
Slovenia	14 reports requested
<i>(Paragraphs 90 and 98)</i>	
· All reports received: Conventions Nos. 11, 87, 97, 98, 100, 111, 122, 135, 143, 144, 149, 151, 154, 156	
South Sudan	7 reports requested
· 2 reports received: Conventions Nos. 29, 98	
· 5 reports not received: Conventions Nos. 100, 105, 111, 138, 182	



Tajikistan**25 reports requested****(Paragraph 98)**

- 14 reports received: Conventions Nos. 32, 87, 95, 98, 100, 103, 105, 111, 122, 142, 144, 149, 159, 177
- 11 reports not received: Conventions Nos. 23, 27, 69, 92, 108, 113, 124, 126, 133, 134, 147

Thailand**4 reports requested**

- All reports received: Conventions Nos. 88, 122, 159, MLC

Timor-Leste**4 reports requested****(Paragraphs 90 and 98)**

- All reports received: Conventions Nos. 87, 98, 100, 111

United Kingdom of Great Britain and Northern Ireland - Falkland Islands (Malvinas)**4 reports requested****(Paragraph 93)**

- 3 reports received: Conventions Nos. 87, 98, (MLC)
- 1 report not received: Convention No. 82

United Kingdom of Great Britain and Northern Ireland - Guernsey**5 reports requested****(Paragraph 98)**

- All reports received: Conventions Nos. 2, 87, 98, 122, 142

United Kingdom of Great Britain and Northern Ireland - Jersey**4 reports requested****(Paragraph 98)**

- All reports received: Conventions Nos. 2, 87, 98, 140

Grand Total

A total of 1,915 reports (article 22) were requested,
of which 1,460 reports (76.24 per cent) were received.

A total of 188 reports (article 35) were requested,
of which 179 reports (95.21 per cent) were received.



Appendix II. Statistical table of reports received on ratified Conventions (reports received as of 16 June 2023) (article 22 of the Constitution)

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports registered for the session of the Committee of Experts		Reports registered for the session of the Conference	
1932	447	-		406	90.8%	423	94.6%
1933	522	-		435	83.3%	453	86.7%
1934	601	-		508	84.5%	544	90.5%
1935	630	-		584	92.7%	620	98.4%
1936	662	-		577	87.2%	604	91.2%
1937	702	-		580	82.6%	634	90.3%
1938	748	-		616	82.4%	635	84.9%
1939	766	-		588	76.8%	-	
1944	583	-		251	43.1%	314	53.9%
1945	725	-		351	48.4%	523	72.2%
1946	731	-		370	50.6%	578	79.1%
1947	763	-		581	76.1%	666	87.3%
1948	799	-		521	65.2%	648	81.1%
1949	806	134	16.6%	666	82.6%	695	86.2%
1950	831	253	30.4%	597	71.8%	666	80.1%
1951	907	288	31.7%	507	77.7%	761	83.9%
1952	981	268	27.3%	743	75.7%	826	84.2%
1953	1026	212	20.6%	840	75.7%	917	89.3%
1954	1175	268	22.8%	1077	91.7%	1119	95.2%
1955	1234	283	22.9%	1063	86.1%	1170	94.8%
1956	1333	332	24.9%	1234	92.5%	1283	96.2%
1957	1418	210	14.7%	1295	91.3%	1349	95.1%
1958	1558	340	21.8%	1484	95.2%	1509	96.8%
As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions							
1959	995	200	20.4%	864	86.8%	902	90.6%
1960	1100	256	23.2%	838	76.1%	963	87.4%
1961	1362	243	18.1%	1090	80.0%	1142	83.8%
1962	1309	200	15.5%	1059	80.9%	1121	85.6%
1963	1624	280	17.2%	1314	80.9%	1430	88.0%
1964	1495	213	14.2%	1268	84.8%	1356	90.7%
1965	1700	282	16.6%	1444	84.9%	1527	89.8%
1966	1562	245	16.3%	1330	85.1%	1395	89.3%
1967	1883	323	17.4%	1551	84.5%	1643	89.6%
1968	1647	281	17.1%	1409	85.5%	1470	89.1%
1969	1821	249	13.4%	1501	82.4%	1601	87.9%
1970	1894	360	18.9%	1463	77.0%	1549	81.6%
1971	1992	237	11.8%	1504	75.5%	1707	85.6%
1972	2025	297	14.6%	1572	77.6%	1753	86.5%
1973	2048	300	14.6%	1521	74.3%	1691	82.5%
1974	2189	370	16.5%	1854	84.6%	1958	89.4%
1975	2034	301	14.8%	1663	81.7%	1764	86.7%
1976	2200	292	13.2%	1831	83.0%	1914	87.0%



Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports registered for the session of the Committee of Experts		Reports registered for the session of the Conference	
As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals							
1977	1529	215	14.0%	1120	73.2%	1328	87.0%
1978	1701	251	14.7%	1289	75.7%	1391	81.7%
1979	1593	234	14.7%	1270	79.8%	1376	86.4%
1980	1581	168	10.6%	1302	82.2%	1437	90.8%
1981	1543	127	8.1%	1210	78.4%	1340	86.7%
1982	1695	332	19.4%	1382	81.4%	1493	88.0%
1983	1737	236	13.5%	1388	79.9%	1558	89.6%
1984	1669	189	11.3%	1286	77.0%	1412	84.6%
1985	1666	189	11.3%	1312	78.7%	1471	88.2%
1986	1752	207	11.8%	1388	79.2%	1529	87.3%
1987	1793	171	9.5%	1408	78.4%	1542	86.0%
1988	1636	149	9.0%	1230	75.9%	1384	84.4%
1989	1719	196	11.4%	1256	73.0%	1409	81.9%
1990	1958	192	9.8%	1409	71.9%	1639	83.7%
1991	2010	271	13.4%	1411	69.9%	1544	76.8%
1992	1824	313	17.1%	1194	65.4%	1384	75.8%
1993	1906	471	24.7%	1233	64.6%	1473	77.2%
1994	2290	370	16.1%	1573	68.7%	1879	82.0%
As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995							
1995	1252	479	38.2%	824	65.8%	988	78.9%
As a result of a decision by the Governing Body (November 1993), reports were requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals							
1996	1806	362	20.5%	1145	63.3%	1413	78.2%
1997	1927	553	28.7%	1211	62.8%	1438	74.6%
1998	2036	463	22.7%	1264	62.1%	1455	71.4%
1999	2288	520	22.7%	1406	61.4%	1641	71.7%
2000	2550	740	29.0%	1798	70.5%	1952	76.6%
2001	2313	598	25.9%	1513	65.4%	1672	72.2%
2002	2368	600	25.3%	1529	64.5%	1701	71.8%
2003	2344	568	24.2%	1544	65.9%	1701	72.6%
2004	2569	659	25.6%	1645	64.0%	1852	72.1%
2005	2638	696	26.4%	1820	69.0%	2065	78.3%
2006	2586	745	28.8%	1719	66.5%	1949	75.4%
2007	2478	845	34.1%	1611	65.0%	1812	73.2%
2008	2515	811	32.2%	1768	70.2%	1962	78.0%
2009	2733	682	24.9%	1853	67.8%	2120	77.6%
2010	2745	861	31.4%	1866	67.9%	2122	77.3%
2011	2735	960	35.1%	1855	67.8%	2117	77.4%



Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports registered for the session of the Committee of Experts		Reports registered for the session of the Conference	
As a result of a decision by the Governing Body (November 2009 and March 2011), reports are requested, according to certain criteria, at yearly, three-yearly or five-yearly intervals							
2012	2207	809	36.7%	1497	67.8%	1742	78.9%
2013	2176	740	34.1%	1578	72.5%	1755	80.6%
2014	2251	875	38.9%	1597	70.9%	1739	77.2%
2015	2139	829	38.8%	1482	69.3%	1617	75.6%
2016	2303	902	39.2%	1600	69.5%	1781	77.3%
2017	2083	785	37.7%	1386	66.5%	1543	74.1%
2018	1683	571	33.9%	1038	61.7%	1194	70.9%
As a result of a decision by the Governing Body (November 2018), reports are requested, according to certain criteria, at yearly, three-yearly or six-yearly intervals							
2019	1788	645	36.1%	1217	68.1%	ILC 2020 deferred due to the COVID-19 pandemic	
In light of the deferral of 109th Session of the Conference to June 2021 due to the COVID-19 pandemic, the Governing Body decided in March 2020 to invite Member States to provide supplementary information on reports submitted in 2019, highlighting relevant developments, if any, on the application of the provisions of Conventions under review that might have occurred in the meantime. In addition, reports were requested on the basis of a footnote adopted by the Committee requesting a report for 2020 and on the follow-up of failures to submit reports							
2020	1796	394	21.9%	712	39.6%	768	42.8%
As a result of a decision by the Governing Body (November 2018), reports are requested, according to certain criteria, at yearly, three-yearly or six-yearly intervals							
2021	1865	747	40.0%	1230	65.9%	1383	74.2%
2022	1915	787	41.1%	1334	69.7%	1460	76.2%

