



International  
Labour  
Organization

# ► Conference Committee on the Application of Standards

Record of Proceedings 2021

International Labour Conference  
109th Session, Geneva, 2021

Conference Committee on the Application of Standards

▶ **Record of proceedings 2021**

Conference Committee on the Application of Standards

## ► Record of proceedings 2021

- General Report
- Discussion on the General Survey and on the situation concerning particular countries
- Submission, discussion and approval

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## ► Foreword

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The Conference Committee on the Application of Standards, a standing tripartite body of the International Labour Conference and an essential component of the ILO's supervisory system, examines each year the report published by the Committee of Experts on the Application of Conventions and Recommendations. Following the technical and independent scrutiny of government reports carried out by the Committee of Experts, the Conference Committee provides the opportunity for the representatives of governments, employers and workers to examine jointly the manner in which States fulfil their obligations deriving from Conventions and Recommendations. The Officers of the Committee also prepare a list of observations contained in the report of the Committee of Experts on which it would appear desirable to invite governments to provide information to the Conference Committee, which examines over 20 individual cases every year.

The report of the Conference Committee is submitted for discussion by the Conference in plenary, and is then published on the website in the Record of proceedings. Since 2007, with a view to improving the visibility of its work and in response to the wishes expressed by ILO constituents, it was decided to produce a separate publication in a more attractive format bringing together the usual three parts of the work of the Conference Committee. This publication is structured in the following way: (i) the General Report of the Conference Committee on the Application of Standards; (ii) discussion on the General Survey and on the situation concerning particular countries; and (iii) the report of the Conference Committee on the Application of Standards: Submission, discussion and approval.

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## ► **Report of the Committee on the Application of Standards**

### **General Report**



# ► Record of proceedings

# 6A

International Labour Conference – 109th Session, 2021

Part One

Date: 19 June 2021

## Third item on the agenda: Information and reports on the application of Conventions and Recommendations

### Report of the Committee on the Application of Standards

#### Part One

#### General Report

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## A. Introduction

1. In accordance with article 7 of the Standing Orders, the Conference set up a Committee to consider and report on item III on the agenda: "Information and reports on the application of Conventions and Recommendations". The Committee was composed of 221 members (110 Government members, 8 Employer members and 103 Worker members). It also included 20 Government deputy members, 86 Employer deputy members, and 94 Worker deputy members.
2. The Committee elected its Officers as follows:
 

<b>Chairperson:</b>	Ms Corine Elsa Angonemane Mvondo (Government member, Cameroon)
<b>Vice-Chairpersons:</b>	Ms Sonia Regenbogen (Employer member, Canada) and Mr Marc Leemans (Worker member, Belgium)
<b>Reporter:</b>	Mr Pedro Pablo Silva Sanchez (Government member, Chile)
3. The Committee held 15 sittings.
4. In accordance with its terms of reference, the Committee considered: (i) the reports supplied under articles 22 and 35 of the Constitution on the application of ratified Conventions; (ii) the reports requested by the Governing Body under article 19 of the Constitution on the Employment Policy Convention, 1964 (No. 122), the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), the Home Work Convention, 1996 (No. 177), the Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168), the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), the Home Work Recommendation, 1996 (No. 184), the Employment Relationship Recommendation, 2006 (No. 198), and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204); and (iii) the information supplied under article 19 of the Constitution on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference.<sup>1</sup>

## Opening sitting

5. **Chairperson:** Allow me to thank you for the trust that you have placed in me to chair the Committee on the Application of Standards of the 109th Session of the International Labour Conference. I would like to take this opportunity to express my gratitude to the African Group and the authorities of my country, Cameroon, which made it possible. It is a great honour for me, for my country and for Africa to take on this responsibility in the very specific context that we have experienced over recent months. It is a privilege and a great responsibility for me to lead the work of the first and, I hope, last virtual session of the Committee on the Application of Standards.
6. I would like to congratulate the two Vice-Chairpersons and the Reporter for their election as Officers of the Committee. I am looking forward to working in close collaboration with you over the coming weeks. I am convinced that your great experience and support, and

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<sup>1</sup> Report III to the International Labour Conference – Parts A and A (Addendum): Report of the Committee of Experts on the Application of Conventions and Recommendations; Parts B and B (Addendum): General Survey.

that of all the delegates and the secretariat, will enable us to take up the challenge of a virtual meeting and to have a productive session.

7. It is not a secret for anyone that the Committee on the Application of Standards is the cornerstone of the ILO regular supervisory system and at the heart of the Organization's tripartite system. Since 1926, it has been the tripartite dialogue forum within which the Organization has debated both the application of international labour standards and the functioning of the standards system. The conclusions adopted by our Committee and the technical work of the Committee of Experts on the Application of Conventions and Recommendations, as well as the technical assistance provided by the Office, are essential tools for Member States for the implementation of international labour standards. I am pleased to note that once again this year, despite the COVID-19 pandemic and the challenges that it brings, the report of the Committee of Experts offers a solid basis for our discussions.
8. I strongly encourage you to participate actively in the discussions and I am convinced that over the two and a half weeks of this session of the Conference, our Committee will be able to respond to the very high expectations of the ILO constituents in a spirit of constructive dialogue.
9. **Employer members:** Despite the many procedural modifications that were necessary to adapt the meeting to a virtual format, we are confident that it will be possible for the Committee to deliver its essential supervisory functions. The discussion this year takes place against the all-overshadowing backdrop of the ongoing pandemic, which has had severe effects on both the application and the supervision of ILO standards. Many governments and ILO Member States directed their primary attention to coping with the immediate crisis and mitigating its effects, and have thus not been able to send their reports in compliance with their obligations. Many employers' and workers' organizations have not been able to send their submissions on standards application.
10. Even more importantly, the application of many ratified Conventions may have been altered to respond to immediate crisis needs. The Committee of Experts has provided information and guidance on standards application in the face of the COVID-19 challenge in the addenda to its 2020 report and we thank the Committee of Experts for these timely inputs into our discussion.
11. Let me recall that the Standing Orders of the Conference indicate that the Committee has unrestricted mandate to supervise the application of standards. In delivering its mandate, the Committee receives technical support from the Committee of Experts and the Office, and uses the Committee of Experts' report and written information provided by the governments as the basis for discussions. It is the Employer members' view that the Committee is not bound by any views or analysis, and that we must formulate our own discussion and analysis.
12. The ILO Centenary Declaration calls on all tripartite constituents to promote a clear, robust, up-to-date body of standards and to further enhance transparency; international labour standards also need to respond to the changing patterns of the world of work, protect workers and take into account the needs of sustainable enterprises, and be subject to authoritative and effective supervision. The Committee needs to make clear its commitment to a balanced supervisory system taking into account the changing patterns of the world of work, workers' protection needs and also the needs of sustainable enterprises. This past year, the global COVID-19 pandemic demonstrated the importance of both worker protection, given the contribution of workers to functional economies, and sustainable enterprises as a foundation for a functioning economy.



13. These needs should be reflected in the Committee's discussions and in the outcome of debates. The Employer members look forward to a results-oriented balanced tripartite dialogue reaffirming the central role of the Committee in standards supervision at this very special 109th Session of the International Labour Conference.
14. While divergence of views on substantial issues continues to exist among constituents, and between this Committee and the Committee of Experts, the Employer members continue to voice these views in a spirit of mutual respect and understanding. The views expressed by the Employer members in the Committee's debates and discussion, as well as the conclusions, should be considered by other ILO supervisory procedures, by the Office for support to the overall system and technical assistance, and also by other ILO initiatives in the context of the 2030 Agenda for Sustainable Development.
15. With these initial remarks, let me reiterate that we are committed to the Committee's functioning this year in this new format, which we also hope to be a one-time event, and we remain ready to actively participate in the discussions in a proactive and constructive spirit. Our members are connecting from all regions of the world and in certain cases at very late or early hours of the day to participate, and we want to thank them in advance for their efforts to contribute to a successful and inclusive Committee. Tripartite governance, balanced transparency and efficiency are key values that contribute to the success of the Committee. The Employer members will continue to uphold these values in our engagement in this first-ever virtual session of the Committee.
16. **Worker members:** This year, we find ourselves in the context of a Conference that is exceptional in all respects. It is the first, and we hope the last time that our meeting has been held virtually. We are being forced to do so due to a pandemic that has given rise to the worst economic and social crisis since the last World War. At the time of speaking, we do not yet know the scope of the impact that this pandemic will have and still less its repercussions. Nevertheless, we can already draw certain lessons and conclusions. The lessons are many and varied, but three are particularly relevant to the Committee's discussions.
17. First, we observe the extent to which work plays a central role in the life of humanity. We understand by work the workers without whom no economy is able to operate correctly. Some have even discovered that there were so-called essential functions and that the women and men who perform them are often the least recognized. All workers deserve to be where they have been placed by this crisis, that is at the top of the agenda, and not an appendix or annex to other subjects. They will also have to be remembered when it comes to distributing the fruits of the prosperity that they contribute so greatly to creating.
18. The second lesson shows that, while all countries were unprepared to manage the pandemic, those with strong economic and social institutions have best succeeded in attenuating its consequences. Strong social dialogue with the organizations representing the workers and employers involved, but also and in particular inclusive social protection systems that are able to adapt rapidly, have been and remain key elements of an appropriate response to the crisis.
19. The third lesson takes the form of a paradox. While most of the short-term responses have essentially been conceived and implemented at the level of the State, it is clear that a lasting solution to the crisis requires a multilateral response. The worst thing would be to believe that each Member State defending its short-term interests could emerge without too many problems. In truth, that would give rise to even more inequalities between countries and result in greater frustration. From experience, we know that

prosperity is not possible when it is founded on deprivation and frustration. Failure to address a problem anywhere in the world very often has consequences for those who have ignored it from the beginning. A lasting and credible way out of this multiple crisis involves cooperation and the reinforcement of multilateralism. The scientific community, which throughout the world has engaged in broad cooperation to improve understanding of the virus, its effects and impact, has demonstrated that cooperation beyond frontiers allows major and rapid progress by combining efforts to achieve a common objective.

20. International labour standards have been put to a harsh test during the pandemic. The Committee will discuss this fully during its work, but the Worker members already wish to insist on one fundamental point: international labour standards are not an adjustable variable with an option to respect them less or not at all depending on the circumstances. The Worker members also wish to express here their full solidarity and support for trade unionists whose rights have been undermined during this crisis, whether in the Islamic Republic of Iran, the Philippines, Sudan or Algeria. Certain States seem to consider respect for standards as a barrier to an effective response to the challenges raised by the pandemic, whereas in reality it is a necessary precondition for economic prosperity and social stability. Moreover, the ILO standards system must be a central element in the preparation of post-COVID-19 recovery. The ILO has many instruments that can be used to meet challenges. The General Survey that the Committee is examining this year, which covers employment policy, will offer an occasion to demonstrate that further. The crisis has also revealed the shortcomings and limits of social protection in many countries. Its extension and reinforcement must today be considered everywhere to be an absolute priority.
21. This year, the Conference is exceptional insofar as it is being held virtually. That has led us to adopt certain arrangements that depart from our usual methods of work. For the Worker members, it is clear that all these arrangements are of an exceptional nature and are in no way intended to be reproduced in future. It is evident that these arrangements cannot serve as a basis or source of inspiration to guide the methods of work of the Committee in future Conferences. The Worker members hope that the Committee will have productive and serene discussions in order to reach constructive conclusions.

## Work of the Committee

22. During its opening sitting, the Committee adopted document D.1, which sets out the manner in which the work of the Committee was carried out <sup>2</sup> and, on that basis, the Committee considered its working methods, as reflected below.
23. In accordance with its usual practice, the Committee continued its work with a discussion on general aspects of the application of Conventions and Recommendations and the discharge by Member States of standards-related obligations under the ILO Constitution. In this general discussion, reference was made to Part One of the report of the Committee of Experts on the Application of Conventions and Recommendations. A summary of the general discussion is found under relevant headings in sections A and B of Part One of this report.
24. The final part of the general discussion focused on the General Survey entitled "Promoting Employment and Decent Work in a Changing Landscape" and its Addendum.

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<sup>2</sup> Work of the Committee on the Application of Standards, ILC, 109th Session, CAN/D.1 (see Annex 1).

This discussion is contained in section A of Part Two of this report. The outcome of this discussion is contained in section C of Part One of this report.

25. Following these discussions, the Committee considered the cases of serious failure by Member States to respect their reporting and other standards-related obligations. The result of the examination of these cases is contained in section D of Part One of this report. More detailed information on that discussion is contained in section B of Part Two of this report.
26. The Committee then considered 19 individual cases relating to the application of various Conventions. The examination of the individual cases was based principally on the observations contained in the Committee of Experts' report and the oral and written explanations provided by the governments concerned. As usual, the Committee also referred to its discussions in previous years, comments received from employers' and workers' organizations and, where appropriate, reports of other supervisory bodies of the ILO and other international organizations. Time restrictions required the Committee to select a limited number of individual cases among the Committee of Experts' observations. With reference to its examination of these cases, the Committee reiterated the importance it placed on the role of tripartite dialogue in its work and trusted that the governments of the countries selected would make every effort to take the necessary measures to fulfil their obligations under ratified Conventions. A summary of the information submitted by governments and the discussions of the examination of individual cases, as well as the conclusions adopted by the Committee, are contained in section C of Part Two of this report.
27. The adoption of the report and the closing remarks are contained in section E of Part One of this report.

### Working methods of the Committee

28. **Chairperson:** One of the significant challenges of our Committee during the present session will be to carry out its crucial work with a limited number of sittings. To succeed, we will have to respect our programme of work and apply strictly the measures set out in document D.1, particularly with regard to time management.
29. During the informal tripartite consultations on the methods of work of the Committee, which were held in March–April 2021, the limits on speaking time were reviewed to take into account the limited number of sittings available to the Committee and the virtual nature of the discussions. For the proper functioning of the work of the Committee, delegates who wish to take the floor on the various items on the agenda of the Committee will have to register in advance on the list of speakers by electronic mail at the address CAN2021@ilo.org. The list will be prepared by the secretariat 24 hours in advance.
30. Speakers who have not registered in advance on the speakers list may be given the floor if sufficient time remains for this purpose. However, the Chairperson, in agreement with the other Officers of the Committee, may, where necessary, decide to reduce the speaking time accorded, for example if the speakers list is very long. The limits on speaking time will be announced by the Chairperson at the beginning of each sitting and will be applied strictly.
31. All delegates to the Conference have an obligation to abide by parliamentary language. Interventions should be relevant to the subject under discussion and should avoid references to extraneous matters. It is my role to maintain order and to ensure that the Committee does not deviate from its fundamental purpose of providing an international

tripartite forum for full and frank debate within the boundaries of respect and decorum essential to making effective progress towards the aims and objectives of the International Labour Organization.

32. Governments which are on the list of individual cases may provide written information before the examination of their cases. These written replies are to be provided to the secretariat at least two days before the discussion of their case and may not reproduce the information contained in the oral statement or any other information already provided by the government. The total length of this written reply is not to exceed five pages. The secretariat prepares a summary of the written information which is shared with the Committee in a D document that is put online.
33. The Committee's discussions are reproduced in extenso. As was the case at the last session of the Committee, each intervention will be reproduced in extenso in the working language in which it has been delivered or, failing that, in the language chosen by the Government – English, French or Spanish. Delegates who speak in a language other than English, French or Spanish will be invited to indicate, in the form requesting the floor, in which of these three working languages their intervention should be reproduced in the draft verbatim minutes.
34. The draft minutes will be available online on the Committee's webpage. It is the Committee's practice to accept amendments to the draft minutes of previous sittings prior to their adoption by the Committee. The amendments should be submitted electronically and be limited to the correction of transcription errors.
35. Finally, the conclusions of all individual cases will be adopted at the Committee's last sitting.

### Adoption of the list of individual cases

36. The Committee adopted, during the course of the opening sitting, the list of individual cases to be discussed.<sup>3</sup>
37. **Employer members:** Members of this Committee well understand that the Committee of Experts' observations provide technical foundation for the discussions that take place in this Committee and the Employer members wish to be clear that an agreement to discuss individual cases does not mean that they necessarily agree with the Committee of Experts' observations on a particular case. We may not agree with the observations on a particular case in whole or in part. The hearing of an individual case provides an opportunity for Employer members, as well as other members of the Committee, to voice their view and their reactions with respect to the observations included in the Committee of Experts report. Of course, the Committee of Experts report is a very important foundational document. In the spirit of social dialogue, there is the ability to voice divergent views with respect to that information.
38. For example, we have a commitment to discuss the individual cases involving the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in Belarus, Colombia and Kazakhstan but that does not mean that the Employer members agree with the scope of the Committee of Experts' observations regarding the right to strike. That is an ongoing but important area of divergence of the Employer members' view vis-à-vis the Committee of Experts.

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<sup>3</sup> ILC, 109th Session, Committee on the Application of Standards, CAN/D.2 (see Annex 2).

39. Also, the Employer members wish to be clear pursuant to the adoption of the final list of cases and our commitment to discuss the individual cases on the list, that we do not agree with all of the comments of the Committee of Experts, some of which are, for example, more critical of a government situation than we would agree with. Therefore, we will take the opportunity to voice our perspectives of, for example, progress in a country.
40. In this regard, I would specifically highlight the commitment to discuss the case of Colombia. In the Employer members' view, there is significant progress in the Government's investigations and prosecutions of crimes against trade unionists and trade union leaders. So there is much progress to be discussed. Furthermore, the Employer members' view is that a discussion of an individual case is not necessarily only to discuss areas of non-compliance but it is also to highlight areas in which there is progress or significant movement towards compliance with international labour standards. So there is a variety of aspects that we expect to be brought forward in our discussion of these individual cases, including the case of Colombia.
41. We also feel very strongly that it is important, as a principle, that the discussion of the cases is based and grounded in the Committee of Experts' observations and the technical issues. We do not believe that the cases should be politicized and/or deal with issues outside of the scope of the international labour standard that is being discussed. We highlight that at the outset in our comments with respect to the adoption of the final list of cases.
42. **Worker members:** The exceptional discussions on the Committee's working methods have led us to discuss the number of individual cases that we are to examine in the course of our work. The only possible compromise has appeared to be the analysis of 19 individual cases of violations of international labour Conventions. A list of 24 cases already generates considerable frustration under normal conditions. So you can imagine the frustration of having a list of only 19 cases, in a context where the number of situations of concern is constantly increasing. Once again, I stress the fact that the analysis of 19 individual cases is a totally exceptional measure taken in the particular context that we are experiencing. This pandemic has already cost us the analysis of 29 individual cases, taking account of the cancellation of last year's Conference session and the reduction for this year. We cannot afford to let this sorry state of affairs get even worse.
43. The Worker members would like to mention the following countries which were not kept on the final list and in which the situation is a source of particular concern: we express regret at the serious deterioration of the situation in Myanmar. The coup d'état by the military junta must be condemned with the utmost severity by the international community. Trade unions and trade unionists are, among others, in the front line opposing this coup d'état and are undergoing violent repression, and the murders perpetrated by the junta run into the hundreds. This is unacceptable. It is imperative that this bloody repression ceases and that the democratically elected government be restored in the country.
44. The situation in Guatemala is also particularly worrying. The violence towards trade unions and the murders of trade unionists are unacceptable and must stop. The numerous forms of discrimination still being suffered by indigenous peoples in Guatemala are also a particular source of concern.
45. With India currently undergoing a severe episode in the health crisis, Indian workers have been deprived of all protection for months since the powers of labour inspectors

are strictly limited because of the suspension of many labour regulations. However, inspection services equipped with the powers and resources needed for the protection of workers' rights are the best guarantee for limiting the numerous impacts of the health crisis.

46. Lastly, in Brazil, on top of the dubious management of the health crisis, we still note a decline in freedom of association and the right to collective bargaining. Social dialogue has become virtually non-existent there, thus depriving Brazilian workers of legitimate representation of their interests with respect to labour issues. But tripartite social dialogue is a fundamental necessity in the crisis conditions that we are going through.
47. We continue to follow the situation closely in all these countries and we express our solidarity with all workers and trade unions that are experiencing difficulties in their day-to-day lives. They can rely on the international community to mobilize and to assert their rights through all possible channels. Despite the many situations that would also have merited discussion and despite the exceptional reduction in the number of cases to be discussed, the Worker members have accepted the adoption of document D.2 containing the list of 19 individual cases of violations of international labour Conventions.
48. I would like to point out that, contrary to what the Employer members have asserted, the list does not contain any cases of progress. In order to consider that a case of progress is on the list, the case must be explicitly identified as such by the two Committee spokespersons. This is not how things stand. The Worker members have always said that they are in favour of discussing cases of progress, but in addition to the 24 cases of serious failure. With the discussion of only 19 cases this year, the conditions for discussing cases of progress have not been met anyway. Lastly, as my final argument that these cases cannot be considered cases of progress, I invite you to re-read the considerations set out by the Committee of Experts in paragraph 131 of the 2021 addendum regarding the identification of cases of progress. Here the Committee of Experts considers that "the expression by the Committee of interest or satisfaction does not mean that it considers that the country in question is in general conformity with the Convention". The Committee of Experts goes on to say that "an indication of progress is limited to a specific issue related to the application of the Convention and the nature of the measures adopted by the government concerned." Hence there is no question of describing the general situation of the case or cases concerned as a situation of progress.
49. In conclusion, the Worker members welcome the constructive discussions which will enable good conclusions to be reached at the end of each individual case.

## B. General questions relating to international labour standards

### 1. General discussion

#### Statement by the representative of the Secretary-General <sup>4</sup>

50. I would like to welcome you to this unprecedented International Labour Conference which is taking place virtually in the current exceptional circumstances, after having been postponed for a year. The last time this Committee met, the ILO was celebrating its Centenary in Geneva. Very few, if any, among us could foresee that the transformative changes that were the subject of the Centenary Declaration on the Future of Work were

<sup>4</sup> ILC, 109th session, Committee on the Application of Standards, document CAN/D.3.



already at our doorstep. The year 2020 propelled the world, including the ILO and its Member States, into the biggest public health crisis in living memory bringing about devastating effects, in terms not only of loss of human lives, but also loss of jobs, enterprises and livelihoods, along with a resurgence of poverty and a marked increase in inequality. It is in this extraordinary context that your Committee is called upon to provide, as an essential pillar of the ILO's supervisory mechanism, its guidance on the way to recovery and reconstruction, reaffirming that international labour standards and rights at work are an essential part of safeguarding social cohesion and universal peace, reinforcing resilience and building back better.

51. Your Committee is a standing committee of the International Labour Conference. It has met every time the International Labour Conference has been in session since 1926 and its mandate, which lies at the heart of the ILO's action, consists of examining and bringing to the attention of the Plenary of the Conference: (i) the measures taken by Members to give effect to the provisions of Conventions to which they are parties; and (ii) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution. Under the terms of this article, your Committee examines at every session of the Conference, a General Survey on the law and practice of Member States in a specific area.
52. As you know, following the postponement of the 109th Session of the Conference to June 2021, the Governing Body took the unprecedented decision to invite your Committee to examine in 2021 both reports produced by the Committee of Experts at its 90th and 91st Sessions (November–December 2019 and 2020 respectively). The report released by the Committee of Experts in 2020 was updated on the basis of information received to reflect the developments which took place in the meantime, notably the impact of the COVID-19 pandemic. The updated information was examined by the Committee of Experts at its 91st Session (November–December 2020) and is reflected in the Committee of Experts' report released in 2021. Your Committee will have an opportunity to have a discussion dedicated to the impact of the COVID-19 pandemic on the application of international labour standards during a special segment of the general discussion.
53. Similarly, the 2020 General Survey entitled *Promoting Employment and Decent Work in a Changing Landscape* was updated through an Addendum released in 2021 in order to take stock of the impact of the pandemic. The General Survey and its Addendum will form the basis of your Committee's discussion and will provide additional opportunities to explore the impact of the pandemic on employment and decent work, including vis-à-vis women, workers in the informal economy, workers on non-standard forms of employment and groups in vulnerable situations such as youth, workers with disabilities and indigenous peoples.
54. Finally, your Committee will undoubtedly have additional opportunities during this session to explore the impact of the COVID-19 pandemic on the application of international labour standards during the examination of individual cases. As head of your secretariat, I look forward to the key messages that your Committee will convey on this defining challenge.
55. In the exceptional circumstances of the COVID-19 pandemic, the International Labour Conference, including your Committee, is meeting virtually and special arrangements had to be introduced to make this possible. Document D.1 details all the adjustments that will allow your Committee to discharge its constitutional obligations within the framework of a virtual session and a reduced number of sittings. These exceptional adjustments reflect the outcome of the informal tripartite consultations on the Committee's working methods which took place on 30 March and 12 and 27 April this

year. Detailed information on these consultations is available on the Committee's website. I invite you to read document D.1 carefully in order to facilitate your participation and the proper conduct of the Committee's work.

56. As provided in document D.1, the Committee will operate on the basis of a compressed working schedule which will result, among other things, in: (i) enhanced possibility to provide written inputs to complement the oral debates; (ii) longer deadlines for the submission of written statements; (iii) early registration on the speakers list; (iv) strict time management with some reduced speaking time; and (v) specific time allotment for the various items on the Committee's agenda.
57. The general discussion will be organized in two segments. One segment will be dedicated to a general discussion on the General Report and, as mentioned already, the second segment will focus on the application of international labour standards in the context of the COVID-19 pandemic. Given that speaking time will be limited, I invite those delegates who so wish, to communicate written statements to the Office sufficiently in advance so that they can be released on the Committee's website 24 hours before the sitting. These statements will be translated and included in the Committee's report in three languages. Written statements submitted will be clearly differentiated in the Committee's report from oral interventions made during the discussions.
58. Following the decisions taken at the informal tripartite consultations of March–April 2021, it is proposed to frame the discussion of the General Survey around three generic questions on the understanding that interventions do not have to be limited to these questions only. The three generic questions are: (i) progress made and problems encountered in the implementation of the instruments examined; (ii) measures to be taken to promote the Conventions and their ratification in the light of good practices and the obstacles identified; (iii) avenues for the future in terms of normative action and technical assistance. These generic questions could, to the extent possible, structure your interventions so as to facilitate a discussion conducive to an action-oriented outcome.
59. In order to organize the discussion of cases of serious failure to report this year, the Governments concerned were invited to communicate written information to the Office by 20 May. Relevant information has been received from five governments. A document compiling this information, along with the general remarks of the Employer and Worker spokespersons, will be published in the three languages 24 hours before the sitting at which cases of serious failure will be discussed. During the sitting, the governments concerned may, if they wish, present information concerning new developments, with a reduced speaking time, before the Employer and Worker spokespersons present their final remarks.
60. Based on the consensus reached during the informal tripartite consultations of March–April 2021 and on an exceptional basis, the adoption of the final list of "individual" cases to be discussed by the Committee has been scheduled at the end of the opening session. This year, the Committee will examine 19 cases as indicated in the provisional working schedule. The Officers and the Office will introduce reasonable adaptations to the usual practice of planning the discussion of individual cases following an alphabetical order, taking into account the different time zones and the complexity of the cases to be examined.
61. Pursuant to the informal tripartite consultations on the Committee's working methods and due to this year's tight working schedule, all conclusions to the examination of "individual" cases will be adopted in a single dedicated sitting. As a result, it will not be



possible to reflect the conclusions on the examination of “individual” cases in the first part of the report as per the usual practice. The conclusions will nevertheless be integrated in the second part of the report at the end of each individual case to which they relate.

62. In addition to this year’s special arrangements, allow me to recall the many improvements made to the methods of work of your Committee since 2006 which are reported in detail in document D.1. I would like to recall in particular that governments on the long list of individual cases are able to submit, on a purely voluntary basis, written information to the Committee on recent developments not yet examined by the Committee of Experts. This year, 24 governments have taken advantage of this opportunity and have provided information which is available on the web page of your Committee. If a case is included in the final list of cases to be discussed at the Committee, any additional written information that governments may wish to communicate should reach the Office at least two days before their case is discussed so that it can be translated and posted on the Committee’s website 24 hours before the discussion.
63. Furthermore, following the practice introduced in the Committee’s previous session, the discussions of your Committee will be reproduced in extenso in verbatim transcripts. The Chairperson will provide you with fuller information on this subject. The first part of the Committee’s report will consist of a consolidated document in three working languages which will be presented for adoption to your Committee’s final sitting. Both Parts One and Two of your report will be submitted to the Plenary sitting of the International Labour Conference for adoption. The full report translated into the three languages will be made available online 30 days after its adoption by the International Labour Conference. As this Conference is organized virtually, all documents will be produced in electronic format only and released on the Committee’s web page which will be our means of sharing important documents and complementing the oral proceedings of the Committee.
64. As this is the first session of your Committee since the International Labour Conference adopted the Centenary Declaration for the Future of Work, I should recall that the Conference in 2019 declared that the setting, promotion, ratification and supervision of international labour standards is of fundamental importance to the ILO, playing a central role in further developing its human-centred approach to the future of work.
65. This Declaration is even more important in the current context as it recalls that social justice relies on the principle of the rule of law which is not suspended in situations of crisis. The implementation of and respect for international labour standards are essential for maintaining solidarity, for reinforcing social cohesion and for resilience in the face of a crisis like the one before us. A global response for a human-centred recovery from the COVID-19 crisis will be the central focus of the Conference discussion this year.
66. It is consequently very encouraging to observe that ILO Member States continue to demonstrate their commitment to ratify and implement international labour standards. As a result of the Centenary Ratification Campaign, a total of 70 new ratifications were registered in 2019. In addition, 26 new ratifications were registered in 2020 while 35 ratifications were registered in just the first five months of 2021. These developments serve to confirm the continuing will of Member States to engage in a multilateral system of cooperation based on international labour standards in pursuit of social justice, including in times of crisis.

67. The Violence and Harassment Convention, 2019 (No. 190), will enter into force on 25 June 2021, two years after its adoption by the International Labour Conference, having received to date six ratifications.
68. A landmark development has been the universal ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182), achieved in June 2020. In a general observation on Convention No. 182 released in its 2021 report, the Committee of Experts notes that as we are celebrating this first-ever universal ratification of an ILO Convention, we must not lose sight of the fact that the ongoing COVID-19 pandemic could reverse a generation of progress against child labour and its worst forms with 66 million children falling into extreme poverty since the pandemic's outbreak. New cases of bonded child labour, such as domestic servitude, as well as commercial sexual exploitation, hazardous work in mining and agriculture and a range of sweatshop activities are on the rise. These alarming developments put at risk progress toward the achievement of Sustainable Development Goal 8.7 which is pursued in this International Year for the Elimination of Child Labour by Alliance 8.7.
69. In the case of child labour, as in other cases where the most vulnerable are left behind, it is the common responsibility of all Member States to demonstrate the solidarity needed at national and international levels to generate "a tide that lifts all the boats" and prevent any retrograde measures that may strip large sections of the population of the protection of the law.
70. This year, we celebrate the anniversaries of international labour Conventions that continue to shape some of the institutions of our world of work, embodying a human-centred approach to the future of work:
- the centenary of the Weekly Rest (Industry) Convention, 1921 (No. 14), which has now become our oldest confirmed up-to-date instrument, addressing one of the longest standing concerns of workers worldwide yet still only ratified by 120 Member States worldwide;
  - the 70th anniversary of the Equal Remuneration Convention, 1951 (No. 100), a fundamental Convention underpinning the transformative gender equality agenda envisaged in the Centenary Declaration for the Future of Work;
  - the 50th anniversary of the Workers' Representatives Convention, 1971 (No. 135), a key instrument in realizing social dialogue and in particular the effective recognition of the right to collective bargaining;
  - the 40th anniversary of the Occupational Safety and Health Convention, 1981 (No. 155), the first general framework Convention promoting safe and healthy working conditions setting up-to-date standards currently considered by the Governing Body in the context of proposals for including safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work. The year of 1981 was a particularly prolific standard-setting year as the Conference also adopted the Collective Bargaining Convention, 1981 (No. 154), and the Workers with Family Responsibilities Convention, 1981 (No. 156), which will be the subject of the General Survey your Committee will discuss in 2023;
  - the 20th anniversary of the Safety and Health in Agriculture Convention, 2001 (No. 184), which itself marked the 80th anniversary of the first-ever standards adopted for the protection of rural workers;

- the tenth anniversary of the Domestic Workers Convention, 2011 (No. 189), again the subject of a General Survey which your Committee will discuss next year.
71. This year, we are also celebrating the 70th anniversary of the Committee on Freedom of Association. The Committee was established in 1951 to examine complaints of violations of freedom of association principles, whether or not the country concerned has ratified the relevant ILO Conventions. This Committee of the Governing Body continues to be the lead body within the UN system promoting respect for the fundamental freedom of association rights of workers and employers. Professor Evance Kalula, Chairperson of the Committee on Freedom of Association will present the Annual Report of the Committee on Freedom of Association.
  72. Work is continuing with a view to reinforcing the standards work of the ILO in its second century based on a body of standards that is robust, clear and up to date, and a system of supervising the application of these standards that is authoritative and transparent, based on strengthened tripartite consensus. Of the 235 international labour standards covered by the initial programme of work of the Standards Review Mechanism Tripartite Working Group (SRM), 75 instruments remain to be examined. At its fifth meeting in September 2019, the SRM Tripartite Working Group completed its in-depth examination of all the instruments on employment policy and employment promotion. The pandemic caused the work of the SRM Tripartite Working Group to be temporarily postponed. The Tripartite Working Group will resume work with a review of social security instruments at its sixth meeting which is set to take place virtually in September 2021.
  73. Similarly, at its fourth meeting held in April this year, the Special Tripartite Committee (STC) of the Maritime Labour Convention, 2006, as amended (MLC, 2006), made recommendations concerning the status of more than 30 maritime labour standards concerning seafarers, which were referred to it by the SRM Tripartite Working Group, as many of these instruments have been revised by the MLC, 2006. By 2030 the majority of those standards should be abrogated by the International Labour Conference, leaving the MLC, 2006, as the up-to-date ILO instrument in the maritime field.
  74. At its 341st Session (March 2021), the Governing Body undertook the second evaluation of the functioning of the SRM, and expressed its gratitude to the Tripartite Working Group's ongoing work while stressing the need for follow-up by Member States, social partners as well as by the Office to its recommendations as adopted by the Governing Body. The Governing Body will undertake a further evaluation no later than March 2022. With a view to ensuring the follow-up to the recommendations of the SRM Tripartite Working Group, the Office has been actively supporting the development of tripartite national plans of action on international labour standards, inter alia, in the framework of Outcome 2 of the programme and budget. The Office will report on results achieved in the framework of the *Programme and Budget Implementation Report*, which will be submitted to the Governing Body in March 2022 and to the next session of the International Labour Conference.
  75. The work of the SRM Tripartite Working Group has thus far resulted in the placing of two standard-setting items on the agenda of future sessions of the International Labour Conference. Next year, the Conference will hold its first standard-setting discussion on a framework for quality apprenticeships stemming from the review of instruments concerning employment policy and employment promotion. Here again, the COVID-19 pandemic had a temporary disruptive effect, as the first Conference discussion on this standard-setting item had to be deferred by one year due to the deferral of the 109th Session of the Conference. The Governing Body decided accordingly to extend until 31 March 2021 the deadline for submitting replies or supplementary information

to the questionnaire for the first discussion so as to capture recent developments that might have had an impact on the law and practice in Member States.

76. Furthermore, at its 341st Session (March 2021), the Governing Body decided to place on the agenda of the 112th and 113th Sessions (2024–25) of the Conference an item related to occupational safety and health protection against biological hazards. This item stems from the review of occupational safety and health instruments carried out by the SRM Tripartite Working Group at its fourth meeting.
77. The follow-up to the Centenary Standards Initiative includes the strengthening of the ILO supervisory system. In the framework of the implementation of the work plan on the strengthening of the supervisory system, the Governing Body is continuing its consideration of further steps to ensure legal certainty and the follow-up to other action points. In order to give effect to the decision taken by the Governing Body at its 331st Session (October–November 2017), the Office, in cooperation with the International Training Centre of the ILO in Turin, has just released the initial web-based version of the *Guide on Established Practices of the ILO Supervisory System (ILO supervisory system: A Guide for Constituents)* in English. The French and Spanish versions will follow soon, along with a fully customized application for tablets and smartphones. In line with the Governing Body decisions, the purpose of the Guide is to bring together useful information in a user-friendly way in order to ensure a level playing field of knowledge on the supervisory system among ILO constituents. I hope the Guide will facilitate reporting on ratified and unratified standards and the further engagement of governments and social partners with the ILO supervisory system.
78. The various supervisory bodies have continued to discuss their working methods and to introduce innovations wherever necessary. At its 341st Session, the Governing Body took note of information provided by the Office on the procedure for the appointment of members of the Committee of Experts on the Application of Conventions and Recommendations and requested the Office to prepare a document for its 343rd Session (November 2021) taking into account the discussion held.
79. In line with previous decisions taken in the framework of informal tripartite consultations on the Committee's working methods, the Office regularly places on the Committee's web page information on the measures taken by the Office to give effect to the recommendations of your Committee. As can be seen from this information, in view of the travel restrictions adopted as a result of the COVID-19 pandemic, the Office had to adapt its methods for following up on your Committee's conclusions. As an alternative to missions, and in order to provide much needed technical assistance in the current exceptional circumstances, the Office sought innovative ways to respond to the needs of the constituents, notably by delivering advisory services and capacity-building activities either at a distance or through local presence.
80. Furthermore, the Office provided reinforced assistance in cases of serious failings by Member States to comply with their reporting obligations. Several countries, notably in Africa, have benefited from such assistance including Djibouti, Sierra Leone, Liberia and Somalia. Some of these Member States have since fulfilled their reporting obligations, at least in part.
81. A partnership with the European Commission has been consolidated through the Trade for Decent Work Project which as of this year covers 12 countries in Africa, Asia and the Americas with a view to promoting the ratification, application and reporting on fundamental and related governance and technical Conventions.

82. At its 340th Session (October–November 2020), the Governing Body also welcomed the ILO technical cooperation programme “Strengthening of the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards” and requested the Office to report annually on its implementation for the duration of the three-year programme.
83. The current phase of the technical cooperation programme in Qatar is ending in June and a report on results obtained was presented to the Governing Body at its 340th Session (October–November 2020).
84. The pandemic had a marked impact on the Office’s capacity-building strategy. The challenge of the pandemic also gave rise to opportunities as new means of communication made it possible to reach a wider audience in a more agile manner.
85. The Office in collaboration with the International Training Centre of the ILO in Turin, took immediate measures to transform all capacity-building activities into online courses delivered at a distance. In parallel, the regional focus of capacity-building activities was reinforced in order to ensure more targeted discussions, including the sharing of good practices, among countries with geographical, economic and legal ties. As a result, the first regional International Labour Standards Academy was delivered in 2020 at a distance to over 155 participants from Africa including tripartite constituents, judges and law professionals, academics and media professionals. This year’s Academy will be delivered to participants from Latin America from 28 June to 30 July 2021. The Turin Centre is also providing tailored training on international labour standards to Members in all regions.
86. A special mention should be made of the situation of seafarers in the context of the COVID-19 pandemic, which is calling for increased international cooperation between the tripartite constituents with the coordinated support of specialized agencies, namely the ILO, the International Maritime Organization and the United Nations. Still to this day, thousands of seafarers remain stranded at sea without the possibility of being repatriated or of accessing medical care and vaccines, while continuing to ensure the uninterrupted transportation of 80 per cent of global trade, including vital medical supplies, food and other basic goods that are critical for the COVID-19 response and recovery. The latest report of the Committee of Experts contains a general observation on the MLC, 2006, which takes stock of the latest developments, including the United Nations General Assembly Resolution on international cooperation to address challenges faced by seafarers as a result of the COVID-19 pandemic to support global supply chains, adopted on 1 December 2020, and the Resolution of the Governing Body of the International Labour Office concerning maritime labour issues and the COVID-19 pandemic, adopted on 8 December 2020.
87. Most recently, the Special Tripartite Committee of the MLC, 2006, held its fourth meeting in April bringing together more than 100 representatives of governments, and organizations of seafarers and shipowners. Through two resolutions, the STC called on governments to treat seafarers as key workers and to cooperate to make vaccines available to them at the earliest opportunity, to allow them to pass through international borders and keep global supply chains moving. The STC also agreed to actions to restore the full respect of seafarers’ rights under the MLC, 2006, and called for the convening of a United Nations inter-agency task force to examine the implementation and practical application of the Convention during the pandemic, including its impact on seafarers’ fundamental rights and on the shipping industry.

88. Allow me to conclude by recalling, as I did on the occasion of the ILO's Centenary, the parchment placed under the first stone of the former ILO building in Geneva, which reads "If you desire peace, cultivate justice". Humanity in 1919 was faced with the historic responsibility of ensuring peace based on social justice. In the current context, I am sure you will agree with me that the women and men of today bear an equally important responsibility towards the future generations as the ILO's founders did, more than 100 years ago of ensuring a recovery that delivers social justice to all.
89. Rest assured that the International Labour Standards Department is determined to maintain the tradition of public service devoted to excellence and is placing its expertise at the service of your Committee to help you play your vital role within the ILO's constitutional framework.

### Statement by the Chairperson of the Committee of Experts

90. It is a pleasure for me to participate in this very special session of the Committee on the Application of Standards, which is being held, not at headquarters in Geneva, as it is every year, but virtually. This session is particularly important in view of the public health situation experienced by the world as a whole, and its impact on the world of work.
91. In the first place, I wish to convey my greetings to all those who are attending and participating in this session of the Conference, and pay tribute to the efforts made to ensure that, despite the circumstances, the meeting can effectively take place. This is the reason why it is of special importance for the Committee of Experts, which I duly represent, to be able to participate in your Committee. I would like to address certain very specific points taking into account the time limits imposed by the circumstances.
92. First, I would like to make some observations on the reflections of the Committee of Experts concerning the exceptional and dramatic circumstances that have affected millions of human beings and as a result, global production and labour relations. I would also like to consider the prevalence and importance of international labour standards and their demonstrated significance in the historical context of the COVID-19 pandemic, as international labour standards are essential for guaranteeing the protection of the minimum rights of workers, and maintaining the capacity of the economy to operate in all the States in the world, and particularly States which have ratified labour Conventions. This review will attempt to highlight certain challenges arising out of the global crisis, which in addition to testing the solidity of the principles and institutions created and founded over 100 years ago, certainly confirm the importance of compliance and the rule of law as the crisis in no way implies the suspension of the obligations undertaken by virtue of ratified international labour standards by the Member States of the Organization. Finally, I will make an effort to address aspects that we consider positive, that is, opportunities which have emerged notwithstanding the devastating effects of the crisis, both in relation to public health and the economies of all the countries in the world, creating new scenarios that have to be taken advantage of by all those who serve these values in one way or another and the rule of law within the international setting.
93. It is important to recall that the Committee of Experts meets every year, from November to December, in accordance with the mandate conferred upon it by the Governing Body. In 2020, despite the challenge represented by the COVID-19 pandemic, the Committee of Experts held its session, for the first time, virtually. This exceptional challenge was met with success. The 20 experts participated from their various locations and we carried out substantive work which enabled us to examine the reports provided by States and adopt conclusions. Despite the circumstances, the Committee of Experts examined the annual reports provided by Member States and a report was produced in which we were able to



set out a synthesis of the crisis, in accordance with the reports presented by virtue of articles 22 and 35 of the Constitution. Our report also illustrates the information shared in reports provided by Member States in accordance with article 19 of the Constitution. The Committee of Experts was thereby able to look into the reports which had been submitted in the previous reporting period and had not been examined, as well as the reports received in the beginning of 2020, before the health crisis.

94. The year 2020 was *sui generis*, in that was a difficult year for everyone, and particularly for Member States which had to submit these reports. The experts recognized the extraordinary efforts made by Member States to be able to comply with their reporting obligations and allow the Committee of Experts to carry out its work. We understand the complex difficulties faced in being able to comply with some of the requirements set out in international Conventions and Recommendations and welcome the fact that certain States managed, despite the circumstances, to give effect to these obligations.
95. With regard to this year's General Report, the Committee of Experts decided to produce an addendum to its 2020 report. Also, the Committee of Experts adopted an addendum to the 2020 General Survey. These documents, which are examined at the Committee's current session, place emphasis on three fundamental pillars.
96. The exceptional and dramatic circumstances linked to the COVID-19 pandemic affected millions of human beings and had a de facto impact on global production and labour relations. This shed light on the role and importance of international labour standards in this historic juncture in order to guarantee workers' basic rights and the continuing function of national economies. The challenges arising out of the crisis are another of the aspects that the Committee of Experts highlights in the General Report and the General Survey in order to emphasize the importance of respect for the rule of law. Finally, the Committee of Experts identifies the opportunities which, notwithstanding the devastating effects of the crisis, open up new scenarios, both in relation to public health and the economies of countries around the world.
97. The challenges to which the world is confronted in the context of the COVID-19 pandemic may be resumed as follows: on the one hand, the Committee of Experts recognized as a major challenge the need to maintain compliance and preserve fundamental rights at work in a situation of severe restrictions, social confinement measures and the closure of economic activities. Another important challenge that the Committee of Experts pinpointed in its report, consists in the complexities in the application of international standards respecting occupational safety and health, as well as the situation of the sudden and severe contraction of the world economy and its impact on the social security systems established in States. Indeed, the global health crisis put to the test the social security systems. In many societies and economies, these models of social security revealed their fragility and weaknesses and the need to make significant changes to bring them in line with international Conventions so as to guarantee and secure minimum health and social security conditions to the population and workers in particular. Another important challenge for the Committee of Experts was the identification of priorities and the assessment of emerging situations facing governments, and their impact on compliance with reporting obligations.
98. In this context, the Committee of Experts examined a few reports which contained a description of the situation and certainly served to illustrate certain specific situations arising in these economies. We emphasize as one of the greatest challenges the difficult situation facing the maritime sector. The maritime sector was one of the worst affected by the impact of the COVID-19 pandemic. In this respect, as all the social partners and participants are aware, the situation of seafarers was perhaps one of the most dramatic

episodes of the health crisis linked to the COVID-19 pandemic. In this regard, the Committee of Experts focused very special attention on this situation in a general observation on the Maritime Labour Convention, 2006, highlighting and emphasizing in particular the importance of all seafarers working on ships flying the flag of a State being covered by adequate health protection measures, and in addition being granted rapid and adequate access to medical care when they are working on board, as well as being provided with vaccines. The health crisis that struck the world of maritime work affected over 400,000 seafarers who were trapped on the high seas without being able to disembark for more than a year. It also affected workers who were not able to board ship in order, not only to replace the crews who were there, but also to ensure their own livelihoods through work. This crisis in the maritime sector had an impact in economic terms in view of the recognition that over 90 per cent of world trade is carried by sea.

99. It is also important to emphasize the role of social dialogue as a fundamental instrument for economic recovery. In this context, it should be noted that it is in the maritime sector that social dialogue proved to be a fundamental instrument as it made it possible to pay rapid and positive attention on a crisis that otherwise could have had an even more devastating impact; thanks to the collaboration of those involved in developing a response and solutions to the crisis, including not only seafarers, but also employers and States themselves, key statements and decisions could be adopted to overcome the negative impact that the crisis had, and continues to have, for workers in the maritime sector.
100. With regard to the relevance of social dialogue in general, we wish to emphasize that the crisis offered an opportunity to confirm its fundamental importance for economic recovery. Overcoming the crisis in a sustainable and human-centred manner is not possible without adequate social dialogue. Given an exacerbation of social tension and unfortunate weakening of trust among the constituents, these delicate circumstances having an impact on social dialogue and its effectiveness, the Committee of Experts must reaffirm that the current circumstances must not constitute an obstacle to the strengthening of dialogue. The exacerbation of social tension can only be addressed and overcome when the stakeholders can listen to each other, hold discussions and develop concerted solutions. According to ILO data, the impact of the crisis has compromised over 495 million full-time equivalent jobs. This situation has placed at risk the stability of the levels of development that humanity had achieved over the hundred years since the creation of the ILO. It is a situation which, according to ILO estimates, has led to loss of jobs and means of subsistence for around 1.6 billion workers in the informal economy. Not only full-time workers have been affected, but also, and in a very significant way, workers in the informal economy who account to 76 per cent of global employment. Moreover, the measures adopted to contain the propagation of the pandemic such as quarantines, travel restrictions and lockdowns, have given rise to a global recession and unprecedented levels of unemployment. In view of the repercussions of the pandemic, the number of persons living in extreme poverty may rise to over 150 million before the end of this year. It is a dramatic global impact which exceeds the scale of poverty experienced by humanity up to 1998. The phenomenon of extreme hunger, according to the calculations that have been made, may double before the end of this year and, for this reason, social dialogue is one of the tools and one of the essential and fundamental mechanisms for maintaining respect for human rights.
101. Finally, allow me to make a short description of the opportunities that the Committee of Experts recognized in the current socio-economic crisis. For it is clear that not everything has been devastating and negative, and that a positive lens can also apply to every dramatic experience. The opportunities that have emerged from the crisis should also



be shared. An important opportunity has been the development of more inclusive employment policies based on the solid basis of international labour standards, which set out the principles that the Committee of Experts considered in its 2020 General Survey. These opportunities, including the opportunity to develop new employment policies, became much more visible precisely as a consequence of the impact of the COVID-19 pandemic. The conclusions and recommendations on the effective application of international labour standards contained in the 2020 General Survey constitute, or could offer, an opportunity for States to launch new employment policies in light of the needs of the world of work today.

- 102.** Another opportunity emphasized by the Committee has been the acceleration caused by the crisis in the creation of a new integrated but also broad normative framework. A normative framework which enables or ensures and protects labour rights both for workers in the new types and forms of work that are emerging in production, as well as in traditional forms of work. When it comes to the new types and forms of work experienced today, there has been an acceleration in a process that has already begun years ago and has also been considered by the Committee of Experts in earlier studies; at the time we referred to the new challenges and emerging scenarios in the world of work resulting from the development of technology and science. This time, we have experienced an unprecedented acceleration as a consequence of the impact of the pandemic. In productive activities, there has been an expansion in forms of homeworking, distance working, including the expansion and acceleration of forms of work through technological platforms in the context of the situation imposed upon us by the COVID-19 pandemic. Moreover, in terms of the opportunities that have emerged from this pandemic, the international community, as well as the social partners, have been offered the opportunity to confirm the value of international labour standards, to confirm their importance and relevance as useful tools and as a reference point for the development of effective crisis responses to this pandemic. Such that, in light of the situation described above, and only as an illustration, we consider it important to emphasize and to share that standards such as the Social Protection Floors Recommendation, 2012 (No. 202), and the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), as well as the standards related to social security and occupational safety, have taken on fundamental importance. Their importance takes on renewed relevance in light of the challenge referred to earlier on, in relation to the crises affecting the social security systems in many States following the impact of the global health crisis.
- 103.** Indeed, it is pertinent to recall that for the next General Survey, the Committee of Experts will focus on the issue of decent work for care economy workers in a changing economy. We consider it important, and I will conclude here, to hear and to visualize the opportunity offered to us to structure mechanisms that make the transition from the informal to the formal economy viable and facilitate it, as well as narrowing the technology gap and the preparation and skilling of workers with a view to facilitating their inclusion in productive work through the design of a new generation of employment policies and programmes that guarantee human-centred decent work, as well as inclusive work that takes into account gender issues and non-discrimination.
- 104.** I conclude by emphasizing that we have the opportunity to generate synergy within countries, and also at the level of the international community, for the establishment, reinforcement and productive expansion of all social protection systems.

### Statement by the Chairperson of the Committee on Freedom of Association

- 105.** It is again an honour and a privilege for me to come before your esteemed Committee to report on the activity of the Committee on Freedom of Association, as reflected in its annual reports since we last met in 2019. The idea for the Committee on Freedom of Association to report annually and present its report to the Committee emanated from workers and employers with a view to ensuring the complementarity of both Committees and avoiding duplication of procedures.
- 106.** The role of the Committee on Freedom of Association is to examine the complaints brought before it of violations of freedom of association regardless of ratification of the relevant freedom of association Conventions. As freedom of association can only be exercised in conditions in which fundamental human rights and civil liberties are fully respected and granted, the Committee on Freedom of Association is also empowered within its mandate to examine to what extent the exercise of trade union rights may be affected in cases of allegations of infringement of civil liberties.
- 107.** Judging from about 150 cases that the Committee on Freedom of Association examines every year, and the governments in cooperation with the Committee's procedures, it is clear that the Committee's work is well known and appreciated and is seen as an authoritative voice for identifying shortcomings and finding workable solutions through social dialogue at the national level in order to address pending concerns that may have otherwise been raised in your global public forum.
- 108.** Since your Committee is about to examine the application of Conventions relative to freedom of association, it would be appropriate to recall the types of allegations that came most often before the Committee on Freedom of Association in 2019 and 2020. These were inadequate protection against acts of interference and anti-union discrimination and violation of collective bargaining rights, trade union rights and civil liberties.
- 109.** While a lot remains to be done, it is my pleasure to inform you that there has been important progress noted by the Committee on Freedom of Association with interest or satisfaction during this period. In this respect, I would like to draw the attention of your Committee to the 2020 annual report, which contains visual statistics on the cases of progress by type of allegations as well as on the cases of progress by region.
- 110.** Aware of the fact that the ILO technical assistance is a critically important tool for governments and social partners alike to resolve outstanding issues, particularly those related to capacity, the Office has made available in the last two years technical assistance in 17 cases.
- 111.** Since their adoption and the beginnings of the Committee on Freedom of Association, 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), have been ratified by 157 and 168 Member States, respectively. In cases where the government has ratified the relevant Convention, the Committee on Freedom of Association often transmits the legislative aspects to the Committee of Experts. In the period covered by the two reports before your honourable Committee, this practice was used in 16 cases, ensuring complementarity in the system through follow-up by regular supervision while also importantly avoiding duplication in examination, as well as the constant engagement between the Committee on Freedom of Association which is a complaint-based procedure on the one hand, and the Committee of Experts and your Committee, on the other. This also demonstrates the importance of ratification for ensuring sustainable progress in respect of freedom of association around the globe.

112. I would like to take this opportunity to recall that this year represents the 70th anniversary of the creation of the Committee on Freedom of Association. Its success lies, no doubt, in the way it conducts its work. The Committee on Freedom of Association is not a tribunal. It does not punish, it does not blame, but engages in a constructive dialogue with the experience and expertise that its members, drawn from the tripartite constituencies of the ILO, bring to bear from the real economy to promote respect for freedom of association, both in law and in practice.
113. I am very honoured to chair this Committee on Freedom of Association and, in that role, to make my own modest contribution to its work. As you begin your important work, I wish your Committee constructive and fruitful discussions.

### Statement by the Employer members

114. **Employer members:** We would like to welcome Judge Dixon Caton, the Chair of the Committee of Experts, and Professor Evance Kalula, the Chair of the Committee on Freedom of Association, to the first-ever virtual session of the Committee. The Employer members also want to take this opportunity to thank Judge Abdul Koroma and Judge Lelio Bentes Correa, who are completing their mandates this year, for their knowledgeable contribution to the Committee of Experts and the Committee on Application of Standards during the past 15 years. We wish them well in their future endeavours. We very much appreciate the work of the Committee of Experts in its technical observations as part of the supervisory system and as part of the preparatory work for our Committee. We appreciate the work of the Committee on Freedom of Association regarding the articulation of principles of freedom of association and collective bargaining.
115. With regard to the work of the Committee on Application of Standards, the Employer members would like to share the following important points: first, we would like to recall the ILO's Centenary Declaration, which clearly states that international labour standards also need to respond to the changing patterns of the world of work, protect workers and take into account the needs of sustainable enterprises and be subject to authoritative and effective supervision. We believe that the needs of sustainable enterprises should also become more visible in ILO standards supervision, which, in our view, could contribute to more balanced application of international labour standards globally. In that regard, we would be interested in hearing from Judge Dixon Caton, how the Committee of Experts can take into account the needs of sustainable enterprises in their supervisory work in a more substantive and meaningful way. This seems to be of particular relevance in the current context where Member States are designing or implementing COVID-19 recovery strategies in which sustainable enterprises are expected to play a key role.
116. Second, the discussion this year takes place against the backdrop of the ongoing pandemic which has left its mark, both on the application and supervision of ILO standards. While the application of ratified Conventions has generally not been suspended during the COVID-19 crisis, temporary modification of the application has likely had to be made in order to safeguard business continuation and employment, or to prevent more serious negative consequences. Such modifications may also be necessary in the recovery process where governments, employers and workers need the necessary space and flexibility for getting economies back up and running. Having said that, the employers wish to stress that the crisis must not be used as an excuse for not complying with ILO fundamental Conventions.

- 117.** Third, we note that the Committee of Experts this year once again expressed concerns at the low number of government reports reviewed by the 1 October deadline. While we do understand the difficulties and challenges governments have been facing, we count on them to continue complying with their reporting obligations under articles 19, 22 and 35 in a timely manner and to do so in consultation with the most representative employers' and workers' organizations. This is important because it is government reports that provide the core basis for the ILO supervisory work.
- 118.** Fourth, we must discuss the distinction between direct requests and observations in the Committee of Experts' report. We observe the explanations provided by the Committee of Experts in paragraph 117 of its 2021 report, in particular, that direct requests can be used for the clarification of certain points when the information available does not enable a full appreciation of the extent to which obligations are fulfilled. The Employer members are concerned that the Committee of Experts, despite this explanation, makes numerous substantial assessments of compliance in the form of bilateral direct requests. By doing so, given that direct requests are not discussed in the Committee on the Application of Standards, the Committee of Experts excludes a major part of its standards supervisory work from tripartite scrutiny and discussion within this Committee. According to this year's Addendum to its report, the Committee of Experts in 2020 made as many as 1,110 direct requests compared to 556 observations, this is not therefore a minor issue. The Employer members as a result request the Committee of Experts to make comments that contain assessments of compliance, whether based on a first or supplemental government report, in the form of observations and that only matters that deal with requests for information or clarification be included in direct requests.
- 119.** Fifth, the Employer members take note of the criteria that the Committee of Experts established for determining double-footnoted cases in paragraph 125 of the report. We would like to reiterate our early request to the Committee of Experts to provide clear explanations for each double-footnoted case in the report as to why it has been categorized as such. We believe that providing additional information in this regard, will contribute to increasing transparency in the identification of these cases.
- 120.** Sixth, the Employer members note with concern that this year, in its technical observation on the application of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the Committee of Experts requested a number of governments to provide information not only on the application of Convention No. 144, but also on the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152). It should be recalled that Member States have an obligation under article 22 of the ILO Constitution to provide information on the application of ratified Conventions, but do not have a corresponding obligation to provide information on related Recommendations. It is important that the Committee of Experts does not give the impression that Member States are obliged to provide information on the application of Recommendations within the context of article 22.
- 121.** Now, I would like to turn to some comments that are related to the Committee of Experts' observations on the promotion of collective bargaining under Article 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Given the controversial discussions that have taken place in recent years on this provision, the Employer members take this opportunity to clarify their views on several key issues in this context: (i) first, this concerns the question – who has a right of collective bargaining? According to Article 4, this is employers or employers' organizations and workers' organizations; organizations of other persons, for example, organizations of independent contractors,

or organizations of self-employed individuals are not workers' organizations and therefore not entitled to collective bargaining. It is therefore important that clear criteria and procedures be put in place that allow the determination of who is a worker versus who is a self-employed person or an independent contractor. In the absence of rules in this regard in Article 4, the competence for establishing such criteria and procedures lies exclusively with governments; (ii) our second point in respect of the promotion of collective bargaining under Article 4 of Convention No. 98, concerns the level of collective bargaining. Article 4 does not specify nor prioritize a particular level; in other words collective bargaining at every level is equally protected by Article 4, including at the national level, the sectoral level or the company level. Therefore, while governments have an obligation to promote collective bargaining under this provision, the choice of the level for bargaining is up to the social partners involved; (iii) another rather controversial issue which has emerged is whether Article 4 provides for a hierarchy of norms in which collective agreements cannot depart from applicable legislation, and individual labour contracts cannot depart from applicable collective agreements. Article 4 does not address this issue at all. Therefore, as long as governments comply with their obligation to promote collective bargaining, it is at their discretion to establish a hierarchy of norms or a framework, and modify that as necessary; (iv) a question has also emerged in a certain observations in recent year as to whether a legal obligation to negotiate for employers is compatible with Article 4. The Committee of Experts seems to answer this question in the affirmative, as long as there is no obligation to conclude a collective agreement. The Employer members do not agree with this, given that Article 4 clearly refers to "voluntary negotiation"; (v) finally, in certain circumstances, the Committee of Experts has considered compulsory arbitration on the initiative of a workers' organization to be in line with Article 4, where this is meant to achieve the conclusion of a first collective agreement. The Employer members cannot see or understand the justification for this view, given that Article 4 is solely based on the voluntary nature of collective bargaining, and compulsory arbitration sits in diametric opposition to that concept. In conclusion, the Employer members request the Committee of Experts, and the Office that supports their work, to fully respect the wording of Article 4 of Convention No. 98 and the flexibility afforded by this provision to governments and social partners in Member States in finding ways of implementation that best meet their national circumstances and business and worker protection realities.

- 122.** In addition, the Employer members must once again question the Committee of Experts' numerous assessments on the "right to strike" within the context of Convention No. 87. We note that in the 2020 report, 58 observations were made on Convention No. 87, out of which 42 (which is 72 per cent of the observations) concern the right to strike. Furthermore, the Committee of Experts made 52 direct requests on Convention No. 87 and 83 per cent of those direct requests have right to strike elements or questions. Moreover, the figures in the 2021 Addendum report are quite similar. The Committee of Experts made 50 observations on Convention No. 87 out of which 38 (which equals 76 per cent) concern the right to strike. There are also 39 direct requests, and 36 of them (which is the equivalent of 92 per cent) have right to strike elements.
- 123.** It is important to note that, apart from the Employer members, the Government group in the Governing Body expressed its view that the conditions and practices of the right to strike are to be defined at national level. The legislative history is also clear in that the proposed Convention relates to freedom of association and not the right to strike. Therefore, the Employer members cannot but note that the repeated insistence of the



Committee of Experts on an extensive articulation regarding the right to strike is increasingly divisive and weakens the ILO standards supervisory system.

124. The Employer members reiterate their firm support and commitment to social dialogue and to the ILO standards supervisory system, as key and important governance institutions in international labour and social policy.
125. **Employer member, New Zealand:** While the ongoing pandemic has created significant challenges for the application of labour standards, it must not become an excuse for not complying with ILO fundamental Conventions. Sadly, it seems that this thought is not shared by all. At the heart of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), is the right to bargain freely and voluntarily, free from compulsory arbitration and government interference. Equally important is the right of the social partners to determine the level of collective bargaining.
126. Article 4 of Convention No. 98 does not specify or prioritize a particular level for collective bargaining. Bargaining at every level is equally protected, including at the national level, the sectoral level or the company level. While governments have an obligation to promote collective bargaining, the choice of the concrete level for bargaining is actually up to the social partners. However, this is not always the case when it comes to observations on Convention No. 98. While bargaining for national industry or occupational collective documents covering all workers and employers in that industry or occupation is within the ambit of Convention No. 98, restricting how the level may be determined, is not. Similarly, permitting only one party to initiate bargaining for an agreement and to decide whether or not the document is to be an industry-based or occupationally-based one, as well as deciding the document's scope and coverage, falls well outside any accepted interpretation of Article 4. Exactly the same can be said about rules that prohibit the ability of the parties to opt out of collective bargaining and require an agreement to be concluded either by agreement or through compulsory arbitration. Indeed, countries that enforce systems of compulsory arbitration, which, in the absence of agreement ultimately fix the terms of the agreement, cannot be said to be compliant with the principle of free and voluntary negotiation. A failure to ratify a settlement that results in the terms of the agreement being fixed by arbitration, with no right of appeal against the terms that are fixed, is similarly non-compliant.
127. Equally challenging is the situation of a government that chooses to oversee the bargaining process, ensure compliance and turn settlements, be they agreed or arbitrated, into legislation. While all of these actions singly or collectively are not unknown, they cannot and must not go unchallenged by this house less the failure to do so weakens the very fabric of the supervisory system served by this Committee. In this regard, I echo our spokesperson's earlier statement regarding whether or not a legal obligation for employers to negotiate is compatible with Article 4 of Convention No. 98.
128. To conclude, the New Zealand employers believe implicitly in the ILO standards supervisory system and do not want to see it being openly abused anywhere. We respectfully request that the Committee of Experts and the Office not only fully respect the wording of and the principles enshrined in Article 4 of Convention No. 98, but also take prompt and effective action to address clear instances of departure from these. In our view, a failure to do so undermines the supervisory system and by extension, undermines all of us. Please do not let this happen.
129. **Employer member, Argentina:** We thank the Committee of Experts for its reports of 2020 and Addendum of 2021. In a constructive spirit and always aiming at improving the regularization of international labour standards we would like to add some comments:

(i) we would like to reinforce the proposal that we made previously for the Committee of Experts to consider that the information in the next report is presented by country and not by subject matter. We believe this will allow the users to get a more comprehensive understanding of the progress made and identify the persisting application issues in a given country. This would also be more coherent with the way the information and the case profiles are presented in the ILO NormLex database; (ii) we appreciate the efforts made to present consolidated comments in the Committee of Experts' report. We think that expanding this practice could help the ILO constituents by making information more accessible. However, we are interested in having some clarification on the reasons for not doing it more systematically and including all subject areas; (iii) in the same spirit, we would like to request the Committee of Experts to systematically insert hyperlinks to comments made in previous General Surveys in their report. This will avoid repetition and provide easier access to previous comments. We trust these measures will help to increase transparency and also the efficiency of the work of this Committee and help to build sustained dialogue and constructive cooperation with the Committee of Experts.

- 130. Employer member, Colombia:** I would like to refer to the importance of maintaining coordination between the different standards supervisory systems and the appropriate balance that must be retained between these supervisory mechanisms. While the standards supervisory system is focused on the Committee of Experts and the Committee on the Application of Standards as standing bodies, as well as on representations under articles 24 and 26 of the ILO Constitution, as special bodies, on the other hand, the Committee on Freedom of Association is not founded on Conventions, but on two principles: freedom of association and the effective recognition of the right to collective bargaining. The former has its origins in the ILO Constitution and the latter in the Declaration of Philadelphia. These mechanisms must also take into account the importance of the level of autonomy that each State must have in being able to determine the framework in which to develop international labour standards, in accordance with its own national situation and circumstances and, for that purpose, the drawing up of legislation and its application must be constructed with the social partners.
- 131.** Secondly, I would like to echo our spokesperson's call concerning the importance of the transparency required in the use by the Committee of Experts of observations and direct requests to Governments. The purpose is to avoid, through the use of such means, analysis of compliance with standards escaping tripartite scrutiny, particularly when it is borne in mind that in matters such as the right to strike there is not consensus in this house on the content of international labour Conventions.
- 132.** Thirdly, with regard to the application of international labour standards in the context of the COVID-19 pandemic, I wish to emphasize the importance of going into greater depth concerning the content and concept of sustainable enterprises and the need to include this concept in the analyses undertaken by the Committee of Experts. Further to the comments made by our spokesperson, the inclusion of sustainable enterprises in the analysis undertaken by ILO supervisory mechanisms will allow an appropriate balance in the application of international labour standards.
- 133.** Lastly, we believe that it is important for the Committee of Experts to highlight the positive experiences of States in implementing measures to protect the life and health of their populations, without prejudice to the fundamental labour principles contained in the Conventions.
- 134. Employer member, South Africa:** We recall that the ILO Centenary Declaration clearly states that international labour standards also need to respond to the changing patterns

of the world of work, protect workers and to take into account the needs of sustainable enterprises and be subject to authoritative and effective supervision.

135. We believe that the needs of sustainable enterprises should become more visible in the ILO standards supervision, which would contribute to more balance and acceptance in the application of ILO standards. In this regard, we would be interested in understanding how the Committee of Experts takes into account the needs of sustainable enterprises in its supervisory work, especially concerning the African continent. This is particularly relevant in the current context for us. Member States in Africa are designing or implementing COVID-19 recovery strategies in which sustainable enterprises are expected to play a key role.
136. We note the Committee of Experts' observation that the rule of law should always be upheld, even in pandemic circumstances. We do not take issue with this; however, we believe that a level of pragmatism is necessary. There is no doubt that the pandemic has worsened the employment situation and the ability of enterprises to remain viable and sustain jobs. Some countries have sought tripartite solutions to assist enterprises to survive in order to sustain employment levels.
137. In the case of South Africa, the Government and the social partners have sought a package of measures called COVID-19 temporary employment relief scheme which essentially provided temporary relief to firms that struggled to pay workers for a few months. While these schemes are helpful they are not always sustainable. What could and should be considered is the impact of standards on the ability of enterprises to swiftly adapt to crisis in order to remain viable and sustain jobs. And, the views of the Committee of Experts in this regard will be particularly useful. It is our view that the case of Mozambique, on the Employment Policy Convention, 1964 (No. 122), which in many perspectives should be considered a case of progress will provide this Committee with a great opportunity to consider what we are suggesting.

### Statement by the Worker members

138. **Worker members:** We thank the Chairs of the Committee of Experts and the Committee on Freedom of Association for their presence and participation in the Committee's discussions. This bears witness to the productive dialogue between the various permanent ILO supervisory bodies. This closer dialogue between our Committee and the Committee of Experts illustrates the complementary nature of the two mechanisms, as the report of the Committee of Experts constitutes the basis for the work of our Committee.
139. This complementarity is conditional upon the independence of the two bodies, which seek the same objective and, in so doing, decide to engage in a continuous dialogue on an equal footing. In order to avoid any misunderstanding, we wish to specify that these exchanges are not moments to try and influence the work of the Committee of Experts, and still less to give them instructions. Apart from the fact that our Committee has no mandate to do so, such an approach would undermine the independence of the Committee of Experts and would diminish its authority. For the Worker members, these discussions have the sole aim of allowing the two Committees to gain a better understanding of their respective methods and to note, where appropriate, points of convergence. In this regard, it should be specified that, if one of the Groups or certain States have a divergence with the Committee of Experts, that implies no commitment by the Committee on the Application of Standards as a whole.



- 140.** We have heard on several occasions that our two Committees should move towards greater synergy. It is true that they have a common objective, which is to supervise and ensure the sound application of standards. However, in view of their composition and mandates, they each have specific characteristics that must be respected and maintained. That guarantees, for example, that differences of approach between employers and workers on certain issues do not have an impact on the work of the Committee of Experts. The latter, independently, must continue to supervise compliance with ILO standards.
- 141.** In this regard, the right to strike is a very specific example. I would recall that the Worker members consider that the right to strike is an integral component of freedom of association and that it is covered by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Despite the isolated position of the Employer members on this issue, this has not in any way prevented the Committee of Experts from continuing to make comments on this subject. This shows its independence and its capacity to work effectively.
- 142.** The work of the Committee of Experts is characterized by its exhaustive nature. This allows it to deal with many cases and examine all aspects, including those on which there has been progress. In view of the time limitations, our Committee can only examine a few cases, 19 this year, and as I have already indicated, the list adopted this year does not include any case of progress. I recall in passing that the classification of a case of progress by the Committee of Experts corresponds to a precise definition and cannot be extrapolated at a whim. Progress in one respect does not mean that other problems do not continue to arise in other areas. I also recall that, in our Committee, for a case to be considered a case of progress, it must be explicitly identified as such by the two spokespersons.
- 143.** On another issue, the Worker members have noted with attention the request made by the Employer members to the Committee of Experts to take greater account of the needs of sustainable enterprises when assessing compliance with standards. In this regard, we wish to make three observations.
- 144.** First, workers are those who are primarily concerned by the fate of enterprises. Indeed, they are the ones who, through their work, allow the economic activity to exist. As illustrated by this pandemic, without workers it is not possible to produce goods and services. They therefore have as much to say concerning enterprises as the Employers' group.
- 145.** Second, the ILO's mandate focusses on workers' rights. An enterprise is only sustainable if it is capable of respecting the rights – all the rights – of workers. It has to be noted that no authoritative ILO instrument defines what is to be understood or meant by sustainable enterprise. It may nevertheless be recalled that, during the discussion on this issue at the 90th Session of the International Labour Conference, it was clearly recalled on a tripartite basis that a conducive environment for sustainable enterprises is characterized by respect for international labour standards.
- 146.** The third observation, and perhaps the most important, is that the mandate of the Committee of Experts consists of the supervision of the extent of conformity of the law and practice of States with Conventions and Recommendations. In this regard, the independence and rigour of these comments, expressed on the basis of their interpretation of the texts, are essential elements in the view of the Worker members.
- 147.** In light of the above, this suggestion by the Employer members is totally inappropriate and the Worker members categorically reject it. Instead of going off on this type of

discussion, it is necessary to refocus on the essential. Throughout the world and in many countries, international labour standards are not implemented or are flouted. Our role and that of the Committee of Experts is to endeavour to change this sad reality. It is in the interests of workers, but also of employers, and clearly also of governments.

- 148. Worker member, Belarus:** I would like to reaffirm our commitment to the fundamental principles of the Committee, primarily objectivity and equal access for all countries. We consider that when considering questions, there is no room for divergent interpretations of labour standards and we support the Committee's position that any assessment needs to be based on an objective, factual basis, not on suppositions or ulterior motives. That guarantees the fairness of our work.
- 149.** Our Federation is making efforts to ensure the implementation of labour standards in our country and despite all difficulties brought about by the pandemic, we are moving towards the necessary protection of workers' rights thanks to a system of social dialogue. In the difficult conditions of the pandemic we have been able to resolve pressing issues for workers at the legislative level and in the area of practical application by the social partners. All workers, for example, who have fallen ill or might be infected receive full sick pay. Furthermore, we have managed to work at the legislative level to provide for additional holiday days for workers for health checks. We have also achieved agreements between the social partners to prevent mass redundancies. First steps have been made to ensure legislation is in place to protect workers working remotely. There has been a significant increase in pay for medical workers. Furthermore, additional material support is being provided to those who have fallen ill as a result of carrying out their professional activities. All this demonstrates commitment to the principles of ILO Conventions, in particular those relating to collective bargaining, employment, social protection, health and safety in the workplace and other issues.

### Statement by Government members

- 150. Government member of Portugal, speaking on behalf of the European Union and its Member States:** The candidate countries Republic of North Macedonia, Montenegro, Serbia and Albania and EFTA country Norway, member of the European Economic Area, as well as the Republic of Moldova, Georgia and Ukraine, align themselves with this statement.
- 151.** We welcome not only with immense satisfaction, but also with relief, that the discussion of the Committee on Application of Standards finally takes place after a one-year deferral. We strongly believe in the fundamental importance of international labour standards and their effective and authoritative supervision, especially during crises such as the one resulting from the COVID-19 pandemic.
- 152.** We highly appreciate the analysis of the Committee of Experts in the General Report, in particular the guidance offered with regard to the path to recovery and resilience. This report provides a solid basis for the work of our Committee. All European Union Member States have ratified all the fundamental ILO Conventions and we truly believe that ratification, implementation of and compliance with these Conventions not only contributes to the protection and promotion of human rights, including labour rights, but also to the larger objectives of building social and economic stability, as well as inclusive societies all over the world.
- 153.** This commitment is reaffirmed in the European Union's trade agreements and unilateral trade preferences, as well as through continuous support for ILO technical assistance in the field.

154. We fully share the report's premise that international labour standards have a central role in preventing further socio-economic regression, and in putting recovery efforts on a more stable footing. International labour standards, their full implementation and their effective and authoritative supervision are a fundamental part of the recovery from the crisis. This is also in line with the Centenary Declaration on the Future of Work.
155. As pointed out by the Report, the crisis poses a risk that labour conditions deteriorate globally. However, the crisis situation does not authorize to suspend obligations under ratified international labour standards. More importantly, it stresses the need for living up to them and that any derogations should be exercised within clearly defined limits of legality, necessity, proportionality and non-discrimination. We share the Committee of Experts' view that recovery measures should never weaken the protection afforded by labour laws as that would only further undermine social cohesion and stability and erode citizens' trust in public policies.
156. We therefore underline the critical importance of effective forms of social dialogue to elaborate and implement responses grounded in respect for rights at work. Similarly, the continued support and provision of comprehensive policy guidance and technical assistance from the ILO cannot be overstated.
157. The European Union and its Member States are convinced that a well-functioning supervisory system is also critical to ensure the credibility of the Organization's work as a whole. The ILO's leadership has proven crucial in addressing challenges identified by the Report, such as poverty, inequalities, discrimination and marginalization, especially of those most vulnerable. We note with regret that there are immense challenges to ensure the safety and health of workers around the world; the pressures on creating robust, flexible and shock-resilient social security systems; the questioning of the value of employment policies; as well as the use of the COVID-19 crisis as a pretext for acts of anti-union discrimination. In this regard, international labour standards provide guidance to lay the foundations for an inclusive and sustainable recovery.
158. The European Union and its Member States are particularly worried that child labour, especially in its worst forms, as well as forced labour, are exacerbated by the COVID-19 pandemic. We must ensure that the progress made towards eliminating forced labour and child labour over recent years is not reversed. The European Union and its Member States will continue to fully support the ILO's supervisory system and the promotion of international labour standards. We remain convinced that this is one of the most valuable examples of a multilateral rules-based order which has gained even more importance during the crisis. We are looking forward to constructive engagement with all constituents during the debate in this Committee.
159. **Government member, Belgium:** Belgium aligns itself with the statement of the European Union and its Member States. The ILO is a standard-setting organization, and the Committee on the Application of Standards is its backbone. Belgium is one of the countries that has ratified the highest number of Conventions, implements them and provides reports to the ILO.
160. Since 2012, the standards supervisory mechanism has been subjected to various types of pressure. Admittedly, the mechanism is also dependent on other bodies within the Organization, but the Committee on the Application of Standards, as a standing committee of this global labour assembly, is essential. The standards supervisory mechanism is essential for the achievement of social justice, the constitutional objective of our Organization. The work that will be carried out will be based on the report

prepared by the Committee of Experts, and Belgium highlights the independent and impartial nature of its analysis.

161. We support statements affirming that no crisis situation may justify exemptions from the rule of law. ILO membership is not a declaratory act, it is a commitment to the promotion and implementation of the ILO's standards, strategic objectives and values. However, as recent work has demonstrated, the health crisis has had the consequence of increasing inequality and a rise in child labour. Violations of fundamental rights, including those related to freedom of association, have multiplied. Some of the gains made in equality between women and men are being eroded. The COVID-19 crisis has therefore had undeniable consequences for the world of work.
162. In this difficult context, it is therefore essential to intensify efforts for the implementation of the standards to which we have subscribed. In particular, Belgium calls on the States that are on the agenda of the Committee to adopt the necessary measures, without delay, to improve the situation. Belgium intends to pursue resolutely its commitment in this Committee and the Organization.
163. **Government member, Saudi Arabia:** We thank the Committee of Experts which confirmed in its report the satisfaction with the measures taken by our Government on the application of the Minimum Age Convention, 1973 (No. 138), and noted with interest the different measures taken by the Kingdom on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). We commend the Committee's role in supporting the Member States in enhancing compliance with international labour standards and for facilitating easy access to their reports and ensuring the transparency of information and clarity of guidelines and observations.
164. We also congratulate the ILO on the universal ratification of Worst Forms of Child Labour Convention, 1999 (No. 182), which came as a result of the cooperation of the international community and the unified efforts to abolish the worst forms of child labour. We faced great challenges in Saudi Arabia during the COVID-19 pandemic as did the rest of the world. Our Government took many measures to respond to the pandemic in order to mitigate its negative impact on the labour market under the Government's national and international obligations.
165. The Government of Saudi Arabia confirms its commitment to take effective actions toward the labour market recovery from the pandemic's negative impact and it continues to endeavour to ensure the stability of the contractual and labour relations in the midst of the constant changes in the labour market.
166. The Saudi Government has reaffirmed its obligation to the ILO's normative system late last year through the ratification of the Hygiene (Commerce and Offices) Convention, 1964 (No. 120), and the Protection of Wages Convention, 1949 (No. 95), especially given their particular significance during the current crisis. Earlier this year, the Saudi Government also adopted the National Policy on Occupational Safety and Health and the National Policy to Prevent Child Labour including the implementation of its respective action plan. We deposited last week the formal ratification instrument of the Protocol of 2014 to the Forced Labour Convention, 1930, and we are fully aware that the work does not end there. We will maximize our efforts to ensure the required measures are taken for their enforcement, as well as their follow-up and we perform the required monitoring to guarantee the protection of workers' rights and further develop working conditions in cooperation with the ILO and in consultation with the relevant social partners.
167. Finally, I would like to reiterate our appreciation for the Committee on Application of Standards and the Committee of Experts, being the two pillars of the ILO's supervisory

system, for their efficient role in ensuring and following up on the optimal application of international labour standards.

- 168. Government member, Brazil:** Brazil attaches great importance to the continued discussion and development of the ILO supervisory bodies and their working methods. We therefore take note with interest of the exchange between the Committee of Experts and the Committee on the Application of Standards that took place in a special sitting last year. However, we deeply regret that only the Worker and the Employer Vice-Chairpersons of the Committee on the Application of Standards were invited to participate in the sitting. The absence of a representative from the Government group is a symptom of serious disregard to one of the most fundamental principles of this Organization, namely tripartism.
- 169.** Brazil is convinced that further improvement of the synergies between the two Committees is needed. Their work has been interdependent since the establishment of the system in 1926 by the International Labour Conference. The Committee of Experts plays an important role in providing observations on the application of standards which are then considered by the Committee on the Application of Standards. The conclusions of the latter, as adopted by the International Labour Conference, are based on extensive discussions by tripartite constituents. As such, the Committee of Experts should consider them as the main reference for their future observations and refrain from reopening discussions that have already been decided upon by the Committee on Application of Standards.
- 170.** Finally, we reaffirm our call for the discussion and adoption of an improved procedure for the selection of Committee of Experts members. The procedure currently carried out as a matter of practice is far away from the best practices and rules adopted in similar procedures in other international organizations. In the wake of the ILO Centenary, it is time for its constituents to engage in a serious and open debate on this issue so as to render the selection procedure up to date with the best recognized practices of good governance that take due account of the need for impartiality, transparency, efficiency, accountability, regional balance and tripartism.

## 2. Application of international labour standards in the context of the COVID-19 pandemic

- 171.** In the framework of the tripartite consultations of March–April 2021, it was decided that the Committee would devote a section of the general discussion to the question of the application of international labour standards in the context of the COVID-19 pandemic.

### Statement by Worker members

- 172. Worker members:** The Worker members provided the following written information.<sup>5</sup> Emphasis should be placed on the need for a post-COVID recovery that respects international labour standards. We have noted in recent years that certain international institutions went as far as recommending the adoption of national measures that were contrary to international labour standards, under the pretext of creating an environment conducive to investment. This short-term calculation has shown the disastrous results that it implies in times of crisis.

<sup>5</sup> ILC, 109th Session, Committee on Application of Standards, document CAN/D/GD.

- 173.** It is therefore essential for the ILO to reaffirm, especially in relation to these international institutions, that the post-COVID recovery must be focused on the creation of a working environment that places emphasis on the human, inclusive, sure and resilient, which can offer lasting guarantees of means of subsistence to workers in times of crisis and build economies capable of resisting the terrible shocks arising out of the various crises that we will unfortunately still have to face in future. It is essential for all stakeholders to work with us hand in hand in order to achieve the sustainable development goals that the world has set itself.
- 174.** There are a number of fields in which international labour standards are also of fundamental importance, but which it was not possible to address in the intervention made during the sitting, and which deserve to be covered by the written comments.
- 175.** The employment policy instruments will be particularly valuable in setting in motion a human-centred recovery. We will have the opportunity to come back to this more fully in the discussion on the General Survey.
- 176.** The universal ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182), was an important symbolic step that crowned the efforts made up to then by the international community with a view to the complete eradication of child labour, including its worst forms. However, the shock of the crisis is threatening to undermine the progress that has been achieved. It is therefore essential for every measure to be taken to prevent children from also being victims of this crisis and for everything to be done to spare them from work, including its worst forms. We call on the international community, as well as Member States, to reinforce programmes to combat child labour, particularly by strengthening support for families that are badly affected by the crisis.
- 177.** Nor can the crisis be used as a pretext for the implementation of compulsory employment policies. Although exceptions are contained in the international instruments that combat forced labour, these exceptions must be very strictly interpreted and limited to what is strictly required by the situation. As it will inevitably be necessary to relaunch employment as we come out of the crisis, the international instruments on employment policy must serve as a guide to Member States.
- 178.** The principles of equality and non-discrimination have also come under pressure during the crisis. Women appear to be paying a heavy price for the crisis. It is necessary to pay particular attention to reinforcing, among others, the measures intended to give effect to the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). As workplace violence and harassment have also increased markedly during the crisis, the Violence and Harassment Convention, 2019 (No. 190), which has now entered into force, will certainly be a fundamental tool to combat this scourge. It is important to create an inclusive working environment in which all categories of workers have their place.
- 179.** We have already referred above to the dangerous short-term tendency consisting of dismantling the rights contained in international labour standards, and this danger also arises in particular in relation to wages. And yet it seems clear to us that a post-COVID recovery should also include the upwards adjustment of the lowest wages; low wages that are often paid to those front-line workers referred to in the opening speech and the intervention in the sitting on this subject. Member States will have to ensure that workers can benefit from an adequate, legal and negotiated minimum wage, which guarantees them a decent income. It is only in this way that we will be able to achieve the objectives set by the ILO of achieving greater social justice and less inequality and poverty.
- 180.** The Committee of Experts has emphasized the particular impact of the crisis on indigenous peoples in view of their vulnerability and the specific socio-economic



conditions with which they are confronted. We call on Member States to pay particular attention to indigenous peoples, to adopt all the necessary measures to take into account their specific needs and to engage in dialogue with these peoples. The effective implementation of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), will be fundamental in this regard. As we have already indicated, our response to the crisis cannot leave anyone behind.

- 181.** We insist once again on the need to follow up the impact of COVID in all Member States in the years to come. The Committee of Experts certainly has a role to play in the assessment of the measures taken in Member States and in the formulation of recommendations with a view to further improving our responses to the consequences of the crisis, in full conformity with international labour standards. The Worker members will in this regard follow with interest the outcome of the discussions in the COVID Response Committee.
- 182.** In addition, the Worker members made the following oral statement: The COVID-19 pandemic has had a significant impact on the world of work. According to the ILO Observatory, hours of work have undergone an unprecedented collapse worldwide. Behind these figures, it is undeniable that workers have suffered greatly from this crisis. On the one hand, there have been all those who have had to stop their occupational activity and have been faced with losing their income or having it reduced and, on the other hand, all the front-line workers who have continued to provide essential goods and services throughout the pandemic, at risk to their health. If the impact of the crisis on informal sector workers is added to this scenario, the picture looks even more catastrophic. We will probably never be able to fully grasp the scale of the earth-shattering upheaval caused by the COVID-19 pandemic. What is clear, however, is that the situation would have been much worse without the existence of international labour standards and their proper application. By way of illustration, we can refer to healthcare, which is a branch of social security and is covered by the Social Security (Minimum Standards) Convention, 1952 (No. 102), and the Social Protection Floors Recommendation, 2012 (No. 202). The impact of the pandemic on this sector has revealed not only how important the sector is but also how fragile it is. Indeed, even supposedly robust health systems have been pushed to the limits of their capacity. More fragile health systems have unfortunately proved incapable of coping with this crisis. It is therefore vitally important that Member States invest and continue to invest in quality healthcare systems capable of coping with a health crisis on this scale. Similarly, we have been able to see how countries with sufficiently sound social protection systems have been able to provide support for their populations deprived of work and have been in a position to put their economies on a more stable footing. These two examples show to what extent the proper implementation and observance of standards are essential. But this dimension would warrant being reinforced by a more proactive approach. In this regard, the idea of a treaty on pandemics, promoted in particular by the World Health Organization, is worthy of consideration. Given the impact of this pandemic on the world of work, the ILO needs to be fully associated with this debate, contributing its specific role and means of action.
- 183.** Moreover, there is obviously no escaping the question of occupational safety and health. This is what we have seen throughout the pandemic: large numbers of workers exposed to the risk of infection by the coronavirus in the context of their occupational activities. All too often safety and health rules have been ignored to preserve business activity, to the detriment of workers' fundamental right to health. On this occasion, we have been able to observe to what extent endangering workers' health is also endangering public health. The Worker members have been calling for it for a long time and this pandemic



should finally convince those who are most reticent. It is now time to incorporate occupational safety and health instruments in the fundamental rights and principles of the ILO. The step taken in this regard at the last session of the Governing Body with the revision and adoption of the plan of work is to be welcomed. Moreover, promoting the ratification of the Occupational Safety and Health Convention, 1981 (No. 155), which provides the necessary framework for policies in this field, should continue.

- 184.** In order to ensure the effectiveness of these standards, it is essential to have a robust labour inspection system. We have seen a sharp decline during the pandemic in the number of inspections undertaken by inspectorates. It is true that the smooth functioning of inspection services has itself been affected by the health crisis. However, we can only deplore the fact that some Member States have gone as far as introducing a moratorium on inspections during the pandemic. This is tantamount to giving a blank cheque to employers who do not respect the rules and placing at a disadvantage those who are doing everything to ensure that the rules are applied properly. This is clearly unacceptable and is contrary to the Labour Inspection Convention, 1947 (No. 81).
- 185.** The pandemic has seen an explosion in systems of the organization of work, such as the use of telework, platform work, home work and many others. Workers occupied in such modes of working must also, in the same way as any other workers, enjoy the protections guaranteed by international labour standards, particularly regarding respect for their fundamental rights, the right to an adequate minimum wage, limits on hours of work and the right to safety and health at work.
- 186.** The many difficulties caused by the pandemic have driven trade unions to formulate legitimate demands to improve the lot of workers in the context of the pandemic and to reconstruct a fairer and more inclusive post-COVID society. However, we can only deplore the fact that this period of crisis has put even heavier pressure than usual on freedom of association and the right to collective bargaining. The health measures taken by governments to combat the coronavirus obstruct, by their very nature, the exercise of freedom of association and the right to collective bargaining. Even if these measures sometimes prove legitimate, necessary and proportional from the health perspective, there is still a need to challenge and question States that use the health crisis as a pretext for cracking down on any form of trade union action and obstructing the free exercise of the right to collective bargaining. We pointed it out in our opening statement: where social dialogue is strongest, the strongest responses to the crisis have been possible. More than ever, we need to stress the fact that 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), are not the problem, but are an integral part of the solution.
- 187.** Despite these adverse findings, we can note with satisfaction that wherever standards are respected, they have been able to strongly mitigate the effects of the pandemic on the world of work. However, we must not lose sight of the need to continue promoting these instruments, to monitor them, to continue reinforcing them and to search constantly for areas in which new ILO initiatives can be taken. This last element is fundamental for further improving the resilience of the world of work in response not only to the upheaval caused by this pandemic but also to that already encountered by many countries because of other challenges facing them. In this regard, the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), as a framework that enables these crisis situations to be prevented and appropriate responses to be provided, must at all times be the subject of particular attention, and not just when a crisis erupts because then, sadly, it will already be too late.

188. Moreover, the Worker members propose that each Member State carries out an evaluation of its response to the challenges posed by the pandemic in the country and establishes a plan of action to build greater resilience for the future, in a tripartite manner and on the basis of the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205). Similarly, we propose that Governments that have taken measures derogating from international labour standards be invited to report on these aspects to the Committee of Experts and that specific follow-up on these aspects takes place.
189. Allow me to thank the Committee of Experts for its numerous relevant observations on the subject of the importance of international labour standards in the context of the COVID-19 crisis. In an interconnected and interdependent world, we cannot avoid the need for standard-setting instruments which are intended to be applied universally. Nor can we use a crisis context as the pretext for suspending their application when a rapid and sustainable recovery from the crisis largely depends on respecting them. It is undeniable that their ratification and implementation represent an enormous challenge for all stakeholders. However, this challenge is much more achievable than we think if it is measured against the serious consequences and problems which will inevitably arise for any States that choose to discard these instruments.
190. We invite States that have embarked on this course to learn the lessons of the pandemic and to engage with us, in accordance with the ILO Centenary Declaration, in shaping a fair, inclusive, secure and human-centred future of work. The Declaration of Philadelphia recalled that lasting peace can only be based on social justice. Respect for international labour standards, social protection and social dialogue form an integral part of this concept as established in the ILO Declaration on Social Justice for a Fair Globalization, 2008. I would therefore like us all to be able to recall, at the end of our discussions, that international labour standards certainly constitute an effective means of responding to crises and are essential instruments for achieving these goals of social justice.
191. **Worker member, Zimbabwe:** My organization is the Congress of Trade Unions and is supported by our regional body, the Southern African Trade Union Coordination Council (SATUCC), which has been following the events in our region and in my country in particular from the onset of the outbreak of COVID-19. The SATUCC aligns itself with my statement and this accolade is made by the Government of Zimbabwe's failure to observe fundamental rights of employees during the COVID-19 period, as I will demonstrate.
192. The COVID-19 pandemic only exacerbated the already existing challenges to workers' fundamental rights. The rights to freedom of association, collective bargaining, occupational safety and health, social protection and social dialogue are among such rights that are grossly violated under the pretext of combating the spread of coronavirus. The SATUCC remains concerned by the growing trend in the criminalization of trade union activities during strikes and protest actions. As my country engaged in lockdowns in March 2020, certain sectors of the economy were declared to be essential services, but most workers in such sectors were not adequately protected against the virus due to failure by both the Government and employers to supply adequate PPE. The workers were overworked with no essential pay and benefits. Our health sector workers went back on strike and their leaders were arrested and judicially persecuted. My federation was labelled a terrorist organization and some of its leaders, including its President, Mr Peter Mutasa, were placed on police wanted custody list following protest actions by citizens demanding better social and economic rights. Such an attack is a threat to workers' rights to civil liberties. In addition, our members generally continue to

face some arrests for reporting some of the violations that include issues of corruption and are judicially persecuted as well. Trade unions were excluded from the list of essential services and were forced to close offices leaving workers without representation. Our country already has a weekly inspection system and it is the duty of trade unions to undertake their duties in a crisis period. Our situation was also compounded by lack of measures to protect workers against income insecurity. The Government abrogated its responsibility and insisted that employers should determine what they want to pay their workers and workers were then forced to engage in survival activities.

193. We also note a disrespect of social dialogue as the Government took measures without consultations. We are now a country ruled through decrees. After several demands, some dialogue resumed but most of our agreed recommendations were not taken on board. Let me end by reiterating that governments have every obligation to respect the fundamental rights of workers, even during a crisis period.
194. **Worker member, Philippines:** Like many governments, the Philippine Government has done little to protect workers in the current COVID-19 crisis. Its militarized pandemic response, prioritization of irrelevant and dangerous initiatives like the Anti-Terrorism Act and the Joint Industrial Peace and Concerns Office (JIPCO), anti-worker issuances, as well as the red-tagging of trade unionists, undermine any claim to upholding workers' rights.
195. In fact, Filipino workers are under immense pressure: COVID-19 and the crises it has engendered and intensified, on the one hand, and the assault on trade unionism, on the other. For example, the Government's militarized response – preferring military and police solutions from the policy-making to the community level – has led to widespread economic disruption and a spike in human rights abuses. The implementation of lockdowns across the country without adequate aid has done more to cause unemployment and the loss of livelihood than eradicate the threat posed by COVID-19. More than that, more trade union leaders and members were added to the list of those killed, from 43 in 2019, to 56 in 2021.
196. At the same time, government officials under the National Task Force – End Local Communist Armed Conflict (NTF-ELCAC) have been rapidly tagging workers, progressives, and ordinary citizens as fronts of the country's decades-long communist insurgency. Furthermore, the Department of Labor and Employment issued several controversial pronouncements during the pandemic. The anti-worker Labor Advisory 17 and Department Order 213 were only repealed or amended because of organized labour's swift condemnation. In addition, workers from a multinational beverage company have been dismissed for trumped-up charges during the pandemic. The unions meanwhile were intensely red-tagged. The refrain across many industries is consistent, to be a unionist is to be a member of the underground New People's Army. The NTF-ELCAC representatives were also engaged in multiple instances of red-tagging against workers such as in Davao. JIPCO forms meanwhile were being handed out to citizen-driven community pantries that sprung up as a form of collective mutual aid after two years of pandemic.
197. All of these developments are a clear indication of the deterioration of international labour standards in the country. We call on the ILO, the International Trade Union Confederation (ITUC) and the international community to support Philippine labour as we continue to assert the recognition of labour rights in our country.
198. **Worker member, Chile:** I am from the Single Central Organization of Workers of Chile (CUT-Chile) and would like to make a few comments on the COVID-19 situation and the

Government's response to it, a situation of social upheaval where questions are being raised about the neoliberal model which has made life more precarious for workers.

199. The absence of social dialogue, constant pressure and policies against workers have been the dominant features of the Government's handling of the COVID-19 pandemic. Despite international evidence that pointed to the rapid spread of the virus among the population, the Government of Chile resisted adopting measures such as national lockdowns, sanitary cordons, and effective quarantine and isolation of persons who had tested positive. It was only as a result of pressure from labour organizations that action was taken to impose community lockdowns and school closures.
200. The measures issued by the Ministry of Health to the health services were belated, unequal, confusing and in some cases contradictory, and in these difficult circumstances the country's public health network and its workers were the ones providing care for the population. In order to tackle the pandemic, the Government of Chile took the risk of using health strategies untested anywhere in the world, and without other experiences for comparison, which were called "dynamic lockdowns" to protect the economy, a strategy that resulted in a worsening of the health crisis, as demonstrated by the figures for infections and deaths. Sebastián Piñera, representing the economic right wing, implemented a coordinated policy to capitalize on the health crisis and intensify his neoliberal agenda. The priority was to transform the health crisis into a stage in the process of wealth accumulation in which the economy and the millions of the super-rich were placed above, and without any counterweight, the people's constitutional right to life and health. This is the only way to explain how the medical crisis was used by Health Insurance Institutions (ISAPRES) and the private health enterprises to increase the cost of their plans and raise the prices of their services, and the fact that the pension fund administrators (AFP) used deceitful market practices to cause the disappearance of billions of dollars of savings belonging to Chilean workers. Incidentally, these are the same workers who, pursuant to a much touted Employment Protection Act, are lowering the cost of labour for employers to zero with their savings from unemployment insurance, since the only costs that employers still have in this case are those of health insurance contributions which they can pay in easy instalments, with the workers bearing the costs of this crisis. The same applies to the Telework Act, which has made employment relationships even more precarious with working days in excess of 12 hours and transferring all the costs of work tools and operations to the workers.
201. The unemployment rate has increased in Chile, and a large number of workers have had their employment contracts suspended. There are also many self-employed workers, own-account workers, platform workers, etc., who have been unable to leave their homes to work and have also had no effective social protection response from the State enabling them to cover their basic needs such as food and housing. This has created the need for a resurgence in various types of community kitchens to provide a response to this structural, economic and social crisis that we are experiencing in Chile, in which it is the people and social organizations and trade unions which have coordinated actions of this kind.
202. Chile has woken up, it is living through a historic time involving the creation of a new Constitution, but this cannot possibly go ahead when there are still violations of human rights and political prisoners in jail.
203. **Worker member, Brazil:** In Brazil, the COVID-19 pandemic has increased violations of this Organization's standards. Violations of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154), have intensified over the past two years, and there has been a total failure to

comply with the conclusions adopted by the Committee on the Application of Standards in 2018 and 2019. In September 2020, the Brazilian postal enterprise launched a legal challenge to the workers' strike in the courts, and as a result the Higher Labour Court removed 50 of the 79 clauses of the collective agreement, most of which had been the result of years of free bargaining in a serious violation of Convention No. 98. We also condemn the persecution of trade union leaders, including the President of the Single Federation of Oil Workers, who was punished simply for exercising the function for which he was elected. Interim measures Nos 927, 936 and 1045 were published to allow, without any consultation with trade unions, collective agreements to be abrogated at the discretion of employers and wage reductions, working hours and the suspension of labour contracts to be agreed through individual agreements. There is no social dialogue in Brazil.

204. The vulnerability of the indigenous and Quilombola communities has increased during the pandemic. The Government has not complied with court orders relating to testing, vaccination and other protection measures. The right to consultation was ignored.
205. The whole world knows that in Brazil the tragedy of the pandemic has been worsened by the incompetence and irresponsibility of a Government that saw four different Ministers of Health in one year and whose President, instead of fighting the virus and protecting the population, appears to want to fight the people and protect the virus. In March 2020, after 1,000 people had died, the President described COVID-19 as a "gripezinha", or little flu. In April, he stated that there was nothing to be done. In June, when the death toll stood at 35,000, the President declared that he would cease publishing figures for the pandemic. While he denies the risks of the pandemic and battles against WHO guidelines, he encourages his people to go out into the streets unprotected and attacks countries that offer help. In January 2021, after there had been 198,000 deaths, there was an oxygen shortage in the State of Amazonas. The President said that "there is no oxygen, there is nothing I can do". The trade union confederations had to intercede with the Government of the Bolivarian Republic of Venezuela to secure a supply of oxygen to mitigate the tragedy. Over half the Brazilian population is living under conditions of food insecurity, and on 1 June the country's death toll as a result of the pandemic exceeded 465,000.
206. **Worker member, United Kingdom of Great Britain and Northern Ireland:** We welcome the role labour inspectors have played during the pandemic, and our thanks and respect go to those who have faced an increased risk of infection in carrying out essential duties. As they do for all such workers. We note, however, the concerns of the Committee of Experts that moratoria and changes to inspection practices have reduced capacity at a crucial time. Targeting reduced inspection resources risks leaving significant gaps in workplace protection, and we urge all governments to consult with the real workplace experts, namely the unions, to ensure that emergency provision is fit for purpose.
207. In the United Kingdom, we already had concerns over inspection, including the recruitment and retention of skilled inspectors. Recent research by the Trades Union Congress (TUC), based on information gathered through parliamentary questions, suggests that if the United Kingdom is to meet the ILO benchmark on inspector numbers, it needs to recruit and train urgently a further 1,792 staff. This is more than is currently employed by the different inspection agencies. The upshot of this is that each year, only one in 171 UK workplaces is subject to inspection by a labour market enforcement body.



- 208.** Trade unions and wider civil society are always willing to play their role in adding value to government inspection. The *Independent* newspaper reported last October that a pathology company that processes COVID-19 test samples for the National Health Service (NHS) put its staff at risk of infection through multiple breaches of health and safety rules. Its breaches included misleading hygiene advice for couriers, for example, claiming that lab sample boxes only needed to be cleaned once a week, inadequate training for PPE use, and insufficient space for social distancing. There was no guidance provided on how to deal with spilled COVID samples.
- 209.** The Health and Safety Executive carried out a thorough investigation on the basis of information provided by the Independent Workers' Union of Great Britain. In Leicester, journalists and NGOs uncovered systematic breaches of COVID regulations in the city's textile industry, with cramped factory spaces running at full capacity throughout the initial lockdown period, with minimum wage and other violations also rife. COVID cases in Leicester affected working-age people more than in the rest of the country and the city has consistently had to face additional COVID-prevention measures. In Leicester, there is now heightened enforcement activity, as well as a laudable partnership between unions, local government, businesses and enforcement agencies aimed at thoroughly reforming the industry's working practices, but these serious problems might not have come to light had it not been for the intervention of unions and third parties. Civil society is not a replacement for a properly funded labour inspection system.
- 210.** Many countries, for example the G7 members, have supported calls for economies to "build back better" after COVID. Properly resourcing all our labour inspection systems would correct one glaring flaw in what we are aiming to build back better from, as well as allowing greater influence over other ways in which we can ensure our economies are built on decent work.
- 211. Observer, International Trade Union Confederation (ITUC):** I represent the India National Trade Union Congress (INTUC), the largest union in our nation. As of now in India, more than 20 million Indian people have been infected with COVID-19. More than 300,000 precious lives have been lost as a result of the Indian Government's negligent and irresponsible policy in responding to the pandemic. There is an alarming shortage of vaccine doses, oxygen, hospital beds, even cremation facilities everywhere. Despite the disastrous outbreak of the COVID-19 pandemic, the Government is passing laws no one wants, and pursuing full-scale privatization that has been protested strongly by the trade unions.
- 212.** Last year, the governments of six states, Uttar Pradesh, Himachal Pradesh, Gujarat, Madhya Pradesh, Haryana and Uttarakhand, suspended labour laws through executive orders while the legislative assemblies were not in session. All the major labour laws governing trade unions, industrial relations, industrial disputes, labour inspection and contract workers have been suspended, and industrial establishments are exempted from the labour laws for a period of three years, or indefinitely in major sectors in some states. Trade unions were fighting hard to stop the extension of working hours from eight to 12 hours. It was pressed through by six state governments to become the norm of work. In May, new rules were adopted to limit the scope of collective bargaining and to devise a new bargaining procedure without any consultation.
- 213.** The Government is also repealing the latest Inter State Migrant Workmen Act which will result in dire consequences for the protection of migrant workers who are most vulnerable under the lockdown, and many were unable to return to their home province. Under the pandemic, millions of workers and the trade unions have lost their fundamental rights we have won in decades of trade union struggle.

- 214.** The Federal Government of India is responsible for ensuring that their obligations under international labour standards are observed by all state governments. Under the pandemic, workers have been killed in lethal industrial accidents in mines and petrochemical plants. Up to now, the Government of India is still refusing to accept a direct contacts mission of the ILO to implement the conclusions adopted by this Committee in 2019. Dialogue with the Government has been disrupted since the Government ceased to convene the national labour conference in 2014. I urge the Government of India to respect its obligations as a member of the ILO and repeal all the labour legislation that contravenes international labour standards.
- 215. Observer, International Transport Federation (ITF):** At the peak of the COVID-19 pandemic, there were possibly 400,000 seafarers trapped, working aboard ships due to the so-called crew change crisis caused by pandemic-related government border and travel restrictions, and an equal number of unemployed seafarers waiting to join them who were ashore. That made 800,000 seafarers affected by the crisis. With new COVID-19 variants continuing to emerge and the inequitable distribution of vaccinations around the world, this crisis is far from over.
- 216.** Seafarers who provide a key front-line service to society with more than 90 per cent of world trade moved by sea, are enjoying some of the toughest conditions faced by workers in any occupation during the pandemic. It is simply not right. As the Committee of Experts has recognized in its general observation on the application of the Maritime Labour Convention (MLC, 2006), during the pandemic, failure by governments to adhere to international protocols developed to alleviate this crisis, among other things, has resulted in widespread non-compliance with the MLC. In addition to the impact this has on the lives of seafarers, such pervasive violations of the MLC not only affect the credibility of the instrument itself, but the entire system of international labour standards. A number of States, of course, have stepped up to the plate and delivered for seafarers, but much more needs to be done. For example, so far only 55 States, at the last count, have declared seafarers as key workers.
- 217.** On the question of force majeure, the Committee of Experts makes it absolutely clear that it may no longer be invoked from the moment that options are available to comply with the Convention, and such is the case now. Among the many key takeaways on the Committee of Experts' recommendations is the need for further cooperation among ratifying Member States to ensure the effective implementation and enforcement of the Convention during the pandemic. Also a general principle of international law. We are also heartened by the Committee of Experts' recognition that it is implicit in the very inaction of certain Member States to ensure crew changes that give seafarers no option but to stay on board, which in turn creates conditions that amount to forced labour, a violation of a non-derogable right under international law.
- 218.** We have had supportive resolutions on this issue from the United Nations General Assembly, the ILO Governing Body and the Special Tripartite Committee of the MLC. We now have a multi-UN agency COVID-19 maritime human rights due diligence checklist which aims to help companies play their essential role in helping in this crisis. It is now imperative that governments implement these resolutions and the Committee of Experts' recommendations. There is simply no time to waste.
- 219.** In conclusion, I would like to thank the ILO Director-General, our wonderful colleagues from the ILO Standards and Sectoral Activities Departments for their invaluable work in support of the world's seafarers during the past 15 months.



- 220. Observer, Public Services International (PSI):** The pandemic highlighted and exacerbated the impact of many years of underfunding and privatization of public health. Among the consequences are underpaid, understaffed and overworked health and care workers. Those who we called heroes and received much applause during this year are also rewarded with “precarization” and unsafe work. Indeed, workplace safety and occupational health are still major issues for health and care workers. Lack of personal protective equipment, long working hours and shortage of staff means that one health worker has died every 30 minutes during the pandemic, while others suffer in their mental health. The overwhelming 23 per cent prevalence of depression and 39 per cent insomnia in health workers during this period is just the tip of the iceberg of mental health issues arising as the result of the working conditions during the pandemic.
- 221.** There are also severe constraints on social dialogue. Workers raising issues and making complaints were sometimes met with outright repression. For instance, health workers in Hong Kong withdrew their services at the beginning of the pandemic and faced administrative sanctions. A similar situation took place in Malawi. In Zimbabwe, the Government dumped ongoing bargaining to pass a unilateral regulation of wages and working conditions. The nurses’ union declared a strike, 15 members were arrested and later released after a massive outcry, but they are still facing trial.
- 222.** There was also the mass sacking of doctors and other health workers in Kenya. In Liberia, it seems that the Government did not learn any lessons from the Ebola crisis, and instead threatened and victimized health workers again, and today, the Secretary-General of the nurses’ union is in exile. In total, PSI has recorded health and care worker strikes in at least 84 countries during this period. All these involved, in one way or another, the violation of one form of international labour standard.
- 223.** So perhaps, next year’s General Survey will shed some more light on the situation and experiences of health and care workers during the pandemic. Yet, we would like to call for a more in-depth analysis of the impact of COVID-19 on international labour standards in the next Committee of Experts report, as long as the pandemic and the recovery from it continues to affect the world of work.

### Statement by Employer members

- 224. Employer members:** Clearly, the COVID-19 pandemic has had a profound impact on the world of work around the globe. Millions of people across the world have been exposed to the coronavirus and to date more than 3.5 million people have died. Many governments in addressing the health crisis have adopted containment measures including lockdowns and related restrictions in an effort to prevent the spread of the virus. These measures, although necessary for public health, have had devastating consequences for labour markets.
- 225.** While demand has increased in certain sectors, other sectors have completely collapsed. Millions of enterprises have been closed and millions of jobs have been lost. In addition, the crisis has affected enterprises of all sectors and sizes in some way or another. Micro, small, medium-sized enterprises, many of which lack the necessary human and financial resources to weather a crisis of this magnitude have been severely affected and many have closed their doors.
- 226.** In some regions of the world, the percentage of companies that will have to close their businesses will be up to 20 per cent, and at this moment we are far from being out of the crisis. The numbers of infections continue to rise in certain regions and have recently surpassed 170 million worldwide. Employers have made massive efforts in the last

12 months to adapt to the global pandemic to ensure that businesses survive and health and well-being is protected. In these turbulent times, employers have been a trusted partner for governments and workers and become a key resource for information for their employees.

- 227.** The pandemic has had severe effects on both the application and supervision of ILO standards. Many governments of Member States directed their primary attention to coping with the crisis and mitigating its effect and, we have heard, have not been able to send their reports to the ILO. Similarly, many workers' and employers' organizations have not been able to send comments under article 23(2) of the Constitution on standards application issues. The application of many ratified Conventions has had to be temporarily altered to respond to crisis needs. While the application of ratified Conventions has not been suspended during the crisis, the Employers' group is of the view that temporary modification of the application must in some circumstances be considered unavoidable to safeguard business continuation and employment and to try to mitigate the very serious labour market consequences. Such modifications may also be necessary in the recovery process where employers need the necessary flexibility to focus on getting businesses back up and running.
- 228.** The Employer members agree with the three key challenges identified by the Committee of Experts, in pages 13–22 of the 2021 Addendum to the General Report, namely the limitations on rights and freedoms, maintaining the universality, indivisibility, interdependence and interrelation of all human rights and the comments regarding discrimination and marginalization of vulnerable groups. The Employer members also stress the challenges that the COVID-19 pandemic imposed on economic activity, job creation and productivity, as various public health measures were implemented to contain the spread of the virus. The global pandemic has accelerated the digital transformation of the world of work. There are serious concerns that unless much more is done to invest in digital skills and respect of training opportunities, the world may be heading to a jobless recovery and a bigger gap in the digital divide.
- 229.** The Employer members have stressed the importance of sustainable enterprises in creating more income-generating opportunities, including for the vulnerable and in increasing prosperity and quality of life for all. We consider that sustainable enterprises are part of the solution in tackling the impacts of the pandemic in addressing long-term sustainability challenges and seeking positive responses for a resilient recovery. We need more enhanced strategic and determined collaboration between the public and private sector in order to pave the path for an efficient, strong, resilient private sector-led recovery to build back a better and more sustainable future.
- 230.** Therefore, in our view, the supervisory system must adopt a balanced, pragmatic and mindful approach in the promotion, consideration of ratification, application and supervision of international labour standards, that takes into account the needs of sustainable enterprises in line with the Centenary Declaration. The supervisory system must also, in the employers' view, pay greater attention to the needs of sustainable enterprises when assessing compliance with international labour standards.
- 231.** The COVID-19 pandemic has demonstrated the importance of occupational health and safety (OSH) for all workers and employers. We consider that the application in law and practice of ratified OSH Conventions should remain a priority and be done in a balanced manner recognizing the joint responsibility of governments, employers and workers to make safe and healthy working conditions a reality for all. We would like to call the Committee's attention particularly to the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), which recalls the need to promote

continuous improvement of occupational safety and health to prevent occupational injuries, diseases and death through the development, in consultation with the most representative organizations of employers and workers, of a national policy, a national system and a national programme. This Convention highlights the importance of a national preventative strategy and culture surrounding health and safety. A culture in which the right to a safe and healthy working environment is respected at all times and where government, employers and workers actively participate in securing safe and healthy work environments for a system of defined rights, responsibilities and duties and where the principle of prevention is afforded the highest priority.

- 232.** The COVID-19 pandemic has also exposed the vulnerability of our existing social protection systems. At our last Committee session, we examined during the General Survey discussion, the Social Protection Floors Recommendation, 2012 (No. 202), a tripartite consensus standard on the development of social protection floors.
- 233.** In particular, the Employers' group has emphasized that social protection should follow the following key principles: first, sustainable financial basis: social protection systems need to be sustainably financed; second, addressing the informal sector: the development of a national social protection system needs to go hand-in-hand with policies to address the plight of a number of informal sector operators who are neither covered nor contributing to those social systems; third, respect for primacy of national specificities and traditions: in our view, social protection systems need to respond to the specific needs and to be coherent with the socio-economic traditions and culture in respective countries. Social protection systems also are not a one-size-fits-all policy; they can vary greatly among countries and regions depending on national culture, law and practice.
- 234.** In addition, the COVID-19 pandemic has highlighted the importance of strong employment policies. Employment policies at this time have had to constantly maintain a proper balance between public health restrictions and prevention on the one hand, and maintaining, promoting and incentivizing full, productive and freely chosen employment as called for by the Employment Policy Convention, 1964 (No. 122). If public health restrictions and preventative measures are disproportionate, the damage for enterprises, employment and the well-being of workers may be more severe than the damage to public health.
- 235.** The world of work post COVID-19 is forcing governments and the tripartite constituents more than ever to focus on the employability of workers instead of the right to work and job security. How to ensure productive employment? This can only be done if the right mix of policies is in place and adequate coordination is ensured. In line with this, government action must focus on labour market policies that are able to support employment creation and employability, activate untapped labour force resources by making work pay and providing labour market mobility. The linchpin for this determination is to ensure an enabling environment for business and entrepreneurship so that productive employment can be created.
- 236.** Freedom of association is also engaged in light of the COVID pandemic and it is worth reminding the tripartite constituents of the fundamental nature of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in guaranteeing freedom of association both for workers and employers. The Employer members also welcome the universal ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182), this year. This is a historic achievement, committing ILO Members to prohibiting and eliminating all worst forms of child labour, including slavery, forced labour and trafficking. What is required now, as COVID-19 threatens to potentially

reverse these achievements, is increased vigilance to ensure that the negative impact of the pandemic does not put millions of children at risk by forcing them to earn an income to support their families. Governments must assume their responsibility for the proper implementation of Convention No. 182 which they have now all ratified. The International Organisation of Employers (IOE), together with its global network of 150 member organizations representing more than 50 million companies, has long supported the ratification and implementation of Convention No. 182 and all efforts to address child labour in line with target 8.7.

- 237.** Similar to freedom of association, the Employer members express concern with the increase of forced labour due to the COVID-19 pandemic. We call on governments to respect, promote and realize the elimination of all forms of forced or compulsory labour as enshrined in the 1998 Declaration on Fundamental Principles and Rights at Work.
- 238.** We take note of the Committee of Experts concerns with the sharp decrease in the number of labour inspections due to the pandemic. While this may be due to social distancing measures, it nevertheless is important for governments to continue complying with their obligations under the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), especially, in our view, as it regards providing assistance and guidance to companies in taking the necessary health and safety prevention and protection measures to enable business continuity and the maintenance of jobs in the crisis. This may require thinking about new and innovative ways to conduct inspections and provide guidance to companies in these exceptional circumstances.
- 239.** We highlight once again the Centenary Declaration that states “international labour standards also need to respond to the changing patterns of the world of work, protect workers and take into account the needs of sustainable enterprises”. A balanced application of international labour standards, in our view, must take fully into account the special needs of both employers and workers in this exceptional situation and this will be the key for a sustainable and resilient recovery with productive employment and decent work opportunities for all.
- 240. Employer member, Belgium:** The ILO Centenary Declaration provides that international labour standards must respond to changing models in the world of work, protect workers and take into account the needs of sustainable enterprises, while being subject to effective supervision. Enterprises’ needs are particularly relevant in the current context of progressive economic recovery that requires governments to implement COVID-19 recovery strategies in which sustainable enterprises will play a key role. Our work is currently taking place in the context of the ongoing pandemic. With a view to facilitating the recovery from the crisis, it will be necessary to make full use of the flexibility of ILO standards with a view to implementation that is conducive to growth and employment.
- 241.** Governments in the European Union, and in particular in Belgium, must encourage and support effective and constructive social dialogue. From the onset of the pandemic, the social partners in Belgium have shouldered their responsibilities to ensure workers’ safety and health in the workplace. Social dialogue has also contributed to the Government’s decisions on temporary support for hard-hit businesses, as well as for workers forced into unemployment. Fortunately, those measures have prevented most redundancies.
- 242.** Governments must avoid rafts of initiatives to which the social partners have to respond with little notice. Social dialogue requires a minimum of time and numerous skills to

study, consult, negotiate and develop balanced solutions. The challenges are many. The way out of the crisis is gradual, and the recovery is still fragile.

- 243.** Belgian employers wish to play their full role in their country's economic recovery, as well as in the structural reforms needed in the labour market. We expect all partners to commit to the three pillars of sustainable development and for the economic, social and environmental dimensions to be balanced. The ILO remains the benchmark for the social standards that must be respected by all. The work of the Committee of Experts is vital to ensuring that these standards are really given effect throughout the world. The Committee of Experts continues to enjoy our full support.

### Statements by Government members

- 244. Government member, Colombia:** Colombia has not been spared by the crisis caused by the pandemic. Since the crisis started, our Government has been attentive and diligent with regard to the major challenge that our country faces as a result of the health and economic emergency that has arisen; it has formulated and implemented various measures aimed at protecting employment and guaranteeing decent work. We wish to take this opportunity to thank the Office for the timely and prompt assistance that it has given to our country in the drawing up of standards issued exceptionally because of the pandemic, specifically provisions on working hours adopted in accordance with the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30).
- 245.** In order to mitigate the crisis, the Government of Colombia has adopted various measures, including an unemployment protection mechanism, exceptional payments from termination of employment entitlements, and a programme of assistance for workers whose contracts have been suspended. Measures have also been adopted in relation to: fiscal and monetary policy; financial support for specific sectors; safeguarding social protection; maintenance of employment in occupational safety and health; teleworking and homeworking; the programme of credits for a guaranteed 90 per cent of the nation to protect jobs; the subsidy of 40 per cent of the statutory minimum wage in force for formal employers covering almost 3 million people; and the subsidy for the allowance or bonus that used to be paid in the month of June.
- 246.** With regard to labour inspection, procedures were adjusted to take rapid action to address concerns expressed and requests and complaints made on account of the crisis. It is also important to point out that during the pandemic collective bargaining was not suspended. In fact, Colombia is currently engaged in collective bargaining with the public sector, on the basis of the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154), and these negotiations are being conducted in a virtual format. Social dialogue forums have continued to function fully, as in the case of the Special Committee for the Handling of Conflicts referred to the ILO.
- 247.** Although the Telework Act has existed in Colombia since 2012, the Home Work Act has been adopted, which applies to both the public and the private sector and includes important aspects such as disconnecting from work.
- 248.** In order to move forward in terms of recovery and confidence in the institutions, the Government will invest over 170 billion Colombia pesos in the economic recovery plan, aimed at moving closer to full employment through a strategy combining support for micro, small and medium-sized enterprises (MSMEs), speeding up infrastructure



projects, providing incentives for the “orange economy” project, and making advances in connectivity and digital transformation.

249. On the other hand, the Committee of Experts’ report indicates that the pandemic crisis resulted in the detection of a normative gap in the field of biological hazards, and this same void was also identified by the Andean Committee of Social Security Authorities. So a request was made to include the pandemic as a biological hazard, coinciding with the Committee’s interpretation. It should be emphasized that Colombia was the first country to classify COVID-19 as an occupational disease.
250. In conclusion, we believe that social dialogue is fundamental for moving forward in this time of crisis and that everyone, including the social partners, must contribute to the search for solutions at such times. The ILO must therefore play a more active role in the search. The ILO Bureau for Workers’ Activities and the Bureau for Employers’ Activities could be more dynamic in regional dialogues, helping to generate synergies and the Office could provide mechanisms to be able to move forward together with States in specific actions that contribute to improvements in the effective application of Conventions. Our Government reiterates its commitment to guaranteeing the protection of labour rights and support for business with the commitment to implement policies aimed at reviving employment.
251. **Government member United Kingdom:** In response to the COVID-19 pandemic last year, the United Kingdom Government adopted a coordinated strategy to address all the accompanying challenges, including social protection, employment policy, occupational safety and health and other areas in which ILO labour standards apply. The Government has centred on the principle that nobody will be left behind as a result of this pandemic and we have provided an unprecedented level of support to individuals and businesses.
252. The flexibilities in the United Kingdom social protection system, which supports those in and out of work, allowing us to more easily support the low-earning self-employed, those whose earnings fluctuate, allow the United Kingdom to act quickly to meet the needs of people hit by the pandemic. Despite a huge surge in claims, people moving in and out of work and changes in hours people work, the system stood up to the challenges. The Government put in place an unprecedented economic package to mitigate the impact of the pandemic. Working in close cooperation with our social partners, the package included a job retention scheme and self-employment schemes which provide grants to support work in businesses. The Health and Safety Executive (HSE) provided support to all sectors with information, advice and guidance relevant to employers and workers in managing the risks associated with restarting or running their businesses during the outbreak and being COVID secure. Additional financial and human resources were secured to underpin the Health and Safety Executive’s approach to COVID-19.
253. The United Kingdom performs consistently well compared to other large economies on key health and safety outcomes, such as workplace injuries, work-related illness and health and safety practices in the workplace. The effectiveness of the HSE demonstrates that its number of inspectors is sufficient to secure the effective discharge of its duties. The Government’s priority is to deliver a recovery that ensure the United Kingdom is more prosperous, healthier and stronger than before the pandemic. Significant work is now under way to promote job creation and to get people back to work. One of the central aims of the United Kingdom’s G7 presidency is to develop a shared agenda for international action and national economic recovery that builds back better, more inclusively and greener. A major concern of the United Kingdom is the risk that the pandemic reverses years of progress towards the ending of forced labour, human trafficking, child labour and modern slavery globally. We welcome the fact that the

G7 trade ministers recently agreed on the need to continue to work together to protect individuals from forced labour, including mitigating the risks of forced labour in global supply chains, an important labour standards issue.

- 254. Government member, Brazil:** A Worker member of Brazil has referred to some issues that were included in the Committee of Experts report concerning the application of Conventions in Brazil. First of all, I would like to recall that no individual case concerning Brazil has been included on the final list of cases to be considered by this Committee. For this reason, constituents should not engage in discussing such cases. I will restrain myself to recalling that the Committee discussed two times a case on the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and no violation was found by the Government of Brazil. Furthermore, Brazil is up to date with its reporting duties and implementation of all the conclusions adopted by this Committee on our case regarding Convention No. 98. The National Labour Council is a tripartite body whose agenda is open to representatives of workers and employers. Since the adoption of the Committee's conclusions on our case concerning Convention No. 98, workers have never raised this subject there, or within any other body nationally.
- 255.** Social dialogue in Brazil is strong, and has been fully respected and duly taken into consideration by the Brazilian Government. The National Labour Council and the Tripartite Permanent Parity Commission have been convened for a record number of times since 2019.
- 256.** On the provisional measures adopted in the context of the pandemic, I would like to say that derogations of labour laws provided for in those instruments are exceptional and time-bound. They were adopted under exceptional circumstances in an emergency situation, in order to provide a timely and robust response to the economic and social crisis that suddenly struck us all. Those measures are aimed at preserving jobs and income, and are similar to the ones adopted by many other countries in the world. They are in agreement with all provisions of the relevant international labour standards ratified by Brazil. Ten million workers were supported by the income support programme; another 60 million informal workers were supported by the emergency cash transfer programme. More than 80 per cent of workers' income has been preserved by Government programmes and income retention is higher for the most vulnerable people.
- 257.** Concerning the pandemic, I would like to state that 46 million people have already received their first dose of COVID-19 vaccine, and 22 million people have received their second dose of the vaccine. This makes us the fourth country in the list of countries which have mostly vaccinated at this stage.
- 258. Government member, China:** The representative of Public Services International (PSI) mentioned that some health workers in the Hong Kong Special Administrative Region had invoked their rights under the Nursing Personnel Convention, 1977 (No. 149), but were faced with administrative sanctions. We feel obliged to point out the factual anomaly in such a misleading statement and are grateful for your agreement to grant us the opportunity here. The fact is that Convention No. 149 actually does not apply to the Hong Kong SAR, as China has not ratified and the Hong Kong SAR has not applied the Convention. We submit, for record, that it is a serious mistake to base any accusation against the Hong Kong SAR on Convention No. 149.
- 259.** As a matter of fact, health workers who chose to withdraw from performing emergency duties at the peak of Hong Kong's difficult battle against the COVID pandemic in 2020 did so, not because they wanted to improve their employment terms, but for other



political reasons advocated by other protest groups at the same time. While the Government of the Hong Kong SAR takes the labour right to strike seriously and is committed to safeguarding such right under our laws, the Trade Unions Ordinance of Hong Kong specifies that strike by a trade union refers to cessation of work relating to the terms or conditions of employment. Withdrawal from performing emergency services by individual health workers in 2020 clearly fell outside the remit of strike. Therefore, there is no question of referring to it as a labour union claiming its right to strike.

### Reply of the Chairperson of the Committee of Experts

- 260.** I would like to express my gratitude for the invitation to the Committee of Experts for its Chairperson to attend this meeting once again. I am honoured to represent the Committee of Experts on this occasion and I can assure you that I will inform my colleagues of the debates and opinions expressed in this forum. Without a doubt, the annual visit by the Worker and Employer Vice-Chairpersons to the Committee of Experts meeting and your invitation to us to participate in your work strengthen the links between the Committees and underline the complementarity of the supervisory work that we undertake.
- 261.** During my visit this year, I have noted certain comments relating to the criteria established to distinguish between observations and direct requests, differences in the examination of compliance with ratified Conventions and Recommendations and the possibility of providing more detailed information on the footnotes inviting Governments to provide information to the Conference. We have also noted your comments regarding the possibility of presenting our report by country, rather than by subject; the use of a hyperlink or hyperlinks to cite previous reports; the expansion of the practice of consolidated comments; and the appropriateness of taking into account the needs of sustainable enterprises in the supervisory work.
- 262.** I have noted your comments with differing opinions on issues of interpretation relating 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).
- 263.** With regard to the comments on the criteria that the Committee of Experts has established to distinguish between observations and direct requests, the Committee of Experts has had the opportunity to express its views on this subject and in its 2020 report it emphasized that the application of these criteria, which are by no means new, is not an exact science based on a mathematical formula. Their use has been refined continuously over the years. The number of observations and direct requests made each year varies and is based on the information available to the Committee of Experts. In any case, I can assure you that we will continue to ensure that the existing criteria are followed.
- 264.** With regard to the information relating to the footnotes in which governments are invited to provide information to the Conference, I am pleased to report that we have considered the wording in question. I am sure that you have seen that the Committee of Experts includes a paragraph in the corresponding observation that provides specific information explaining the reasons why it was decided to include a footnote.
- 265.** With regard to the interpretation of Conventions, and in particular the references to Convention No. 87, I am bound to remind the Committee that the Committee of Experts has discussed this matter extensively, from the time when Professor Yozo Yokota was Chairperson until that of my predecessor, Judge Abdul Koroma. The Committee of

Experts reiterated that it acts within the framework and context of its mandate and in the exercise of its independence as a specialized body within the Organization's supervisory bodies. We have also been informed that the ILO Governing Body intends to hold a discussion on the adoption of measures to ensure legal certainty and that in this context the possibilities provided for under article 37 of the ILO Constitution will be discussed. We will follow the discussions and any decisions taken in this regard closely.

- 266.** In terms of considering the needs of the constituents and their representatives, I am pleased to recall that in its report the Committee of Experts has systematically highlighted the importance of employers' and workers' organizations providing observations on the application of ratified Conventions and in relation to the preparation of General Surveys. These observations provide up-to-date information from the social partners to the Committee of Experts and are vital to evaluating the application of Conventions in national law and practice. I encourage the social partners to continue, and even increase this practice, which is extremely useful to the system.
- 267.** All the opinions expressed in the course of the discussions during this Conference will be communicated to my colleagues in the Committee of Experts. The Committee of Experts' subcommittee on working methods meets annually, during our session, and will certainly examine carefully all the issues raised. I am sure that the next visit by the Vice-Chairpersons to the Committee of Experts will allow us to continue a meaningful dialogue, as has always been the case.
- 268.** Once more, I thank you for your invitation and I trust that dialogue between both Committees will continue in future.

#### **Reply of the representative of the Secretary-General**

- 269.** The Committee's discussions on the General Report and the General Survey prepared by the Committee of Experts have, as usual, been rich in terms of the sharing of information and analysis on the implementation of international labour standards in the context of which we are well aware, and on compliance with constitutional reporting obligations and their supervision. Many of you have taken the floor at this stage of our debate to confirm the importance of the standards-related mandate of the International Labour Organization and I have taken due note of all the views expressed on the role of the Office as a key actor in the development and implementation of the ILO standards policy.
- 270.** No specific questions have been raised for the Office this year and I would therefore merely wish to say a few words concerning our technical assistance portfolio in the field of international labour standards and to confirm that we will continue to respond to all requests that we receive for technical assistance. I have clearly taken due note of all the requests that have been made, especially today, concerning the reporting obligations on ratified Conventions. It is clear that our priorities in relation to technical assistance will be adjusted in light of the outcomes and conclusions that your Committee adopts at its final sitting.
- 271.** May I also confirm that, once the restrictions on international travel have been lifted, we will resume the planning of the various missions requested, including by your Committee. And I must say that I am looking forward to being able to meet some of you again without going through this camera, both in Geneva and in your respective countries.
- 272.** Finally, please allow me to conclude, very exceptionally, on a more personal note. The representative of the International Organisation of Employers yesterday in her intervention paid tribute to the work of the Office and in particular the whole team that

assisted the Committee of Experts to prepare its General Survey on promoting employment and decent work in a changing landscape. My colleagues and I are grateful for his special thoughts for our colleague Maria Marta Travieso, who made a significant contribution to the preparation of this General Survey and who would have so liked to be able to participate in our discussions yesterday and today. We will convey to her your messages of encouragement and the outcome of your discussions. I thank you for your kind attention.

### Concluding remarks

- 273. Employer members:** I would like to thank the Governments and the Worker members for their rich and interesting contributions to the discussion on the General Report, the discussion on the impact of COVID-19 on the application and supervision of international labour standards, and to the rich discussion of the General Survey concerning eight employment instruments.
- 274.** The Employer members also very much appreciate the replies from the Chairperson of the Committee of Experts and the representative of the Secretary-General. The presence of the Chairperson of the Committee of Experts, Judge Dixon Caton, and the ongoing dialogue between the Committee of Experts and the Conference Committee is fundamental in our view, not only for ILO constituents to better understand the standards-related requirements and the technical observations of the Committee of Experts, but also to facilitate the Experts' understanding of the realities and practical needs of the users of the supervisory system and participants in the Committee.
- 275.** We were very much pleased to hear the comments of Judge Dixon Caton in which she welcomed the comments regarding the cooperation and dialogue that continues and is ongoing between the Committee of Experts and this Committee, and welcomed her comments about the fundamental importance of cooperation and dialogue between employers and workers and their inputs in particular.
- 276.** We also believe that the work of the Committee of Experts clearly constitutes a major contribution to the successful functioning of this Committee and the regular supervisory system as a whole. While maintaining its independence, the Employer members are of the view that it still remains important for the Committee of Experts to hear the ILO's tripartite constituents' views and opinions, and to implement measures to make the regular standards supervisory system more user-friendly, effective, transparent and balanced, as well as to facilitate the understanding and application of international labour standards. The Centenary Declaration, which represents the tripartite consensus for the future work of the ILO, including the work of the ILO supervisory system, is clear in confirming the following: the setting, promotion, ratification and supervision of international labour standards is of fundamental importance to the ILO. This requires the Organization to have and promote a clear, robust and up-to-date body of international labour standards and to further enhance transparency in this process. International labour standards also need to respond to the changing patterns of the world of work, protect workers and take into account the needs of sustainable enterprises. Labour standards must also be subject to authoritative and effective supervision.
- 277.** The Employer members have highlighted several issues in respect of our concerns. However, these have been highlighted in the spirit of mutual respect and understanding. In line with the Centenary Declaration, in our view, the Committee of Experts and the Conference Committee must take into account the needs of sustainable enterprises in their deliberations and assessment of the application of international labour standards.

This is in no way to derogate from worker protection needs. We cannot confuse the wording, in the spirit of the Centenary Declaration. However, making the needs of sustainable enterprises more visible in the ILO standards supervisory system, in our view, will contribute to a more balanced application of international labour standards and a higher profile of those same standards. This seems to be of particular relevance in the current context where Member States are designing or implementing COVID-19 recovery strategies in which sustainable enterprises are expected to play a central role as economic and social stabilizers for society.

- 278.** In addition, in respect of the issue concerning the Committee of Experts' differentiation between observations and direct requests, we appreciate Judge Dixon Caton's clarification of those distinctions. However, we remain concerned that in making numerous substantial comments in the form of direct requests, the Committee of Experts is excluding a major part of the standards application from tripartite scrutiny, discussion and transparency. The figures we presented were simply to make a point that we must continue to ensure that we have transparency in the work of the Committee of Experts, so as to allow the proper functioning of this Committee.
- 279.** In addition, as regards the assessments of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), as well as other Conventions, the Employer members requested the Committee of Experts and the Office that supports the work of the Committee of Experts, to continue to respect the language of the Conventions, the scope of the Conventions and also the flexibility afforded by the provisions of these Conventions, in order to allow Member States and social partners to find ways of implementing their obligations under international labour standards, in line with the national standards and economic reality of each Member State.
- 280.** The Employer members have made comprehensive submissions on the General Survey. We agree with the Committee of Experts on a number of points, but have also respectfully expressed our disagreement on some points in an effort to contribute our view to this broader discussion. The main message from the discussion, from the Employers' point of view with respect to the General Survey, is that it must be necessary to keep in mind that in order to ensure a sustainable job-rich recovery from the global pandemic and to protect livelihoods in implementing Employment Policy Convention, 1964 (No. 122), and employment policies and programmes, due attention should be given to creating a truly enabling environment for enterprises, including micro, small and medium-sized enterprises. Economies and societies need intermediate and long-term measures to emerge from the COVID-19 crisis stronger and more resilient than before.
- 281.** ILO assistance on employment policies should include advice on measures that help enterprises play their role in this recovery process. In this context, we must note that the Worker spokesperson's comments, in which he was concerned with our expressing disagreement with the Committee of Experts, were out of place in that this is the process by which the Employer members can provide feedback and comments on the General Survey in the spirit of transparency and open social dialogue. Expressing disagreement in areas of divergence is part of the system of healthy social dialogue.
- 282.** The Employer members look forward to ongoing exchanges between the Conference Committee and the Committee of Experts in 2022. The Employer members would like to reaffirm their full commitment to continuing to improve the international labour standards supervisory system, including working to ensure that it remains credible, relevant, balanced and transparent as the ILO continues into its second century. In

particular, to conclude, in order for the standards supervisory system to contribute meaningfully to a sustainable and resilient recovery from the pandemic, balanced assessment and recommendations are required.

- 283. Worker members:** We express thanks to all the participants who took the floor during the discussion. Thanks also go to the Chairperson of the Committee of Experts for the clarifications provided, and to the representative of the Secretary-General. We join in wishing our colleague in the International Labour Standards Department a swift recovery. I would like to come back to several points that were raised by different speakers during the discussion of the General Report.
- 284.** The Worker members recall that our Committee is not appointed to assess the work of the Committee of Experts or give it instructions. Of course, it is always possible to express dissatisfaction with the content, as my colleague, the spokesperson of the Employers' group, indicated.
- 285.** The suggestion by the Employer members that the promotion of sustainable enterprises be incorporated into the examination of standards is, in our opinion, irrelevant. The Committee of Experts and our Committee are appointed to monitor compliance with standards and not to promote concepts that do not fall under any standard-setting instrument. Such considerations are only relevant when formulating new standards but certainly not when monitoring compliance with existing standards. Incidentally, I would point out that our Organization's mandate is centred on worker's rights. And the Centenary Declaration recalls, in this regard, that the ILO must develop "its human-centred approach to the future of work, putting workers' rights and the needs, aspirations and rights of all people at the heart of economic, social and environmental policies". It should also be recalled that enterprises are a means of ensuring the production of goods and services. Consequently, it must be ensured that the attention we afford these means does not take precedence over the ultimate goal, namely the promotion and improvement of workers' rights.
- 286.** The Employer members deemed it useful to present considerations concerning in particular the right to collective bargaining. It is not for us to discuss this here and now, since the issue is not on the agenda. But we nevertheless wish to indicate that the Worker members categorically reject the vision expressed. We wish to recall that the right to collective bargaining is a fundamental right, as reaffirmed by both the Declaration of Philadelphia and the Centenary Declaration. And these two texts even set forth that this right is guaranteed for all workers. It also appears that, with regard to Article 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Employer members base their statements on a position that they attribute to the Committee of Experts – but a position that, in our opinion, the experts have clearly not taken.
- 287.** In any case, potential divergences between the employers and workers may exist but in no way concern the Committee of Experts. This is an independent body, which is appointed to monitor compliance with standards and which, on this basis, interprets the meaning of Conventions and Recommendations. In the discharge of its mandate, it is under no obligation to consider the points of view or desiderata of one group or another.
- 288.** Based on the position of the Employer members, the Committee of Experts would have authority only where it took account of the views that they express. We can ask ourselves, then, what would remain of this body's authority if its vision was dictated by a group, state or government, and if its interpretations should change depending on the mood or changes in interests. The Committee of Experts' independence is, therefore, the guarantee of its authority.

289. Some members have also taken the liberty of revisiting here the selection and appointment procedure for the Committee of Experts. That is a discussion that is irrelevant and does not fall within the competence of our Committee.
290. I would also like to raise a point regarding direct requests. It has been stated that the recourse, by the Committee of Experts, to direct requests prevented the possibility of having a tripartite discussion on the issues raised in these requests. But it should also be noted that our Committee is not appointed to lead a tripartite discussion on the report of the Committee of Experts but rather to examine the measures taken by Member States in order to give effect to the provisions of the Conventions. In this regard, the report of the Committee of Experts constitutes the basis of this discussion. In addition, it is not for our Committee to interfere in the working methods of the Committee of Experts, which is free to organize and coordinate its work as it sees fit.
291. It must be noted that we spend a lot of time on issues that are rather peripheral. In the view of the Workers, it is preferable that in the future we benefit from our exchanges with the Committee of Experts to address the only question that we think matters: how can we improve respect for workers' rights throughout the world?

## C. Reports requested under article 19 of the Constitution

### General Survey and its Addendum: Promoting Employment and Decent Work in a Changing Landscape

292. The Committee dedicated a sitting to the discussion of the General Survey carried out by the Committee of Experts concerning the Employment Policy Convention, 1964 (No. 122), the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), the Home Work Convention, 1996 (No. 177), the Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168), the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), the Home Work Recommendation, 1996 (No. 184), the Employment Relationship Recommendation, 2006 (No. 198), and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), and its 2021 Addendum. The record of this discussion is contained in section A of Part Two of this report.

### Concluding remarks

293. At the meeting on the adoption of the outcome of the discussions, the following statements were made by members of the Committee.
294. **Employer members:** The Employer members are pleased with the engaging and interesting discussion on this year's General Survey on the eight ILO employment instruments. The General Survey and the Committee's tripartite discussions were timely, given the severe impact the ongoing COVID-19 pandemic is having on employment. The Committee's discussion was an opportunity, among others, to highlight the efforts that governments, employers and workers have jointly undertaken to safeguard employment during the crisis as far as possible, and the need for prioritizing employment in the recovery and building-forward processes. The tripartite discussion and the outcome showed the outstanding role of sustainable and resilient enterprises as economic and social stabilizers for societies.
295. We would like to take the opportunity to reiterate some important points made in the discussion. First, to ensure sustainable job-rich recovery from the crisis and to protect livelihoods in implementing Convention No. 122 on employment policies and



programmes, due attention should be given to creating a truly enabling environment for enterprises, including for micro-, small and medium-sized enterprises. Economies and societies need intermediate and long-term measures to emerge from the crisis stronger and more resilient than before. Office assistance on employment policies should include active measures and advice on those measures that help ensure that enterprises can play their role in this process and create employment opportunities.

- 296.** Second, Convention No. 122 requires ratifying Member States to declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment. While the Convention does not prescribe the means and strategies to achieve this goal, we would like to recall that the ILO Centenary Declaration states, in this regard, that the ILO must direct its efforts to supporting the role of the private sector as a principal source of economic growth and job creation by promoting an enabling environment for entrepreneurship and sustainable enterprises. We are pleased to see this recognized in the outcome of the discussion. We trust that the Committee of Experts will give due consideration to the enabling environment necessary for sustainable enterprises in future assessments and considerations on Convention No. 122 as well as other Conventions in the area of employment.
- 297.** As regards the impact of new technologies – automation and artificial intelligence, as well as robotization – on employment, and its impact on employment policies, the Employer members are of the view that these have considerably improved working conditions, and that the reduction of hazards in many sectors is a by-product of these advancements. We would add that new technologies also have significant potential to contribute to the creation of full and decent employment. While, to be sure, there are many new challenges arising from the introduction of new technologies that need to be assessed and considered, in doing so, measures should be given preference that do not hamper the employment-creating effects of such new technologies, including for people with disabilities.
- 298.** Third, while the employment relationship in most countries still remains the main form of dependent labour, the diversification of the world of work and the emergence of new and alternative forms of work should be acknowledged and must be welcomed. These new forms of work have significant potential for integrating more people in the labour market, and thus have the ability to contribute to full, productive and freely chosen employment in line with Convention No. 122.
- 299.** Fourth, transitioning from the informal to the formal economy is central to development. We favour a progressive approach involving sustained measures and policies to achieve full and productive employment, to reduce poverty, including measures and policies that minimize the costs and increase the benefits of formality. The transition process needs to take into account the specific country context and the existing potential. Promotion of an enabling business environment with a focus on entrepreneurship, job creation, and skills development in the formal sector is critical to absorb informal activity.
- 300.** Fifth, we note from the General Survey that the ratification proposals for the three Conventions examined in this General Survey, that is to say, Conventions Nos 122, 159 and 177, are limited. In particular, there seem to exist significant ratification obstacles for Convention No. 177, which is also the least ratified among the three Conventions. In our view, the lesson learned from this is that it is not advisable to set internationally binding rules on particular forms of work, particularly when these forms of work are very diverse, nationally and internationally, as is the case with home work. We also have doubts regarding the usefulness and appropriateness of Recommendation No. 198 in



view of its unduly narrow focus on the employment relationship, which can, in fact, conflict with the concept of the independent contractor relationship.

301. Having said this, the Employer members consider that the other employment instruments examined in the General Survey, namely Conventions Nos 122 and 156, Recommendation No. 168, Recommendation No. 169 and Recommendation No. 204, overall impressively retain their relevance as guideposts for designing balanced policies that help achieve the objective of full, productive and freely chosen employment. The importance of a policy focus on employment and business continuity as crisis stabilizers has become very obvious in the ongoing COVID-19 pandemic. The above ILO standards, when their implementation is thoroughly adapted to the national situation, in our view can indeed contribute in a meaningful way to allow Member States to build more resilient societies, economies and institutions, and thus pave the way towards achieving a sustainable future of work.
302. The outcome document clearly recognizes the private sector as a principal source of economic growth and job creation, the need to promote an enabling environment for entrepreneurship and sustainable enterprises, and the role of sustainable enterprises as generators of employment and promoters of innovative and decent work.
303. The Employer members welcome the shared commitment of the tripartite constituents to build back better, with a human-centred and job-rich recovery, by developing, implementing, monitoring and reviewing strong, proactive employment policies, underpinned by constructive social dialogue, and a respect for fundamental rights at work. Effective evidence-based employment policies should be firmly grounded on relevant, reliable and gender-disaggregated data.
304. The Employer members request the Office to take into account the General Survey, the detailed views expressed in the discussion that followed, and the outcome of the discussion in its work and technical assistance services.
305. **Worker members:** We welcome the adoption of these conclusions, which largely reflect the content of our exchanges. The topic addressed this year is timely, just as our societies are preparing to find their way towards a post-COVID recovery. Employment policies in all their dimensions will be crucial in this context and will have to draw on lessons learned from the pandemic. Our conclusions highlight the importance of having a human-centred and, more precisely, workers' rights-centred approach.
306. An economic activity is lasting and sustainable only if it is in conformity with the rights – all the rights – of workers. In this regard, international labour standards, which are the vehicle for these rights, must be placed at the heart of programmes and actions, and serve as benchmarks for the initiatives that are adopted. The instruments examined must be promoted without exception or reservation, and their ratification must be widely encouraged.
307. It is not possible to discuss employment policies without giving particular attention to the informal economy, which continues to be a reality for many workers around the world. It is essential to tackle this issue by evaluating its causes, such as the deregulation of labour rights. This evaluation is necessary in order to provide appropriate responses with a view to ensuring the transition to the formal sector as set out in Recommendation No. 204. In the same vein, it is important to give full effect to Recommendation No. 198, which represents a suitable framework for combating disguised employment relationships by guaranteeing primacy of fact over the parties' description. Our discussions have also enabled us to highlight the extent to which women are particularly

exposed to fragile work situations, such as informal work, telework and part-time work. These characteristics need to be taken into account when formulating policies.

- 308.** Many of the issues examined within the framework of the General Survey require proactive measures on the part of the States. This role is fundamental, whether through public investment, guarantee of workers' rights, or expansion of and access to public services. It is therefore fundamental that this role is not diminished by austerity measures, the disastrous consequences of which we have already witnessed in the relatively recent past.
- 309.** Social dialogue led with the workers' and employers' representatives must also serve as an engine in the implementation of the commitments made here. Lastly, I wish to note that the General Survey and the Committee's conclusions must be seen as a road map for the States but also for the Office as part of their interventions and missions on the matter.
- 310. Government member, Philippines:** The Philippines watched the outcome of the discussion on the General Survey and its Addendum. We note with the highest appreciation the dedication of the Committee in giving close guidance to Member States to ensure their compliance with international labour standards in both legislations and in implementation. The near conclusion of the 109th Session of the International Labour Conference is proof of both our fortitude and ingenuity, not only in rising above challenges but, more importantly, in faithfully fulfilling our obligations as members of the great family of nations regardless of any tests or circumstance.
- 311.** In our continuous drive to reopen safely, we need to fortify our collective efforts. Our present situation calls for further collaboration to support, expound and magnify the advantages of technological and digital transformation. We cannot stress enough the importance of proper social dialogue in our policy framework and in the formulation of national economic recovery plans as we navigate our way towards a better normal. We stand witness today to our commitment in overcoming these unprecedented circumstances through a universal framework to build back better, maximizing constructive and effective social dialogue. We are steadfast in advancing human-centred policy responses, putting human rights and core labour standards as vanguards. After all, this pandemic challenges not only our healthcare systems but also our commitment to human dignity, equality and social justice through the advancement of decent work principles.
- 312.** The Philippine Government stands firm by its mandate to promote and protect the workers' constitutionally guaranteed fundamental rights and welfare.

### Outcome of the discussion of the General Survey and its Addendum: Promoting Employment and Decent Work in a Changing Landscape

- 313.** The Committee approved the outcome of its discussion, which is reproduced below.

#### Introduction

- 314.** The Committee examined the General Survey and Addendum carried out by the Committee of Experts on *Promoting employment and decent work in a changing landscape*, which covered selected employment instruments, notably the Employment Policy Convention, 1964 (No. 122); the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159); the Home Work Convention, 1996 (No. 177); the Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168); the Employment Policy (Supplementary Provisions) Recommendation, 1984

(No. 169); the Home Work Recommendation, 1996 (No. 184); the Employment Relationship Recommendation, 2006 (No. 198); and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). The Addendum, carried out by the Committee of Experts following the outbreak of COVID-19 in early 2020, examined the impact of the pandemic on the strategic objective of employment, particularly its impact on the application of the above-referenced instruments. The Committee welcomed the timely opportunity to discuss the application in law and practice of the eight ILO instruments in the area of productive employment and decent work, given the devastating effects that the COVID-19 pandemic is having on an ever-changing world of work.

- 315.** The Committee welcomed the General Survey and Addendum, noting that they provided a sound background for its discussions. It considered the central role of Convention No. 122 as a governance Convention and noted that Convention No. 122 requires ratifying States to declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment. The national employment policy should be developed, implemented, monitored and reviewed in consultation with the social partners and persons affected by the measures to be adopted. Moreover, the Convention calls for employment policies to be coordinated with other social and economic policies, in particular policies on education, training and lifelong learning.
- 316.** The Committee recalled that employment is one of the four strategic objectives of the Decent Work Agenda and has been a primary concern of the ILO since it was founded. It noted that employment is at the heart of the ILO's social justice mandate, expressed in the ILO Constitution and reaffirmed in the 1944 Declaration of Philadelphia, as well as in the 2019 Centenary Declaration, which calls on the tripartite constituents to develop "effective policies aimed at generating full, productive and freely chosen employment and decent work opportunities for all". Moreover, the Committee recalled that the 2030 Agenda for Sustainable Development integrates the principle of full, productive and freely chosen employment in Sustainable Development Goal 8, and that this key principle is inextricably linked to the other SDGs, particularly Goal 1 (ending poverty), Goal 4 (education), Goal 5 (gender equality) and Goal 10 (reducing inequalities).

### **The situation and needs of Member States**

- 317.** The Committee expressed concern at the severe impact of the COVID-19 pandemic on economies and societies around the world. It recognized that labour markets and institutions of work, including educational and vocational training institutions and systems, were being subjected to severe shocks, despite concerted efforts by governments, employers' and workers' organizations to mitigate these impacts. To date, millions of workers have lost their jobs and livelihoods, with disadvantaged groups, such as young persons, women, workers in the informal economy, homeworkers and persons with disabilities being particularly hard hit. The Committee further noted that enterprises of all sizes have been forced to cease or reduce their operations due to containment measures, including quarantines and lockdowns.
- 318.** The Committee's discussion highlighted the measures that governments, employers and workers have undertaken to mitigate the effects of the pandemic, particularly measures to protect jobs, preserve incomes and support enterprises to continue their activities to the extent possible. The Committee welcomed the commitment of the tripartite constituents to ensuring a fair and just as well as a sustainable and inclusive recovery from the crisis, noting that the pandemic has shown the importance of comprehensive employment policies that take into account changes in the world of work, including

environmental and social changes and technological advancements, as well as the need to protect workers and their rights.

- 319.** Stressing the importance of building back better with a human-centred approach to the future of work and ensuring a job-rich recovery, as well as to better prepare for future crises, the Committee recalled the ILO Centenary Declaration, which states that the ILO “must direct its efforts to supporting the role of the private sector as a principal source of economic growth and job creation by promoting an enabling environment for entrepreneurship and sustainable enterprises” and reaffirms “the continued relevance of the employment relationship as a means of providing certainty and legal protection to workers”.
- 320.** The Committee noted that many countries have begun to transition from emergency measures to interim and longer-term recovery measures. Most have taken measures to counter the effects of the pandemic on the labour market, as well as to provide social protection, including income support for those in need of assistance, and financing of wage subsidies. Some have taken measures to extend and regulate the possibilities for telework and working from home, as these arrangements have become significantly more prevalent due to the pandemic and have proven key to protecting jobs during the crisis. A number of countries have also taken measures to provide needed childcare services for emergency and frontline workers, which enable both women and men to continue working.
- 321.** The Committee emphasised the key role of social dialogue in coordinating national responses to the pandemic, noting that a number of countries have negotiated tripartite agreements aimed at protecting jobs, preserving incomes and supporting enterprises during the crisis.

### Common commitments

- 322.** The Committee welcomed the shared commitment of the tripartite constituents to build back better with a human-centred approach to the future of work by developing, implementing, monitoring and reviewing strong, proactive employment policies underpinned by constructive social dialogue and respect for fundamental rights at work.
- 323.** To ensure a human-centred, sustainable and job-rich recovery from the COVID-19 pandemic and protect decent jobs and livelihoods, the Committee recognized the need to develop and implement, in consultation with employers’ and workers’ organizations, comprehensive, inclusive and productive employment policies and programmes aligned with Convention No. 122 that are gender-responsive and evidence-based. Moreover, such policies should take into account the situation of disadvantaged groups who face difficulties in accessing the labour market, protect workers and promote an enabling environment for entrepreneurship and sustainable enterprises, in particular micro-, small and medium-sized enterprises, as well as cooperatives and the social and solidarity economy.
- 324.** The Committee recalled that, as the Committee of Experts noted in its Addendum, national economies and societies will require a mix of short, intermediate and long-term employment policy measures to enable them to build stronger and more resilient labour markets and institutions of work that ensure full, productive and freely chosen employment and decent work, so as to improve the living standards of workers and their families. It further recalled the need to develop a human-centred approach to the future of work as expressed in the Centenary Declaration, which puts workers’ rights and the needs, aspirations and rights of all people at the heart of social and economic policies.

Consequently, employment policies should, as a major goal, foster the creation and preservation of decent, stable and lasting employment, safeguard workers' rights and livelihoods, address unemployment and underemployment and reduce poverty; while promoting sustainable enterprises as generators of employment and promoters of innovation and decent work. Such policies should also facilitate just economic, social and environmental transitions that can assist countries to prepare for a brighter future of work for all.

- 325.** The Committee welcomed the shared commitment among the tripartite constituents to developing national employment policies and programmes that put international labour standards at the heart of the global and national responses to the pandemic, taking into account the needs of sustainable enterprises. The Committee noted that the strategic objective of employment is intrinsically linked to the other three strategic objectives pursued by the ILO's work, namely fundamental principles and rights at work, social protection and social dialogue. Elements, such as gender equality, an enabling environment for sustainable enterprises, including for micro-, small and medium-sized enterprises, improved labour market information systems, transition from informality, adequate protection for workers, vocational education and training and lifelong learning, and supporting inclusive social dialogue for developing and implementing sustainable solutions should form part of comprehensive employment policies and programmes.
- 326.** Noting that women around the world still face obstacles to accessing employment, particularly in decision-making positions, persistent gender wage gaps and a disproportionate burden of unpaid work, the Committee expressed a shared commitment to promoting gender equality and addressing the decent work deficits that women still face in national policies to achieve full, productive and freely chosen employment.
- 327.** The Committee recognized the role of the private sector as a principal source of economic growth and job creation and supported the role of the public sector as a significant employer and provider of quality public services. In order to support a job-rich recovery, the Committee stressed the need for the public authorities to invest in strengthening labour market and educational institutions, improving access to relevant quality education, training and lifelong learning opportunities, as well as to improve labour market information systems to anticipate labour market needs.
- 328.** The Committee noted that governments and social partners have a joint responsibility to address existing and anticipated skill gaps and to pay particular attention to ensuring that education and training systems are responsive to labour market needs in order to help enhance workers' capacity to make use of the opportunities available for decent work.
- 329.** The Committee noted the common commitment among the tripartite constituents to give particular attention to facilitating the transition to the formal economy. The Committee stressed the need to assess efforts made to implement Recommendation No. 204 as well as to examine the structural causes of informality.
- 330.** The Committee noted the growing use of home work, in particular during the COVID-19 pandemic. While noting that home work has moved beyond traditional crafts and production activities, and that teleworking and other new business models have emerged due to improved information technology, the Committee stressed the need to promote, as far as possible, equal treatment between homeworkers and other wage earners, taking into account the special characteristics of home work and, where

appropriate, conditions applicable to the same or a similar type of work carried out in an enterprise, noting the opportunities that home work can provide for workers with family responsibilities, workers in rural or distant areas or workers with disabilities.

- 331.** The Committee welcomed the strong commitment among the tripartite constituents to ensuring equal treatment and effective implementation of productive employment and inclusive social policies. The Committee welcomed the use of technology to enable persons with disabilities to access and participate in rehabilitation, training and employment. As noted in the General Survey, in addition to quotas, many countries have also put in place financial incentives and assistance, including in relation to provision of reasonable accommodation, for enterprises recruiting persons with disabilities, to promote employment and decent work for persons with disabilities on the open labour market and foster recognition of their abilities and contribution to their economies and the larger society.

### **ILO means of action**

- 332.** Stressing the importance of building a human-centred and job-rich recovery, as well as the need to shape a sustainable, resilient, secure and inclusive future of work, the Committee recalled the Centenary Declaration, which states that the ILO must direct its efforts to “supporting the roles of the private sector as a principal source of economic growth and job creation by promoting an enabling environment for entrepreneurship and sustainable enterprises” and support governments in “strengthening the institutions of work to ensure the protection of all workers and reaffirming the continued relevance of the employment relationship as a means of providing certainty and legal protection to workers.”
- 333.** The Committee noted that effective, evidence-based employment policies should be firmly based on reliable and gender disaggregated data and use relevant international labour standards as guideposts for designing balanced policies that help achieve the objective of full, productive and freely chosen employment.
- 334.** The Committee underlined the high value of Office technical assistance to Member States in strengthening data collection and processing capacities and promoting the benefits of and rationale for compiling improved gender-disaggregated data.
- 335.** It also called upon the ILO to support the elaboration and implementation of well-targeted national comprehensive employment policies, based on tripartite consultation, and to closely monitor developments in this area, including through employment and decent work impact assessments and the implementation of recovery measures.
- 336.** The Committee stressed the importance of supporting national social dialogue processes and providing capacity for social partners in this regard.
- 337.** The Committee requested the Office to take into account the General Survey and its Addendum on *Promoting employment and decent work in a changing landscape*, the discussion that followed and the outcome of its discussion, in relevant ILO work.



## D. Compliance with specific obligations

### 1. Cases of serious failure by Member States to respect their reporting and other standards-related obligations

- 338.** During a dedicated sitting, the Committee examined the cases of serious failure by Member States to respect their reporting and other standards-related obligations. As explained in document D.1, Part V, the following criteria are applied: failure to supply the reports due for the past two years or more on the application of ratified Conventions; failure to supply first reports on the application of ratified Conventions for at least two years; failure to supply information in reply to all or most of the comments made by the Committee of Experts; failure to supply the reports due for the past five years on unratified Conventions and Recommendations; failure to submit the instruments adopted for at least seven sessions to the competent authorities; and failure during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23(2) of the Constitution, copies of reports and information supplied to the Office under articles 19 and 22 have been communicated. The Chairperson explained the working methods of the Committee for the discussion of these cases. The procès-verbaux of this discussion is found in section B of Part Two of this report.
- 339. Worker members:** Given the inescapable constraints of the particular context that we are experiencing, the Committee has modified the procedures for the special sitting that it usually holds on the subject of cases of serious failure to respect reporting and other standards-related obligations. Nevertheless, these modifications enable us to address this fundamental question, in the first place through written observations, while reserving the possibility subsequently for the listed governments to provide new information during the sitting and enabling the spokespersons of the Workers' and Employers' groups to make final observations during the sitting too.
- 340.** The Committee of Experts' report shows clearly that the current crisis has had a serious impact on the fulfilment of constitutional obligations by Member States. Even though we can recognize the difficulties encountered by Member States in this regard, the Committee of Experts rightly recalls that the ILO Constitution does not provide for any exception to these obligations, even in times of crisis. The fact remains that in today's context of crisis resulting from the COVID-19 pandemic, we can see a worrying trend towards an increasing number of violations of fundamental rights, whether in relation to occupational safety and health or with respect to the exercise of the fundamental freedoms of association and collective bargaining. All of this makes dialogue between the ILO and the Member States even more essential than in normal times.
- 341.** Member States should also be reminded that these reporting obligations are precisely what enable the ILO to gain a better understanding of the difficulties faced by Member States in the application of ILO instruments and to provide suitable responses to these difficulties.
- 342.** Without compliance with these fundamental obligations on the part of Member States, the ILO cannot fully discharge its role either through its supervisory system or in its other areas of action. So it is the Member States themselves that are the victims of non-fulfilment of their constitutional obligations since the ILO is diminished in its capacity to provide adequate responses, particularly at a time of crisis. It is therefore essential to raise this issue and to insist that countries which fail to meet their obligations make the



necessary arrangements without delay and take all possible steps to fully respect their constitutional obligations.

- 343.** Even though this year is undeniably a peculiar year in which we cannot fail to note a drastic reduction in the fulfilment of reporting obligations, we must not lose sight of the fact that the decrease in the number of reports received is a worrying trend that we have been bound to deplore for a number of years. Although the ILO certainly has a role to play in providing assistance, it is for Member States in the first place to allocate sufficient resources to enable them to respect the obligations imposed on them by the ILO Constitution.
- 344.** As regards the reporting obligations relating to ratified Conventions, we cannot fail to note a very sharp reduction in the number of reports received by comparison with last year. The proportion of the number of reports received during the last session of the Committee of Experts (859) compared with the number of reports requested by the Committee of Experts (2,004) was only 42.9 per cent compared to 70.7 per cent for the preceding session, in other words 27.8 per cent less. This is a significant decline that gives cause for concern and it cannot be justified by the crisis alone, bearing in mind the observations that we have made above.
- 345.** It also appears from the Committee of Experts' report that of all the reports requested from governments, only 26.5 per cent of them were received in time, namely by 1 October. Governments have been less punctual than last year, since 39.6 per cent of reports were received in time last year. This is also a significant decline. Already in the previous year we noted a decrease regarding the submission of reports in time. This is a worrying trend and it needs to be reversed strongly in the years to come. It is vitally important that governments submit their reports in time so as not to disrupt the smooth functioning of the ILO supervisory system and to enable the ILO to be fully informed of the challenges arising for Member States with respect to launching a post-COVID recovery.
- 346.** Furthermore, 16 countries have not provided any reports for two or more years and 12 countries have not provided any first reports for two or more years. First reports are the reports which are due further to the ratification of a Convention by a Member State. These first reports are of vital importance since they enable an initial evaluation of the application of the Conventions concerned in the Member States.
- 347.** The ILO Constitution also imposes the obligation on Member States to indicate the representative organizations of employers and workers to which copies of reports on ratified Conventions are communicated. The Committee of Experts' report contains a positive element in this regard: it indicates that all Member States have met this obligation.
- 348.** Tripartism is indeed the foundation of the ILO. It is therefore essential that the social partners are involved in monitoring the application of international labour standards in their countries. Communicating the reports sent to the ILO to these organizations enables them to contribute to the work of evaluating the conformity of national law and practice with international labour Conventions. It is also essential that there is genuine tripartite momentum to ensure that this formality is implemented.
- 349.** Each year the Committee of Experts formulates observations and direct requests to which countries are invited to reply. This year 47 countries have not replied (compared with 44 last year). As the Committee of Experts has emphasized, the number of comments to which there has been no reply remains very high. This negligence has a

negative impact on the work of the supervisory bodies. We join the Committee of Experts in inviting non-compliant governments to send all the requested information.

- 350.** In view of the figures causing even greater concern that those of recent years – which may partly be explained by the crisis context – the deep concern of the Committee of Experts is shared by the Workers’ group. While recalling that the prime responsibility for meeting reporting obligations rests on the Member States, we ask the Office to be particularly attentive to the difficulties encountered by Member States, especially because of the health crisis, and to adapt and strengthen initiatives already taken in the past to reverse the negative trend observed for many years and which the health crisis is only making worse. This means ensuring more effective follow-up with respect to countries which seriously fail to meet their constitutional obligations and ensuring that these Member States resume without delay the task of respecting their reporting obligations with an eye to emerging from the crisis.
- 351.** The Committee of Experts, in collaboration with the Office, recently launched a new positive initiative in this regard and the first results of this can already be seen. This is the urgent appeals procedure, whereby the Committee of Experts is able to examine the application of the relevant Convention, in terms of the substance, on the basis of information accessible to the public, if the government has not sent a report despite having been urged to do so. This procedure is applicable in cases where the Member State has not sent reports on ratified Conventions for three or more years (four countries are concerned this year) and in cases where the country has not sent any first reports for three or more years (five countries are concerned this year). This year nine Member States are likely to have the substance of their respective cases examined next year by the Committee of Experts on the basis of publicly accessible information if they do not provide the expected report in time.
- 352.** As indicated above, this procedure already seems to be yielding positive initial results since seven of the 14 reports for which urgent appeals were launched have been received in the meantime. This is a very positive outcome and we are hopeful that this Committee of Experts’ initiative in collaboration with the Office will produce further good results in the future.
- 353.** Every year our Committee devotes its attention to a General Survey. This cannot be achieved without the transmission of the reports provided by the Member States of our Organization. It is therefore vitally important that Member States send their reports as part of the preparation of the General Surveys so that we can gain an overview of the application in law and in practice of ILO instruments, even in countries which have not ratified the Conventions under examination. The General Surveys are invaluable instruments which enable us to hold extremely interesting debates and have a glimpse of prospects for the future. Many General Surveys published in the past are still used today to shed light on possible interpretations of ILO Conventions and Recommendations. However, we are bound to note that 21 countries have not supplied any information for the last five years to contribute to the last five General Surveys drafted by the Committee of Experts. This is regrettable since these States would have made a valuable input to the overview that the General Survey provides.
- 354.** Cases of serious failure to submit are cases in which governments have not submitted the instruments adopted by the Conference to the competent authorities for at least seven sessions. This obligation is essential for ensuring, at the national level, official communication of the ILO’s standard-setting initiatives to the competent authorities, further to which the Member State can contemplate possible ratification. This year 48 countries are in a situation of serious failure to submit, compared with 36 last year.

This amounts to as many missed opportunities for promoting international labour standards adopted by the ILO.

355. It is essential that Member States constituting cases of serious failure to respect constitutional reporting obligations make every possible effort to comply without delay with the obligations imposed on them. These Member States are not alone in facing these obligations. They can count on the ILO, which has always shown great willingness to assist Member States with fulfilling their obligations. We therefore invite the Office to continue to provide Member States with the necessary assistance.
356. However, we must also firmly remind Member States that they have a responsibility to meet their obligations vis-à-vis the ILO. Their credibility and the effectiveness of the various ILO bodies are at stake. The ILO, for its part, must be firm in requiring the replies and reports that States have to provide on the basis of their obligations and must give the necessary impetus for dialogue between the ILO supervisory bodies and the Member States. This dialogue is fundamental to the effective application of standards and their dissemination.
357. **Employer members:** The discussion this year takes place against the all-overshadowing backdrop of the ongoing pandemic which has had severe effects on both the application and the supervision of ILO standards. We note that the Committee of Experts once again expressed concerns in the 2021 Addendum to its Report at the low number of government reports received by the 1 October deadline, which was exceptionally modified to allow governments more time under the special circumstances of COVID-19. We fully understand that last year was an exceptional year as governments were primarily concerned with managing the pandemic, but we nonetheless count on them to continue complying with their reporting obligations under article 19, 22 and 35 in a timely manner and to do so in consultation with the most representative employer and worker organizations. This is important – and it cannot be repeated often enough – because it is government reports that provide the core basis for our supervisory work.
358. With regard to Governments' compliance with reporting obligations on ratified Conventions, we regret to see that even with the extended 1 October deadline there is a decrease in the number of reports received – only 26.5 per cent compared to 39.6 per cent last year. This just adds to our disappointment with the continued low levels of reporting over the past years. While we understand that the Office has limited finance and human resources, we trust it will nevertheless continue its efforts to provide assistance and encourage governments to meet their reporting obligations in consultation with the most representative employer and worker organizations.
359. We note with real concern that according to paragraph 102, none of the reports due have been sent for the past two or more years from 16 countries. The Committee of Experts rightly urges the Governments concerned to make every effort to supply the reports requested on ratified Conventions. We invite these Member States to request ILO technical assistance.
360. In terms of first reports, we note that like last year, only five of the 20 first reports due were received by the time the Committee's session ended. According to paragraph 104, 12 Member States have failed to supply a first report for two or more years. Out of these 12 Member States, we are particularly concerned about the serious failure of the following countries: (i) Congo – no reporting on the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), since 2015, the Maritime Labour Convention, 2006 (MLC, 2006), since 2016, and the Work in Fishing Convention, 2007 (No. 188), since 2018; (ii) Equatorial Guinea – no reporting on the Food and Catering (Ships' Crews) Convention,

1946 (No. 68), and the Accommodation of Crews Convention (Revised), 1949 (No. 92), since 1998; (iii) Gabon – no reporting on the MLC, 2006, since 2016; (iv) Maldives – no reporting on the MLC, 2006, since 2016; (v) Romania – no reporting on the MLC, 2006, since 2017.

- 361.** First reports are vital to provide the basis for a timely dialogue between the Committee of Experts and the ILO Member States on the application of a ratified Convention. We strongly encourage the governments of these five countries to request technical assistance from the Office and to provide the Committee of Experts the overdue first reports without further delay.
- 362.** In paragraph 110, we note with concern that the number of comments by the Committee of Experts to which replies have not been received remains significantly high. We would like to understand from the Governments concerned for what reasons they are not responding to the Committee of Experts comments: Is it a lack of understanding of or disagreement with the content of observation or direct request? Or is it for other reasons? We understand that COVID-19 might be one significant factor for this, but if there are any other reasons, the Governments should let the Office know, should they require more assistance and/or have ideas to improve the reporting process.
- 363.** We note with regret that paragraph 155 records 21 countries as not having provided reports on unratified Conventions and Recommendations requested under article 19 of the Constitution for the past five years. We note that the great majority of cases of failure to report are either developing or small island states or both. We suggest that the Office give appropriate attention to this demographic to better assist it to prioritize and focus the assistance it can and does provide to states to meet their reporting requirements.
- 364.** We welcome the decision taken by the Committee of Experts to take up the employers' proposal to institute a new practice of "urgent appeals" for cases meeting certain criteria of serious reporting failure that require the Committee's attention on these cases. This makes it possible to call governments concerned before the Conference Committee and enables the Committee of Experts to examine the substance of the matter at its next session even in absence of a report. We welcome that seven out of 14 first reports on which urgent appeals were issued have been received, with technical assistance provided by the Office.
- 365.** Turning now to the social partners' role and participation in the regular supervisory system. As part of their obligations under the ILO Constitution, governments of Member States have an obligation to communicate copies of their reports to representatives of employers' and workers' organizations. Compliance with this obligation is necessary to ensure proper implementation of tripartism at the national level. In paragraph 149, we observe that social partners submitted 757 comments to the Committee of Experts this year – 230 of which were communicated by the employers' organizations and 527 were by workers' organizations. We trust the Office will continue to provide technical assistance, as well as capacity-building to social partners, to enable them, where appropriate, to send comments to the Committee of Experts.
- 366.** From our side, employers' organizations' members of the International Organization of Employers (IOE) are working with the invaluable support of the IOE secretariat to contribute to the supervisory system in a more effective manner. We are doing this through submitting up-to-date and relevant information to the Committee of Experts on how Member States are applying ratified Conventions in law and in practice, communicating not only shortcomings in application, but most importantly any progress made and alternative ways to implement ILO instruments. Comments from employers'

organizations are of particular importance to inform the Committee of Experts about the needs and realities of sustainable enterprises in a given country with regard to particular ratified Conventions.

367. We trust that the Committee of Experts will reflect these comments, as well as any additional comments by the employers in the discussion of the Conference Committee, fully in their observations.

#### 1.1. Failure to submit Conventions, Protocols and Recommendations to the competent authorities

368. In accordance with its terms of reference, the Committee considered the manner in which effect was given to article 19(5), (6) and (7) of the ILO Constitution. These provisions required Member States within 12, or exceptionally 18, months of the closing of each session of the Conference to submit the instruments adopted at that session to the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action, and to inform the Director-General of the ILO of the measures taken to that end, with particulars of the authority or authorities regarded as competent.
369. The Committee noted that, in order to facilitate its discussions, the report of the Committee of Experts mentioned only the governments which had not provided any information on the submission to the competent authorities of instruments adopted by the Conference for at least seven sessions (from the 99th Session (2010) to the 108th Session (2019), because the Conference did not adopt any Conventions and Recommendations during the 97th (2008), 98th (2009), 102nd (2013), 105th (2016) and 107th (2018) Sessions). This time frame was deemed long enough to warrant inviting Government delegations to the dedicated sitting of the Committee so that they may explain the delays in submission.
370. The Committee took note of the information and explanations provided by the Government representatives who took the floor during the dedicated sitting. It noted the specific difficulties mentioned by certain delegates in complying with this constitutional obligation, and in particular the intention to submit shortly to competent authorities the instruments adopted by the International Labour Conference. Some governments have requested the assistance of the ILO to clarify how to proceed and to complete the process of submission to national parliaments in consultation with the social partners.
371. The Committee expressed deep concern at the failure to respect the obligation to submit Conventions, Protocols and Recommendations to national parliaments. It recalled that compliance with the obligation to submit Conventions, Protocols and Recommendations to national competent authorities was a requirement of the highest importance in ensuring the effectiveness of the ILO's standards-related activities. It also recalled that governments could request technical assistance from the Office to overcome their difficulties in this respect.
372. The Committee noted that the following countries were still concerned with the serious failure to submit the instruments adopted by the Conference to the competent authorities: **Albania, Bahamas, Bahrain, Belize, Plurinational State of Bolivia, Brunei Darussalam, Comoros, Congo, Croatia, Democratic Republic of the Congo, Dominica, El Salvador, Equatorial Guinea, Eswatini, Gabon, Gambia, Grenada, Guinea, Guinea-Bissau, Haiti, Hungary, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Liberia, Libya, Malaysia, Malta, Marshall Islands, Pakistan, Papua New Guinea,**

**Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Solomon Islands, Somalia, Syrian Arab Republic, Timor-Leste, Tuvalu, Vanuatu, Yemen and Zambia.** The Committee expressed the firm hope that appropriate measures would be taken by the Governments concerned to comply with their constitutional obligation to submit.

## 1.2. Failure to supply reports and information on the application of ratified Conventions

- 373.** The Committee took note of the information and explanations provided by the Government representatives who took the floor during the dedicated sitting. Some governments have requested the assistance of the ILO. The Committee recalled that the submission of reports on the application of ratified Conventions is a fundamental constitutional obligation and the basis of the system of supervision. It also recalled the particular importance of the submission of first reports on the application of ratified Conventions. It stressed the importance of respecting the deadlines for such submission. Furthermore, it underlined the fundamental importance of clear and complete information in response to the comments of the Committee of Experts to permit a continued dialogue with the Governments concerned. In this respect, the Committee recalled that the ILO could provide technical assistance to contribute to compliance in this respect.
- 374.** The Committee noted that, by the end of the 2020 meeting of the Committee of Experts, the percentage of reports received (article 22 of the ILO Constitution) was **40** per cent (68.1 per cent for the 2019 meeting). Since then, further reports have been received, bringing the figure to **42.8** per cent (as compared with 70.9 per cent in June 2019).
- 375.** The Committee noted that no reports on ratified Conventions have been supplied for the past two years or more by the following States: **Congo, Djibouti, Dominica, Equatorial Guinea, Grenada, Guyana, Lebanon, Madagascar, Saint Kitts and Nevis, Saint Lucia and Vanuatu.**
- 376.** The Committee also noted that first reports due on ratified Conventions have not been supplied by the following countries for at least two years: **Albania, Congo, Equatorial Guinea, Gabon, Guinea, Romania, Sao Tome and Principe and Tunisia.**
- 377.** The Committee noted that no information has yet been received regarding any or most of the observations and direct requests of the Committee of Experts to which replies were requested for the period ending 2020 from the following countries: **Afghanistan, Antigua and Barbuda, Bangladesh, Barbados, Belize, Plurinational State of Bolivia, Chad, Congo, Djibouti, Dominica, Equatorial Guinea, Gabon, Grenada, Guinea-Bissau, Guyana, Haiti, Kiribati, Kyrgyzstan, Lebanon, Liberia, Madagascar, Mauritius, Montenegro, Mozambique, Papua New Guinea, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Sierra Leone, South Sudan, Syrian Arab Republic, Tuvalu, Ukraine, Uganda, Vanuatu and Zambia.**

## 1.3. Urgent appeals

- 378.** Following the decision of the Committee of Experts to institute a new practice of launching urgent appeals for cases corresponding to countries which have failed to send a report due under article 22 of the Constitution for at least three years and to draw the attention of the Committee on the Application of Standards to those cases, the Committee invited the countries concerned to provide information during the examination of cases of serious failure to fulfil reporting obligations, and expressed the



hope that the Governments of **Congo, Dominica, Equatorial Guinea, Gabon, Grenada, Romania** and **Saint Lucia** will supply their first reports due as soon as possible.

- 379.** The Committee brought to the attention of these Governments that the Committee of Experts could examine in substance, at its next session, the application of the Conventions concerned on the basis of publicly available information, even if the Government has not sent the corresponding report. The Committee recalled the possibility of governments availing themselves of the technical assistance of the Office in this regard.

#### 1.4. Supply of reports on unratified Conventions and Recommendations

- 380.** The Committee stressed the importance it attaches to the constitutional obligation to supply reports on unratified Conventions and Recommendations. These reports permit a better evaluation of the situation in the context of the General Surveys of the Committee of Experts. In this respect, the Committee expressed **deep concern** at the failure to respect this obligation and recalled that the ILO can provide technical assistance to contribute to compliance in this respect.
- 381.** The Committee noted that over the past five years none of the reports on unratified Conventions and Recommendations, requested under article 19 of the Constitution, have been supplied by: **Belize, Botswana, Chad, Congo, Dominica, Grenada, Guyana, Haiti, Liberia, Maldives, Marshall Islands, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Sierra Leone, Somalia, South Sudan, Timor-Leste, Tuvalu** and **Yemen**.

#### 1.5. Communication of copies of reports to employers' and workers' organizations

- 382.** The Committee welcomes the fact that no Member State has failed to indicate during the past three years the names of the representative organizations of employers and workers to which, in accordance with article 23(2) of the Constitution, copies of reports and information supplied to the ILO under articles 19 and 22 have been communicated. The Committee pointed out that the fulfilment by governments of their obligation to communicate reports and information to the organizations of employers and workers was a vital prerequisite for ensuring the participation of those organizations in the ILO supervisory system. The Committee expresses the firm hope that this is a sign of genuine tripartite social dialogue in all ILO Member States. The Committee encourages Member States to continue in that direction.

### 2. Application of ratified Conventions

- 383.** The Committee noted with **interest** the information provided by the Committee of Experts in paragraph 86 of its report, which lists new cases in which that Committee has expressed its satisfaction at the measures taken by governments following comments it had made as to the degree of conformity of national legislation or practice with the provisions of a ratified Convention. In addition, the Committee of Experts has listed in paragraph 89 of its report cases in which measures ensuring better application of ratified Conventions have been noted with interest. These results are tangible proof of the effectiveness of the supervisory system.

384. At its present session, the Committee examined 19 individual cases relating to the application of various Conventions.<sup>6</sup>

## 2.1. Specific cases

385. The Committee considered that it should draw the attention of the Conference to the discussion it held regarding the cases of the application of the **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)** by **Belarus**, the application of the **Abolition of Forced Labour Convention, 1957 (No. 105)** by **Zimbabwe**, and the application of the **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)** by **El Salvador**. The full record of these discussions, the Committee's conclusions and the government statements following their adoption, appear in Part Two of this report.

## 2.2. Continued failure to implement

386. The Committee recalls that its working methods provide for the listing of cases of continued failure over several years to eliminate serious deficiencies in the application of ratified Conventions which it had previously discussed. The Committee did not have any such cases to mention this year.

## 3. Participation in the work of the Committee

387. The Committee wished to express its appreciation to the **39** governments which collaborated by providing information on the situation in their countries and participating in the discussion of their cases.

388. The Committee nevertheless **regretted** that the Governments of the following States failed to take part in the discussions concerning their country and the fulfilment of their reporting and other standards-related obligations: **Albania, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Brunei Darussalam, Chad, Comoros, Congo, Croatia, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Gambia, Grenada, Guinea-Bissau, Guyana, Haiti, Hungary, Kuwait, Kyrgyzstan, Lebanon, Libya, Malaysia, Malta, Marshall Islands, Mauritius, Montenegro, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Sierra Leone, Solomon Islands, Syrian Arab Republic, Timor-Leste, Tunisia, Tuvalu, Uganda, Vanuatu, Yemen and Zambia**.

389. The Committee noted with **regret** that the Governments of the following Member States which were not represented at the Conference could not participate in the discussion concerning their countries, regarding fulfilment of their reporting and other standards-related obligations: **Dominica, Gambia, Grenada, Guinea-Bissau, Marshall Islands, Timor-Leste and Tuvalu**.

390. Overall, the Committee expresses **regret** at the large number of cases of serious failure by Member States to respect their reporting and other standards-related obligations. The Committee observes that some governments have provided information after the session dedicated to examining this question.<sup>7</sup> While acknowledging the efforts made in this regard, the Committee trusts that in the future governments will act swiftly to enable it to carry out this examination in full knowledge of the facts. The Committee

<sup>6</sup> A summary of the information submitted by governments, the discussion and conclusions of the examination of the individual cases are contained in section C of Part Two of this report.

<sup>7</sup> Belize, Gabon and Somalia.

recalls that governments may request technical assistance from the Office to overcome their difficulties in this regard.

- 391. Worker members:** Sixty-six Member States were invited to provide written explanations relating to serious failures to comply with reporting and other standards-related obligations. We have received written information from only seven of them. We thank the latter, but these particularly low figures give rise to deep concern in the Workers' group. We bitterly regret the fact that the 59 other Member States have not provided any written information. We have emphasized in our written observations the fundamental nature of the dialogue that needs to be established between the Member States of the ILO, particularly through scrupulous compliance with these standards-related obligations. This dialogue would appear to be even more essential during a period of crisis.
- 392.** In the written information provided by Governments, we have taken due note of the difficulties encountered by certain Member States and we note with satisfaction that they have generally called for Office assistance, and that the ILO systematically responds favourably and very effectively to such requests. This ILO support must be maintained and reinforced to guarantee over time the capacity of these Member States to comply with their reporting and other standards-related obligations. These Member States must however be aware that it is essential to allocate the necessary resources for compliance with these obligations, and that not everything can be left to Office assistance.
- 393.** We have heard on several occasions that the health crisis has affected the capacity of governments to fulfil their obligations. While recognizing the undeniable impact that the pandemic has had, it however seems to us important to recall, on the one hand, that the ILO Constitution does not envisage any circumstances in which standards-related obligations can be suspended, as indicated by the Committee of Experts in paragraph 97 of the Addendum to its report and, on the other, that failure to fulfil most of these obligations must continue for several years to be classified as a "serious failure".
- 394.** The failures referred to therefore often go back to a period that preceded the beginning of the pandemic. It also emerges from the written information provided and from certain Government interventions that there is a clear need for training. Member States must therefore not fail to seize the opportunities of the training programmes established by the ILO, and particularly those intended for the representatives of Member States. The training programmes of the International Training Centre intended for ILO constituents are a valuable aid in this regard. Reference should also be made here to the many very useful ILO resources that are available to Member States, and particularly the technical assistance provided by the many standards specialists in the field, the Web Managing ILS reporting website, and the many other tools developed within the framework of the ILO programme and budget.
- 395.** The ILO is also continuing its efforts to reinforce the capacities of its constituents through new tools, as shown by the placing on line of a first version in English of the Guide on established practices across the supervisory system, which is still being translated into French and Spanish. This tool will also be developed in the form of an application, as announced by the Representative of the Secretary-General of the Conference.
- 396.** We call on Member States that have not provided written information to our Committee, despite the invitation to do so, to be included in the conclusions of the present discussion, That prejudices the discussion in the present special sitting of our Committee and means that we do not know the intentions of the Governments concerned, unless

they have come to speak during the sitting. We regret in this respect that very few Governments have responded during the sitting.

- 397.** We have taken due note of the commitments made by certain Governments in their written information and in certain interventions and we hope that these commitments will be followed up by specific action to ensure full and complete compliance with their obligations. We also call on all of these Governments, and particularly those that have not provided any information to the Committee, to bring an end as soon as possible to the serious failings indicated. Over and above formal compliance with these obligations, it is necessary for Member State to ensure the effective social dialogue procedures that underlie these obligations.
- 398.** Allow me, finally, to react to certain of the observations made by the Employer spokesperson. The Worker members are open to discussions intended to facilitate greater compliance by Member States with their standards-related constitutional obligations. However, it does not appear to us to be possible to achieve this objective through an approach involving the consolidation or simplification of standards.
- 399.** We also wish to emphasize the fact that the act of ratifying international labour Conventions must be guided by the will of Member States to give effect to the principles of law and freedom that they contain. Fears related to the capacity to comply with reporting obligations must never be a barrier to ratification. For that purpose, Member States can rely on Office technical assistance and on tripartite social dialogue.
- 400.** Finally, it seems to us to be important to conclude by recalling, based on the mandate of the Committee of Experts as set out in paragraph 43 of the Addendum to its report, that while taking into account the comments of workers and employers contributes to the broad recognition of the technical role and moral authority of the Committee of Experts, it can in no event influence the independent and impartial examination by the Committee of Experts of the content and meaning of the provisions of Conventions. We therefore firmly reject the observations of the Employer spokesperson, which call into question the independence of the Committee of Experts and which, moreover, bear no relation to the purpose of the present discussion.
- 401. 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. Without these inputs, the Committee of Experts and the Committee on the Application of Standards cannot properly supervise the implementation of ILO standards. We understand that last year was a particularly challenging year for all of us and we appreciate all the efforts made to enable the supervisory system to continue to do its work.
- 402.** We hope our continued efforts to streamline reporting and extending the possibilities for e-reporting will help facilitate government reporting and increase the number of reports and social partners' comments received in the future. In our view, these efforts need to be complemented by a significant consolidation, concentration and simplification of ILO standards. In that regard, we hope that the work of Standards Review Mechanism will help us move forward. Last but not least, we would stress that it is important for governments before ratifying ILO Conventions to make sure that they not only have in place the capacity to implement the respective Conventions but also the capacity to meet their regular reporting obligations.

## E. Adoption of the report and closing remarks

403. The Committee's report was adopted, as amended.
404. **Government member of Brazil, speaking on behalf of the group of Latin American and Caribbean countries (GRULAC).** GRULAC reiterates the commitment of our countries to the supervisory mechanisms for the application of standards and to compliance with ratified Conventions by each of our Member States. We value the efforts made by the Committee of Experts and the Committee on Freedom of Association in the meetings held with the Workers' and Employers' groups. However, we note with concern that Governments have not been included in such important meetings.
405. I wish to draw to the attention of the Committee that, in complying with the corresponding obligations, Governments commit in good faith to the standards supervisory system. By that, GRULAC understands that all the parties should participate in these meetings. Our countries have always been clear on the supervisory mechanisms, and particularly as our region has the most cases in the Committee on Freedom of Association and we are repeatedly called before the Committee on the Application of Standards. This is also due to the fact that a high number of Conventions have been ratified by Latin American and Caribbean countries.
406. GRULAC has reiterated that the methods of work of the Committee on the Application of Standards need to be revised to take into account the significant and legitimate concerns raised by Governments with a view to true tripartism. On page 4 of the Addendum to the 2020 Report of the Committee of Experts on the Application of Conventions and Recommendations, it is indicated that: "Similarly, the Employer and Worker Vice-Chairpersons of the Conference Committee are invited to meet the Committee of Experts during its sessions and discuss issues of common interest within the framework of a special session held for that purpose." In this regard, it is necessary to indicate that we value these meetings. Nevertheless, GRULAC must emphasize that this practice, which has been followed for several years, by not inviting Governments, distorts the tripartite nature of the ILO. Accordingly, Governments must be invited to these types of meetings.
407. The work of the Committee has shown that governments play a fundamental role, not only because they are responsible for the application of Conventions, but also because they are constantly seeking to strengthen social dialogue in each country. When they are denied the opportunity to participate in this type of meeting and they are not involved in all activities, as is the case with the Committee, they lose their role as constituents and merely remain simple spectators.
408. In conclusion, with a view to continuing to contribute to the strengthening of the ILO supervisory mechanisms, GRULAC proposes that the Committee should request the Committee of Experts to consider the possibility of also allowing a representative of the Government group to attend the next special sitting to which the Worker and Employer Vice-Chairpersons are invited.
409. **Government member of Portugal speaking on behalf of the European Union (EU) and its Member States:** The candidate countries Montenegro and Albania, the European Free Trade Agreement (EFTA) countries Iceland and Norway, the members of the European Economic Area, as well as the Republic of Moldova and Georgia align themselves with this statement. We would like to thank the Chair of the Conference, the Chair of the Committee, the Rapporteur, as well as the Director General and the Office for their dedication and perseverance in making this Conference a success and ensuring that this important Committee's work could go on despite the special circumstances. In the same vein, we would like to thank the spokespersons of the Workers and Employers

for their constructive spirit and contributions. We welcome Governments' positive approach and engagement in the process. The Committee embodies a true essence of tripartism and we strongly believe that commitment to the work of our Committee to improve the implementation of the Conventions should remain a priority for all constituents.

- 410.** We welcome, not only with immense satisfaction but also with relief, that the discussion at the Committee on the Application of Standards finally took place after a one-year deferral. We strongly believe in the fundamental importance of international labour standards and the effective and authoritative supervisory system, especially during crises such as the one resulting from the COVID-19 pandemic. We are firm advocates of the need for an independent, expert-based, efficient and robust supervisory system to oversee the implementation of ILO Conventions. We are convinced that a well-functioning supervisory system is crucial in ensuring the credibility of the Organization's work as a whole. Putting this system under pressure of any kind would not only be inefficient and ineffective but very worrying, in particular in the current context of the pandemic.
- 411.** We believe that international labour standards have a central role in addressing socio-economic regression and in putting recovery efforts on a more resilient footing. The full implementation of international labour standards and the effective and authoritative supervisory system are fundamental pillars of the recovery from this crisis. This is also in line with the Centenary Declaration on the Future of Work and the resolution concerning a global call to action for a human-centred recovery from the COVID-19 crisis.
- 412.** We strongly reaffirm our support to the Committee of Experts' observations that recovery measures should never weaken the protection afforded by labour and social protection laws, as that would only further undermine social cohesion and stability, and erode citizens' trust in public policies. We therefore underline the critical importance of effective and genuine social dialogue to elaborate and implement responses grounded in respect for rights at work while leaving no one behind. Similarly, the relevance of continued support to constituents and provision of comprehensive policy guidance and technical assistance from the ILO cannot be overstated.
- 413.** We also express our support to the Committee of Experts' re-affirmation of the premise that the right to strike should be understood as an intrinsic component and logical consequence of freedom of association and the right to organize as defined in ILO Convention No. 87. We fully trust the independence and impartiality of the Committee of Experts, which is a crucial aspect of ILO's supervisory system.
- 414.** The Conference Committee is a unique mechanism that enables all constituents to discuss the implementation of ILO Conventions in a constructive and tripartite manner, based on unbiased and independent observations by experts. It enables the exchange of views and fosters progress. In this respect, we welcome that the Committee's conclusions are more action-oriented and provide guidance to identify key recommendations and necessary actions for each case and situation in order to actively support progress towards decent work for all. We encourage ILO Member States to comply with the conclusions to the greatest extent possible, where appropriate with the support of Office technical assistance and/or direct contact missions.
- 415.** The European Union and its Member States will continue to fully support the ILO's supervisory system and the promotion of the ratification and implementation of international labour standards. We remain convinced that they provide for the most



elaborate and one of the most valuable examples of a multilateral rules-based order, which has gained even more importance during this crisis.

- 416. Employer members:** On behalf of the Employer members, I would like to endorse the report of the Committee on the Application of Standards and recommend its adoption. This year, the Committee took place for the very first time in a virtual format. Overall, the Employer members are pleased that the Committee was able to successfully conclude its work on time, thanks to the discipline and cooperation of all delegates. In particular, we thank the Chair, Ms Corine Elsa Angonemane Mvondo, for the effective time-management of our work. This was a difficult job and you handled it beautifully.
- 417.** We must also take this moment to highlight some of the challenges of the virtual format. Regrettably, we noticed that members from some regions were not able to participate effectively due to time zone differences, and note challenges with respect to connectivity. Furthermore, the fixed and limited time sessions meant that we had to compromise in some instances on the depth of meaningful discussions.
- 418.** The Employer members hoped that we could have discussed fewer cases, but more thoroughly. The Employer members also note that, despite these time constraints, the Committee once again demonstrated its ability to conduct a results-oriented tripartite dialogue and adopt clear, consensual and straightforward conclusions. Regarding the discussion of individual cases, the Employer members were pleased to learn that many governments have already started taking remedial actions, or intend to do so in the near future, in respect of compliance with the Convention in question. We noted positively that the majority of governments constructively engaged in the Committee process and expressed a clear and firm commitment to engagement in the supervisory system. We welcome these expressions of commitment and encourage the constructive engagement with the supervisory system.
- 419.** In addition, the Employer members consider of utmost importance that assessments of the Committee are based on sound and balanced evidence. After all, the credibility of the Committee's conclusions depends on a solid factual foundation. Establishing facts may often be a difficult process requiring time and resources, but a necessary one. Governments should make particular efforts to provide complete and updated information in consultation with the social partners to facilitate this important supervisory work.
- 420.** The Employer members have also, on various earlier occasions, called upon the Committee of Experts to orient its preparatory observations of compliance with ratified Conventions more strictly to the text of the Conventions and that the Committee of Experts, in this regard, should fully adhere to the applicable methods of the Vienna Convention on the Law of Treaties in respect of interpretation issues. Where ILO Conventions deliberately grant flexibility in implementation, for instance through the use of general terms, this must not be undone by restrictive interpretations by the Committee of Experts. Furthermore, the Employer members call upon the Committee of Experts to adequately reflect the needs of sustainable enterprises in its compliance assessments. This is an important element highlighted in the ILO Centenary Declaration, which must also be duly recognized in the ILO standards supervisory system. It is also more important than ever, emerging out of the COVID-19 pandemic, that the needs of sustainable enterprises be taken into account.
- 421.** The Employer members would like to take this opportunity to encourage the Committee members, the Committee of Experts and the Office to continue cooperating towards increasing the transparency, efficiency, balance, relevance and tripartite governance of

the ILO standards supervisory system in a good-faith manner, and in a constructive manner. On behalf of the Employer members, we make a number of proposals in this regard. The first is to ensure better readability and user-friendliness; users of the Committee of Experts' report need clear, balanced and up-to-date presentation of the issues. Comments made by the Committee of Experts should be based on sound analysis and explain the compliance problems in an easily comprehensible manner. Recommendations for remedial action, in our view, should be straightforward, concrete and verifiable. Presenting the observations by country, in our view, would also be helpful.

- 422.** In respect of the double-footnoted cases, the Employer members would appreciate if the Committee of Experts could elaborate further on the reasons why a case has been double-footnoted. This should be done not only in the respective observations, but also in the General Report, in our view.
- 423.** In respect of the issue of hyperlinks, the Employer members are of the view that in the electronic version of the Committee of Experts' comments, hyperlinks related to earlier comments and Conference Committee discussions should be made available.
- 424.** In addition, an important issue is access to the submissions from social partners. It would be desirable if the text of the submissions made by employers' and workers' organizations to the Committee of Experts was made available via hyperlinks in the electronic version of the Committee of Experts' report, and on the NORMLEX website. To date, while NORMLEX contains information on which employers' or workers' organizations have made submissions, the text of the submissions is currently not available. In our view, this strikes at the heart of the transparency of the process.
- 425.** In addition, access to mission reports is an important component of this process. As stated in the 2017 joint statement of workers and employers, reports of follow-up missions regarding the Committee's conclusions, or a summary with the non-confidential and concrete results of the mission, should be published on the Committee's webpage or in the NORMLEX database within a reasonable period after a mission is completed. Where such reports are referred to in observations, access to them could also be facilitated via hyperlinks.
- 426.** We trust, in addition, that the Committee's webpage, which is a central portal for any information of relevance to the Committee's work, will be further expanded and upgraded.
- 427.** In respect of the question of the Committee highlighting cases of progress, the Employer members are of the view that the Committee discussed a number of cases containing elements of progress this year. We are of the view that this provides an important opportunity for the Committee to showcase good practice by ILO Member States in the application of international labour standards, and to comment, on a tripartite basis, governments' successful efforts to improve their compliance with ratified Conventions. This point is particularly important to the Employer members and we are in favour of increasing the share of cases which highlight progress on the shortlist of cases discussed.
- 428.** In respect of the issue of follow-up to Committee conclusions, the Employer members would like to place emphasis on the importance of the follow-up to the Committee's conclusions. In our view, the Committee conclusions represent clear, tripartite consensus on compliance issues, and thus define and set out the mandate of related Office technical assistance and follow-up missions. In this spirit, specialists from the Bureau for Employers' Activities and the Bureau for Workers' Activities should be involved in the follow-up action to assist employers' and workers' organizations from the

respective countries in contributing to the solution of compliance issues in a way that takes into account their needs. Reports on technical assistance provided and missions undertaken should be made available online within a reasonable period.

- 429.** The key role that the Office plays in helping countries better comply with their standards-related obligations cannot be stressed enough. We trust that this will continue to be done in a balanced and practical manner in consultation with the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC) as employers' and workers' secretariats. The Employer members firmly believe these proposals could further improve the relevance and acceptance and transparency of the regular ILO standards supervisory system. We remain available and look forward to discussing these proposals in more detail at the next informal tripartite consultations on the working methods of the Conference Committee.
- 430.** In conclusion, the Employers note with satisfaction the constructive overall operation of this year's virtual Committee session. In our view, discussions were held respecting time limits. In most cases, consensus was reached where possible, disagreements or divergence of views, where they exist, were respectfully highlighted and discussed.
- 431.** I would like to conclude with words of thanks and appreciation to the International Labour Standards Department for facilitating this virtual format. We know this was a very large job and we congratulate all of those involved in making this year's zoom Committee meetings happen smoothly. Also, a special thanks goes to the Chairperson for the fair parliamentary running of the Committee's meetings this year and the very effective time management. Please allow me also a moment to thank the Employers' group, in particular the members who participated in the preparation and presentation of the Employer perspective on the individual cases as well as the General Survey. I would finally like to express my gratitude to the IOE and Bureau for Employers' Activities. Last but not least, I thank my friend, the spokesperson of the Worker members and his team, as well as the Government representatives that participated actively in the Committee and whose work ensured that our discussions were constructive and productive.
- 432. Worker members:** We have come to the end of our work. It has been carried out in very particular circumstances, which have forced us to adopt a number of exceptional measures. This is true regarding, especially, the reduction in the number of cases, which has caused much frustration within our group, as many workers around the world continue to have their rights infringed. We can nevertheless be satisfied that we have adopted significant conclusions for the cases examined and we hope that they will have an impact on reality.
- 433.** In this regard, it is with deep concern that we learn of the deterioration of the situation in certain cases discussed this year by our Committee. We call on the Governments concerned to act wisely and ensure the full implementation of the conclusions adopted. Furthermore, our Organization will not accept that reprisals be taken as punishment for discussions held here. To give full effect to our conclusions, we suggest that the Bureau for Workers' Activities and the Bureau for Employers' Activities be associated with their implementation.
- 434.** Our work is based on the report of the Committee of Experts. We cannot overemphasize the independence of the Committee. Contrary to what has sometimes been implied, it is not simply a technical committee that prepares the work of our Committee. It is a fully-fledged supervisory body that freely and independently examines compliance with the Conventions and Recommendations. This independence would be severely damaged if it were to act on suggestions that it should promote vague concepts. Even in the event

that they could be taken into account, they would only be relevant when formulating standards but in no way when enforcing them. Let me be clear on this point. The Worker members are not at all opposed to discussing a concept such as sustainable enterprises. This discussion, however, has nothing to do with supervising standards. It can be held in another ILO forum, as we did, in fact, in 2007. In addition, the suggestions made by the Employer members concerning the right to collective bargaining, and with which the Worker members do not agree, must be set aside.

- 435.** It is therefore essential to respect the independent expression of the Committee of Experts concerning all the issues examined, including the right to strike. In this regard, the Worker members wish to recall their position. The right to strike is a fundamental right that is integral to freedom of association and covered by Convention No. 87.
- 436.** We would also like to emphasize that the Conference Committee on the Application of Standards is not mandated to provide guidance or instructions to the Committee of Experts, and certainly not to oversee its work. In this respect, the dialogue between the two Committees, which is based on mutual respect and an equal footing, is intended solely to highlight their complementarity and enable them to discuss their future cooperation.
- 437.** I mentioned at the start of my statement that our session this year has been impacted by the pandemic. The same applies to the international labour standards, which have really been put to the test. It was thus important that some of our discussions were dedicated to the pandemic. Allow me to underscore the need to respect standards, a fortiori, in contexts such as this pandemic. There is not one standard-setting body for prosperous times and another for troublesome eras. The standards should also be at the heart of the post-Covid recovery, with particular attention on instruments that offer a suitable framework to that end, such as the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205). Further, it is important that the supervisory bodies ensure specific follow-up to the measures taken during the pandemic and continue to examine their conformity with the standards of our institution.
- 438.** I would now like to turn to certain events that arose during our discussions. We have had to deplore the fact that, on several occasions, some participants deemed it useful to describe certain cases as progress cases. Everyone is free to assess the situation as they see fit, at the risk of putting their credibility on the line. However, we are sure that all reasonable people here would easily agree that it is totally inappropriate to talk about progress when people continue to lose their lives because of their beliefs. I would like to recall that a case can only be qualified as a progress case if both the Workers' and Employers' groups explicitly agree to define it thus. No cases were designated as such this year.
- 439.** We have also noted that some delegates have taken it upon themselves to determine what falls within the scope of the discussion and what falls outside of it. We wish to recall that our Committee's mandate is to ensure respect by Member States of the ratified Conventions. Anything that relates to compliance of the State in question with the Conventions falls within the scope of our Committee's discussions.
- 440.** In addition, it is important to us to come back to the way that some people have used points of order, taking it upon themselves to interrupt the interventions and requesting that statements be removed from the record. On the one hand, raising a point of order is a modality that can only be used in exceptional cases and when there is a clear breach of the rules. It is the exclusive responsibility of the Chairperson to manage the debates and no delegate is entitled to take that role. On the other hand, it is clear that this kind

of attitude rather reveals a lack of tolerance towards other opinions. Social dialogue is not, however, simply a slogan that is bandied about on occasions, but a practice that implies that we accept to listen to and discuss different opinions. It is by confronting contradictory positions that conflicts are overcome and relations eased. Censorship, contempt and denial have never advanced an idea.

- 441.** Allow me to conclude on a personal note. In the midst of raucous discussions, we sometimes engage in bitter arguments by adding to the rhetoric. But in order to evaluate the value of our work, it is important to ask ourselves to what degree our exchanges can contribute to improving the lives of the people concerned by our discussions. This is the mandate of our Organization, which calls for the improvement of working conditions and the adoption of truly humane labour regulations. This is the only question that matters, and the only one to give meaning to our work and determine our level of satisfaction.
- 442.** I would like to proceed, as usual, with a few words of gratitude. On behalf of the Worker members, I extend my sincere thanks to the Chairperson of our Committee, Ms Corine Elsa Angonemane Mvondo, who has led the discussions very calmly, taking on the thankless task of ensuring observance of the speaking time, and the whole Office for the enormous work carried out in a hitherto unknown extraordinary system. I particularly wish to thank the representative of the Secretary-General, Ms Corinne Vargha, for her flawless investment, and the interpreters and the conference services for their invaluable support, without which our activity could not take place. I would like to thank the delegates who contributed to our discussions for their input, and the spokesperson of the Employers' group, Ms Sonia Regenbogen, and her team, who illustrate that differences do not preclude respect. I, of course, thank my group, the Workers' group, for its active participation and solidarity. In particular, I would like to thank those who have accepted the role of spokesperson in the examination of certain cases. I thank all those with whom I collaborate directly, those of the ITUC, the Confederation of Christian Trade Unions (CSC) and our colleagues from the Bureau for Workers' Activities.
- 443. Chairperson:** Before bringing our work to a close, I would like to express my gratitude to all the members of the Committee for what has been accomplished, despite the difficulties arising from the virtual format of this session, the lack of time, and the different time zones which we have all had to cope with.
- 444.** I would like to take this opportunity to apologize if I upset any of you in any way, perhaps by interrupting you abruptly during your statement. I assure you that this was nothing personal. It was simply the result of paying particular attention to good time management to ensure that we could finish our work. I hope that you won't hold this against me.
- 445.** I would also like to thank the two Vice-Chairpersons for the constructive understanding that we have experienced throughout our work. Lastly, I would like to thank the secretariat, without whose support we would have been unable to accomplish anything, and I also wish to express my gratitude to the interpreters and to all the technicians who are unseen but without whom we would have been unable to work.
- 446.** I now close the session of the Committee on the Application of Standards.

Geneva, 18 June 2021

(Signed) Ms Corine Elsa Angonemane Mvondo  
Chairperson

Mr Pedro Pablo Silva Sanchez  
Reporter

## Annex I

International Labour Conference  
109th Session, Geneva, 2021

► CAN/D.1

### Committee on the Application of Standards

**Date:** 13 May 2021

## ► Work of the Committee

### I. Work of the Committee

1. This document (D.1) sets out the manner in which the work of the Committee on the Application of Standards (CAS) is carried out. It is submitted to the Committee for adoption when it begins its work at each session of the Conference.<sup>1</sup> This document reflects the results of the discussions and informal tripartite consultations that have taken place, since 2002, on the working methods of the Committee, including on the following issues: the elaboration of the list of individual cases to be discussed by the Committee; the preparation and adoption of the conclusions relating to these individual cases; time management and respect for parliamentary rules of decorum.
2. This document takes into account the results of the last informal tripartite consultations on the working methods of the CAS, held on 30 March, 12 April and 27 April 2021. These consultations examined the special adjustments to the working methods of the Committee required to allow it to discharge its constitutional obligations within the framework of a fully virtual session of the Conference and a reduced number of sittings.

### II. Terms of reference and composition of the Committee, voting procedure and report to the Conference

3. Under its terms of reference as defined in article 7, paragraph 1, of the Standing Orders of the Conference, the Committee is called upon to consider:
  - (a) the measures taken by Members to give effect to the provisions of Conventions to which they are parties and the information furnished by Members concerning the results of inspections;
  - (b) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution;

<sup>1</sup> Since 2010, the document is appended to the General Report of the Committee.



- (c) the measures taken by Members in accordance with article 35 of the Constitution.
- 4. In accordance with article 7, paragraph 2, of the Standing Orders of the Conference, the Committee submits a report to the Conference. Since 2007, in response to the wishes expressed by ILO constituents, the report of the Committee has been published both in the *Record of Proceedings* of the Conference and as a separate publication, to improve the visibility of the Committee's work.
- 5. Questions related to the composition of the Committee, the right to participate in its work and the voting procedure are regulated by section H of Part II of the Standing Orders of the Conference.
- 6. Each year, the Committee elects its Officers: its Chairperson and Vice-Chairpersons, as well as its Reporter.

### III. Working documents

#### A. Report of the Committee of Experts

- 7. The basic working document of the Committee is the report of the Committee of Experts on the Application of Conventions and Recommendations (Report III (Parts A and B)), printed in two volumes.
- 8. Report III (Part A) contains, in Part One, the General Report of the Committee of Experts, and in Part Two, the observations of the Committee of Experts concerning the sending of reports, the application of ratified Conventions and the obligation to submit the Conventions and Recommendations to the competent authorities in Member States. At the beginning of the report there is an index of comments by Convention and by country. In addition to the observations contained in its report, the Committee of Experts has, as in previous years, made direct requests which are communicated to governments by the Office on the Committee's behalf.<sup>2</sup>
- 9. Report III (Part B) contains the General Survey prepared by the Committee of Experts on a group of Conventions and Recommendations decided upon by the Governing Body.
- 10. This year, in the light of the deferral of the 109th Session of the Conference to 2021, the Governing Body decided to invite the CAS to examine in 2021 the 2019 Report III (Parts A and B), as updated by the Committee of Experts at its 91st Session, in December 2020.

#### B. Summaries of reports

- 11. At its 267th Session (November 1996), the Governing Body approved new measures for rationalization and simplification of the arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under articles 19, 22 and 35 of the Constitution.<sup>3</sup> Requests for consultation or copies of reports may be addressed to the secretariat of the CAS.

<sup>2</sup> See para. 71 of the General Report of the Committee of Experts. A list of direct requests can be found in Appendix VII of Report III (Part A).

<sup>3</sup> See report of the Committee of Experts, Report III (Part A), Appendices I, II, IV, V and VI; and Report III (Part B), Appendix III.

## C. Other information

12. The secretariat prepares documents (which are referred to, and referenced, as “D documents”) which are made available <sup>4</sup> during the course of the work of the Committee through its [web page](#) to provide the following information:
  - (a) reports and information which have reached the International Labour Office since the last meeting of the Committee of Experts; based on this information, the list of governments which are invited to supply information to the Conference Committee due to serious failure to respect their reporting and other standards-related obligations is updated; <sup>5</sup>
  - (b) written information supplied by governments to the Conference Committee in reply to the observations made by the Committee of Experts, when these governments are on the preliminary list of cases or on the list of individual cases adopted by the Conference Committee; <sup>6</sup>
  - (c) written information supplied by governments that have been requested to supply information on cases of serious failure to respect reporting or other standards-related obligations for the stated periods; <sup>7</sup>
  - (d) written information supplied by delegates during the general discussion. <sup>8</sup>

## IV. General discussion

13. In accordance with its usual practice, the Committee begins its work with the consideration of its working methods on the basis of this document. The Committee then holds a discussion on general aspects of the application of Conventions and Recommendations and the discharge by Member States of standards-related obligations under the ILO Constitution, which is primarily based on the General Report of the Committee of Experts.
14. In the context of the tripartite consultations held in March and April 2021, it was decided that this year, on an exceptional basis in view of the special circumstances in which the session of the Committee will take place, the general discussion will be divided into two segments of 90 minutes each. One segment will be devoted to the discussion of the General Report and the other to the item “Application of international labour standards in the context of the COVID-19 pandemic”. In view of the speaking time limits for these discussions (see Part IX below), delegates may also submit written information. This information will be published 24 hours before the relevant sitting, translated into the three languages, and included in the Committee’s final report. <sup>9</sup>
15. The Committee will also hold a discussion on the General Survey, entitled *Promoting employment and decent work in a changing landscape*. The General Survey concerns the Employment Policy Convention, 1964 (No. 122), the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), the Home Work Convention, 1996 (No. 177), the Vocational Rehabilitation and Employment (Disabled Persons)

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<sup>4</sup> D documents will be made available online on the Committee’s dedicated web page.

<sup>5</sup> See below Part V.

<sup>6</sup> See below Part VI (supply of information).

<sup>7</sup> See below Part V.

<sup>8</sup> See below Part IV.

<sup>9</sup> The Committee’s report will distinguish between written information and information shared orally.

Recommendation, 1983 (No. 168), the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), the Home Work Recommendation, 1996 (No. 184), the Employment Relationship Recommendation, 2006 (No. 198), and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).<sup>10</sup>

16. At the informal tripartite consultations in March–April 2021, it was decided that, exceptionally, a single three-hour sitting would be devoted to the discussion of the General Survey, with the usual speaking times (see below, Part IX). It was also confirmed that the discussion would be structured around three generic questions, on the understanding that this would not have the effect of restricting speakers' presentations to those issues addressed in the General Survey. The generic questions are:
- progress and challenges in the implementation of the instruments under examination;
  - measures to be taken to promote Conventions and their ratification in the light of the good practices and obstacles identified; and
  - pathways for future ILO standards action and technical assistance.

## V. Cases of serious failure by Member States to respect their reporting and other standards-related obligations

17. Governments are invited to supply information on cases of serious failure to respect reporting or other standards-related obligations for stated periods. These cases are considered in a dedicated sitting of the Committee. Governments that submit the required information before the sitting will not be called before the Committee. The discussion of the Committee, including any explanations of difficulties that may have been provided by the governments concerned, and the conclusions adopted by the Committee under each criterion are reflected in its report.
18. In the context of the informal tripartite consultations in March–April 2021, it was decided that this year, on an exceptional basis, a special procedure would be set up for the consideration of cases of serious failure to respect reporting obligations:
- the governments concerned are invited to communicate written information on such failures by **20 May 2021**;
  - the Employer and Worker spokespersons are invited to send their general comments **no later than Thursday, 3 June 2021**;
  - the Office will publish a document compiling the information received, in the three languages, **24 hours before the sitting devoted to the examination of these cases**;
  - during the sitting, the governments concerned may, if they so wish, provide information on any new development, with a maximum speaking time of two minutes, and the Employer and Worker spokespersons will present their concluding remarks.

<sup>10</sup> It should be recalled that the subjects of General Surveys have been aligned with the strategic objectives that are examined in the context of the recurrent discussions under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization (2008). The discussion of General Surveys by the Committee will continue to be held one year in advance of the recurrent discussion under the new five-year cycle of recurrent discussions adopted by the Governing Body in November 2016. The full synchronization of General Surveys and their discussion by the Committee will be re-established under the new cycle in the context of the recurrent discussion on social protection (social security) to be held by the Conference in 2020 (see GB.328/INS/5/2 and GB.328/PV (paras 25 and 102)).

19. It should be recalled that the Committee identifies the cases on the basis of criteria which are as follows:<sup>11</sup>
- none of the reports on ratified Conventions have been supplied during the past two years or more;
  - first reports on ratified Conventions have not been supplied for at least two years;
  - none of the reports on unratified Conventions and Recommendations requested under article 19, paragraphs 5, 6 and 7, of the Constitution have been supplied during the past five years;
  - 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 Constitution;<sup>12</sup>
  - 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;
  - the government 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 Constitution, copies of reports and information supplied to the Office have been communicated.
20. At its 88th and 89th Sessions (2017 and 2018), the Committee of Experts decided to institute a new practice of launching “urgent appeals” on cases corresponding to certain criteria of serious reporting failure.<sup>13</sup> The aim is also to draw the attention of the CAS to these cases, so that governments may be called before it. Thus, at its session in November–December 2020, the Committee of Experts issued urgent appeals to four countries that had failed to send the reports requested for three years or more, and to five countries that had failed to send a first report for three years or more.<sup>14</sup> The countries to which urgent appeals have been addressed will be invited to provide information to the Committee during the examination of cases of serious failure to comply with reporting obligations.

## VI. Individual cases

21. The Committee considers a certain number of cases relating to the application of ratified Conventions. These cases are selected on the basis of the observations published in the report of the Committee of Experts.
22. **Preliminary list.** Since 2006, an early communication to governments of a preliminary list of individual cases for possible discussion by the Committee concerning the application of ratified Conventions has been instituted. Since 2015, the preliminary list

<sup>11</sup> These criteria were last examined by the Committee in 1980 (see *Provisional Record* No. 37, International Labour Conference, 66th Session, 1980, para. 30).

<sup>12</sup> This time frame begins at the 96th Session (2007) and concludes at the 106th Session (2017) of the International Labour Conference, bearing in mind that the Conference did not adopt any Conventions or Recommendations during the 97th (2008), 98th (2009), 102nd (2013) and 105th (2016) Sessions.

<sup>13</sup> See paras 9 and 10 of the General Report of the Committee of Experts, Report III (Part A), International Labour Conference, 107th Session, 2018.

<sup>14</sup> See paras 103 and 106 of the General Report of the Committee of Experts, Report III (Part A), International Labour Conference, 109th Session, 2020.

of cases has been made available 30 days before the opening of the International Labour Conference. The preliminary list is a response to the requests from governments for early notification, so that they may better prepare themselves for a possible intervention before the Committee. It may not in any way be considered definitive, as the adoption of a final list is a function that only the Committee itself can assume. During the informal tripartite consultations of March 2019, it was decided to provide the opportunity for governments appearing on the preliminary list of cases to provide, if they so wished, written information to the Committee. This information provided, on a purely voluntary basis, should concern only new developments not yet examined by the Committee of Experts. They must be transmitted in at least one of the three working languages of the Office at the latest two weeks before the beginning of the opening of the session of the Conference <sup>15</sup> and, to the extent possible, shall not exceed 2,000 words.

**23. Establishment of the list of cases.** The list of individual cases is submitted to the Committee for adoption, after the Employers' and Workers' groups have met to discuss and adopt it. The final list is normally adopted at the beginning of the Committee's work, ideally no later than its second sitting. In the context of the informal tripartite consultations in March–April 2021, it was decided that this year, on an exceptional basis, the final list could be adopted during the early opening sitting of the session of the Committee, to be held on 28 May 2021.

**24.** As of the revision in 2015 of the criteria for the selection of cases, the selection should take into consideration, on balance, the following elements:

- the nature of the comments of the Committee of Experts, in particular the existence of a footnote;
- the quality and scope of responses provided by the government or the absence of a response on its part;
- the seriousness and persistence of shortcomings in the application of the Convention;
- the urgency of a specific situation;
- comments received by employers' and workers' organizations;
- the nature of a specific situation (if it raises a hitherto undiscussed question, or if the case presents an interesting approach to solving questions of application);
- the discussions and conclusions of the Conference Committee of previous sessions and, in particular, the existence of a special paragraph;
- the likelihood that discussing the case would have a tangible impact;
- balance between fundamental, governance and technical Conventions;
- geographical balance; and
- balance between developed and developing countries.

**25.** There is also the possibility of examining one case of progress as was done in 2006, 2007, 2008 and 2013. <sup>16</sup>

**26.** Since 2007, it has been the practice to follow the adoption of the list of individual cases with an informal information session for governments, hosted by the Employer and

<sup>15</sup> During the informal tripartite consultations, it was agreed that the deadline for sending this information would be 20 May 2021.

<sup>16</sup> See paras 83–89 of the General Report of the Committee of Experts. The criteria developed by the Committee of Experts for identifying cases of progress are also reproduced in Appendix II of this document.

Worker Vice-Chairpersons, to explain the criteria used for the selection of individual cases.

27. **Automatic registration.** Since 2010, cases included in the final list have been automatically registered and scheduled by the Office, on the basis of a rotating alphabetical system, following the French alphabetical order. The “A+5” model has been chosen to ensure a genuine rotation of countries on the list. This year, the registration will begin with countries with the letter “Y”. Cases will be divided into two groups: the first group of countries to be registered following the above alphabetical order will consist of those cases in which the Committee of Experts requested governments to submit full particulars to the Conference (“double-footnoted cases”).<sup>17</sup> The Office will then register the second group, which will comprise the other cases on the final list, also following the above-mentioned alphabetical order. It should be noted that, in the context of the informal tripartite consultations in March–April 2021, it was agreed that, this year, the Office would adapt this practice in respect of planning to take account of different time zones and the complexity of cases.
28. Information on the agenda of the Committee and the date on which cases may be heard is available:
  - (a) through the *Daily Bulletin* and the Committee’s dedicated web page;
  - (b) by means of a D document containing the list of individual cases and the working schedule for the examination of these cases, which is made available to the Committee as soon as possible after the adoption of the list of cases.<sup>18</sup>
29. **Supply of information.** Prior to their oral intervention before the Conference Committee, governments may submit written information that will be summarized by the Office and made available to the Committee.<sup>19</sup> This written information is to be provided to the Office at least two days before the discussion of the case. It serves to complement the oral intervention by the government representative of the country concerned. It may not reproduce the information contained in the oral statement nor any other information already provided by the government. The total number of pages is not to exceed five pages.
30. **Adoption of conclusions.** The conclusions regarding individual cases are proposed by the Vice-Chairpersons and submitted by the Chairperson to the Committee for adoption. The conclusions should take due account of the elements raised in the discussion and information provided in writing by the government. The conclusions should be short, clear and specify the action expected of governments. They may also include reference to the technical assistance to be provided by the Office. The conclusions should reflect consensus recommendations. Divergent views can be reflected in the Committee’s record of proceedings.
31. Conclusions on the cases discussed will be adopted at dedicated sittings. During the informal tripartite consultations of March–April 2021, it was agreed that the conclusions of all the individual cases would be adopted at a single dedicated sitting at the end of the session of the Committee.<sup>20</sup> The conclusions are made visible on a screen and at the same time a copy of these conclusions is provided to the government representative

<sup>17</sup> See para. 80 of the General Report of the Committee of Experts.

<sup>18</sup> Since 2010, this document is appended to the General Report of the Committee.

<sup>19</sup> See above Part III(C).

<sup>20</sup> The sitting dedicated to the adoption of conclusions on individual cases is scheduled for Friday, 18 June.



concerned in one of the three working languages, chosen by the government. Given the virtual format of the session, this year the draft conclusions will be transmitted to a person designated by the government concerned a few hours before the adoption of the text. The government representatives may take the floor after the Chairperson has announced the adoption of the conclusions.

32. As per the Committee's decision in 1980,<sup>21</sup> Part One of its report will contain a section entitled "Application of ratified Conventions", in which the Committee draws the attention of the Conference to: (i) cases of progress, where governments have introduced changes in their law and practice in order to eliminate divergences previously discussed by the Committee; (ii) certain special cases, which are mentioned in special paragraphs of the report; and (iii) cases of continued failure over several years to eliminate serious deficiencies in the application of ratified Conventions which it had previously discussed – including "urgent appeals" (see section V).

## VII. Participation in the work of the Committee

33. As regards failure by a government to take part in the discussion concerning its country, despite repeated invitations by the Committee, the following measures will be applied, in conformity with the decision taken by the Committee at the 73rd Session of the Conference (1987), as amended at the 97th Session of the Conference (2008),<sup>22</sup> and mention will be made in the relevant part of the Committee's report:
- In accordance with the usual practice, after having established the list of cases regarding which Government delegates might be invited to supply information to the Committee, the Committee shall invite the governments of the countries concerned in writing, and the *Daily Bulletin* shall regularly mention these countries.
  - Three days before the end of the discussion of individual cases, the Chairperson of the Committee shall request the Clerk of the Conference to announce every day the names of the countries whose representatives have not yet responded to the Committee's invitation, urging them to do so as soon as possible.
  - On the last day of the discussion of individual cases, the Committee shall deal with the cases in which governments have not responded to the invitation. Given the importance of the Committee's mandate, assigned to it in 1926, to provide a tripartite forum for dialogue on outstanding issues relating to the application of ratified international labour Conventions, a refusal by a government to participate in the work of the Committee is a significant obstacle to the attainment of the core objectives of the International Labour Organization. For this reason, the Committee may discuss the substance of the cases concerning governments which are registered and present at the Conference, but which have chosen not to be present before the Committee. The debate which ensues in such cases will be reflected in the appropriate part of the report, concerning both individual cases and participation in the work of the Committee. In the case of governments that are not present at the Conference, the Committee will not discuss the substance of the case, but will draw attention in its

<sup>21</sup> See footnote 12 above.

<sup>22</sup> See *Provisional Record* No. 24, International Labour Conference, 73rd Session, 1987, para. 33; and *Provisional Record* No. 19, International Labour Conference, 97th Session, 2008, para. 174.

report to the importance of the questions raised.<sup>23</sup> In both situations, a particular emphasis will be put on steps to be taken to resume the dialogue.

## VIII. Minutes of the sittings – Verbatim

34. In the context of the informal tripartite consultations on the working methods of the Committee of November 2018 and March 2019, it was decided that the general discussion, the discussion of the General Survey, as well as the discussion of cases of serious failure to respect reporting or other standards-related obligations and the discussion of cases in which governments are invited to respond to the comments of the Committee of Experts (“individual” cases) will be produced in the form of verbatim transcripts. Each intervention will be reproduced *in extenso* in the language of work in which it has been delivered, or failing that, chosen by the government – English, French or Spanish – and the verbatim draft minutes will be made available online on the Committee’s dedicated web page.<sup>24</sup> It is the Committee’s practice to accept amendments to the verbatim draft minutes of previous sittings prior to their adoption by the Committee. The time available to delegates to submit amendments to the verbatim draft minutes will be clearly indicated by the Chairperson when they are made available to the Committee. The amendments should be clearly highlighted and submitted electronically.<sup>25</sup> In order to avoid delays in the preparation of the Committee’s report, no amendments may be accepted once the draft minutes have been approved. To the extent that the discussions are reproduced *in extenso* in the form of verbatim draft minutes, their amendments will be limited exclusively to the elimination of transcription errors.
35. Following the informal tripartite consultations, it was also decided to reorganize the two parts of the Committee’s report. The first part of the report of the Committee will contain the verbatim minutes of the general discussion, the outcome of the discussions on the General Survey, the conclusions adopted following the examination of the “automatic” cases and the examination of the “individual” cases<sup>26</sup> – including, where appropriate, the special paragraphs, – as well as the verbatim minutes of the discussion on the adoption of the report and the closing remarks. This first part of the report will be produced in the form of a consolidated document and will be translated into the three languages for adoption by the Conference in plenary session.
36. The second part of the report of the Committee will consist of trilingual (patchwork) verbatim minutes of the discussion of the General Survey, the discussion of “automatic” cases and the discussion of “individual” cases. These verbatim minutes will be available online on the Committee’s web page as they are adopted. The second part of the report

<sup>23</sup> In the case of a government which is not accredited or registered to the Conference, the Committee will not discuss the substance of the case, but will draw attention in its report to the importance of the questions raised. It was considered that no country should use inclusion on the preliminary list of individual cases as a reason for failing to ensure that it was accredited to the Conference. If a country on the preliminary list registered after the final list was approved, it should be asked to provide explanations (see *Provisional Record* No. 18, International Labour Conference, 100th Session, 2011, Part I/54).

<sup>24</sup> These new modalities result from the informal tripartite consultations of March 2016. Delegates who will be intervening in a language other than English, French or Spanish will be able to indicate to the Secretariat in which of these three working languages their intervention should be reflected in the verbatim draft minutes.

<sup>25</sup> Please refer to Appendix III or contact the secretariat in relation to the procedure for amendments to draft minutes.

<sup>26</sup> This year, as it has been decided that the Committee will adopt all the conclusions at the end of its session, it will not be possible in practice to reproduce all the conclusions in the first part of the Committee’s report. These conclusions will nevertheless be set out in the second part of the report.

of the Committee will be submitted to the plenary sitting of the Conference for adoption only in electronic format.

37. The full report (first and second parts) translated into the three languages will be made available online 30 days after its adoption by the plenary sitting of the Conference.

## IX. Time management

38. Every effort will be made so that sessions start on time and the schedule is respected. During the informal tripartite consultations in March–April 2021, the speaking time limits applicable during the examination of individual cases were reviewed to take into account the special circumstances in which the Committee will have to fulfil its mandate given the limited number of sittings available and the virtual nature of the discussions. The speaking times to be applied on an exceptional basis will be as follows:
- 15 minutes for the government whose case is being discussed;
  - 10 minutes for the spokespersons of the Workers' and the Employers' groups;
  - 6 minutes for the Employer and Worker members, respectively, from the country concerned, to be divided between the different speakers of each group;
  - 4 minutes for Government groups;
  - 3 minutes for the other members;<sup>27</sup>
  - 10 minutes for the concluding remarks by the government whose case is being discussed;
  - 6 minutes for the concluding remarks by the spokespersons of the Workers' and the Employers' groups.
39. Furthermore, with regard to the general discussion, it was decided, again on an exceptional basis, to limit the speaking time for each of the segments of the general discussion as follows:
- 15 minutes for the spokespersons of the Workers' and the Employers' groups;
  - 5 minutes for statements by Government groups;
  - 3 minutes for the other members.
40. Speaking time limits applicable to the discussion of the General Survey will remain the same, namely:<sup>28</sup>
- 15 minutes for the spokespersons of the Workers' and the Employers' groups;
  - 10 minutes for Government groups;
  - 5 minutes for the other members;
  - 10 minutes for the concluding remarks by the spokespersons of the Workers' and the Employers' groups.

<sup>27</sup> This time limit may be reduced to two minutes by the Chairperson, in consultation with the other Officers of the Committee, for instance where there is a very long list of speakers.

<sup>28</sup> These arrangements result from the informal tripartite consultations of March 2016.

The Chairperson, in consultation with the other Officers of the Committee, may nevertheless decide to reduce the time limits where the situation of a case would warrant it, for instance, where there is a very long list of speakers. These time limits will be announced by the Chairperson at the beginning of each sitting and will be strictly enforced.

41. During interventions, the remaining time available to speakers will be displayed on the screen and will be visible to all speakers. Once the maximum speaking time has been reached, the speaker will be interrupted.
42. The list of speakers will also be visible on the screen. Early registration on that list of delegates intending to take the floor is encouraged.<sup>29</sup> At the informal tripartite consultations in March–April 2021, it was decided that a list of speakers would be drawn up 24 hours before the examination of each individual case. Delegates who are accredited to the Conference and registered in the Committee should request their inclusion on the list of speakers by sending an email to [CAN2021@ilo.org](mailto:CAN2021@ilo.org). The speaking times will be adjusted according to the number of speakers registered. Speakers who have not registered in advance may be given the floor if time allows.
43. In view of the above limits on speaking time, governments whose case is to be discussed are invited to complete the information provided, where appropriate, by a written document, not longer than five pages, to be submitted to the Office at least two days before the discussion of the case.<sup>30</sup>

## **X. Respect of rules of decorum and role of the Chairperson**

44. All delegates have an obligation to the Conference to abide by parliamentary language and by the generally accepted procedure. Interventions should be relevant to the subject under discussion and should avoid references to extraneous matters.
45. It is the role and task of the Chairperson to maintain order and to ensure that the Committee does not deviate from its fundamental purpose to provide an international tripartite forum for full and frank debate within the boundaries of respect and decorum essential to making effective progress towards the aims and objectives of the International Labour Organization.

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<sup>29</sup> These arrangements result from the informal tripartite consultations of March 2016.

<sup>30</sup> See Part VI above.

## Appendix 1

### Criteria developed by the Committee of Experts for footnotes

#### Excerpts of the General Report of the 2021 Addendum to the 2020 Report of the Committee of Experts (109/III(A))

**123.** As in the past, the Committee has indicated by special notes (traditionally known as “footnotes”) at the end of its comments the cases in which, because of the nature of the problems encountered in the application of the Conventions concerned, it has deemed appropriate to ask the government to supply a report earlier than would otherwise have been the case and, in some instances, to supply full particulars to the Conference at its next session in June 2021.

**124.** In order to identify cases for which it inserts special notes, the Committee uses the basic criteria described below, while taking into account the following general considerations. First, the criteria are indicative. In exercising its discretion in the application of the criteria, the Committee may also have regard to the specific circumstances of the country and the length of the reporting cycle. Second, the criteria are applicable to cases in which an earlier report is requested, often referred to as a “single footnote”, as well as to cases in which the government is requested to provide detailed information to the Conference, often referred to as a “double footnote”. The difference between these two categories is one of degree. Third, a serious case otherwise justifying a special note to provide full particulars to the Conference (double footnote) might only be given a special note to provide an early report (single footnote) when there has been a recent discussion of the case in the Conference Committee. Finally, the Committee wishes to point out that it exercises restraint in its recourse to “double footnotes” in deference to the Conference Committee’s decisions as to the cases it wishes to discuss.

**125.** The criteria to which the Committee has regard are the following:

- the seriousness of the problem; in this respect, the Committee emphasizes that an important consideration is the necessity to view the problem in the context of a particular Convention and to take into account matters involving fundamental rights, workers’ health, safety and well-being, as well as any adverse impact, including at the international level, on workers and other categories of protected persons;
- the persistence of the problem;
- the urgency of the situation; the evaluation of such urgency is necessarily case specific, according to standard human rights criteria, such as life threatening situations or problems where irreversible harm is foreseeable; and
- the quality and scope of the government’s response in its reports or the absence of response to the issues raised by the Committee, including cases of clear and repeated refusal on the part of a State to comply with its obligations.

**126.** In addition, the Committee wishes to emphasize that its decision not to double footnote a case which it has previously drawn to the attention of the Conference Committee in no way implies that it has considered progress to have been made therein.

**127.** At its 76th Session (November–December 2005), the Committee decided that the identification of cases in respect of which a government is requested to provide detailed information to the Conference would be a two-stage process: first, the expert initially responsible for a particular group of Conventions recommends to the Committee the insertion of special notes; second, in light of all the recommendations made, the Committee will, after discussion, take a final, collegial decision once it has reviewed the application of all the Conventions.

## Appendix 2

### Criteria developed by the Committee of Experts for identifying cases of progress

#### Excerpts of the General Report of the 2021 Addendum to the 2020 Report of the Committee of Experts (109/III(A))

**130.** Following its examination of the reports supplied by governments, and in accordance with its standard practice, the Committee refers in its comments to cases in which it expresses its *satisfaction* or *interest* at the progress achieved in the application of the respective Conventions.

**131.** At its 80th and 82nd Sessions (2009 and 2011), the Committee made the following clarifications on the general approach developed over the years for the identification of cases of progress:

- (1) The expression by the Committee of interest or satisfaction does not mean that it considers that the country in question is in general conformity with the Convention, and in the same comment **the Committee may express its satisfaction or interest at a specific issue while also expressing regret concerning other important matters** which, in its view, have not been addressed in a satisfactory manner.
- (2) The Committee wishes to emphasize that **an indication of progress is limited to a specific issue related to the application of the Convention and the nature of the measures adopted by the government concerned.**
- (3) The Committee exercises its discretion in noting progress, taking into account the particular nature of the Convention and the specific circumstances of the country.
- (4) The expression of progress can refer to different kinds of measures relating to national legislation, policy or practice.
- (5) If the satisfaction relates to the adoption of legislation, the Committee may also consider appropriate follow-up measures for its practical application.
- (6) In identifying cases of progress, the Committee takes into account both the information provided by governments in their reports and the comments of employers' and workers' organizations.

**132.** Since first identifying cases of satisfaction in its report in 1964, the Committee has continued to follow the same general criteria. The Committee expresses *satisfaction* in cases in which, **following comments it has made on a specific issue**, governments have taken measures through either the adoption of new **legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions.** In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. The reason for identifying cases of satisfaction is twofold:

- to place on record the Committee's appreciation of the positive action taken by governments in response to its comments; and
- to provide an example to other governments and social partners which have to address similar issues.

[...]

**135.** Within cases of progress, the distinction between cases of satisfaction and cases of interest was formalized in 1979. In general, cases of *interest* cover **measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners.** The Committee's practice has developed to such an extent that cases in which it expresses interest may encompass a variety of measures.



The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention. This may include:

- draft legislation that is before parliament, or other proposed legislative changes forwarded or available to the Committee;
- consultations within the government and with the social partners;
- new policies;
- the development and implementation of activities within the framework of a technical cooperation project or following technical assistance or advice from the Office;
- judicial decisions, according to the level of the court, the subject matter and the force of such decisions in a particular legal system, would normally be considered as cases of interest unless there is a compelling reason to note a particular judicial decision as a case of satisfaction; or
- the Committee may also note as cases of interest the progress made by a state, province or territory in the framework of a federal system.

## Appendix 3

### Procedure for amendments to verbatim draft minutes

This note provides information on the new procedure for amendments to verbatim draft minutes referred to in Part VIII of document CAN/D.1. It should be noted that each intervention is reflected *in extenso* in the verbatim draft minute only in the working language used or chosen by the delegate for this purpose <sup>38</sup> (English, French or Spanish). The verbatim draft minutes will be made available online on the Committee's dedicated web page.

It is recalled that the Committee's practice is to accept amendments to the verbatim draft minutes of previous sittings **prior to their adoption by the Committee**. The time available to delegates to submit amendments to the verbatim draft minutes will be clearly indicated by the Chairperson when the verbatim draft minutes are made available to the Committee.

To the extent that the discussions are reproduced *in extenso* in the form of verbatim draft minutes, the amendments will be limited exclusively to the elimination of transcription errors.

Delegates should submit their amendments to the secretariat **electronically** in "track changes" via the following email address: [CAN2021@ilo.org](mailto:CAN2021@ilo.org). In order to make amendments directly in track changes, delegates are invited to request the "Word version" of the verbatim minutes by sending an email to the address above.

Amendments will be received **only if they are sent from the email address** which will have been provided by the delegate concerned when requesting the floor. The secretariat will acknowledge receipt of the amendment and may contact the delegate concerned when the request does not fulfil the requirements contained in this document. Delegates should specify the verbatim draft minute concerned and make clearly visible the changes they wish to make.

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<sup>1</sup> When filling in a request for the floor, delegates will be requested to indicate in which working language (English, French or Spanish) their intervention should be reflected in the verbatim draft minute, if this intervention is not in one of these three languages. They will also be requested to provide an email address and a phone number.

## Annex II

International Labour Conference  
109th Session, Geneva, June and December 2021

► CAN/D.2

### Committee on the Application of Standards

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**Date:** 28 May 2021

#### ► Cases regarding which Governments are invited to supply information to the Committee

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The list of the individual cases on the application of ratified  
Conventions appears in the present document

## GOVERNMENTS INVITED TO SUPPLY INFORMATION TO THE COMMITTEE

COUNTRY	CONVENTION NUMBER
BELARUS**	87
BOLIVIA, PLURINATIONAL STATE OF	131
CAMBODIA	87
CHINA – HONG KONG SAR	87
COLOMBIA	87
EL SALVADOR	144
ETHIOPIA	87
GHANA**	182
HONDURAS	169
IRAQ	111
KAZAKHSTAN	87
KIRIBATI	182
MALDIVES	MLC, 2006
MOZAMBIQUE	122
NAMIBIA	111
ROMANIA	98
TAJIKISTAN**	81
TURKMENISTAN**	105
ZIMBABWE	105

\*\* Double-footnoted cases

## ► **Report of the Committee on the Application of Standards**

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



# ► Record of proceedings

6B

Part Two

International Labour Conference – 109th Session, 2021

Date: 19 June 2021

## Third item on the agenda: Information and reports on the application of Conventions and Recommendations

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 and its Addendum: Promoting employment and decent work in a changing landscape

**Chairperson** – We now move on to our agenda for this afternoon. As announced in our Committee's working schedule, today's agenda will be devoted to the discussion of the Committee of Experts' 2020 General Survey, *Promoting employment and decent work in a changing landscape*, and its 2021 Addendum.

I will now open the debate on the General Survey. However, before doing so, I would like to draw the Committee's attention to the fact that the Employers' group has expressed the wish to speak for longer than usual. After consulting the officers of the Committee, I have accepted the request by the Employers to make a longer statement at the beginning of the discussion and to consequently reduce their closing statement. Their total time allowance will therefore be respected but will be distributed in a different way.

**Worker members** – The Workers' group wishes above all to thank the Committee of Experts for this report and its high-quality Addendum. Among various improvements, the report is clearly written in accessible and transparent language, with transversal coverage of subject areas, thereby enriching the viewpoints expressed. However, it can be seen that, contrary to usual practice, the General Survey does not sufficiently consolidate or systematize the interpretations that the Committee of Experts gives to the content of the instruments.

After these considerations regarding the form, allow me to share some thoughts from the Workers' group on the substance. It would be illusory to think that we can cover such an extensive Survey in a few minutes, so we are obliged to limit ourselves to a few elements. Our remarks will be guided by a dual perspective, comprising the general scope and consequences of the instruments, and their implementation in the context of the pandemic.

The first subject area addressed relates to employment policy. The Employment Policy Convention, 1964 (No. 122), the flagship instrument in this area, refers to the promotion of full, productive and freely chosen employment. A number of comments cited in the Survey are based on this concept of productivity in order to draw a series of conclusions. This implies that we should stop there in order to discuss the question. It is clear that productivity gains, in other words gains in the efficiency of production, have so far been essential for economic activity. However, a few nuances are needed.

In fact, major gains in productivity are not possible in all fields. Let us take as an example the whole economy relating to personal care, for which this notion is totally inappropriate.

Similarly, basing employment policy exclusively on this aspect may lead to an impasse when it becomes clear that there is stagnation in the gains recorded in a number of countries and that developing countries will experience the same fate once they have gone beyond a certain point.

This phenomenon runs the risk of growing in view of the fact that pandemics have had a historical tendency to cause long-term reductions in productivity.

More fundamentally, if we seriously want to reverse this trend, we have to ensure a drastic increase in public and private investment. Indeed, achieving productivity gains by lengthening working hours is out of the question. So the only other way is massive

investment to integrate innovation flows into the production system. This also calls for massive investment in the training of workers, in the improvement of infrastructures and in the modernization of production apparatus. Both the public authorities and the employers have major responsibility in the matter.

In connection with the role to be played by the public authorities, the global approach implies questioning budget frameworks which often prevent public investment. This applies in particular to the European countries but also to the countries of the South, which, because of public debt levels, see their financial capacities undermined by debt servicing. Let us stress the fact that the private sector must play a key role in the dynamics of job creation, but that the role of States as a driving force is also crucial. It is therefore essential that the latter play an active role in this regard.

With this in mind, we should mention that the General Survey contains observations regarding measures to be taken to favour micro and small enterprises, including references to tax reductions. If there is a need to ensure a fair distribution of the tax effort, we should also be aware that, without sufficient resources, States will not be in a position to invest and to meet collective needs, which in the end will have an adverse impact on economic activity and will create more public debt. Lastly, to conclude on this subject, we would also like to mention foreign direct investment, which can have a positive impact on employment. However, caution is called for with regard to any negative effects, such as the dilution of workers' rights by certain States to attract such investment.

The second aspect that I would like to address is concerned with employment relationships. The world of work is constantly changing, following the economic dynamics that are shaping our societies. The Employment Relationship Recommendation, 2006 (No. 198), provides a solid framework encompassing employment relationships and applying the necessary distinctions. This framework is still relevant in a number of respects.

However, we can see that, apart from disguised employment relationships which need to be redefined, new forms of work do not necessarily fit into the customary frameworks. Some experiments in different countries have tried to approach the question by creating various types of intermediate status between waged workers and self-employed persons. These experiments have clearly not been as successful as expected. So it is essential that other avenues are explored. The possibility of extending the category of waged workers to relationships other than those characterized by a connection of dependence in law is worth examining. Along similar lines, the worker's "integration in the business organization" as referred to by the General Survey might be a good way of shedding light on certain relationships.

And now a brief comment on making employment relationships more flexible. The General Survey provides a very instructive catalogue of the various tools for making the labour force more flexible. Fixed-term contracts, temporary contracts, part-time work and even zero-hours contracts are all tools that make workers' employment more precarious. We might wonder what could still be invented in this area. The time has come to put an end to this trend, particularly in the context of post-COVID recovery. No empirical study supports the idea that under-regulation of work results in greater prosperity. On the contrary, the social costs of this excessive flexibilization provide a measure of the gravity of the situation. Moreover, the pandemic has shown the extent of the damage caused by these political choices which it is time to abandon.

Another subject that has been brought into focus by the health crisis is working at home. As the Addendum illustrates, the picture is fairly nuanced. On the one hand, the increase in telework has made it possible to limit the negative economic consequences. On the other hand, it has raised concerns regarding respect for working hours, infringements of the right to disconnect, the work-life balance and the right to safety and health at work. These considerations should lead us to have a closer look at these aspects and ensure that workers' rights in their entirety are observed in the context of this mode of work.

Another dimension of home work relates to workers who are not engaged in telework. These are workers who are often invisible and have been brought into the spotlight by this crisis. They have been heavily impacted by the effects of the pandemic and they must be given close attention. Given that these workers are often engaged in piece work, regulations relating to hours of work are often poorly observed, and this calls for innovatory approaches to ensure that their rights in this area are guaranteed.

There can be no discussion of employment without addressing the issue of the informal economy. Such a vast subject could merit a whole study on its own. Let us simply underline the need to analyse the structural causes of this phenomenon.

One of the courses of action referred to by the General Survey consists of analysing the links with the formal economy. After all, the two are not worlds apart but interact in many ways, analysis of which would allow solutions to be found. For example, in supply chains, the existence of informal work makes it possible to have a totally flexible labour force which can be exploited at will.

The General Survey also devotes considerable attention to certain categories such as workers with disabilities, women, older workers, young persons and migrants. I will just refer to workers with disabilities and women. The latter are often over-represented in certain forms of activity such as informal work and home work. This increases their vulnerability and implies that the gender dimension forms an integral part of the responses to be found. As regards workers with disabilities, societies do themselves credit by giving them the opportunity to participate in the production process. A society's inclusivity is measured by how far it offers all its members space in which to exercise their skills and talents.

The effectiveness of the instruments examined depends on strong social dialogue and labour inspection services that are sufficient in number and resources, and the General Survey rightly underlines the importance of this. The same applies to social protection, which plays a key role in economic stabilization and a means of defending access to fundamental rights.

It is clear that the subject under discussion is closely connected to a set of other themes and there is a high degree of interdependence among them. We cannot escape the conclusion that once the subject of work is raised, it becomes a matter of building the whole of society. As I conclude my remarks, I can only express the wish that our discussions will lead to conclusions which are able to meet the challenges we are obliged to face.

**Employer members** – We would like to thank the Committee of Experts and the Office for preparing this Survey on the eight ILO instruments in the area of employment. We believe that the Survey is timely, given the severe impact that the ongoing COVID-19 pandemic is having on employment around the world.

We highlight the efforts that governments' workers and employers have jointly undertaken to safeguard employment during the crisis. As far as possible, the need for policies prioritizing employment would also continue in the recovery and "building back" process. The COVID-19 crisis has once more shown the outstanding role of sustainable enterprises as economic and social stabilizers for societies. This should be fully recognized and taken into account in the design of employment and related policies to be better prepared for any future crisis.

We noted the new changed format of the Survey, and while we appreciate the new design and integrated online tools which significantly improve the readability, we want to express concerns regarding the new structure and contents of the General Survey. First off, our concerns go into the question of depth of consideration. The Committee of Experts addresses only certain issues in depth but deals with other topics in less detail and to the extent that they relate to the underlying concept of this General Survey. We recall that the purpose of the General Survey is to provide an in-depth review of the national law and practice of Member States for selected Conventions and/or Recommendations, including information on modalities and difficulties in the implementation of individual provisions. However, this is not possible if only certain parts of the standards are examined.

Secondly, we are concerned about the focus of the General Survey on topics covered by the standards, rather than on the standards themselves. This means the content of the standards takes a back seat to the Committee of Expert's own opinions and recommendations on the topics. The chapter on promoting an inclusive employment policy and the 2021 Addendum are examples of this. While this kind of information is certainly useful, it does not meet the requirements of a General Survey. The fact that General Surveys are now also expected to contribute to related recurrent discussions does not justify, in our opinion, turning them into general ILO reports on particular topics.

Now on these general remarks we would like to provide more specific comments on the individual chapters of the General Survey. We consider section 1 on Convention No. 122 to be the centrepiece of the Survey. Convention No. 122 in essence requires ratifying Member States to declare and pursue as a major goal an active policy designed to promote full, productive and freely chosen employment.

While the Convention does not prescribe the means and strategies to achieve this goal, the key role of the private sector and an inalienable environment for entrepreneurship of sustainable enterprise for its achievement should be recognized. We recall that the 2019 ILO Centenary Declaration for the Future of Work states that the ILO must direct its efforts to supporting the role of the private sector as a principal source of economic growth and job creation by promoting an enabling environment for entrepreneurship and sustainable enterprises. In our view, due regard to sustainable enterprises will be of the essence to ensure a job-rich recovery from the crisis and to enable economies and societies to emerge from the crisis stronger and more resilient than before. We also trust that the Committee of Experts will give due consideration to an enabling environment for sustainable enterprises in their future assessments and explanations of Convention No. 122 and the other Conventions related to employment.

As regards the impact of new technologies on employment and employment policies, we agree that automation and robotization have considerably improved working conditions and reduced hazards in many sectors. We would add though that new technologies also have a significant potential for net employment creation. While there may also be new challenges arising from the introduction of new technologies that

need to be addressed, in doing so those measures should be given preference that do not hamper the employment-creating effects of the new technologies. To identify appropriate measures, special consultation bodies could be set up to discuss and bring forward suggestions that can reinforce the benefits of new technologies, including on future skills needs. Apart from government and the social partners, such consultation bodies should also include entrepreneurs, experts and young persons.

We advise against interventionist methods, such as legislation that provides for obligatory collective bargaining on the introduction of new technology and related questions, which some countries seem to have introduced. It is unfortunate that the Committee of Experts leaves such inappropriate methods in our opinion, which are also not in line with the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and commented on.

The second chapter deals with the employment relationship and Recommendation No. 198 in particular. While the employment relationship in most countries still remains the main form of dependent labour, we consider that the diversification of the world of work and the emergence of new and alternative forms of work should be acknowledged and, on the whole, be welcome. These new forms of work have a significant potential for integrating more people in the labour market and thus to contribute to full, productive and freely chosen employment in line with Convention No. 122.

We stress the importance of Paragraph 8 of Recommendation No. 198, which indicates that the national policy for protection of workers in an employment relationship should not interfere with true civil or commercial relationships. We would like to say the following on this issue. There is no fixed quantitative relationship between civil or commercial relationships and employment relationships. Hence, the increase of civil or commercial contracts in itself is no cause for concern. It should be recognized that most work can be delivered in principle both via civil or commercial contracts or employment contracts. In fact, there is hardly any type of work that can only be carried out within an employment relationship. In line with the principle of free choice of employment in Article 1(c) of Convention No. 122 and within the framework of applicable rules, a choice of persons to be self-employed and to work under a civil or commercial contract should be respected in the same way as the choice of persons to work in an employment relationship. There can be good reasons for either choice. In this respect, it should be noted that working in an employment relationship does not only bring rights and benefits but also duties and obligations, for example the obligation to pay social security contributions or to adhere to a particular working time schedule. We noted the detailed considerations on various forms of employment relationships, including temporary work, part-time work, on-call work, and zero-hours contracts, although the Committee of Experts admits that Recommendation No. 198 is silent on this. Similarly, the Committee of Experts uses a reference in Paragraph 4(c) of Recommendation No. 198 to contractual arrangements involving multiple parties to make detailed comments on subcontracting digital platform work and supply chains.

The Employers consider that the Committee of Experts' considerations and views in this regard have no basis in the provisions of Recommendation No. 198 and are therefore outside the scope of this Survey.

Chapter 3 deals with the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), which is for the first time examined in a General Survey. We agree that transitioning from the informal to the formal economy is central to development. While there is a broad consensus on the need to facilitate transition to a formal economy, there are divergent views on how this should be achieved. We, as



Employers, favour a progressive approach involving sustained measures and policies to achieve full and productive employment, and to reduce poverty, including measures and policies that minimize the costs and increase the benefits of formality. A transition process needs to take account of the specific country context and the existing potential.

Promotion of an enabling business environment with forecasts on entrepreneurship, job creation, and skills development in the formal sector is critical to absorb informal activity. In the Employers' view, this requires proper governance, a stable macroeconomic environment, protection of property rights, and a balanced legal framework, that is effectively enforced.

Particular attention should be given to well-constructed incentive schemes, which can contribute effectively to reducing informality. These include easy access to credit, appropriate technologies, and business development services.

On the other hand, over-regulation, excessive taxes and corruption are significant causes of informality. Governments have a key role to play in creating the requisite environment for formalization and eliminating obstacles to it.

The fourth chapter of the General Survey deals with the Home Work Convention, 1996 (No. 177), and the Home Work Recommendation, 1996 (No. 184). We agree that home work can be a valid alternative to regular employment in an enterprise, particularly for workers who are obliged or prefer to stay at home, including workers with family responsibilities, workers in rural or distant areas, or workers with disabilities. Home work can also be a provisional solution for those who are transitioning from one job to another, or have not managed to find a regular job in an enterprise.

In principle, homeworkers have more independence and can choose when they work and the pace of their work. Technology has improved communications between enterprises and workers, which has facilitated home work. Working at home also makes it possible to avoid the time spent and cost of transport, and that is reflected in paragraph 484 of the General Survey.

The important role that home work plays in providing jobs, and has in contributing to full, productive and freely chosen employment, should be fully recognized. Moreover, thanks to technological developments, home work has extended its area of application from traditional crafts, activities, to new models of occupation, business and entrepreneurship. The job-creating potential of this form of work should be preserved, fostered and, where possible, fully exploited. We stress the diversity of forms of home work, which can be carried out by employees, workers without a special homeworker status, but also entrepreneurs and independent contractors.

In line with Article 1(b), persons that have the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions, such as artisans or professional freelance consultants, are not covered by the Convention. In determining the criteria for these independent workers at national level, their wish for autonomy and independence should be duly taken into account.

Chapter 5 deals with the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168), 1983. We support the approach of promoting the use of technology to enhance the accessibility and participation of persons with disabilities to rehabilitation, training and employment.

A particularly useful approach that has been practised in certain countries seems to be to provide incentives, initial assistance, exclusive contracts or priority production

rights to enterprises employing persons with disabilities as part of an overall policy to promote employment of persons with disabilities. To achieve higher employment rates for persons with disabilities, it would also be important to explore the factors that contribute to their low labour market inclusion.

Finally, we took note of the Committee of Experts' view that consideration should be given to measures to ensure that Convention No. 159 and Recommendation No. 168 are more closely aligned with current international terminology and objectives in the area of disability, and reflect more directly the elements of substantive and inclusive quality, and address the gender dimension of disability, as well as the impact of intersectional discrimination, and the vocational rehabilitation and employment situation of persons with disabilities. We would nevertheless consider that Convention No. 159 is still up to date. In terms of concept and objectives, the Convention avoids rigid definitions and provides adequate flexibility in its implementation. It seems still widely accepted, as evidenced by its ratification at a higher rate than average.

We note that Chapter 6 focuses on the objective of implementing and encompassing national employment policy which not only covers all aspects of growth and employment but is also inclusive and ensures equality of opportunity and treatment for all persons in the labour market so that no one is left behind. We observe that opinions and recommendations presented here, for the most part, have no basis in international labour standards. Apart from that, we find the views expressed by the Committee of Experts to a large extent unbalanced. To provide some illustration on this:

First, the Committee of Experts is concerned about the redistribution of productivity gains. However, not much attention is paid to ways of increasing the existing low productivity of certain groups of workers.

Second, the Committee of Experts seems to mistrust new technologies and flexible ways of working, for which they suspect an increased risk of misclassification, leading to a high level of bogus self-employment with the consequent risk of a lack of adequate labour and social protection.

However, not much attention seems to be paid by the Committee of Experts to the opportunities that new technologies and flexible ways of working offer or to ways of exploiting their potential for distant job creation and reduction of unemployment.

Third, the Committee of Experts seems to assess new forms of work from a somewhat one-dimensional point of view: if, and to what extent, they meet or do not meet the requirements of a regular employment relationship. In this way, the Committee of Experts considers that employment and work arrangements other than the more typical, open-ended, full-time, dependent employment relationship, are to be associated with some decent work deficits, as well as with weaker social protection.

However, not much attention seems to be paid by the Committee of Experts to how the diversification of forms of work also reflects the need for more flexibility of both employers and workers, and changing expectations of customers and of consumers and business customers.

Turning to Chapter 7, we agree that implementation of applicable labour regulations, including on the employment relationship, requires monitoring of compliance and enforcement, as reflected in the Labour Inspection Convention, 1947 (No. 81). Labour inspection plays a major role in this, not only as regards securing enforcement of legislation but also, and perhaps even more importantly, as regards providing technical information and advice to employers and workers.

We are surprised that the Committee of Experts considers that private governance systems are a response to economic globalization and the inadequacy of public governance institutions to address the societal pressures generated by globalization. And, continuing with the quote, indeed, while enterprises operate beyond national boundaries, public institutions, which are normally national, tend to lose their impact.

We ask the question: does this mean that the Committee of Experts means to say that it no longer makes sense to uphold the responsibility of national governments to assure compliance with ratified Conventions within their territory, and that ensuring compliance should rather be left to governance systems? Just giving this impression alone could be very risky as the entire system of international labour standards stands or falls on the responsibility by nation States represented by their governments for compliance with ratified Conventions.

In respect of Chapter 8, we noted that the ratification prospects for the three Conventions examined in this General Survey, namely Convention No. 122, Convention No. 159 and Convention No. 177, are limited. In particular, there seem to exist significant ratification obstacles for Convention No. 177, which is also the least-ratified of the three Conventions. The lesson learned from this is that it is not advisable to set internationally binding rules on particular forms of work, in particular when these forms of work are extremely diverse, both nationally and internationally, as is the case with home work.

We also raise doubts as regards the usefulness and appropriateness of Recommendation No. 198 in view of its unduly narrow focus on the employment relationship, which can conflict with many independent contractor relationships.

Having said this, the Employers consider that the other employment instruments, that is Convention No. 122, Convention No. 159, Recommendation No. 168, the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), and Recommendation No. 204, overall retain their relevance as guideposts for designing balanced policies that help achieve the objective of full, productive and freely chosen employment.

The importance of a policy focus on employment and business continuity as the crisis stabilizes has become obvious in the ongoing COVID-19 pandemic. The above ILO standards, when their implementation is thoroughly adapted to the particular situation and needs of countries, can indeed contribute to building more resilient societies, economies and institutions and thus help pave the way for a sustainable future of work.

As I conclude, to ensure a sustainable, job-rich recovery from the crisis and to protect livelihoods in implementing Convention No. 122 employment policies and resolving problems, due attention should be given to creating a truly enabling environment for enterprises, including micro, small and medium-sized enterprises. As the Committee of Experts states in its Addendum, page 8, economies and societies need intermediate and longer-term measures to emerge from the crisis stronger and more resilient than before. ILO assistance on employment policies should include advice on measures that help ensure that enterprises can play their role in this process.

**Government member, Portugal** – I speak on behalf of the **European Union (EU) and its Member States**. The Candidate Countries, **Turkey**, the **Republic of North Macedonia**, **Montenegro**, **Serbia** and **Albania**, the European Free Trade Association (EFTA) country **Norway**, member of the European Economic Area (EEA), as well as the **Republic of Moldova**, **Armenia** and **Georgia**, align themselves with this statement.

At the outset, we would like to thank the Committee of Experts for the very well drafted Report and its Addendum. It provides a sound background for our discussions in this Committee and on the COVID-19 outcome document as well. Importantly, it will also provide a very useful reference for effective employment policies grounded in international labour standards.

We would also like to commend the input of constituents into this General Survey, which underlines their commitment to ensure full, productive and freely chosen employment.

The world of work has changed significantly in the last decade since the last discussion on employment instruments. Due to environmental and social changes, and as a result of technological advancements, there are new opportunities and challenges that governments have to take into account when designing employment policies and in their efforts, together with social partners, to ensure and promote decent work for all.

In the last year, our labour markets have faced major upheaval, leaving hundreds of millions of people without income or with significantly reduced income, exacerbating poverty and widening inequalities. The COVID-19 crisis has shown the importance of comprehensive employment policies that ensure that those most vulnerable on the labour market are not left behind. This is our opportunity to build back better and we must seize it.

To this end, the EU and its Member States are committed to a fair and just recovery from the crisis, which is reflected in our recovery plan, *Next Generation EU*. Furthermore, we support these efforts globally as well, through the Team Europe initiative.

As of 1 January 2021, we have collected more than €40 billion to support our partner countries in dealing with the pandemic, including helping them rebound economically and promote decent work and full, productive and freely chosen employment.

EU Member States coordinate their economic and employment policies through the European Semester. The Annual Sustainable Growth Strategy sets out sustainability, productivity, fairness and macroeconomic stability as the guiding principles underpinning national recovery and resilience plans.

The ILO plays a unique normative role in ensuring that economic growth goes hand-in-hand with decent work, and as such, should play a key, proactive role in addressing the consequences of a changing world of work in line with the Centenary Declaration. The EU and its Member States continue to stand ready to support the ILO and effective multilateralism in employment and social policies.

The COVID-19 pandemic has highlighted the weak spots in our employment policies. People in the informal economy were in the front row of socio-economic hardship as a result of the pandemic. Additional efforts are needed to foster the transition from the informal to the formal economy while also improving working conditions in the informal economy. It is also important to design inclusive employment policies, in consultation with social partners, and ensure labour protection for all, paying special attention to youth and women, as well as to vulnerable groups, such as migrant workers, workers from minorities, the low skilled and persons with disabilities.

Regarding disability, the EU and its Member States note with satisfaction that significant progress has been made in addressing the situation of persons with disabilities on the labour market in the past decades. The European Accessibility Act adopted in 2019 addresses the obligation of the EU and its Member States to implement accessibility as arising from the UN Convention on the Rights of Persons with Disabilities

(CRPD). We remain committed to further promoting the rights and equal access of persons with disabilities to all areas of life, including employment, as also stated in the Strategy for the Rights of Persons with Disabilities 2021–2030.

Young people tend to be among those most exposed to economic shocks on the labour market. This is the case in this pandemic. Supporting them in finding employment, education or training is essential to ensure a healthy future for our labour markets and societies.

Effective, evidence-based employment policies should be firmly rooted in relevant data of good quality. The ILO needs to assist constituents in strengthening the necessary collection and processing capacities and promote the benefits and rationale for better, gender-disaggregated data. This is important for the identification of challenges, monitoring of trends, and elaboration of solutions, including for establishing well-targeted active labour market policies.

To successfully ensure a just and fair transition to an environmentally, economically and socially sustainable future of work, it is paramount to reinforce skills development and lifelong learning, in order to support people's transitions throughout their working lives and ensure that education and training systems are responsive to labour market needs. Re- and upskilling should be a crucial element of active labour market policies.

The pandemic has accelerated the already emerging profound changes in the world of work. The EU and its Member States note that employment relationships still provide the most efficient channel for ensuring labour protection. While the evolution of the world of work might require the revision of certain notions, it is key that the labour protection standards and existing mechanisms of social protection are not diminished as a result.

The EU and its Member States welcome the publication of the recent World Employment and Social Outlook on *The role of digital labour platforms in transforming the world of work* and call on the ILO to continue its efforts to explore the opportunities and challenges presented by the growth of these platforms and the gig economy. In this regard, we look forward to the tripartite meeting scheduled for 2022.

The pandemic has resulted in a new reality with an increasing number of people teleworking or working from home on a regular basis. Post-pandemic new forms of "hybrid work" are likely to emerge. As such, we believe that it would be opportune to hold in-depth discussions on how these changes in the world of work should be managed, including examining the concepts of Convention No. 177.

To conclude, as we are discussing the strategic response to recovery from the COVID-19 crisis, we must keep in mind that employment is the best way out of poverty and so we stand ready to work together with all constituents and other relevant stakeholders to achieve full, productive and freely chosen employment around the world.

*Interpretation from Arabic:* **Observer, Gulf Cooperation Council (GCC)** – I am pleased to speak before your respected Committee on behalf of the Member States of the Gulf Cooperation Council (GCC), namely the **United Arab Emirates, the Kingdom of Bahrain, the Kingdom of Saudi Arabia, the Sultanate of Oman, the State of Qatar and the State of Kuwait**. Our sincere thanks goes to the Committee of Experts and the International Labour Office for having prepared this distinguished document.

The GCC States followed with interest the content of both documents, that is, the General Survey prepared last year with regard to promoting employment and decent

work in a changing world, and the second document prepared this year, which the Committee of Experts dedicated to discussing our current crisis, the COVID-19 pandemic and its impact on the labour market globally.

The General Survey and its Addendum come at a time when the world of labour is suffering from the impact of the pandemic, whereby shrinking business activity and employment are giving way to downsizing and hardship for enterprises in confronting the pandemic; also, with the rise of new forms of models of employment to deal with the crisis adding further pressure in deviating towards informal and untraditional activities.

The document raises diverse and multiple topics, covering a number of Conventions and Recommendations being highlighted together for the first time. It focuses on employment policies while navigating the challenges of the green economy, technological effects, the issues of modern contractual relationships, facilitating the transition from the informal economy to the formal economy, work from home, employing persons with disabilities, empowering women and achieving gender equality.

We at the GCC realize the place of employment in the world of work context, which was highlighted by the document as well as the ILO's 2019 Centenary Declaration, with regard to the future of work and the 2030 Sustainable Development Goals. We strive with all our administrative and human capacities to translate the content of these directives to have a stable working environment based on sound decisions, forecasting the future and putting all aspects of the labour reality on the follow-up in order to achieve protective inclusivity and social justice.

The GCC States achieved many milestones in the field of employment taking into consideration demographic and social specificities. For instance, they have regulated working from home and incentivized its growth and contribution to national production process. With regard to persons with disabilities, the GCC countries jointly developed a guidebook for the terminology of people with disability and the special rehabilitation needs in order to achieve the spirit and the goals of the International Convention on the Rights of Persons with Disabilities enshrined by the United Nations in 2006, also believing in rehabilitating those with disabilities from situations of dependency to one where they are productive and fully contributing to society and where no one is to be left behind for environmental and societal reasons and obstacles.

The COVID-19 pandemic has taken us all by surprise and greatly affected our main agenda and concerns. Our full attention had to be focused on facing the fallout of lockdowns, physical distancing, isolation and quarantine requirements, which hindered the normal flow of life and production, and so has the focus on the recovery from the pandemic crisis. However, such violent disruptions recall once again the importance of decent work in a changing world, even an unpredictable world, as proven by the case of the pandemic for which no State nor even our organization has set up any contingency.

Therefore, we would like to reaffirm the principles of decent work and social justice in any national employment policy in order to contain potential shocks, and emphasize a greater role for the ILO in adopting an early warning system for such global catastrophes to mitigate their effects.

**Government member, Sweden** – The Nordic countries, **Denmark, Finland, Iceland, Norway and Sweden**, thank the Committee of Experts for its General Survey promoting employment and decent work in a changing landscape. We align ourselves with the statement of the EU and its Member States.



We want to bring up the issue of gender equality as a means to achieve full, productive and freely chosen work. In the concluding remarks, the Committee of Experts rightly recalls gender equality as essential to equality of opportunity and treatment in employment and occupation for all workers. The Committee of Experts concludes that gender equality must be ingrained in national employment policies as well as in any poverty reduction policy. Women around the world still face hurdles to access employment, to access decision-making positions and jobs in certain sectors. Combined with the unequal distribution of unpaid work, it results in differences in working conditions, such as the gender pay gap and the over-representation of women in part-time jobs, resulting in persisting decent work deficits.

In parts of the world, women are unjustifiably barred from many jobs, limiting their possibility to freely choose their work. Women should have the right to pursue freely any job or profession and exclusions should be determined objectively, without reliance on stereotypes and negative prejudice about men's and women's roles. When the ILO surveyed women's and men's attitudes towards gender equality in the labour market, it was obvious that a majority of both men and women would prefer women having paid jobs. When looking at the obstacles, balance between work and family life was almost universally one of the top challenges mentioned. Through social dialogue a transition can be facilitated from the informal economy – where women are dominant – to the formal economy.

This also points to a link between this Committee of Experts and the Social Protection Committee (SPC) of the EU, namely the importance of affordable childcare, as well as the importance of addressing and promoting an equitable distribution between women and men of the unpaid household and care work. The care economy is a contributing factor in the push for equality. The absence of accessible care facilities, and women tending to shoulder, disproportionately, responsibility for unpaid and unvalued or undervalued care provision, are widely recognized as crucial obstacles to the advancement of women at work. The care economy is growing, and the demand for care increasing in all regions. Addressing decent work deficits and gaps in the legislative framework is essential. As the care sector is the major employer of women, gender equality policies are essential in making sure that care work is highly valued in society, as well as in making sure that the care sector attracts more men. One important aspect is an even gender distribution of positions of power. Therefore, the proportion of women in leading positions in both business and the public sector and administration needs to increase.

It is important to empower women by sharing unpaid care work at the home to ensure equality of opportunity in the workplace, to eliminate violence and harassment at work, and to ensure equal pay as well as to strengthen women's voices and leadership. As women employees are highly organized, at least in the Nordic countries, we encourage all constituents to step up and make further efforts to make gender equality at work a reality and fight, in particular, the persisting gender pay gaps.

**Worker member, Ghana** – I am delighted to share with you the Ghana example with respect to the elaboration process and implementation of the national employment policy.

The national employment policy for Ghana was launched in April 2015 following an extensive process of consultations between the relevant ministries and the social partners. The goal of the national employment policy is to create gainful and decent employment opportunities for the growing labour force to improve their living conditions and contribute to economic growth and national development within the



framework of equity, fairness, security and dignity. Specifically, the policy is expected to achieve four bigger objectives: creating more decent jobs to meet the growing demand for employment; improved quality of jobs for those who are employed; increased labour productivity and strengthened governance and labour administration in the country.

Trade unions made a number of demands during the process. These include the need for government to adopt a more active approach in resolving the unemployment challenge, particularly among youth; address the precarious nature of work in the agricultural sector; and support labour market institutions to ensure the provision of timely labour market information for decision-making and planning.

There is no doubt that the implementation of the national employment policy has suffered some setbacks due to the outbreak of the COVID-19 pandemic. As you are all aware, the pandemic has caused a devastating impact on our economy and on employment, income and livelihoods, especially in hard-hit sectors such as the hotel and restaurant sector and among certain groups, including women and youth. As the country begins to develop its recovery plans and programmes, it is paramount that they be coordinated in line with the overarching objectives of the national employment policy. In addition, if employment policies and programmes are to be successful, they must fully include the social partners in their design, implementation and review. There is also a need for labour market data to inform policy development and decision-making. While the national employment policy has produced some promising results since 2015, tremendous challenges remain ahead of us to overcome the negative effects of the pandemic on the economy. Therefore, decent employment should remain the highest priority for the government in its immediate and longer term actions. Furthermore, international labour standards must remain at the heart of any global and national level response and the ILO should closely monitor efforts and assist Member States at the national and global level to ensure a job-rich recovery and sustainable structural change.

**Employer member, Argentina** – We would like to take this opportunity to make a couple of comments on the considerations that relate to our country.

Firstly, with regard to the importance of private initiative and to sustainable economic growth as a driver of employment generation, we wish to highlight the importance of clear institutional frameworks in creating productive and quality employment. In the case of Argentina, we believe that urgent discussion is required on the transition from the emergency regulations intended to contain the effects of the crisis to policies that create an enabling environment for the recovery by addressing three fundamental aspects. Firstly, systemic competitiveness factors, including access to infrastructure and financing, stable exchange rates and access to reasonable interest rates; the macroeconomic context, with productive development policies that promote innovation, the harnessing of technology, the provision of skills and training for personnel and the scale of production; and, lastly, aspects of the tax system that support these policies and stimulate investment, technology transfer and applied innovation. A comprehensive national development strategy needs to be discussed, and that debate must take place in consultation with the social partners to ensure that protection measures are appropriately balanced against incentives for investment and productivity gains.

Secondly, with regard to the importance of some forms of work and their regulatory treatment, we believe that the restrictions implemented to tackle the health crisis have affected the organization of work and accelerated the adoption of new technologies, which have also been supported by diverse forms of work arrangements that have given rise to new employment relationships. Some arrangements have been key to reducing

the number of jobs lost as a result of the crisis and facilitating the inclusion of disadvantaged groups, such as persons with disabilities, women, young people and migrant workers. We agree with the Committee of Experts on the need for a review, at the national level, of whether current legislation remains appropriate for responding to these realities, and for reflection on how best to regulate new forms of work. Additionally, free and voluntary collective bargaining is another tool with proven benefits in addressing these realities in an efficient and balanced manner. Labour standards should not work against this reconfiguration or attempt to confine these new relationships to binary definitions; on the contrary, they should seek the most suitable way to regulate them so that their benefits may be enjoyed and job creation accelerated with the aim of promoting formalization and access to social protection.

Lastly, we wish to emphasize that tripartite social dialogue has been, and continues to be, central to the coordination of the COVID-19 response in Argentina. Not only was a national agreement on support for jobs and production reached between the Argentine Industrial Union (UIA) and the General Confederation of Labour (CGT), but a number of sectoral, joint and wage agreements, and even agreements on allowances for lack or reduction of work, have been signed. All these agreements have been of the utmost importance in ensuring the sustainability of enterprises, particularly small and medium sized enterprises that have such a large effect on employment.

We therefore reiterate the importance of institutionalized mechanisms that guarantee effective consultation with the social partners, particularly with regard to comprehensive employment policies to achieve sustainable development that ensures social inclusion.

**Government member, Turkey** – I thank the Committee of Experts for their comprehensive and updated General Survey and take this opportunity to inform your Committee of the far-reaching measures that the Turkish Government has taken to tackle the pandemic.

First of all, I would like to point out that Turkey has ratified Conventions Nos 122 and 159, two of the three Conventions examined in the General Survey, and applies the principles enshrined therein when designing employment policies. As in other countries, the pandemic has had some negative impacts on Turkey. We have taken decisive measures rapidly and implemented them effectively. One week after the outbreak in Turkey on 18 March 2020, the Economic Stability Shield Programme was announced to balance the adverse effects of the pandemic. The programme consists of a set of 21 measures, many of which are related to the labour market. Furthermore, we have also implemented the Social Protection Shield Programme since the early days of the pandemic to ensure that none of our workers and employers suffer in these difficult times.

This programme is built upon four pillars, namely working life, social security, social services and social assistance. Under the working life pillar of the programme, we have provided a total of 55 billion Turkish lira in financial support to our citizens, including 33.2 billion lira in short-time working allowances; 11.4 billion lira in cash wage support; 5.9 billion lira in unemployment benefit; and 4.5 billion lira in normalization support.

We continue to protect both our employees and employers through regulations on working life. There is the application process and conditions of the use of a short-time working allowance, which entered into force on 26 March 2020. With the approval of the President, the short-time working allowance deadline has been extended until 13 June 2021. In addition, we have started providing COVID-19 cash wage support for employers

who did not meet the requirements for receiving short-time working allowances. We have introduced flexible and remote working models in the legislation. Public employees aged over 60 years, pregnant women, as well as persons with chronic illnesses, were granted administrative leave with full salary.

Moreover, we have supported our employees who have returned to their normal work by subsidizing their social security insurance premium support for up to six months. We have also taken all the necessary occupational safety and health measures at the workplace in close consultation with relevant stakeholders. All in all, we can say that we have mobilized all our resources to address the economic and social impacts of the pandemic.

**Worker member, Cameroon** – Progress in artificial intelligence, automation in the workplace and the COVID-19 pandemic have raised our awareness of the urgent need to adapt to changes in the world of work, and particularly the lessons to be taken from the COVID-19 crisis. Indeed, Industry 4.0, which presently destroys more jobs than it creates, coupled with the COVID-19 pandemic, has had a grave impact on regions with high population growth, such as Africa, with millions of jobs lost, a lack of social security coverage and a failure to respect international labour standards. Rapid action is required, particularly as the issue is a key factor in peace and social stability.

Effective action within a State is possible only where there is political will. Governments are therefore the first to be challenged. They must accept that the development of effective policies suited to all levels entails inclusive social dialogue. The promotion of employment and decent work in a changing landscape cannot happen without the involvement of the social partners at all levels, including the informal level. The different policies promoting decent work must be accompanied by oversight and evaluation mechanisms that allow corrective measures to be adopted, rather than the policies being abandoned.

In Cameroon, social dialogue forums do indeed exist, and at all levels. However, regrettably, the social partners are not always consulted or involved. When they are, their suggestions are not always taken into consideration.

The lack of dialogue with the Government is regrettable, and the same applies to dialogue with the employers, which is almost non-existent. This undermines policies linked to areas including retraining, worker employability and the development of appropriate occupational safety and health policies within enterprises.

The policies that we are able to list include, firstly, a strategic document on growth and employment, which failed because it was not inclusive, and, secondly, a national action plan for youth employment, which was inclusive but failed for lack of monitoring and evaluation.

The most recent policies relate to the management of the COVID-19 crisis, during which the Government, despite its good intentions, took unilateral decisions whose effectiveness was debatable for certain occupations. There is also the universal health coverage project; the workers' representatives who participated in that project do not see their contributions reflected in the resolutions adopted by the Government.

The issue of promoting employment and decent work in a changing landscape challenges us all: governments, employers and workers. It is therefore vital that the ILO further supports its tripartite constituents in developing employment policies and monitoring them regularly.

Given the importance of the agricultural sector as a source of employment in many developing countries, including Cameroon, emphasis must be placed on agriculture and related sectors to reach productive growth of 7 per cent per year in the least developed countries – corresponding to target 8.1 of the Sustainable Development Goals – and full and productive employment and decent work for all – corresponding to target 8.5.

Given the consequences of the health crisis it is vital that, in States where we see high demographic growth, social protection floors are developed and established, and informal workers, who mostly remain excluded from social protection, are integrated into the national legislation,

In the same vein, we must also steer our States towards increasing their ratification of ILO Conventions, particularly the Employment Policy Convention, 1964 (No. 122), the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), and the Home Work Convention, 1996 (No. 177). At the same time, the observance and application of the other Conventions must be ensured, since this is neither a variable nor an option.

**Employer member, Belgium** – During the pandemic, enterprises have realized the importance of their human capital, while workers have realized the importance of their work in their lives.

The General Surveys of 2020 and 2021 provide an overview of the ILO's standard-setting instruments that contribute to the promotion of full, productive and freely chosen employment. We emphasize the usefulness of these Surveys in so far as they describe the application of these standards worldwide.

However, we align ourselves with the legal observations made by the Employer members' spokesperson regarding the limits of the Committee of Experts' role. Social protection does not necessarily have to be seen from the sole perspective of a permanent employment contract. This model does not correspond to a wide variety of work situations for which other types of protection must be developed at the national level, in close consultation with the social partners. I am thinking of social protection floors, and also of rectifications of certain imbalances through economic law.

In Belgium, employment promotion policies are developed by the regional and federal authorities. The social partners are closely involved, both in the multi-industry advisory bodies and in the management committees of the public employment services. Contrary to some of the trade unions' comments in the General Survey, we consider that the unanimous opinions of the National Labour Council (CNT) – a joint advisory body which can also conclude collective labour agreements – are largely respected by the Government.

Furthermore, we dispute paragraph 116 of the General Survey. At no stage has the National Labour Council – which is a joint body, as I said, in which my organization represents the employers – made a joint statement that measures for the flexibilization of the labour market with a view to fostering employment creation have resulted in poor quality employment.

On the contrary, the power of social dialogue is that it takes into account respective interests. Balances have always had to be found between economic imperatives and social needs. And let us not forget to put environmental issues, the third pillar of a sustainable society, on the same footing. One example of this difficult balance is the development of electronic commerce or "e-commerce". In order to respond to the needs of the client (we do not speak here of employers but of clients and even of citizens),

enterprises must arrange to deliver the ordered goods “just in time”. If these goods are not delivered the following day, the economic activity and jobs will disappear. Therefore, if balanced agreements are not reached among the social partners concerning evening work between 8 p.m. and midnight, the essential period for preparing deliveries for the following day, these jobs will be moved – or quite simply created – a few kilometres outside our national border.

It is of course necessary to guarantee the quality of these jobs. But the overall stakes warrant reflection, particularly if together we wish to guarantee the financing of our social protection system based on social contributions and therefore on a sufficient number of productive jobs, and from there to increase employability.

To conclude, I will quote an extract from the General Survey: employment policies must take account “of the needs of individuals and enterprises (the latter being the engines to create decent work in a rapidly changing world of work). This guidance will contribute to the achievement of the ILO’s Decent Work Agenda and the Agenda 2030 Sustainable Development Goals.”

**Government member, Ghana** – Ghana welcomes this report which seeks to address some crucial subjects of principal concern to our individual States and regional groups in examining two specific categories of workers in greater detail: homeworkers and workers with disabilities. Indeed, the changing world of work requires our collective efforts to promote the interests of everyone – women, men, young persons, the old and the vulnerable – in an enduring form as a sure way of contributing to inclusive development.

In 2015, Ghana had the pleasant opportunity of the ILO Director-General himself launching its National Employment Policy, which seeks to create gainful and decent employment opportunities for the growing labour force, among others, within the framework of equity, fairness, security and dignity. The policy advocates the creation of more employment opportunities including green jobs and also making the already existing jobs, especially in the informal economy, more decent.

Six years down the line, Ghana has formalized domestic work with the enactment of a new labour regulation dubbed “Domestic Workers Regulations of 2020 (L.I. 2408)”. This regulation will also help reinforce the contractual agreements of female migrants in their quest for greener pastures abroad and addresses disparities in the destination countries that have huge decent work deficits.

Again, this law complements Ghana’s Labour Law in providing a comprehensive employment relationship for the various types of domestic work, employment conditions such as freedom of association, wages and salaries, working time, maternity leave and housing arrangements, among others.

Currently, the Government of Ghana’s coordinated programme of economic and social development policies of 2017–24 is anchored on an “Agenda for Jobs: Creating Prosperity and Equal Opportunity for All”, which is replicated in the country’s medium-term development plan.

Furthermore, Ghana’s commitment to the formalization of the informal economy is anchored on four strategic pillars of identification, location, digitalization and financial inclusion, which is spearheaded by the Office of the Vice-President of the Republic of Ghana in collaboration with the Ministry of Employment and Labour Relations and other relevant institutions.

Despite these well-intended interventions there are still gaps in the implementation of rights, accessibility, employment, education, transportation and healthcare for persons with disability even though explicitly stated in the Persons with Disability Act 2006 (Act 715), which also called for the establishment of a National Council on Disability.

Ghana therefore aligns itself with the expectations of the Committee of Experts that this report will provide guidance on the adoption of the inclusive policies and programmes, taking into consideration the needs of individuals and disadvantaged groups.

**Worker member, Netherlands** – On behalf of the Netherlands Trade Union Confederation (FNV), I would like to bring in our perspective on issues relating to the Committee of Experts' comments on global governance and multinational enterprises' responsibilities.

To promote this responsibility, since 2014 the Netherlands has implemented a broad multi-stakeholder initiative, the agreements on International Responsible Business Conduct (IRBC). This involves partnerships between businesses, government, unions and NGOs in different so-called risk sectors. At the moment, we have registered 12 agreements. Most consolidated are the agreements for banking, natural stone, and textiles and garments.

So far, we have important results. The participating textile and garment companies yearly publish all information about their production sites. This enables local trade unions and NGOs to report instances of malpractice. Production sites listed here have increased from less than 3,000 in 2016 to over 6,000 in 2018. An independent complaints and dispute settlement mechanism has been set up which is unique worldwide.

However, according to a recent independent evaluation by the Royal Tropical Institute (KIT), the policy of the Dutch Government to promote corporate responsibility is still very inadequate. The IRBC agreements cannot do the job alone. The scope of the agreements can be too limited and companies still do not always offer adequate remedies to respond to the damage they have caused. Substantial improvements to the scope and extent of corporate social responsibility are needed and can only be achieved through legislative actions.

The FNV recommends that the Dutch Government seriously considers the introduction of corporate social responsibility legislation. Legislation at national and also European levels should respond to some very basic demands, which we also call building blocks.

The first one is trade union rights, which are key and are inseparable from the 2008 ILO Social Justice Declaration, which recognizes freedom of association and effective recognition of the right to collective bargaining. They are also known as "enabling" rights, to enable attainment of the four strategic objectives of the ILO.

For a proper due diligence process, tracking of the entire supply and investment chain is needed.

Third block, on the basis of the UN guiding principles, due diligence legislation must address the possible impact of business activities and investments on people and the environment, not just the risks of the company itself.

Fourth, consultation of stakeholders, and especially unions and NGOs, is a key part of the design and implementation of any policy legislation.



Fifth, due diligence legislation goes with proportional sanctions. Gross violations of human rights and the environment will continue if sanctions are too easily borne by companies.

Sixth, remedy is more than making sure that something will not happen again. Where victims suffered material or immaterial damage, meaningful compensation is needed.

Seventh, time-bound improvement plans by companies and/or financial institutions are needed. Without a timeline, abuses will continue to exist.

Eighth, there must be social plans in case of layoffs due to changes in the company's supply chains.

Ninth, supervision must be ensured throughout the complete supply chain. Supervisors must be able to verify the matter on the spot in the production countries themselves.

And tenth, a non-regression provision must be assured, so the forthcoming legislation does not undermine existing better agreements on social or environmental protection.

**Employer member, Spain** – The COVID-19 health crisis and restrictions on activity and mobility to contain the pandemic have had unprecedented consequences, in terms of loss of life and on the global economy and employment. In this context, and as stated in the General Survey, States have adopted a series of extraordinary and urgent measures to reduce the impact of the crisis on families, workers and enterprises.

Many countries have adopted such measures as a result of social dialogue, which has been key to facilitating agreements that are more effectively implemented and durable. Such is the case in Spain, where the Government and social partners have shown firm commitment. The five social agreements reached on employment protection have enabled and continue to enable a social safety net to be deployed, thereby preventing the widespread job destruction of previous crises and helping to sustain the fabric of production. An agreement was also reached in the middle of the COVID-19 pandemic to regulate remote working, beyond teleworking, as a health protection measure. It is an agreement that has given legal certainty to enterprise and workers and has promoted collective bargaining and individual agreements in order to adapt this type of working arrangement to parties' needs. An agreement was also reached to safeguard the labour rights of people working on digital delivery platforms. The Rider Act, which establishes the presumption of employment and the right of workers' legal representatives to be informed of the algorithm rules affecting working conditions, is undoubtedly a step forward for the recognition of the rights of all workers and their social protection. While all of these measures help to achieve the objective of sustainably boosting employment in a changing environment, they will not suffice to restore pre-pandemic levels of output and employment.

Therefore, in this current phase of transformation and recovery, and within the framework of social dialogue, it is essential, firstly, to deal with the pathologies of the labour market, namely, the high level of temporary employment in both the private and public sectors, and the high level of unemployment, including a high level of youth unemployment. In addition, active employment policy measures that are effective and efficient must be implemented to facilitate the retraining of workers, their employability and transitions in the labour market. Such measures should also aim to improve the

employment prospects of the most vulnerable individuals, especially young people and the long-term unemployed.

Skills development, especially technological and digital skills and lifelong learning, must be fostered. It is essential to professionalize the care economy, thereby facilitating the entry of women into the labour market. We must also ensure the sustainability of the social protection system to safeguard our welfare state and, fundamentally, provide ourselves with a legal framework that allows businesses to adapt and remain competitive in a globalized, green and digital environment.

*Interpretation from Arabic into French:* **Government member, Algeria** – Algeria welcomes the outcomes of the General Survey, entitled *Promoting employment and decent work in a changing landscape*. This Survey is indeed set in the context of the rapid changes taking place in the world of work.

Algeria therefore emphasizes the importance of employment policies during times of crisis and welcomes the constant and lasting commitment of the International Labour Organization to support developing countries in implementing a comprehensive and coordinated employment policy, based on a rationale of solidarity and international cooperation.

Hence Algeria has always called for the strengthening of policies to ensure sustainable and inclusive economic growth and decent work for all. Algeria reiterates its commitments to the promotion of employment and the fight against unemployment, which is one of the strategic objectives of Algeria's national development policy.

The Algerian delegation wishes to recall that Algeria has put in place various mechanisms aimed at implementing programmes to modernize and strengthen the public employment service, by streamlining procedures and the use of information and communication technologies, and adapting the system for vocational integration, based on a steadfastly economic approach to addressing unemployment, especially among young persons. Algeria has also established flexible mechanisms and incentives for microenterprises.

Algeria would like to reaffirm its firm determination to contribute to efforts and initiatives for the promotion of social dialogue with a view to developing a human-centred approach to the future of work, in a spirit of solidarity that will enable us to find appropriate pragmatic solutions and improve the employment and working conditions of all categories of workers.

In addition, the Algerian delegation emphasizes that the COVID-19 crisis has changed the situation on the market. Today, flexibility is necessary and the digital transformation could further exacerbate inequalities.

Today, labour relations have changed, sometimes under unavoidable circumstances. With regard to the informal sector, the COVID-19 crisis has indeed highlighted new working methods and, today, we have to deal with these new sectors and these new technologies, and transpose them from the informal to the formal sector.

To come back to the future of work, the phenomenon of digital transformation could further exacerbate inequalities. That is why it is important to build the capacities of all countries, particularly developing countries, to ensure they achieve a balanced and optimal implementation of measures to access new technologies and afford workers the training and qualifications necessary to use these technologies.

Algeria remains committed to the implementation of the Centenary Declaration and supports flexible and pragmatic approaches to a new generation of employment

policies, inclusive policies based on clear, robust and up-to-date international labour standards, so that we may build a future of better and decent work for all.

**Worker member, France** – My statement will focus on the employment relationship. The status of platform workers has been under discussion for some years at the Conference and in many countries, given that a number of courts, particularly in Europe, have recently handed down various decisions.

On 4 March 2020, the Labour Division of the French Court of Cassation described the relationship between a driver and a well-known platform as an “employment contract”. In this ruling, the judges held that a driver of the platform is an integral part of a fully-fledged transport service set up by the platform, thereby preventing the driver from building his/her own customer base or freely setting his/her rates or terms of service.

The judges asserted that salaried employment can be inferred from the subordinate relationship of the worker to the employer, which is conventionally characterized by a managerial, supervisory, and sanctioning power. The labour court of Nantes invoked this decision on 23 November 2020. Similarly, the Court of Appeal of Paris recognized the existence of a subordinate relationship between the same platform and another driver on the same grounds, and the company was ordered to pay the driver €58,000. Numerous reclassification decisions in this and other platforms have been taken elsewhere, such as in Switzerland, by a decision of the Court of Appeal of the Vaud Cantonal Court on 23 April 2020; in the Netherlands, by a decision of the Court of Appeal of Amsterdam on 16 February 2021; in Italy, by a decision of the Public Prosecutor’s Office of Milan on 24 February 2021, emphasizing in that case the violation of health and safety rules at work; in Spain, by a ruling of the Court of Barcelona on 12 January 2021 for failure to pay social security contributions in respect of 748 delivery drivers wrongly deemed to be self-employed; and in the United Kingdom, by a ruling of 19 February 2021 reclassifying the employment relationship as a contract giving entitlement to the minimum wage, paid leave and other collective guarantees offered by an employment contract.

Worse, to avoid speaking openly of a “third status” or “grey area”, as it is defined by ILO experts, some governments are taking steps to supposedly ensure the collective representation of such workers. This is the case in France, on the basis of the so-called Mettling report, since an ordinance provides for the organization of collective representation of private hire vehicle (PHV) and bicycle delivery platform workers. This opens the possibility of election to trade union organizations, as well as to associations and collectives. It should be recalled that, while trade unions in France have been subject to mandatory representativeness since 2008, this has not been the case for associations and collectives. Creating a specific form of representation would make it easier to justify a specific status or a third status in the future. Such a precedent could easily spill over to other sectors of the economy, thereby expanding the grey area in which workers will be increasingly insecure, their collective guarantees unravelled and their unions gradually dismantled.

Platform workers must be part of the salaried workforce or genuinely and effectively economically independent. Yet, as early as 2006, the ILO constituents agreed on the Employment Relationship Recommendation, 2006 (No. 198), which states very clearly that the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker. The Recommendation, in Paragraph 11(b), calls on Members to consider the possibility of, and I quote, “providing for a legal presumption that an employment

relationship exists where one or more relevant indicators is present". Several indicators are listed in Paragraph 13(a), (b) and (c), and the question now arises as to what ultimately motivates this debate, if it is not the undermining of these workers' rights and, in the process, of the trade unions, with a view to developing this model in other areas of the economy. However, as our spokesperson reminded us at the opening of our session, precarity, inequality and frustration raise dangerous questions about our democracies.

**Government member, Côte d'Ivoire** – Today, the tripartite constituents have been called upon to reflect both on the issue of promoting employment and decent work in a changing landscape marked by the devastating effects of the COVID-19 pandemic, and on effective measures to combat this scourge. The aim is to provide certainty in the future for actors in the world of work.

This subject enjoys the unreserved, ongoing commitment of Côte d'Ivoire. The President of the Republic's call for solidarity to the social partners, particularly the private sector, has garnered a positive response that has allowed for the pooling of efforts to counteract the harmful effects of COVID-19 on employment, production tools, households and the population. Indeed, the inclusive and tripartite social dialogue implemented in Côte d'Ivoire has allowed all parties (governments, employers and workers) in the pandemic response to adopt measures to mitigate the impact of COVID-19 on the world of work.

Among the robust measures and actions taken, the Government has established an emergency health response plan that has strengthened prevention and protection measures. The Government has also developed an economic, social and humanitarian support plan to provide direct financial assistance to the population, enterprises and the informal sector.

Additional measures to provide financial support to workers whose employment contracts were suspended or terminated were adopted in April 2020, benefiting more than 24,500 workers. All of the provisions implemented remain in operation.

The legal and institutional framework was strengthened with the support of the social partners with a view not only to protecting workers, but also to safeguarding employment relationships through the inclusion of telework and short-time working in our body of laws and regulations. Furthermore, the operational supervision of workplaces has been strengthened by the labour inspection services.

Even better is the intensification of efforts to combat the pandemic through the vaccination of sectors of the population aged over 18, including actors in the world of work, with 517,199 vaccine doses having been administered to more than 56,000 persons. With the support of technical and financial partners and the private sector, the President of the Republic has committed to ensuring that Côte d'Ivoire is among the countries eligible for manufacturing COVID-19 vaccines on the African continent.

The adoption of some of the crisis response measures could prompt the implementation of long-term development programmes in the future, and the operationalization of the support fund for the informal sector. The Government is sparing no effort in establishing measures to support the most vulnerable households by means of cash transfers, the subsidization of electricity bills and the large-scale roll-out of universal health coverage.

Furthermore, the challenge of promoting green jobs in Côte d'Ivoire persists, despite the ongoing health crisis. In line with the commitments that it made at the United Nations Climate Action Summit, Côte d'Ivoire has had a strategy paper for promoting green jobs since 2 October 2020. This paper sets out opportunities for the creation of decent green jobs and defines specific measures to ensure the inclusion of all. Côte d'Ivoire is also committed to working to improve the living and working conditions of domestic workers. That challenge remains at the heart of our considerations and actions.

**Worker member, South Africa** – The COVID-19 pandemic has further highlighted the fact that healthcare is a human right which the State must prioritize and that it cannot and should not be reduced to a market logic arrangement.

We take comfort that the World Health Organization (WHO) has made this declaration official and eloquent. It is on this note that we want to say that working from home in the times of COVID-19 has further exposed the urgency of addressing healthcare issues, especially as more workers were further exposed to other forms of challenges while social distancing and isolating.

Working from home has led to an increase in mental health cases suffered by workers globally.

The pressure to deliver within deadlines has led to a cut in family and recreation time. We also observed workers putting in excessive working hours, including taking energy-boosting substances to stay awake and do more. Our members also reported cases where their supervisors visited their homes unannounced and uninvited to spy on the workers if they are working. Besides such practices affecting the psychological well-being of the workers, it also led to the invasion of the privacy of the worker's family and private life.

Also, there has been the emergence of back-to-back virtual meetings, which would not be possible in a physical office. With fewer opportunities for informal catch-ups, many workers are spending more time in these meetings. As well as being a time drain, these video meetings can trigger fatigue and leave participants feeling, ironically, disconnected.

As has been well documented, female workers were and are still being disproportionately affected by homeworking arrangements. We have seen an increase in domestic gender-based violence, experienced more by women, with instances of fatalities. The experience was worse during the periods of lockdown. Women, aside from struggling to meet work targets and deadlines, were saddled with extra household chores while also serving as children's online teaching supervisors. To cope with their increased and harder tasks, more women, especially established homeworkers, had to recruit their children, mostly the girl child, as extra "unpaid workers".

What we are saying is that homeworking arrangements, without well-factored and embedded value and supply chains, due diligence arrangements and childcare support systems, will easily encourage and lead to the exacerbation of child labour. We are sad to note that COVID-19, aside from worsening the incidence of child labour in Africa and other poor and developing economies, will also make sustainable and enduring recovery harder if it arrests the physical, psychological, mental, social and academic development of more children.

For workers in the informal economy, the majority of whom can barely work from home, the situation is worse. Besides, they are exposed to precarious working conditions and most of them must provide their own personal protective equipment. COVID-19

meant they lost their incomes and expended their savings to provide essentials for themselves and the members of their families during the imposed lockdowns. The lack of any social protection provisions, especially in the poorest economies, meant these categories of workers faced the dilemma of either staying at home, be safe but starve, or go to work and risk contracting the virus.

Given the very lean social protection provisions available in developing countries, the challenges of promoting employment and decent work in times such as these will require compassion and solidarity. The pandemic has made the task of transiting from and transforming the informal economy more urgent and necessary. It has made the need for social protection provisions critical. Curbing illicit financial flows will free up more resources for governments to finance social protection provisions.

Better public financing of education will reduce workers' worries about the education of their children. Employers must commit to redesigning working from home by embedding provisions for mental health protection and care.

Finally, it will be helpful to consider an international discussion on how to regulate working from home.

**Government member, Switzerland** – My delegation has noted with great interest the General Survey and its Addendum, which deal exhaustively with strategies for employment and decent work. In this context, I would like to underline a number of specific points.

The General Survey is concerned with the eight different instruments which, through their objectives, seek to promote full, productive and freely chosen employment in a rapidly changing world. The Committee of Experts has highlighted the persistent problems and legal gaps while developing a series of good practices and positive initiatives. These detailed analyses will make it possible to provide better guidance for Member States. Switzerland supports these analytical results and attaches great importance to them.

In order to implement these instruments, Switzerland takes several pillars as a basis. We favour social dialogue with the social partners who follow all these changes, we support dual vocational training which makes it possible to have a labour force in line with employment market requirements and we encourage the lifelong acquisition of new skills.

In order to adjust to the effects of the new technologies, we are adopting a digital strategy. In this regard, digital resources enable better inclusion of individuals with specific needs. Moreover, we have a favourable macroeconomic framework which stimulates the economy and innovation, key factors in sustainable economic growth and decent work.

In sharing with you the pillars of our employment policy, we also underline the importance of the effective implementation of these instruments examined by the Committee.

Indeed, all of these elements enable us to ensure good framework conditions in the current context of the COVID-19 pandemic, which is obliging us to deploy major resources and put in place a wide range of measures to stimulate the economy and employment, support enterprises, jobs and incomes, and protect workers in the workplace.

In conclusion, as the Committee of Experts reminds us, the future of work is now. The world is changing in economic, environmental, political, legal, health, sociocultural



and technological terms, so that there is constant upheaval in our landscape, which presents us with fresh opportunities. Switzerland is committed to the future of work with an inclusive, human-centred approach, in line with the ILO Centenary Declaration.

**Worker member, Philippines** – INTUC and the MPSBSI align themselves with this statement. This intervention will focus on the transition from the informal to the formal economy and the General Survey.

The working people of the Philippines continue to hope for and demand a government that is genuinely concerned for its citizens. The ongoing multiple crisis engendered by COVID-19 continues to be made worse by the failure of the Government of the Philippines to systematically respond to the needs of the situation.

The pandemic situation has demonstrated clearly the gaps in the protection of our informal economy workers. This is highlighted by the plight of our transport sector, especially our jeepney drivers and operators. Widespread problems with the distribution of government subsidies have also been observed, and hesitation to implement a robust public employment programme. These are some of the pressing issues we face today. The handling of our transport modernization programme has been disastrous. Our cities are witness to public transport workers who are reduced to begging for alms as their routes remain suspended, causing misery for many commuters. Jeepney drivers who dare to protest against these broad policies were jailed for breaking quarantine rules, only to end up contracting COVID-19 in jail, where they are packed like sardines.

Bent on using the pandemic to phase out traditional jeepneys, the Department of Transportation and Road and the Land Transportation Franchising and Regulatory Board insisted on imposing deadlines for their consideration amidst the ravages of the pandemic. While the unions and transport advocates succeeded in pushing back the deadline from 30 June 2020 to 30 December 2020 and then to 31 March 2021, the Government had not made it easy for the transport workers to consolidate their franchise by imposing policies that favoured big corporations and clearly discriminate against the traditional jeepneys. This has forced the National Confederation of Transport Workers Union (NCTU) to file a complaint before the Supreme Court.

To ensure a safe commute for the riding public while mitigating the income losses of the transport workers due to COVID-19 restrictions, the NCTU, through a coalition successfully lobbied for the inclusion of a service contracting programme in the “Bayanihan to Heal as One Act” No. 2. But rather than work with cooperatives of traditional or old jeepneys, the Government opted to deal with individual drivers and operators of traditional jeepneys and with transport cooperatives with modernized units. As of now, only 9 per cent of the budget of 5.5 billion pesos was disbursed. The programme is set to lapse at the end of June 2021.

At the same time, many Filipino families rendered poor and jobless by the present pandemic, especially those in the informal economy, also failed to qualify for or receive proposed government subsidies. Many continue to wait, hoping to receive the much-needed financial assistance. It is for this reason that we welcome the recent legislation passed in response to COVID-19, which includes a universal 2,000 pesos subsidy, even if this falls short of what the trade unions are asking for, which is a 10,000 pesos income guarantee for those who lost their jobs and income.

In spite of the immense suffering of our people, the Government still refuses to embark on a comprehensive intervention in our economy. Consultation for the national economic recovery strategy only started in April this year. While many of our proposals were accepted, the problem is that many of them require legislation and public

expenditure, but the Government is averse to spending more money, citing the lack of financial resources. We find it hard to understand the Government prioritizing tax breaks for corporations rather than a work for wealth tax.

In this context, we reiterate the need for comprehensive government intervention, the protection of livelihoods through income guarantees and public employment programmes, as well as long-term responses such as the generation of climate jobs.

**Observer, International Organisation of Employers (IOE)** – I have asked for the floor in this important discussion for two reasons. First, to thank the Committee of Experts for the preparation of the 2020 General Survey and its Addendum 2020–2021. We can agree with many of the statements contained in both documents and dissent respectfully from many others, but in any case we recognize them as important inputs into this discussion and for the Recurrent discussion on employment that will be held next year.

I have also requested the floor to recognize and pay tribute to the work of the officials of the Standards Department who have tirelessly supported the Committee of Experts in the preparation of these reports, the 2020 General Survey and its Addendum, under the leadership of the Director of the Standards Department.

I am very happy to see Ms Ana Torriente in the room and to thank her in person, but in particular I wish to recognize and pay tribute to the work and commitment of an outstanding official in the Standards Department, and I am referring to María Marta Travieso who, as the good daughter of a well-known Argentine painter, added many important brush strokes that are reflected in the 2020 General Survey and its Addendum. María Marta is in a very complex situation at present, which we hope she can overcome, however long it takes. On a personal level, I am very much looking forward to coming across María Marta again in the corridors of the ILO building, the kiosk, the Delegates' Bar, and to taking a coffee again and being able to talk to her of the many things about which we are both passionate, such as international labour standards, the pertinence of the ILO supervisory system, the future of work, but also about our beloved Argentina, religion, our common friends and our respective families.

**Government member, Colombia** – Our Government has been working on the elements of a policy on formal employment and decent work. Even though Colombia has not ratified the Employment Policy Convention, 1964 (No. 122), it has formulated employment policies giving priority to vulnerable population groups, taking account of all the economic sectors, since these are what create jobs.

In the same way, specific instruments have been adopted to achieve the goals of full employment, which are sought by all economies. However, the contingency that we have been experiencing as a result of the pandemic has made it difficult, as it has for most countries in the world, to maintain a stable economy, and this has cost jobs and caused increased levels of poverty.

In line with the analysis carried out by the Committee of Experts and with the aim of enhancing the development of employment policies in the context of decent work, and also the institutional capacity of actors responsible for training, implementation and follow-up of public policies, the elements of formal employment policy have been strengthened, comprising four pillars which are geared to meeting the social commitments with regard to the population that is facing major obstacles as regards gaining entry to the labour market and remaining in it.

In addition, the “single window” for business has been created to facilitate the establishment of formal enterprises. Since it became operational in 2018, a total of 84,724 new enterprises had been created up to September 2020.

The Colombian Government created the employment mission with the purpose of having viable policy strategies and instruments financially and legally geared to the best performance of the labour market in the short, medium and long term, overcoming the challenges related to the sustained rise in the unemployment rate that we have experienced since 2015 and the prevalence of informal employment rates of over 60 per cent, all in addition to the new situation facing the country as a result of COVID-19.

The mission conducts a comprehensive and in-depth analysis of the labour market and addresses various themes such as training for employment, the management of employment and productivity, the regulatory and institutional framework, and also demographic, regional and macroeconomic aspects of the labour market. The mission has an advisory board, a technical secretariat, thematic round tables and the preparation of policy studies and documents which will help with the design of public policies. We would like to emphasize, Madam Chairperson, the support that the ILO has provided to our Government for the implementation of this mission.

The mission has been progressing with the development of diagnostic documents by the expert committees and the heads of the mission, on the basis of which recommendations will be made regarding the policy of social protection for workers, labour regulation, training for employment and productivity. In the process of shaping these outputs, talks were held on social protection, employment, employment and gender, employment in the rural sector, pensions and old-age protection, protection for loss of employment and unemployment insurance, supply of jobs and labour productivity, which have been inputs for the development of these outputs.

Furthermore, and with the goal of tackling the pandemic, the Government has created the programme of support for formal employment, in which over US\$1.86 billion have been invested, targeting 142,000 employers and benefiting over 4 million workers.

With regard to telework as a mechanism for the protection of employment, and above all as a health containment measure, the adoption of exceptional and alternative measures was authorized, such as home work as regulated by Act No. 2088 of 12 May 2021.

In order to stimulate and promote youth employment for the 18 to 28 age group, the Government will provide an allowance equivalent to 25 per cent of the minimum wage for employers who establish formal employment relationships with this population group.

For Colombia the vocational rehabilitation of persons with disabilities is of supreme importance. For this reason various actions have been undertaken that reflect the analysis and conclusions of the Committee in the General Survey. In total coherence with this, Colombia has established Decree No. 392 of 2008 which highlights incentives for enterprises in the hiring of persons with disabilities, which has improved the rate of employment for persons in this category. In addition, the Government of Colombia is providing tax incentives for enterprises which have hired persons with disabilities in every tax year throughout the employment relationship.

Lastly, we reiterate the Government of Colombia's commitment to continue using all its operational capacity to implement policies that seek economic recovery in employment, all within the framework of social dialogue.

**Worker member, Spain** – At the outset, on behalf of the Trade Union Confederation of Workers' Commissions of Spain (CCOO), I would like to express my appreciation for the opportunity to participate in this debate.

As many people know, Spain has just published a specific regulation on telework. The new regulation aims at preventing this mode of work (which, though not new, was almost anecdotal in Spain) from becoming a new form of exploitation and a cost for workers. It should be noted that the regulation is the result of social dialogue with significant involvement of the trade unions, which, for the Workers' Commissions, is primordial. The process of discussion and reflection lasted over three months and ended with the teleworking agreement, which contains three key elements of the European framework agreement on telework. First, guarantee of specific legal certainty; second, voluntary nature of telework; and third, equal rights between telework and on-site work.

Turning to the content of the regulation, the general underlying idea in this regulation is equal rights in both telework, or telecommuting, and on-site work. The main pillar of this regulation is perhaps the fact that consumables, resources, equipment and tools, as well as their upkeep, and payment and compensation for expenses must be borne by the enterprises and determined through mechanisms established by collective bargaining, which places special value on the collective agreement, which we, as unions, particularly appreciate. In addition, companies must avoid any form of discrimination based on gender, firstly, by guaranteeing conciliation. On this point it is important to make clear that teleworking is not conciliation. It is essential to prevent teleworking from becoming a women-oriented activity while men go to the workplace. But it is also necessary to ensure protection against all forms of discrimination or prejudice in conditions of work, including remuneration, job stability, working time, regulation of working hours, guarantee of digital disconnection, vocational promotion and training, as well as the necessary measures for the prevention of occupational hazards.

Another fundamental element is the voluntary nature of telework for the parties. In the same way, the right to reversibility will be regulated through collective bargaining. The right to data protection and privacy is established, with monitoring carried out with the participation of the workers' legal representation. In trade union circles, a vital issue is the recognition of collective rights in telework and workers' entitlement to exercise their collective rights on an equal footing with those working on-site.

To sum up, firstly, we consider that the regulation of telework is a trade union and social dialogue success in Spain, regarding a reality which, it appears, is here to stay. It is necessary to, secondly, establish regulations, with the notion that they are permanent, not temporary; third, ensure extensive regulation to avoid loopholes in the protection of the rights of millions of people; fourth, place value on collective bargaining and thus on the legal representation of workers and unions; fifth, consider the voluntary nature and reversibility of telework; sixth, ensure equal rights in telework and on-site work; seventh and lastly, cover an area that until now has been transparent. Nonetheless, we must be vigilant as to how collective bargaining will eventually respond to certain specific situations, such as how fraud will be reported and prosecuted, how labour inspection will be able to perform and how occupational hazards will be prevented and occupational health ensured.

To conclude, this regulation is an example of the usefulness of trade unionism for the defence of the rights of the working class and of the importance of social dialogue as the best mechanism for regulating labour rights and obligations. Furthermore, the coordinated action of international trade unionism can contribute to ensuring that good

practices, which is what we consider the elements presented today in this forum to be, are extended to other national experiences in their specific contexts.

**Government member, Madagascar** – The Government delegation of Madagascar takes this opportunity to briefly outline the country's efforts in fulfilling its commitments to achieve United Nations Sustainable Development Goal 8 and honour the ILO Centenary Declaration, as reinforced by the 2019 Abidjan Declaration on a human-centred future of work.

Indeed, in 2017 Madagascar became an Alliance 8.7 pathfinder country so as to strengthen its commitment to combating trafficking in persons and modern slavery.

In 2019, in parallel to the President of the Republic's commitment to promoting decent work for all, the Government ratified six ILO Conventions, namely:

- the Protocol of 2014 to the Forced Labour Convention, 1930;
- the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143);
- the Labour Relations (Public Service) Convention, 1978 (No. 151);
- the Collective Bargaining Convention, 1981 (No. 154);
- the Private Employment Agencies Convention, 1997 (No. 181);
- the Domestic Workers Convention, 2011 (No. 189).

From 2015 we implemented a five-year Decent Work Country Programme (DWCP). For the next phase, following a national tripartite workshop intended to draw up a second-generation DWCP, Madagascar identified priorities that reflected the expectations of the ILO Centenary Declaration for the Future of Work and the Abidjan Declaration. These are:

- Priority 1: the creation of decent and productive employment, particularly for young women, young men and vulnerable groups in key sectors of the blue, green and rural economies;
- Priority 2: the transition from the informal economy to the formal economy;
- Priority 3: the improvement and extension of social protection for all workers.

The country is currently undertaking labour law reforms, whose aim and spirit focus particularly on promoting decent work and which take into account the issue of telework.

It should also be highlighted that, in the light of the experience of managing the pandemic, particularly in terms of preventing the spread of COVID-19 in the workplace, the country is also considering ratifying the Conventions relating mainly to the promotion of social security and to occupational safety and health, such as:

- the Occupational Safety and Health Convention, 1981 (No. 155);
- the Occupational Health Services Convention, 1985 (No. 161);
- the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187);
- the Violence and Harassment Convention, 2019 (No. 190).

It should also be noted that the Government is in the process of renewing its national employment policy.

As part of the COVID-19 response, we have increased inspections of workplaces not only to contain the virus, but in particular to monitor the application of legal provisions on working conditions and further promote social dialogue in the workplace. The Government has therefore adopted measures that allow employers to maintain jobs and continue to pay their workers' wages, such as the deferred payment of taxes and social security contributions. The Government, through the National Social Insurance Fund, has decided to grant interest-free loans to laid-off workers to increase their resilience to the crisis. The Government has also decided to issue grants to dismissed workers. The Ministry of Labour, through the labour inspectors, has increased inspections of workplaces to contain the coronavirus by establishing occupational safety and health mechanisms in enterprises and to monitor workers' rights.

We have also reinforced the fight against child labour by adopting an action plan on child labour in mining operations during the pandemic.

Social dialogue, both at the national level and within enterprises, has been strengthened to mitigate the impact of the crisis on workers' rights.

This is a very brief description of the efforts made by the Government of Madagascar to promote decent work against a backdrop of change.

**Worker member, Finland** – On behalf of the Finnish trade unions, I would like to thank you for the opportunity to participate in this debate. I would like to specifically address the question of the employment and vocational rehabilitation of workers with disabilities.

Finland has long been implementing and promoting an inclusive employment policy for workers with disabilities. The Finnish system seeks to adapt as best as possible to the needs of workers with disabilities through targeted services and support.

Our approach is a comprehensive one which relies on the following pillars: first, prevention of risks as the underlying principle of all actions, which also includes prevention of existing disabilities from getting worse; second, promotion of work ability of all workers at the workplace, including workers with disabilities; and third, the provision of tailored services to workers with disabilities by the occupational healthcare services, which are provided and paid for by the employer for every employee in Finland.

This approach is broadly supported by unions as they are involved in the elaboration, implementation and evaluation of policies and plans. Tripartite processes are an intrinsic feature of Finnish industrial relations, and social dialogue is facilitated at all levels: nationally, locally and on-site.

As a result, the adopted measures are fully included in broader employment policies, as illustrated by the recent mid-term review of the employment policy which led the Ministry of Employment to create a new intermediary institution for people with partial work ability, seeking to recruit them for longer-term employment relationships. One aim is that some workers will eventually find employment in the open labour market.

There is no doubt that the COVID-19 pandemic has had negative impacts on the employment of workers with disabilities. The crisis has revealed some gaps that need to be addressed in order to ensure that post-COVID policies aimed at enhancing the employment of workers with disabilities are effective.

First, measures should be adopted to improve the services provided to workers with disabilities. In particular, public employment services should be more inclusive and provide targeted guidance, for example through specialized case managers and regular



contacts with the workers to assess their needs. Rehabilitation services should further adopt a multidisciplinary approach, including medical, vocational and social rehabilitation to better cater to the needs of workers with disabilities. To achieve this, efforts should be made to enhance the expertise of professionals in contact with workers with disabilities. Flexible paths should also be considered, for example with the possibility to be employed part-time while receiving a part-time disability pension.

Secondly, in the workplace, reasonable accommodation should be provided to facilitate physical access to the workplace as well as the working conditions and integration of workers with disabilities. In this regard, the new technologies can offer extended employment opportunities.

Finally, we observe an increase in cases of sick leave and disability pensions due to mental health problems. We consider that more emphasis should be given to addressing mental health issues through targeted policies and actions.

**Observer, IndustriALL Global Union** – I would like to bring my greetings from the workers in mining, energy and manufacturing, in over 140 countries.

The lack of global governance was exposed by this pandemic. We saw poor coordination or a total lack of it with regard to prevention, lockdown measures, treatment and, most of all, occupational health and safety. We did not develop common protocols and finally failed to provide universal access to vaccines, and we, as representatives of pharmaceutical workers around the world, are committed to producing the vaccines necessary to provide universal access as long as trade barriers are suspended.

At the moment that we see a lot of the stimulus measures for recovery, with packages being brought by a number of countries, it is a moment to reflect about foreign direct investment and what each should bring about in changes in decent work for the countries. Trade-off measures and provisions should be part of foreign direct investment in these stimulus packages with a clear commitment from companies that benefit from these packages to respect for fundamental rights, sustainable employment and decent work.

We welcome as well the prospect of new legislation on regulating supply chains in Germany following France. We hope that these measures will be important for German companies to take care of decent work throughout supply chains along with human rights. But most importantly, we think that the parties of the ILO should encourage bilateral relations respecting labour and capital in global agreements. We have global agreements with 49 multinational companies that employ around 9 million workers plus around 30 million in their global supply chains. These are the best supply chains and all of these companies are successful.

The ILO we thank too for being the house for us to sign a number of our global framework agreements. But I would like to highlight the provisions of some of them. We have a global agreement with one enterprise that provides for prevention of precarious employment; with another enterprise we have a global agreement that regulates future of work and more recently telework; with another enterprise we have provisions for a just transition to renewable resources; and with yet another enterprise we have a global agreement that establishes a global union committee with representatives of workers in the supply chain that have direct contact with the global company.

Moreover, during this pandemic, as you know, the textile and garment sector was one of the most affected and infected sectors, and the companies tended to save their

shareholders instead of cutting the orders immediately, and then we saw a number of workers that were left without any protection. We were able to reach agreement with all the textile and garment brands with which we have global agreements. When we have a joint declaration with them that we sign, then we have the work provision for sustainable orders, foreseeable orders for the future, and a sustainable relationship with their suppliers that were very important for our unions on the ground to anticipate the work and income of the workers.

It is very important that we work for more multilateralism, more global governance, more national legislation and regulation but most of all we need sound labour relations at global, national and local level establishing and guaranteeing freedom of association and collective bargaining.

**Observer, International Transport Workers' Federation (ITF)** – My intervention will focus on Chapter 3 of the General Survey. As a global union federation representing frontline transport workers, including app-based rideshare drivers and food delivery workers, we have seen first-hand the devastating impacts of disguised employment relationships in the so-called gig economy during the pandemic.

Most platform companies deny the existence of employment relationships with their workers, primarily because classifying them as employees would cost the platforms an average 20 to 30 per cent more.

Misclassification impacts on workers' incomes, it deprives them of essential workplace and social security protections and curtails their ability to join trade unions and bargain collectively.

If we look at the limited public data available, it becomes apparent that most gig workers in several countries come from ethnic minority backgrounds and/or are migrant workers. Therefore, in this context, the misclassification of workers takes on an added dimension, given its disproportionate adverse impact on racialized communities.

This is why Recommendation No. 198 needs to be at the centre of policy debates around the fight against disguised employment. Three elements of the Recommendation are critical in this regard: first, the measures to remove incentives that exist to disguise an employment relationship; second, the provision regarding the legal presumption of employment status; third, the non-exhaustive list of indicators of an employment relationship.

The versatility of this instrument allows it to respond perfectly to changes in the world of work. Indeed, in the European Court of Human Rights case *Sindicatul Pastoral Cel Bun v. Romania* regarding the trade-union rights of Orthodox priests, the Court applied the Recommendation No. 198 employment relationship indicators to find an employment relationship. The United Kingdom's Court of Appeal recently applied the Recommendation in the case of *NUPFC v. Certification Officer*, which concerned the rights of foster carers to form a trade union. Last year, in *Esteban Quiemada v. US ride-hail company*, Uruguay's Court of Appeal applied the Recommendation to determine the existence of a labour relationship between the company and its drivers. These decisions demonstrate how the multifactorial test contained in Paragraph 13 of Recommendation No. 198 based on a primacy of facts approach can be reliably used across sectors, old and new. This approach can also help courts dismantle myths peddled by platform companies, including the false trade-off between the ability to work flexible schedules and employment protection, for example. But, as encouraging as these decisions are, it should not be left to vulnerable gig workers alone to fight these court battles.

First, platform companies themselves should do the right thing and stop misclassifying the workers. The OECD MNE Guidelines, for example, explicitly require enterprises to avoid supporting, encouraging or participating in disguised employment practices in line with Recommendation No. 198.

Second, governments need to proactively combat misclassification in line with Recommendation No. 198. Earlier this year, and as we heard from the delegate from Spain, a new law came into force in that country that provides for a presumption of employment status in favour of app-based food delivery riders, very much in line with Paragraph 4 of the Recommendation. More governments need to step up in this way.

Thirdly, in line with Convention No. 98, the 1998 ILO Declaration on Fundamental Principles and Rights at Work and the conclusions of ILO tripartite meetings on this topic, among other things, governments also have a duty to promote collective bargaining for all workers, including platform workers and the genuinely self-employed. Indeed, in countries like Norway, Sweden and Italy, platform companies are entering into bona fide collective agreements with independent trade unions. Progressive industrial relations systems, backed up by strong labour sectors, deliver for workers.

Finally, it would also be very important to look carefully at the Committee of Experts' conclusions in paragraph 1067(q) of the General Survey, which states that "given the proliferation of non-standard forms of employment, including disguised employment, the inclusion of employment status as an expressly protected ground of discrimination under international labour standards should be seriously considered". Disguised employment denies millions of workers access to fundamental rights. Misclassification is a social and racial justice issue. Now is the time to reaffirm the continued relevance of the employment relationship while guaranteeing a floor of rights for all workers, irrespective of employment status.

**Observer, Confederation of Workers of the Universities of the Americas (CONTUA)** – When, in this same Committee in 2018, as the tripartite constituents present from 115 countries, we discussed the report of the Committee of Experts on "Ensuring decent working time for the future", which referred to disconnected time, the accounting of working time and private life, hybrid working days and teleworking, we could never have imagined the speed with which that analysis and those comments on the need to update international standards would turn out to be the priority focus of discussions on labour matters in all countries, under the impulse of the unprecedented and un hoped for generalization of telework as a consequence of the COVID-19 pandemic.

Nor could the impact of the pandemic on the world of work have been foreseen when in 2019 we discussed the Centenary Declaration on the Future of Work.

The international standards that have regulated telework since before COVID-19, as well expressed by the Committee of Experts, envisage this labour practice as another type of home work, and set out certain basic protective measures for a form of labour contract that it was envisaged would grow gradually as an accompaniment to technological development and digitalization.

The pandemic changed and accelerated everything. In the sectors that I am representing here, the public sector, and particularly the university sector, with the exception of health services, practically all work since March 2020 has been carried out remotely. The delay in vaccinations in the poor countries of the south, the outcome of the miserable global inequality in the distribution of doses, means that even today there has not been a return to working face-to-face in many countries.

The consequences of this disordered, unregulated and forced transition to emergency teleworking in the public sector is known by all here. Transferred responsibilities, the costs of equipment and connectivity for workers, arbitrary decisions without spaces for social dialogue, exhausting working days and labour harassment outside statutory working hours, harsh restrictions on trade union activities and severe pressure on wages in many countries.

Purely analogue activities, in which there had been no move to distance working, needed to have recourse to this methodology of telework and digitalization as the only way of maintaining services. The always resilient Latin America maintained the whole of its education system, and a large part of its public and private services, based on the efforts of men and women workers who moved their offices into their homes, with their own devices and connections, while at the same time caring for their school age children, and keeping up with care work. Women have undoubtedly been the worst affected during this process.

We wish to emphasize during this discussion, as we begin to emerge from the pandemic, that we need to take action rapidly in the ILO and in our countries to extend the protective cloak of fundamental labour rights to cover persons who will continue to be engaged in telework, whether partially or wholly, as exhaustive studies are not required to know that many jobs will not return to their previous format.

We must do this on the basis of social dialogue, exercising global protective governance over labour relations, and we have always considered that the market alone does not generate tools of balance, redistribution, well-being and social progress.

Accordingly, we in the trade union movement call for the generation in the ILO, and in our countries, of new protective standards for telework, within the context of social dialogue, and ensuring decent work in all its dimensions. Standards which offer protection for just working hours, compliance with the right to disconnect, employment security, pension coverage and the provision of tools for people engaged in telework. Standards that guarantee the exercise of freedom of association, professional careers, training and, of course, the right to strike as envisaged in Convention No. 87 for those who are teleworking. Standards that make registration compulsory, prevent the fraud of denying the existence of employment relationships and, of course, which address the issue of transnational teleworking in production chains.

I wish to finish this intervention with a call not to fall into the trap of analysing trends in social and labour relations, employment in all its dimensions, and particularly telework, taking only into account the prophetic utterances of gurus of a robotic future of work dependent on artificial intelligence. It must be the social partners who determine the rhythm of the modernization of labour relations, always under the banner of social justice.

**Government member, Morocco** – I am honoured to speak on behalf of the Government of the Kingdom of Morocco and would like to thank the Governing Body for including on the agenda the discussion on the application of international standards in respect of employment policy, vocational rehabilitation, the employment of persons with disabilities, home work, and the transition from the informal to the formal economy.

I would like to congratulate the Committee of Experts on the Application of Conventions and Recommendations on the quality of the documents it has prepared on the theme of “Promoting employment and decent work in a changing landscape”. These documents addressed the impact of the COVID-19 situation on the world of work and encompassed, for example, the importance of adopting comprehensive and inclusive

national employment policies, a clear definition of the employment relationship and integrated policies on the transition to formality, as well as the need to ensure equal conditions in home work and to foster the inclusion of workers with disabilities in the labour market.

Moving forward, the Committee of Experts has made a number of key recommendations, specifically, the implementation of the instruments under review, which provide useful guidance to address future work-related changes in a productive and inclusive manner.

Second, the crucial role of lifelong learning in ensuring the active participation of all workers in the labour market and enabling them to successfully navigate future transitions. Third, the comprehensive policies on employment and the transition to formality that must help create an enabling environment for the development of enterprises and their sustainability and, fourth, the invitation to all governments to continue to avail themselves of the technical support of the Office with regard to the various matters dealt with in the instruments covered by this General Survey, in accordance with their specific requirements.

To this end, Morocco wishes to emphasize its full support for the call to action contained in the Centenary Declaration, which states that urgent action is needed to seize opportunities and to meet the challenges of building a fair, inclusive and secure future that goes hand in hand with full, productive and freely chosen employment and decent work for all.

Moreover, for several years now, Morocco has been engaged in major national projects that fall within the areas covered by the instruments in this General Survey. These projects have strengthened the country's response to the COVID-19 situation, including through the National Policy for the Promotion of Productive and Inclusive Employment, which is now at the regional action plan implementation stage, the third series of the National Initiative for Human Development, which aims to foster the social inclusion of specific categories and combat social inequalities. Third, the royal project on extended social protection, which will allow all population groups in the country to benefit from social protection by 2025. Fourth, the Government's plan on gender equality. Morocco has also introduced a national policy for the protection of persons with disabilities. Finally, I would like to mention, again by way of example and not in an exhaustive manner, the integrated public policy for child protection.

**Government member, Senegal** – I have the honour to take the floor on behalf of Senegal, and to compliment the members of the Committee of Experts on the quality of the General Survey. The examination of the General Survey, which deals with a very topical subject, is timely in the context of the socio-economic crisis that the world has been facing for over 18 months.

Over and above the diversity of the vital subjects addressed by the legal instruments covered by the General Survey, the need to promote employment and decent work has taken on greater urgency than ever in the world in order to confront the substantial effects of the COVID-19 pandemic.

In this regard, even if the beginnings of a recovery in socio-economic activity, however timid, have been seen, the world of work is still perturbed by the effects of the health crisis. Adapting to a changing world will therefore necessarily involve the full implementation of aspects relating to employment, the vocational rehabilitation of persons with disabilities, home work, the protection of employment relations and the transition from the informal to the formal economy in order to promote recovery.

The pandemic has further demonstrated the limits of our current systems established to ensure adequate protection for workers in their jobs and coverage by social protection. In practice, in most States, and particularly in developing countries, the level of social protection of populations is still very low, essentially only covering workers in the formal economy. It therefore leaves out of the system most of the population engaged principally in the informal and rural economies.

That is the whole thrust of the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), the principal objective of which is to provide Member States with guidance as a basis for broadening the coverage of social protection to workers in the informal economy, through a process of progressive formalization of this category of protagonists in the world of work.

In the case of Senegal, although it has globally integrated into its national social protection system, through its National Social Protection Strategy, the various floors set out in the Social Protection Floors Recommendation, 2012 (No. 202), it has been compelled to take exceptional initiatives, in terms of the management of the pandemic, to provide social and economic assistance to populations who are deprived or strongly impacted by the effects of COVID-19.

However, aware of the limits of such episodic measures, the Government of Senegal has already engaged in the process of the reform of its national social security system and legal framework. The objective of this reform is to unify all the laws and regulations governing the various branches of social security covered, in accordance with the Social Security (Minimum Standards) Convention, 1952 (No. 102), but also to extend social protection to categories of workers who were previously excluded from or not covered by existing social security schemes, including workers in the informal economy, the self-employed, entrepreneurs and rural workers.

This is the logic that also justifies the legal protection provided for all forms of working relations in Senegal, irrespective of their nature. In this regard, the national labour legislation, with the same rules, covers both home work and work performed in enterprises.

Moreover, Senegal accords particular importance to the protection of persons with disabilities and their vocational reintegration through the provisions of its Labour Code.

The Social Orientation Act, adopted on 6 July 2010, has also allowed Senegal to develop a National Employment Policy for Persons with Disabilities which promotes and protects the rights of this category of vulnerable workers, through a national policy for the vocational rehabilitation, integration and employment of workers with disabilities. Accordingly, this Act provides for a quota of jobs to be reserved for persons with disabilities, both in the public service and the private sector.

Through this measure, Senegal reaffirms its commitment to the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the importance that it attaches to the principles of equality of opportunity and treatment and action to combat any form of discrimination in employment, work or occupation, irrespective of the status of the person concerned.

**Employer members** – Allow me to thank all the Governments and the Workers that have spoken, for the rich, informative and interesting debate which provided a lot of important and useful information on the current state of law and practice relating to the



employment instruments covered by the General Survey. The discussion also provided ideas and suggestions for activities to be undertaken by the ILO in this context.

We would like to conclude by stressing the need to further develop and improve policies that promote full, productive and freely chosen employment. Measures intended to facilitate labour market inclusion of disadvantaged groups such as women, younger workers, people with disabilities and informal workers should give due attention to an enabling environment for sustainable enterprises, in particular, for small and medium-sized enterprises, productivity improvement and skills development.

Finally, we place on record that the Employers will also finish a more comprehensive submission on the General Survey in writing to be reflected in the Committee's report.

**Worker members** – I also wish to thank all the speakers for their interventions, which have enriched our discussion. But we have also particularly noted the observations of the Employers.

In general terms, we wish to recall that the role of our Committee is not to supervise the work of the Committee of Experts in order to award it good or bad marks. Similarly, it is not for our Committee, and still less for a particular group, to outline the mandate and the manner in which the Committee of Experts fulfils its mission. It is therefore totally inappropriate that observations have been made on the way in which the Committee of Experts has defined and undertaken this General Survey. The instruments examined are not disembodied words and phrases, and they relate to issues and situations that must also be examined. In the view of the Workers, it is essential to insist on the following elements.

An effective and adequate employment policy implies substantial public and private investment. It is therefore essential to allow States to have adequate budgetary margins to make the necessary investments and to meet collective needs in a satisfactory manner through the public service. Similarly, States also have the vital responsibility of offering employment prospects and making up for the shortcomings of the private sector. The diversity of the latter must be highlighted. The social and solidarity economy, and the cooperative movement, are all elements that enrich private initiative.

It is also necessary to place emphasis on the responsibility of employers in this respect. Investing in worker training, modernizing production, as well as increasing investment in research and development, are part of this responsibility.

We have not mentioned it enough, but in addition to the post-COVID recovery, our societies also have to take up the challenge of the ecological transition, which highlights the importance of the elements that we have just referred to. Employment policy must also be focussed on workers with the explicit objective of combating unemployment and underemployment.

It is also necessary to bring an end to the race for greater flexibility. We have been able to see how this policy has a heavy impact on the fundamental rights of workers and imperils the equilibrium of societies. Many workers are rightly demanding autonomy, but no worker demands the precarity that very frequently characterizes these forms of employment. It is fairly curious to hear in discussion in the ILO that some do not hesitate to refer to the needs of consumers to defend greater flexibility. The mandate of our Organization is based on the very idea that the market logic cannot dominate workers' lives. The rights that they are guaranteed by ILO instruments are an antidote to this trend. The purpose of human activity cannot be reduced to an infernal race towards

greater consumption and awareness is needed of the limits set by nature and human dignity.

Through our discussions, we have been able to see how disguised employment relationships represent a danger that must absolutely be contained. Legislative action to specify the criteria of the employment relationship, as well as the role of jurisdictions in ensuring effective compliance, is essential in this regard.

The Employers have argued that Recommendation No. 198 must not constitute an obstacle to the creation of jobs. And yet, no proof is given to show that this position is well founded. Indeed, on the contrary, there are more reasons to suppose that a correct classification of employment relationships creates jobs, by preventing them being wrongly classified as civil or commercial relationships. Moreover, it prevents the development of social dumping and unfair competition.

Even though it appears that the Employers have divergences with the Committee of Experts, they will undoubtedly agree with us in at least reading correctly Recommendation No. 198, which explicitly provides for the primacy of facts in the classification of employment relationships. The considerations expressed in relation to the will of the parties are therefore contrary to the clear and explicit text of the Recommendation.

One subject that will take on even greater importance in the years to come concerns the impact on workers' rights of new technologies and forms of work organization. We insist on the fact that such tools must be in compliance with these rights, and particularly those relating to working time.

The Employers appear to doubt that workers can benefit in this context from such rights as collective bargaining. This approach is very far from the real situation, as this right is increasingly widely recognized in many countries. There may be divergences in theory, but at a certain point it is necessary to see and take reality into account. Indeed, that corresponds to the very demands made by employers who have recourse to these platforms and accept collective negotiation. The same applies to certain categories, such as homeworkers paid on a piece-rate basis, whose rights must be guaranteed and respected.

With regard to workers in the informal economy, it is time to evaluate the implementation of the Recommendation and to assess the problems encountered and the improvements made. In the analysis of the causes of this phenomenon, it will be necessary to pay attention to the effects of the deregulation of labour legislation, which bears a heavy responsibility. Similarly, the links with the informal economy will need to be kept under observation so as to ensure that these workers are not exploited within the framework of supply chains. Guaranteeing social protection for these workers through a transition leading to formalization is also essential.

The General Survey and our discussion have provided an opportunity to shed light on the situation of many vulnerable groups: women, migrants and also youth. A specific approach for these groups must be outlined in the implementation of the instruments under examination. The same applies to workers with disabilities. It is important that the economic models that are promoted give full consideration to this category of workers and allow them to develop and contribute to society.

With regard to ratification and implementation measures, the General Survey identifies difficulties and obstacles, and the means of overcoming them. The Workers support this approach. In this regard, we do not therefore share the views of the

Employers' group. If you listen to them, the difficulties described are insurmountable. But if we follow this type of reasoning, no entrepreneur would dare to take the least initiative, which happily is far from being the case.

In concluding my intervention, I wish to draw attention to the fact that our Organization is human-centred, in other words focused on workers. Despite the sometimes very technical nature of our discussions, it is important not to lose sight of this objective, which gives meaning to our action and legitimacy to our policies.

**Chairperson** – This intervention brings us to the end of the list of speakers registered for the discussion on the General Survey this afternoon.

For your information, the adoption of the outcome of our discussion on the General Survey and its Addendum is planned for Thursday, 17 June. The document will be published on 15 June on the Committee's web page.

## 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 received since the last session of the Committee of Experts

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

Countries mentioned in [paragraph 102](#) of the General Report – page 24

**Belize, Congo, Djibouti, Dominica, Equatorial Guinea, Grenada, Guyana, Lebanon, Madagascar, Netherlands (Aruba and Sint Maarten), Nigeria, Saint Kitts and Nevis, Saint Lucia, Sao Tome and Principe, United Republic of Tanzania – Tanganyika and Vanuatu.**

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

**Belize.** The Government has sent some reports due.

**Netherlands (Aruba and Sint Maarten).** The Government has sent all reports due.

**Nigeria.** The Government has sent most of reports due.

**Sao Tome and Principe.** The Government has sent some reports due.

**United Republic of Tanzania – Tanganyika.** The Government has sent some reports due.

In addition, written information was received from the Government of **Madagascar**

See below under Part B.

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

**Congo, Djibouti, Dominica, Equatorial Guinea, Grenada, Guyana, Lebanon, Saint Kitts and Nevis, Saint Lucia and Vanuatu.**

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

Countries mentioned in [paragraph 104](#) of the General Report – page 24

State	Conventions Nos
<b>Albania</b>	– Since 2018: MLC, 2006
<b>Congo</b>	– Since 2015: Convention No. 185, – Since 2016: MLC, 2006, and – Since 2018: Convention No. 188
<b>Equatorial Guinea</b>	– Since 1998: Conventions Nos 68 et 92
<b>Gabon</b>	– Since 2016: MLC, 2006
<b>Guinea</b>	– Since 2019: Conventions Nos 167, 176, 187 and 189

State	Conventions Nos
<b>Jamaica</b>	– Since 2018: Convention No. 189
<b>Maldives</b>	– Since 2016: MLC, 2006
<b>Romania</b>	– Since 2017: MLC, 2006
<b>Sao Tome and Principe</b>	– Since 2019: Convention No. 183
<b>Sri Lanka</b>	– Since 2019: MLC, 2006
<b>Tunisia</b>	– Since 2019: MLC, 2006
<b>United Republic of Tanzania</b>	– Since 2019: Convention No. 185

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

**Jamaica.** The Government has sent the first report on the application of Convention No. 189.

**Sri Lanka.** The Government has sent the first report on the application of the MLC, 2006.

**United Republic of Tanzania.** The Government has sent the first report on the application of Convention No. 185.

In addition, written information was received from the Government of **Guinea**

See below under Part B.

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

**Albania, Congo, Equatorial Guinea, Gabon, Maldives, Romania, Sao Tome and Principe and Tunisia.**

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

Countries mentioned in [paragraph 103](#) of the General Report – page 24

**Dominica, Equatorial Guinea, Grenada and Saint Lucia.**

Countries mentioned in [paragraph 106](#) of the General Report – page 25

**Congo, Equatorial Guinea, Gabon, Maldives and Romania.**

Since the last session of the Committee of Experts, no reports have been received from the countries mentioned above

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

**Congo, Dominica, Equatorial Guinea, Gabon, Grenada, Maldives, Romania and Saint Lucia.**

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

Countries mentioned in [paragraph 110](#) of the General Report – page 26

**Afghanistan, Antigua and Barbuda, Bangladesh, Barbados, Belize, Plurinational State of Bolivia, Chad, Congo, Djibouti, Dominica, Equatorial Guinea, Gabon, Grenada, Guinea-Bissau, Guyana, Haiti, Iraq, Kiribati, Kyrgyzstan, Lebanon, Liberia, Madagascar, Malawi, Maldives, Mauritius, Montenegro, Mozambique, Netherlands (Aruba and Sint Maarten), Nigeria, Papua New Guinea, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Seychelles, Sierra Leone, South Sudan, Syrian Arab Republic, United Republic of Tanzania (Tanganyika), Tuvalu, Ukraine, Uganda, Vanuatu and Zambia.**

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:

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

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

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

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

**Saint Vincent and the Grenadines.** The Government has sent replies to the majority of the Committee's comments.

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

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

**United Republic of Tanzania (Tanganyika).** The Government has sent replies to the majority of the Committee's comments.

In addition, written information was received from the Governments of **Afghanistan, Liberia, Madagascar and South Sudan**

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:

**Antigua and Barbuda, Bangladesh, Barbados, Belize, Plurinational State of Bolivia, Chad, Congo, Djibouti, Dominica, Equatorial Guinea, Gabon, Grenada, Guinea-Bissau, Guyana, Haiti, Kiribati, Kyrgyzstan, Lebanon, Maldives, Mauritius, Montenegro, Mozambique, Papua New Guinea, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Sierra Leone, Syrian Arab Republic, Tuvalu, Ukraine, Uganda, Vanuatu and Zambia.**



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

Countries mentioned in [paragraph 155](#) of the General Report – page 40

**Belize, Chad, Congo, Dominica, Grenada, Guyana, Haiti, Liberia, Maldives, Marshall Islands, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, South Sudan, Timor-Leste, Tonga, Tuvalu and Yemen.**

Since the last session of the Committee of Experts, Solomon Islands and Tonga have sent reports on unratified Conventions and Recommendations

In addition, written information was received from the Governments of **Liberia and South Sudan**

See below under Part B.

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

**Belize, Chad, Congo, Dominica, Grenada, Guyana, Haiti, Maldives, Marshall Islands, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Sierra Leone, Somalia, Timor-Leste, Tuvalu and Yemen.**

## 6. Failure to submit instruments to the competent authorities

Countries mentioned in [paragraph 172](#) of the General Report – page 43

**Albania, Bahamas, Bahrain, Belize, Plurinational State of Bolivia, Brunei Darussalam, Chile, Comoros, Congo, Croatia, Democratic Republic of the Congo, Dominica, El Salvador, Equatorial Guinea, Eswatini, Fiji, Gabon, Gambia, Grenada, Guinea, Guinea-Bissau, Haiti, Hungary, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Liberia, Libya, Malaysia, Malta, Marshall Islands, Pakistan, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Solomon Islands, Somalia, Syrian Arab Republic, Timor-Leste, Tuvalu, Vanuatu, Yemen and Zambia.**

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

**Chile.** On 19 January 2021, Chile ratified the Protocol of 2014 to the Forced Labour Convention, 1930. The Protocol will enter into force for Chile on 19 January 2022. According to the criteria established by the Committee of Experts, with this ratification, Chile is no longer in serious failure to submit.

**Fiji.** On 22 March 2021, Fiji submitted all of the outstanding instruments adopted by the International Labour Conference from 1996 to 2019 to the Fijian Parliament, thereby making it fully compliant with its submission obligations under article 19 of the ILO Constitution.

In addition, written information was received from the Governments of **Guinea, Liberia, Pakistan and Seychelles**

See below under Part B.

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

**Albania, Bahamas, Bahrain, Belize, Plurinational State of Bolivia, Brunei Darussalam, Comoros, Congo, Croatia, Democratic Republic of the Congo, Dominica, El Salvador, Equatorial Guinea, Eswatini, Gabon, Gambia, Grenada, Guinea-Bissau, Haiti, Hungary, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Libya, Malaysia, Malta, Marshall Islands, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sierra Leone, Solomon Islands, Somalia, Syrian Arab Republic, Timor-Leste, Tuvalu, Vanuatu, Yemen and Zambia.**

## **B. Written information received from Governments concerned by serious failure**

### **Afghanistan**

The Government of Afghanistan is pleased to inform the Committee on the Application of standards of the 109th Session of the International Labour Conference that it is in the process of working on the submission of nine (9) reports on the application of Conventions for submission before the 1 September 2021 deadline. This includes seven (7) out of cycle reports, and two (2) regular reports for 2021.

### **Guinea**

Acknowledging receipt of your email of 20 April 2021 respecting cases of failures relating to standards, I first wish to thank you for the registration of six (6) officials from my department in the course on Best Practices in Reporting organized by the International Training Centre (ILO-ITC) which is currently being held.

In my view, this action, which we welcome at its rightful value, is the result of the favourable response that you gave to request for assistance No. 193 of 28 March 2019, made by Guinea to the ILO concerning the preparation of first reports on recently ratified Conventions.

In addition to this assistance, which was much needed, our country is facing difficulties related to the COVID-19 pandemic. The restrictive measures related to this disease have had a negative effect on research programmes on the ground for the collection of information.

Moreover, the absence of regular counterparts in the various departments has given rise to certain difficulties for our competent services in collecting information.

Despite the difficulties enumerated, which are the basis for the failures noted, the Government of the Republic of Guinea intends to make every effort to comply with its standards-related obligations.

For this reason, while noting the observations of the Conference Committee on the Application of Standards, it envisages:

- renewing the focal points of the Ministry of the Public Service and Labour in relation to other departments and requesting technical support from the ILO for their training on international labour standards;
- preparing the submission of certain Conventions at the next session of the National Assembly.

In the hope that these various measures, once adopted, will enable us to keep up to date, I confirm my sincere collaboration to the Director.

## **Liberia**

Since I (Cllr. Charles H. Gibson) took over as Minister of Labour, Republic of Liberia, it has come to my notice that we as a Government have not reported on ratified Conventions for a number of years now. I have therefore decided to give this a serious consideration and premise upon this, I approached the ILO Abuja Country Office which covers Liberia to see what support is available. Against this backdrop, the Abuja Country Office agreed to support us through the recruitment of a national and an international consultant to ensure that the backlog of pending reports as well as the ones for 2021 are reported on.

Thus, I wish to commit the Ministry of Labour through my leadership to ensure that all pending reports and the ones for 2021 are reported on before the end of July, 2021.

Furthermore, the ILO has also agreed to build capacities of the relevant authorities holding the required information to be reported on to ensure that going forward, reports are submitted in a timely manner.

All of these activities will be financed by the ILO Abuja Country Office.

## **Madagascar**

Madagascar, as a full member of the ILO, is respectful of its governing principles and the derived obligations. Nevertheless, certain events affecting the life of the nation have delayed the supply of its reports.

Indeed, in 2018, the State of Madagascar commenced the process of the ratification of five Conventions and one Recommendation, namely the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Labour Relations (Public Service) Convention, 1978 (No. 151), the Collective Bargaining Convention, 1981 (No. 154), the Private Employment Agencies Convention, 1997 (No. 181), the Domestic Workers Convention, 2011 (No. 189), and the Protocol of 2014 to the Forced Labour Convention, 1930. This process required a high level of commitment in terms of time and of the mobilization of resources and the efforts of the Ministerial Department of Labour were focused on this ratification process. Accordingly, Madagascar was able to deposit the instruments of ratification of these Conventions at the International Labour Conference in 2019.

Moreover, in 2020, the consequences of the COVID-19 pandemic did not spare Madagascar, in the same way as several other countries. The state of health emergency declared by the Malagasy Government for several months, with the health measures adopted for this purpose, had a strong impact on the operation of the public administration and the private sector. During and after this state of emergency, the priority of the Department of Labour was to ensure the application of health measures in the various workplaces, and particularly enterprises. These priorities therefore delayed the preparation and supply of the reports due from Madagascar.

In view of these requirements, which are still continuing to affect the normal functioning of the Malagasy administration, the Government of Madagascar accordingly requests the International Labour Organization (ILO) to grant additional time for the preparation and finalization of its reports.

The Permanent Mission of the Republic of Madagascar to the Office of the United Nations and the Specialized Institutions in Geneva and Vienna thanks the International Labour Organization in Geneva for its valued collaboration and takes this opportunity to convey its distinguished greetings.

## Pakistan

Pakistan joined the ILO in 1947 and has since ratified 36 ILO Conventions including 8 pertaining to fundamental rights. Pakistan values the ILO's role and contribution in advancing labour rights and decent work for all.

The Government of Pakistan accords high priority to effective implementation of ILO Conventions to which it is a party including obligations under article 19 of the ILO Constitution and submitting all instruments (Conventions, Recommendations and Protocols) to the concerned authorities.

The Government is pleased to report that, in 2020, the 39 instruments adopted during different sessions of ILCs were placed before the Federal Cabinet for a decision to fulfil the requirement of article 19 of ILO Constitution. The Federal Cabinet directed the Ministry of Overseas Pakistanis and Human Resource Development (MOPHRD) to initiate requisite consultation process for ratification/acceptance of 15 instruments including 4 Conventions whereas, ratification/acceptance of 24 instruments were postponed.

The MOPHRD through technical assistance of the ILO Country Office in Pakistan held necessary consultations, conducted GAP Analysis and assessed national laws vis-à-vis four Conventions to be ratified and shared final reports with relevant stakeholders including Provincial Governments to enact/align the relevant legislation/rules with the provisions of these Conventions.

The actions taken so far by national authorities to complete necessary internal processes for placing the four Conventions before Federal Cabinet for ratification are reflective of the Government's will as well actions taken. It is a work in progress. Thus, reflection of Pakistan among countries that are yet to fulfil the requirement under article 19 of ILO Constitution (page 43/paragraphs 171–174), in the "Application of International Labour Standards 2021 Report III I Addendum (Part-A) Addendum to the 2020 Report of the Committee of Experts on the Application of Conventions and Recommendation" does not fully take into account the efforts made and progress being achieved.

The MOPHRD has also initiated the process for submitting the Violence and Harassment Convention, 2019 (No. 190) and the Violence and Harassment Recommendation, 2019 (No. 206) to the Federal Cabinet for which the ILO Country Office has been requested for a short brief on these instruments. The MOPHRD will proceed in the matter once the requisite brief is received.

The Government of Pakistan reiterates its appreciation to the supervisory role of ILO bodies and is committed to implementing international labour standards. It is hoped that the Committee on the Application of Standards will take into due account the affirmative steps taken by the Government and the political will for continued improvement in the labour standards at national level.

## Seychelles

The Government of Seychelles would like to inform the Committee on the Application of Standards that it is part of its plan through the Ministry of Employment

and Social Affairs to submit the outstanding ILO adopted instruments to the competent authority.

It acknowledges that the six Recommendations which were submitted to the Cabinet of Ministers in 2018 must also be submitted to the National Assembly being the competent authority, albeit advise by the Department of Foreign Affairs on national procedures that submission to the Cabinet of Ministers shall suffice given the Recommendations are not legally binding. This information was communicated to the ILO in June 2019 during the International Labour Conference. The necessary steps will therefore be undertaken for submission of these Recommendations to the National Assembly.

Furthermore, the Government would like to advise that submission of other adopted instruments remain pending due to disruption of COVID-19 pandemic on the work plan of the Ministry of Employment and Social Affairs. A Cabinet paper for the ratification of the ILO Domestic Workers Convention, 2011 (No. 189) was drafted in late 2019 in consultation with the social partners. However, the submission of the paper to Cabinet of Ministers was delayed due to the effects of the pandemic on the labour market that required urgent interventions by the Government. The ILO Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019 were also added to the list of instruments for possible ratification and submission to the competent authority. Its submission has also been delayed due to the impact of COVID-19 on the Ministry's plan. The Ministry intends to relaunch the process in order to comply with our international obligations.

It must be noted that upon submission of the adopted instruments to the competent authority, the Government provides a brief gap analysis between the instruments and national policies and laws, to support and guide the action to be taken towards the instruments. Delays in receiving information from stakeholders and lack of institutional expertise often contribute in hindering the submission process to the competent authority given the technical nature of the instruments.

The Government of Seychelles nevertheless wishes to reiterate its commitment towards the implementation of international labour standards and the importance to fulfil international obligations with the ILO. We wish the Committee fruitful deliberations at this year's Conference during this challenging time.

## South Sudan

The Government of South Sudan noted the agenda of your Committee in document CAN/D.0/Rev.2 as well as the document listing "Cases of serious failure by Member States to respect their reporting and other standards-related obligations" (document ILO serial number wcms\_794585).

Our Government also notes in particular that you received no information from our article 22 reports in reply to all or most of CEACR comments, and that we failed to supply reports for the past five years on unratified Conventions and Recommendations article 19 reports for inputs on General Surveys.

We deplore this situation.

We also wish to explain that South Sudan, the world's youngest nation, is gradually working towards better application of its ILO constitutional obligations regarding the reporting on the application of international labour standards.

A first effort was made in August 2019 when we jointly organized a workshop in Juba on ILO reporting with the assistance of the Office. It resulted in submission of article 22 reports after a long period of non-compliance in this respect. We realize that the substantial quality of these reports must be improved, including reactions to issues raised by the ILO Committee of Experts.

In a further effort by our Government, I am pleased to share that South Sudan established a Labour Advisory Council on 26 May 2021, as mandated by the South Sudan Labour Act 2017. One of the tasks of the Council is to adhere to the obligations arising from the ILO Constitution as stipulated by Article 5(1)(a to e) of the ILO Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

The draft Regulations of the Council was discussed in a tripartite manner with support from the Office earlier this week on 30 May and 1 June. In addition, my Government is seriously looking into the ratification of ILO Convention No. 144.

Now that the Labour Advisory Council will be operational soon, and with the continuous assistance from the Office, we are hopeful that in the future, my Ministry will faithfully adhere to all reporting obligations arising from the ILO Constitution.

While South Sudan regrets it is not accredited to the 109th Session of this International Labour Conference, we however wish informally to submit this information to your Committee and are thanking you for the opportunity.

## **C. General comments of the Employer and Worker spokespersons**

### **General comments of the Worker spokesperson**

Given the inescapable constraints of the particular context that we are experiencing, the Committee has modified the procedures for the special sitting that it usually holds on the subject of cases of serious failure to respect reporting and other standards-related obligations.

Nevertheless, these modifications enable us to address this fundamental question, in the first place through written observations, while reserving the possibility subsequently for the listed governments to provide new information during the sitting and enabling the spokespersons of the Workers' and Employers' groups to make final observations during the sitting too.

The Committee of Experts' report shows clearly that the current crisis has had a serious impact on the fulfilment of constitutional obligations by Member States.

Even though we can recognize the difficulties encountered by Member States in this regard, the Committee of Experts rightly recalls that the ILO Constitution does not provide for any exception to these obligations, even in times of crisis. The fact remains that in today's context of crisis resulting from the COVID-19 pandemic, we can see a worrying trend towards an increasing number of violations of fundamental rights, whether in relation to occupational safety and health or with respect to the exercise of the fundamental freedoms of association and collective bargaining. All of this makes dialogue between the ILO and the Member States even more essential than in normal times.

Member States should also be reminded that these reporting obligations are precisely what enable the ILO to gain a better understanding of the difficulties faced by Member States in the application of ILO instruments and to provide suitable responses to these difficulties.



Without compliance with these fundamental obligations on the part of Member States, the ILO cannot fully discharge its role either through its supervisory system or in its other areas of action. So it is the Member States themselves that are the victims of non-fulfilment of their constitutional obligations since the ILO is diminished in its capacity to provide adequate responses, particularly at a time of crisis.

It is therefore essential to raise this issue and to insist that countries which fail to meet their obligations make the necessary arrangements without delay and take all possible steps to fully respect their constitutional obligations.

Even though this year is undeniably a peculiar year in which we cannot fail to note a drastic reduction in the fulfilment of reporting obligations, we must not lose sight of the fact that the decrease in the number of reports received is a worrying trend that we have been bound to deplore for a number of years.

Although the ILO certainly has a role to play in providing assistance, it is for Member States in the first place to allocate sufficient resources to enable them to respect the obligations imposed on them by the ILO Constitution.

As regards the reporting obligations relating to ratified Conventions, we cannot fail to note a very sharp reduction in the number of reports received by comparison with last year. The proportion of the number of reports received during the last session of the Committee of Experts (859) compared with the number of reports requested by the Committee of Experts (2004) was only 42.9 per cent compared to 70.7 per cent for the preceding session, in other words 27.8 per cent less. This is a significant decline that gives cause for concern and it cannot be justified by the crisis alone, bearing in mind the observations that we have made above.

It also appears from the Committee of Experts' report that of all the reports requested from governments, only 26.5 per cent of them were received in time, namely by 1 October. Governments have been less punctual than last year, since 39.6 per cent of reports were received in time last year. This is also a significant decline. Already in the previous year we noted a decrease regarding the submission of reports in time. This is a worrying trend and it needs to be reversed strongly in the years to come. It is vitally important that governments submit their reports in time so as not to disrupt the smooth functioning of the ILO supervisory system and to enable the ILO to be fully informed of the challenges arising for Member States with respect to launching a post-COVID recovery.

Furthermore, 16 countries have not provided any reports for two or more years and 12 countries have not provided any first reports for two or more years. First reports are the reports which are due further to the ratification of a Convention by a Member State. These first reports are of vital importance since they enable an initial evaluation of the application of the Conventions concerned in the Member States.

The ILO Constitution also imposes the obligation on Member States to indicate the representative organizations of employers and workers to which copies of reports on ratified Conventions are communicated. The Committee of Experts' report contains a positive element in this regard: it indicates that all Member States have met this obligation.

Tripartism is indeed the foundation of the ILO. It is therefore essential that the social partners are involved in monitoring the application of international labour standards in their countries. Communicating the reports sent to the ILO to these organizations enables them to contribute to the work of evaluating the conformity of national law and

practice with international labour Conventions. It is also essential that there is genuine tripartite momentum to ensure that this formality is implemented.

Each year the Committee of Experts formulates observations and direct requests to which countries are invited to reply. This year 47 countries have not replied (compared with 44 last year). As the Committee of Experts has emphasized, the number of comments to which there has been no reply remains very high. This negligence has a negative impact on the work of the supervisory bodies. We join the Committee of Experts in inviting non-compliant governments to send all the requested information.

In view of the figures causing even greater concern that those of recent years – which may partly be explained by the crisis context – the deep concern of the Committee of Experts is shared by the Workers' group. While recalling that the prime responsibility for meeting reporting obligations rests on the Member States, we ask the Office to be particularly attentive to the difficulties encountered by Member States, especially because of the health crisis, and to adapt and strengthen initiatives already taken in the past to reverse the negative trend observed for many years and which the health crisis is only making worse. This means ensuring more effective follow-up with respect to countries which seriously fail to meet their constitutional obligations and ensuring that these Member States resume without delay the task of respecting their reporting obligations with an eye to emerging from the crisis.

The Committee of Experts, in collaboration with the Office, recently launched a new positive initiative in this regard and the first results of this can already be seen. This is the urgent appeals procedure, whereby the Committee of Experts is able to examine the application of the relevant Convention, in terms of the substance, on the basis of information accessible to the public, if the Government has not sent a report despite having been urged to do so. This procedure is applicable in cases where the Member State has not sent reports on ratified Conventions for three or more years (four countries are concerned this year) and in cases where the country has not sent any first reports for three or more years (five countries are concerned this year). This year nine Member States are likely to have the substance of their respective cases examined next year by the Committee of Experts on the basis of publicly accessible information if they do not provide the expected report in time.

As indicated above, this procedure already seems to be yielding positive initial results since 7 of the 14 reports for which urgent appeals were launched have been received in the meantime. This is a very positive outcome and we are hopeful that this Committee of Experts' initiative in collaboration with the Office will produce further good results in the future.

Every year our Committee devotes its attention to a General Survey. This cannot be achieved without the transmission of the reports provided by the Member States of our Organization.

It is therefore vitally important that Member States send their reports as part of the preparation of the General Surveys so that we can gain an overview of the application in law and in practice of ILO instruments, even in countries which have not ratified the Conventions under examination.

The General Surveys are invaluable instruments which enable us to hold extremely interesting debates and have a glimpse of prospects for the future. Many General Surveys published in the past are still used today to shed light on possible interpretations of ILO Conventions and Recommendations.

However, we are bound to note that 21 countries have not supplied any information for the last five years to contribute to the last five General Surveys drafted by the Committee of Experts. This is regrettable since these States would have made a valuable input to the overview that the General Survey provides.

Cases of serious failure to submit are cases in which governments have not submitted the instruments adopted by the Conference to the competent authorities for at least seven sessions. This obligation is essential for ensuring, at the national level, official communication of the ILO's standard-setting initiatives to the competent authorities, further to which the Member State can contemplate possible ratification. This year 48 countries are in a situation of serious failure to submit, compared with 36 last year. This amounts to as many missed opportunities for promoting international labour standards adopted by the ILO.

It is essential that Member States constituting cases of serious failure to respect constitutional reporting obligations make every possible effort to comply without delay with the obligations imposed on them.

These Member States are not alone in facing these obligations. They can count on the ILO, which has always shown great willingness to assist Member States with fulfilling their obligations. We therefore invite the Office to continue to provide Member States with the necessary assistance.

However, we must also firmly remind Member States that they have a responsibility to meet their obligations vis-à-vis the ILO. Their credibility and the effectiveness of the various ILO bodies are at stake.

The ILO, for its part, must be firm in requiring the replies and reports that States have to provide on the basis of their obligations and must give the necessary impetus for dialogue between the ILO supervisory bodies and the Member States.

This dialogue is fundamental to the effective application of standards and their dissemination.

### **General comments of the Employer spokesperson**

The discussion this year takes place against the all-overshadowing backdrop of the ongoing pandemic which has had severe effects on both the application and the supervision of ILO standards.

We note that the Committee of Experts once again expressed concerns in the 2021 Addendum to its Report at the low number of government reports received by the 1 October deadline, which was exceptionally modified to allow governments more time under the special circumstances of COVID-19. We fully understand that last year was an exceptional year as governments were primarily concerned with managing the pandemic, but we nonetheless count on them to continue complying with their reporting obligations under articles 19, 22 and 35 in a timely manner and to do so in consultation with the most representative employer and worker organizations. This is important – and it cannot be repeated often enough – because it is government reports that provide the core basis for our supervisory work.

## With regard to the reports on ratified Conventions

### A. Governments' compliance with reporting obligations

We regret to see that even with the extended 1 October deadline there is a decrease in the number of reports received – only 26.5 per cent compared to 39.6 per cent last year.

This just adds to our disappointment with the continued low levels of reporting over the past years. While we understand that the Office has limited finance and human resources, we trust it will nevertheless continue its efforts to provide assistance and encourage governments to meet their reporting obligations in consultation with the most representative employer and worker organizations.

We note with real concern that according to paragraph 102, none of the reports due have been sent for the past two or more years from the following 16 countries: *Belize, Congo, Djibouti, Dominica, Equatorial Guinea, Grenada, Guyana, Lebanon, Madagascar, Netherlands (Aruba and Sint Maarten), Nigeria, Saint Kitts and Nevis, Saint Lucia, Sao Tome and Principe, United Republic of Tanzania – Tanganyika and Vanuatu*. The Committee rightly urges the Governments concerned to make every effort to supply the reports requested on ratified Conventions. We invite these Member States to request ILO technical assistance.

In terms of first reports, we note that like last year, only 5 of the 20 first reports due were received by the time the Committee's session ended. According to paragraph 104, 12 Member States have failed to supply a first report for two or more years, namely *Albania, Congo, Equatorial Guinea, Gabon, Guinea, Jamaica, Maldives, Romania, Sao Tome and Principe, Sri Lanka, Tunisia, and United Republic of Tanzania*.

Out of these 12 Member States, we are particularly concerned about the serious failure of the following countries:

1. Congo – no reporting of Convention No. 185 since 2015, MLC, 2006 since 2016 and Convention No. 188 since 2018.
2. Equatorial Guinea – no reporting of Conventions Nos 68 and 92 since 1998.
3. Gabon – no reporting of MLC, 2006 since 2016.
4. Maldives – no reporting of MLC, 2006 since 2016.
5. Romania – no reporting of MLC, 2006 since 2017.

First reports are vital to provide the basis for a timely dialogue between the Committee of Experts and the ILO Member States on the application of a ratified Convention. We strongly encourage the Governments of these five countries to request technical assistance from the Office and to provide the Committee of Experts the overdue first reports without further delay.

In paragraph 110, we note with concern that the number of comments by the Committee of Experts to which replies have not been received remains significantly high. We would like to understand from the Governments concerned for what reasons they are not responding to the Committee of Experts comments:

- Is it a lack of understanding of or disagreement with the content of observation or direct request?
- Or is it for other reasons?

We understand that COVID might be one significant factor for this, but if there are any other reasons, the Governments should let the Office know, should they require more assistance and/or have ideas to improve the reporting process.

We note with regret that, under paragraph 155, records the following 21 countries as not having provided reports on unratified Conventions and Recommendations requested under article 19 of the Constitution for the past five years: *Belize, Chad, Congo, Dominica, Grenada, Guyana, Haiti, Liberia, Maldives, Marshall Islands, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, South Sudan, Timor-Leste, Tonga, Tuvalu and Yemen.*

We note that the great majority of cases of failure to report are either developing or small island states or both. We suggest that the Office give appropriate attention to this demographic to better assist it to prioritize and focus the assistance it can and does provide to states to meet their reporting requirements.

We welcome the decision taken by the Committee of Experts to take up the Employers' proposal to institute a new practice of "urgent appeals" for cases meeting certain criteria of serious reporting failure that require the CAS attention on these cases. This makes it possible to call governments concerned before the Conference Committee and enables the Committee of Experts to examine the substance of the matter at its next session even in absence of a report. We welcome that 7 out of 14 first reports on which urgent appeals were issued have been received, with technical assistance provided by the Office.

## B. Social partners' participation

Turning now to the social partners' role and participation in the regular supervisory system.

As part of their obligations under the ILO Constitution, governments of Member States have an obligation to communicate copies of their reports to representatives of employers' and workers' organizations. Compliance with this obligation is necessary to ensure proper implementation of tripartism at the national level.

In paragraph 149, we observe that social partners submitted 757 comments to the Committee of Experts this year – 230 of which were communicated by the employers' organizations and 527 were by workers' organizations. We trust the Office will continue to provide technical assistance, as well as capacity-building to social partners, to enable them, where appropriate, to send comments to the CEACR.

From our side, employers' organizations' members of the International Organisation of Employers (IOE) are working with the invaluable support of the IOE secretariat to contribute to the supervisory system in a more effective manner. We are doing this through submitting up-to-date and relevant information to the Committee of Experts on how Member States are applying ratified Conventions in law and in practice, communicating not only shortcomings in application, but most importantly any progress made and alternative ways to implement ILO instruments.

Comments from employers' organizations are of particular importance to inform the Committee of Experts about the needs and realities of sustainable enterprises in a given country with regard to particular ratified Conventions.

We trust that the Committee of Experts will reflect these comments, as well as any additional comments by the Employers in the discussion of the CAS, fully in their observations.

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. Without these inputs, the Committee of Experts and the CAS cannot properly supervise the implementation of ILO standards.

We understand that last year was a particularly challenging year for all of us and we appreciate all the efforts made to enable the supervisory system to continue to do its work.

We hope our continued efforts to streamline reporting and extending the possibilities for e-reporting will help facilitate government reporting and increase the number of reports and social partners' comments received in the future. In our view, these efforts need to be complemented by a significant consolidation, concentration and simplification of ILO standards. In that regard, we hope that the work of Standards Review Mechanism will help us move forward. Last but not least, we would stress that it is important for governments before ratifying ILO Conventions to make sure that they not only have in place the capacity to implement the respective Conventions but also the capacity to meet their regular reporting obligations.

#### D. Discussion by the Committee

**Chairperson** – As you are aware, exceptionally, it has been decided that the Office would prepare a document compiling the information received by the States concerned by the various failures. This document consists of three parts, namely the list of countries concerned by each of the six failures; the written information communicated by the governments in question; and the general comments sent by the spokespersons of the Workers' group and the Employers' group.

It should also be recalled that cases of serious failure are determined according to certain criteria which are described in paragraphs 19 and 20 of document D.1 on the working methods of the Conference Committee.

May I remind you that speaking time is limited to two minutes for each intervention, as indicated in the document on the working methods of the Conference Committee. Once all speakers have completed their interventions, I will give the floor to the two Vice-Chairpersons for their concluding remarks and I will then present the draft of the conclusions, criteria by criteria, for adoption by the Committee. Allow me to first give the floor to the Deputy Representative of the Secretary-General, Ms Curtis, to provide some information for the Committee.

**Deputy Representative of the Secretary-General** – Concerning the countries on the list of serious failure, I would like to inform the Committee that the following Member States are not accredited to the Conference: Dominica, Gambia, Grenada, Guinea-Bissau, Marshall Islands, East Timor and Tuvalu.

**Chairperson** – Before inviting the Government of Djibouti to take the floor, I would like to highlight that Djibouti is called upon for failure to supply information for two years – or more – on the application of ratified Conventions, and failure to supply information in reply to the comments of the Committee of Experts.

The Government representative is not connected. While we wait for the representative to connect, I will give the floor to the Russian Federation.



**Government representative, Russian Federation** – Thank you very much for this opportunity to make a short statement in relation to the reporting cycle under articles 22 and 19 of the ILO Constitution, in 2020.

I would like to start by expressing my sincere gratitude to the ILO and the Committee on the Application of Standards for the opportunity to postpone submission of the reports, due to the outbreak of the global pandemic. It was a wise decision that actually helped to ease the burden on the whole international community related to labour and the social sphere. In this regard, I have a question for the Committee in relation to the information on the ILO website on non-submission of the report on Convention No. 81.

I would like to ask the Committee for clarification of this situation because, from our understanding, the current reporting cycle means that the deadline for all reports to be submitted in 2021 would be postponed for one year. After their kind clarification, I would perhaps like to try to find a solution which could be based on mutual respect and dignity.

We hope that the Conference Committee and the Committee of Experts would accept this situation with understanding. In this regard, the Russian Federation kindly requests the ILO to grant the possibility of submitting the report on Convention No. 81 by 1 September 2021, together with the other reports included in this reporting cycle.

We also kindly request the Office to update the information on the NORMLEX website related to article 19 reports, as the reports on unratified Conventions were submitted to the ILO last year.

**Chairperson** – We will now give the floor to Angola. Let me point out, however, that Angola is not on the list of cases of serious failure.

**Government representative, Angola** – I would like to take this opportunity to convey the warm and fraternal greetings pending the success of the work of the Committee. The Republic of Angola submitted 13 reports for the years 2019 and 2020 relating to ratified Conventions, and provided additional information on the report on instruments relating to employment, presented in 2019, pursuant to articles 19 and 22 of the ILO Constitution.

Regarding the submission of the Conventions and Recommendations adopted by the International Labour Conference to the competent authorities, namely the information requested in the 2018 report, the Republic of Angola has encountered enormous difficulties in submitting to the competent authorities the instruments adopted by the International Labour Conference, considering that the official language of the Republic of Angola is Portuguese and the documents are adopted in the Organization's working languages. However, the Government of Angola will make efforts, with the support of the Organization's secretariat, in order to address this situation.

**Chairperson** – We will now give the floor to the Government of El Salvador for the failure to submit instruments to the competent authorities.

**Government representative, El Salvador** – We are here today because our country has been designated as a case of serious failure to submit international labour standards and, therefore, has been called on to supply information to the Conference Committee.

In our intervention in the plenary of the Assembly and when the Government of President Nayib Bukele took up office, we highlighted, in no uncertain terms, the importance of enforcing a labour policy as a cross-cutting pillar of our country, with the support of all sectors involved, based on a tripartite spirit and under equal conditions of

the workers' and employers' sectors, as the expression of what the ILO has been promoting over the years. Our Government is characterized for having changed the malfunctioning and neglect of over 30 years. Despite the absence of registered submission processes in our country, we have initiated the processes for three Conventions and seven Recommendations, through tripartite consultations and an interinstitutional working group under the chancellery, fulfilling and aligning with the commitment, as a State, to guarantee effective protection of labour rights in the country through international and national regulations. In addition, an interinstitutional committee has been established with the Ministry of Foreign Affairs, the Legal Secretariat of the Cabinet and the Ministry of Labour to put instruments in place that enable us to comply with our obligations as a Member State of the Organization and formalize the submission process, and thus duly establish the willingness of El Salvador to comply with the provisions of this Organization's Constitution.

We also requested the support and technical assistance of the International Labour Office during the visit of the Minister of Labour, Rolando Castro, to the Director of the Standards Department, as part of our country's formalization process, as this is a new process for us, which prompts us to modernize the services provided by this governing body in labour matters in our country, particularly in view of the new challenges created by the labour market. We also have presidential approval to ratify these three Conventions shortly.

**Government representative, Eswatini** – Since I am taking the floor for the first time, I would also like to echo the words of the previous speakers by thanking the Office for making the necessary technical arrangements to enable the meeting of this Conference Committee despite difficulties created by the COVID-19 pandemic. We remain confident that it will be possible for the Committee to successfully deliver on its essential supervisory functions in this virtual format.

On the question we are called upon to respond to, we acknowledge that our country is indeed in arrears on the aspect of submitting to the national authorities in whose competence the matter lies for the enactment of legislation all those international labour standards which were adopted between 2010 and 2019. We state that we have received and are continuing to receive technical assistance from the ILO in order to ensure full compliance with our outstanding Constitutional obligations.

As a result, from 10 to 12 May 2021 we had a virtual workshop on international labour standards under the able facilitation of an ILO expert on international labour standards, whose main objective was to build capacity within the Ministry of Labour and Social Security on all international labour standards requirements. Pursuant to that workshop, the process of submission to the competent authorities was initiated earnestly and it is anticipated that this process will be completed without any further delay.

Please further note on a positive note that the above-mentioned international labour standards workshop came at the right time since the Labour Advisory Board (a national tripartite statutory body whose function is to discuss all international labour standards and other employment and labour issues) had already discussed and taken a decision on this subject matter in 2019. The workshop greatly assisted the Ministry of Labour and Social Security in how to implement this decision in terms of examining and instilling an appropriate understanding of the Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, designed by the ILO in 2005.

May I conclude by expressing our sincere gratitude for the technical assistance we continue to receive from the Office in perfecting our constitutional and other international labour standards obligations. Time does not permit me to highlight the strategic areas of development in respect of which the Kingdom of Eswatini is receiving ILO technical assistance in an effort to champion the four pillars of the Decent Work Agenda. May I mention, however, the exceptional tripartite cooperation from our social partners, which remains the driving force behind the successful execution of all development taking place in the country on the labour and employment front.

Most recently, and pursuant to the recommendations of the Standards Review Mechanism Tripartite Working Group, which decided to submit four outdated Conventions for abrogation to the International Labour Conference in 2024, the Government has availed itself of ILO technical assistance to conduct a comprehensive gap analysis with a view to identifying existing notable gaps in our national legislative instruments and policies, in order to prioritize up-to-date Conventions which may be considered for ratification.

**Chairperson** – We will now pass the floor to the Government of Papua New Guinea, which has been indicated for a failure to supply information in reply to comments made by the Committee of Experts, failure to supply reports for the past five years on unratified Conventions and Recommendations, and failure to submit instruments to the competent authorities.

**Government representative, Papua New Guinea** – On behalf of the Government of Papua New Guinea, this response is made in particular to the serious failure to submit 23 instruments adopted by the Conference at 14 sessions held between 2000 and 2017.

The Government acknowledges the seriousness of this matter and has fully noted the comments made by the Committee of Experts in this year's Addendum to the 2020 Report on the Application of Conventions and Recommendations.

Continuous changes affecting management roles have affected the activities within the Department of Labour and Industrial Relations, which has dramatically impacted consistent progress to ensure the adopted instruments are brought before the competent authority. Nevertheless, that has not limited the undertaking and commitment to address the underlying administrative impediments and issues, such as technical capacity constraints and relevant resources to effectively ensure the immediate progress of this matter to Parliament.

The National Tripartite Committee endorsed the Decent Work Country Programme 2018–22, and notes this particular serious outstanding matter as a priority to be implemented by 2022. The Department of Labour is working closely with the ILO Office of the Pacific Island Countries and relevant government agencies to ensure the immediate progress of this matter.

The Government assures the Committee that it will provide an update on the progress of this outstanding matter in the next session.

With respect to the recently adopted Violence and Harassment Convention, 2019 (No. 190) and Violence and Harassment Recommendation, 2019 (No. 206), adopted at the 108th Session of the International Labour Conference, may this Committee be informed that there have been recent calls for immediate action to stop all forms of gender-based violence, which has prompted the establishment of the Special National Parliament Committee to conduct a national inquiry into issues relating to gender-based

violence. This serious undertaking and commitment by members of Parliament surely paves the way towards ratification of Convention No. 190.

Once again, may this Committee be assured that the Government, through the Department of Labour and Industrial Relations, is currently initiating relevant processes to ensure the immediate progress of all relevant matters accordingly.

**Chairperson** – We will now pass the floor to the Government of Pakistan for failure to submit instruments to the competent authorities.

**Government representative, Pakistan** – Let me begin by underscoring that Pakistan accords high priority to implementation of ILO Conventions.

We are pleased to report that in 2020, 39 instruments adopted during various sessions of the International Labour Conference were placed before Federal Cabinet which in turn has directed the Ministry concerned, which is the Ministry of Overseas Pakistanis and Human Resource Development to initiate the requisite consultation process for ratification of 15 instruments including 4 Conventions. Ratification of 24 instruments will be considered subsequently.

The Ministry of Overseas Pakistanis and Human Resource Development through the technical assistance of the ILO Country Office has held the necessary consultations, conducted GAP analyses and assessed national laws vis-à-vis the four Conventions to be ratified. The Ministry has shared final reports with relevant provincial governments and other stakeholders to enact and align the relevant legislation with the provisions of these Conventions.

In our view, actions taken by the Government to complete necessary internal processes reflect our resolve. It is work in progress and we are resolved to do it. Therefore, we consider that including Pakistan among the cases of serious failure to submit does not fully take into account the efforts being made and progress being achieved.

It is encouraging that the Committee on the Application of Standards has expressed satisfaction with regard to Pakistan's implementation of Conventions Nos 138, 29, 81 and 182. We encourage the Committee to also include the cases of progress and good practices in its deliberations. This would help to present a more objective picture.

Finally, we appreciate the supervisory role of the ILO bodies and experts, and hope that the Committee will take into due account the affirmative steps taken and the political will demonstrated for continued improvement in labour standards at the national level.

**Chairperson** – We will now give the floor to the representative of the Secretary-General to respond to the Government of the Russian Federation.

**The representative of the Secretary-General** – With regard to the question asked by the distinguished delegate of the Russian Federation concerning the reasons for which a report on Convention No. 81 was requested of the Government this year, this is actually a request for a report which was expressly made by the Committee of Experts itself in its 2019 observation. Thus, the Committee of Experts itself requested this report which you had to submit in 2020. This request was reiterated in 2021. I hope I have answered your question.

**Chairperson** – We have come to the end of the list of speakers. We will now pass the floor to the spokespersons of the Employers' group and the Workers' group.

**Employer members** – The discussion this year takes place against the omnipresent backdrop of the ongoing pandemic, which has had severe effects on both the application and the supervision of ILO standards.

We note that the Committee of Experts once again expressed concerns in the 2021 Addendum to its report at the low number of government reports received by the 1 October deadline, which was exceptionally modified to allow governments more time under the special circumstances of COVID-19.

We fully understand that last year was an exceptional year, as governments were primarily concerned with managing the pandemic. But we nonetheless count upon them to continue complying with their reporting obligations under articles 19, 22 and 35 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 repeated often enough – because government reports provide the core basis for our supervisory work.

We regret to see that, even with the extended 1 October deadline, there was a decrease in the number of reports received. Only 26.5 per cent compared to 39.6 per cent last year. This just adds to our disappointment with the continued low levels of reporting over the past years. While we understand that the Office has limited finances and human resources, we trust that it will nevertheless continue its efforts to provide assistance and encourage governments to meet their reporting obligations in consultation with the most representative employers' and workers' organizations.

We note, with real concern, that according to paragraph 102, none of the reports due have been sent for the past two or more years from 16 countries. I will not go through them all because they are listed. The Committee rightly urges the governments concerned to make every effort to supply the reports requested on ratified Conventions. We invite these Member States to request ILO technical assistance and return those first reports. We note that, like last year, only five of the 20 first reports due were received by the time the Committee's session ended.

According to paragraph 104, 12 Member States have failed to supply a first report for two or more years. And again, I will not read the list, because they are listed. Out of these 12 Member States, we are particularly concerned about the serious failure of the following countries: Congo, for no reporting of Convention No. 185 since 2015, the MLC since 2016, and Convention No. 188 since 2018; Equatorial Guinea, no reporting of Conventions Nos 68 and 92 since 1998; Gabon, no reporting of the MLC since 2016; the Republic of Maldives, no reporting of the MLC since 2016; and Romania, no reporting of the MLC since 2017.

First reports are vital to provide the basis for a timely dialogue between the Committee of Experts and ILO Member States on the application of a ratified Convention. We strongly encourage the governments of these five countries to request technical assistance from the Office, and to provide the Committee of Experts with the overdue first reports without further delay.

In paragraph 110, we note with concern that the number of comments by the Committee of Experts to which replies have not been received remains significantly high. We would like to understand from the governments concerned for what reasons they are not responding to the Experts' comments. Is it a lack of understanding? Or a disagreement with the content of observation or direct request? Or other reasons? We would simply like to understand.

We understand that the COVID-19 pandemic might be one significant factor for this. But if there are any other reasons, the governments should let the Office know. They may require more assistance and/or have ideas to improve the reporting process.

We note with regret that paragraph 155 records 21 countries as not having provided reports on unratified Conventions and Recommendations requested under article 19. Again, I will not read the list, as they are already listed in the report.

We note that the great majority of cases of failure to report are either developing or small island States, or both. We suggest that the Office give appropriate attention to this situation to better assist it to prioritize and focus the assistance it can and does provide to States to meet their reporting requirements.

We welcome the decision taken by the Committee of Experts to take up the Employers' proposal to institute a new practice of "urgent appeals" for cases meeting certain criteria of serious reporting failure that require the Conference Committee's attention on these cases. This makes it possible to call governments concerned before the Conference Committee and enables the Committee of Experts to examine the substance of the matter at its next session even in the absence of a report. We welcome that seven out of 14 first reports on which urgent appeals were issued have been received, with the technical assistance provided by the Office.

Turning now to social partners' role and participation in the regular supervisory system. As part of their obligations under 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 implementation of tripartism at the national level.

In paragraph 149, we observe that social partners submitted 757 comments to the Committee of Experts this year – 230 of which were communicated by employers' organizations and 527 by workers' organizations. We trust the Office will continue to provide technical assistance, as well as capacity-building to social partners, to enable them, where appropriate, to send comments to the Committee of Experts.

From our side, employers' organization members of the International Organisation of Employers (IOE) are working with the invaluable support of the ILO secretariat to contribute to the supervisory system in a more effective manner. We are doing this through submitting up-to-date and relevant information to the Committee of Experts on how Member States are applying ratified Conventions in law and in practice, informing not only shortcomings in application, but most importantly any progress made and alternative ways to implement ILO instruments. Comments from employers' organizations are of particular importance to inform the Committee of Experts about the needs and realities of sustainable enterprises in a given country with regard to particular ratified Conventions. We trust that the Experts will reflect these comments, as well as any additional comments by the Employers in the discussion of the CAS, fully in their observations.

I would like to conclude by highlighting that, in order to be effective, the regular ILO supervisory system relies upon 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. Without these inputs, the Committee of Experts and the Conference Committee cannot properly supervise the implementation of ILO standards.



We understand that it was a particularly challenging year for all of us and we appreciate all of the efforts made to enable the supervisory system to continue to do its work.

We hope our continued efforts to streamline reporting and extending the possibilities for e-reporting will help facilitate government reporting and increase the number of reports and social partners' comments received in the future. These efforts need to be complemented by a significant consolidation, concentration and simplification of ILO standards. In that regard, we hope that the work of the Standards Review Mechanism will help us move forward.

Last but not least, we would stress that it is important for governments, before ratifying ILO Conventions, to make sure that they not only have in place the capacity to implement the respective Conventions but also the capacity to meet their regular reporting obligations.

**Worker members** – Sixty-six Member States were invited to provide written explanations relating to serious failures to comply with reporting and other standards-related obligations. We have received written information from only seven of them. We thank the latter, but these particularly low figures give rise to deep concern in the Workers' group. We bitterly regret the fact that the 59 other Member States have not provided any written information. We have emphasized in our written observations the fundamental nature of the dialogue that needs to be established between the Member States of the ILO, particularly through scrupulous compliance with these standards-related obligations. This dialogue would appear to be even more essential during a period of crisis.

In the written information provided by Governments, we have taken due note of the difficulties encountered by certain Member States and we note with satisfaction that they have generally called for ILO assistance, and that the ILO systematically responds favourably and very effectively to such requests. This ILO support must be maintained and reinforced to guarantee over time the capacity of these Member States to comply with their reporting and other standards-related obligations. These Member States must however be aware that it is essential to allocate the necessary resources for compliance with these obligations, and that not everything can be left to ILO assistance.

We have heard on several occasions that the health crisis has affected the capacity of governments to fulfil their obligations. While recognizing the undeniable impact that the pandemic has had, it however seems to us important to recall, on the one hand, that the ILO Constitution does not envisage any circumstances in which standards-related obligations can be suspended, as indicated by the Committee of Experts in paragraph 97 of the Addendum to its report and, on the other, that failure to fulfil most of these obligations must continue for several years to be classified as a "serious failure".

The failures referred to therefore often go back to a period that preceded the beginning of the pandemic. It also emerges from the written information provided and from certain Government interventions that there is a clear need for training. Member States must therefore not fail to seize the opportunities of the training programmes established by the ILO, and particularly those intended for the representatives of Member States. The training programmes of the International Training Centre intended for ILO constituents are a valuable aid in this regard. Reference should also be made here to the many very useful ILO resources that are available to Member States, and particularly the technical assistance provided by the many standards specialists in the

field, the Managing ILS reporting website, and the many other tools developed within the framework of the ILO programme and budget.

The ILO is also continuing its efforts to reinforce the capacities of its constituents through new tools, as shown by the placing on line of a first version in English of the Guide on established practices across the supervisory system, which is still being translated into French and Spanish. This tool will also be developed in the form of an application, as announced by the representative of the Secretary-General of the Conference.

We call on Member States that have not provided written information to our Committee, despite the invitation to do so, to be included in the conclusions of the present discussion. That prejudices the discussion in the present special sitting of our Committee and means that we do not know the intentions of the governments concerned, unless they have come to speak during the sitting. We regret in this respect that very few governments have responded during the sitting.

We have taken due note of the commitments made by certain governments in their written information and in certain interventions and we hope that these commitments will be followed up by specific action to ensure full and complete compliance with their obligations. We also call on all of these governments, and particularly those that have not provided any information to the Committee, to bring an end as soon as possible to the serious failings indicated. Over and above formal compliance with these obligations, it is necessary for Member States to ensure the effective social dialogue procedures that underlie these obligations.

Allow me, finally, to react to certain of the observations made by the Employer spokesperson. The Workers' group is open to discussions intended to facilitate greater compliance by Member States with their standards-related constitutional obligations. However, it does not appear to us to be possible to achieve this objective through an approach involving the consolidation or simplification of standards.

We also wish to emphasize the fact that the act of ratifying international labour Conventions must be guided by the will of Member States to give effect to the principles of law and freedom that they contain. Fears related to the capacity to comply with reporting obligations must never be a barrier to ratification. For that purpose, Member States can rely on ILO technical assistance and on tripartite social dialogue.

Finally, it seems to us to be important to conclude by recalling, based on the mandate of the Committee of Experts as set out in paragraph 43 of the Addendum to its report, that while taking into account the comments of workers and employers contributes to the broad recognition of the technical role and moral authority of the Committee of Experts, it can in no event influence the independent and impartial examination by the Committee of Experts of the content and meaning of the provisions of Conventions. We therefore firmly reject the observations of the Employer spokesperson, which call into question the independence of the Committee of Experts and which, moreover, bear no relation to the purpose of the present discussion.

**Chairperson** – I will now read out the draft conclusions, criterion by criterion, for adoption by the Committee.

## Conclusions of the Committee

**The Committee takes note of the information and explanations provided by the Government representatives of Angola, Ewastini, El Salvador, Pakistan, Papua**

New Guinea and the Russian Federation, who expressed themselves, as well as the written communications provided by the Governments of Afghanistan, Guinea, Liberia, Madagascar, Pakistan, Seychelles and South Sudan.

However, the Committee regrets that the Governments of Albania, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Brunei Darussalam, Chad, Comoros, Congo, Croatia, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Gambia, Grenada, Guinea-Bissau, Guyana, Haiti, Hungary, Kuwait, Kyrgyzstan, Lebanon, Libya, Malaysia, Malta, Marshall Islands, Mauritius, Montenegro, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Sierra Leone, Solomon Islands, Syrian Arab Republic, Timor-Leste, Tunisia, Tuvalu, Uganda, Vanuatu, Yemen and Zambia did not provide any written communication to the Committee.

The Committee notes in particular the specific difficulties mentioned by some governments in complying with their constitutional obligations related to the submission of reports and the submission of the instruments adopted by the International Labour Conference to the national competent 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 could 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 the submission of reports on the application of ratified Conventions is a fundamental constitutional obligation and the basis of the system of supervision. The Committee also stresses the importance of respecting the deadlines for such submission.

The Committee expresses the firm hope that the Governments of Congo, Djibouti, Dominica, Equatorial Guinea, Grenada, Guyana, Lebanon, Madagascar, Saint Kitts and Nevis, Saint Lucia and Vanuatu will supply the reports due 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 this submission of first reports on the application of ratified Conventions. The Committee expresses the firm hope that the Governments of Albania, Congo, Equatorial Guinea, Gabon, Guinea, Romania, Sao Tome and Principe and Tunisia 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” (failure to supply reports on the application of ratified Conventions for at least three years and failure to supply first reports on the application of ratified Conventions), 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. With particular reference to the first reports and the detailed information requested, the Committee stresses the importance of this information to set out the baseline for continued regular supervision by the Committee of Experts.

The Committee expresses the firm hope that the Governments of Congo, Dominica, Equatorial Guinea, Gabon, Grenada, Romania and Saint Lucia 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 could examine in substance at its next session the application of the concerned on the basis of publicly available information, even if the Governments mentioned have not sent the reports due. The Committee recalls that governments could request technical assistance from the Office to overcome their difficulties in this respect.

Concerning the failure to supply information in reply 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 to permit a continued dialogue with the Governments concerned.

The Committee expresses the firm hope that the Governments of Afghanistan, Antigua and Barbuda, Bangladesh, Barbados, Belize, Plurinational State of Bolivia, Chad, Congo, Djibouti, Dominica, Equatorial Guinea, Gabon, Grenada, Guinea-Bissau, Guyana, Haiti, Kiribati, Kyrgyzstan, Lebanon, Liberia, Madagascar, Mauritius, Montenegro, Mozambique, Papua New Guinea, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Sierra Leone, South Sudan, Syrian Arab Republic, Tuvalu, Ukraine, Uganda, Vanuatu and Zambia 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 non-ratified Conventions and Recommendations.

The Committee expresses the firm hope that the Governments of Belize, Chad, Congo, Dominica, Grenada, Guyana, Haiti, Liberia, Maldives, Marshall Islands, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Sierra Leone, Somalia, South Sudan, Timor-Leste, Tuvalu and Yemen will comply with their obligation to supply reports on non-ratified 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, Recommendations and Protocols to national competent authorities is a requirement of the highest importance in ensuring the effectiveness of the Organization's standards-related activities.

The Committee expresses the firm hope that the Governments of Albania, Bahamas, Bahrain, Belize, Plurinational State of Bolivia, Brunei Darussalam, Comoros, Congo, Croatia, Democratic Republic of the Congo, Dominica, El Salvador, Equatorial Guinea, Eswatini, Gabon, Gambia, Grenada, Guinea, Guinea-Bissau, Haiti, Hungary, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Liberia, Libya, Malaysia, Malta, Marshall Islands, Pakistan, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Solomon Islands, Somalia, Syrian Arab Republic, Timor-Leste, Tuvalu, Vanuatu, Yemen and Zambia will comply with their obligation to submit Conventions, 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 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 supervisory mechanisms.**

**The Committee welcomes that 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 signals genuine tripartite social dialogue in all ILO Member States. The Committee decides to note this positive development and its encouragement to Member States to continue in that direction in the corresponding paragraph of the General Report.**

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

The Committee on the Application of Standards (CAS) 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 CAS has adopted conclusions on the basis of consensus. The CAS 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 CAS Record of Proceedings, not in the conclusions.

#### Tajikistan (ratification: 2009)

#### Labour Inspection Convention, 1947 (No. 81)

#### Written information provided by the Government

#### Information on the relationship between the State Inspection Service for Labour, Migration and Employment (SILME) and the trade union inspectorate

The Labour Code, the Trade Unions Act, and the Regulations on the Trade Unions Labour Inspectorate, approved by an executive committee resolution of the Council of the Federation of Independent Trade Unions, set out the rights and obligations of trade union labour inspectors.

Article 22 of the Act entitles the trade unions and their associations to exercise oversight of compliance with the national legislation and to make unimpeded visits to a public or private enterprise where trade union members are working, in order to conduct checks on compliance with the national labour legislation by employers and company officials (Version No. 1673 of 2 January 2020). In accordance with article 357 of the Labour Code, the Federation of Independent Trade Unions has established its own inspectorate, which controls and supervises compliance with occupational safety and health (OSH) standards and regulations. The Labour Code entitles trade union inspectors to make unimpeded checks on organizations' compliance with OSH requirements and to submit proposals for mandatory consideration by officials in addressing any breaches of OSH regulations that are found.

The trade union inspectorate operates under the direction of the executive boards of the national and regional trade union committees concerned with the protection of workers' rights and with oversight and compliance monitoring of working conditions and OSH, in all branches of the national economy.

With a view to strengthening trade union supervision of OSH matters, supplementary wording was introduced to the Trade Unions Act in Version No. 1673 of 2 January 2020. Thus, when trade union inspectors discover breaches of workers' labour and social rights and healthcare entitlements, they are entitled to:

- compile reports and issue mandatory compliance orders;



- take part in the investigations of industrial accidents and occupational diseases conducted by state labour inspectors, and carry out an independent inspection;
- impose the requirement for a work stoppage in the event of a threat to workers' lives and health;
- present proposals for mandatory consideration by employers and relevant state entities in remedying defects and breaches in safety, OSH and labour standards.

The trade union inspectors work closely with the state labour supervisory bodies. In 2020, despite the limitations imposed by the COVID-19 pandemic, they conducted over 600 OSH surveys in various branches of the economy, including more than 70 jointly with labour inspectors from the SILME, the Industrial and Mining Inspectorate and the Power Systems Inspectorate.

With a view to raising the effectiveness of the collaboration between SILME and trade union inspectors, the Council for the Coordination of the Activities of Inspection Bodies was set up. The Council has held annual meetings aimed at coordinating the activities of state and trade union labour inspectors, which have been attended by representatives of the Industrial and Mining Inspectorate, the Power Systems Inspectorate and the Health and Epidemiological Inspectorate. However, recently it has not been possible to hold these meetings, for a number of reasons including the pandemic. It may be necessary to revive the Council with technical assistance from the ILO regional office.

The Ministry of Labour, the SILME and the Federation of Independent Trade Unions regularly exchange information on a wide range of issues affecting cooperation on labour inspections, as well as holding joint round tables, seminars and conferences on OSH, labour inspection and other topics.

Thus, throughout 2020 and the first quarter of 2021, representatives of the Industrial and Mining Inspectorate and the SILME consistently invited the trade union inspectorate, together with trade union leaders and representatives, to join their investigations into fatal industrial accidents, or those resulting in serious injury or harm to two or more people.

Representatives of the Federation of Independent Trade Unions and the trade union inspectorate play a consistent role in all meetings of the Ministry of Labour departments concerned with social partnership, labour inspection and OSH. They also contribute actively to the measures taken by the Ministry of Labour and the SILME to improve collaboration on matters such as labour and OSH inspections, delays and arrears in the payment of workers' earnings, and informal employment.

The SILME collaborates with inspectors from the Federation of Independent Trade Unions to hold regular round tables, seminars, conferences and other events involving the social partners, employers and workers on matters affecting OSH and the labour legislation.

### **Status and conditions of service of state and trade union labour inspectors**

Chapter 40 of the Labour Code provides the legal basis for the establishment of state and non-state labour inspection intended to ensure compliance with the national legislation on labour and employment (SILME and trade union inspectorates), as well as for the monitoring of safe operations in industry and mining (Industrial and Mining Inspectorate).

The SILME is a central executive arm of the State. It exercises state supervision and control of compliance with the national legislation on labour, migration and employment, and facilitates the assessment of working conditions at institutions and organizations, regardless of form of ownership or hierarchical status, sole traderships and physical entities which use hired labour. The SILME inspectors are public employees (civil servants) whose status and working conditions are guaranteed under the Civil Service Act and thus ensure them stable employment. In accordance with this Act, wage levels, increments (according to a wage scale reflecting professional seniority) and increases (annual, not less than 15–20 per cent) of labour inspectors are determined by presidential decree.

In the 20 years since the SILME was formed, the regular staff complement of the state labour inspectorate has remained fairly stable. The profile of the SILME staff complement is as follows:

- in 2001 there were 60, of whom 35 worked for regional offices;
- in 2007 there were 72, of whom 38 worked for regional offices;
- in 2014, owing to the abolition of positions in the SILME concerned with pension scheme supervision, the number reverted to 60, of whom 31 worked for regional offices;
- since July 2020 there have been 28 inspectors at headquarters and 32 in the regional offices.

The length of service of SILME labour inspectors in the Ministry of Labour system varies as follows: 3 with over 20 years, 16 with over 15 years, 16 with over 10 years, 12 with over 5 years and 13 with 3–5 years. The SILME has one of the lowest staff turnovers among the state organs. SILME workers are assured the necessary working conditions. Labour inspectors at headquarters and in the regional and territorial offices are provided with adequate office accommodation and equipment (computers, printers, scanners, faxes, copiers, three-part portable toolkits (laboratories) to measure workplace conditions, subsistence expenses, etc.).

All SILME employees are provided with personal internet access, and at headquarters, with technical assistance from the ILO Moscow Office, a functioning information and resource centre and a library on OSH matters have been installed, equipped with a slide projector and an interactive screen giving access to the internet resources of the ILO, the SILME, the Ministry of Labour and other information sites.

At the legislative level, the Civil Service Act and the Regulations on the SILME, and others, contain provisions for effective social protection measures (mandatory life assurance and health insurance for inspectors (as public servants) and their families, pension provision, etc.), define the powers, rights and obligations of labour inspectors, and prescribe the penalties for obstructing inspectors' legal activities, circumventing the legal requirements, threatening inspectors' lives and health, and other offences.

The SILME is supported fully from public funds (wages, subsistence costs, equipment, furniture, etc.). The SILME has 60 employees with public servant status (not counting secretarial staff, drivers, cleaners, etc.). These include 28 headquarters staff and 32 public servants in 8 regional offices.

The Federation of Independent Trade Unions currently comprises 17 trade union branch committees covering all sectors of the national economy and employing

24 labour inspectors. In accordance with article 35(3) of the Trade Unions Act, full-time labour inspectors are paid from the trade union budget.

### **The moratorium on inspections and developments in this regard**

Law No. 1269 of 25 December 2015 on Inspections of Economic Entities states that all state control and inspection bodies must provide written notification of an upcoming planned inspection to organizations and entrepreneurs entitled to hire workers, at least five days in advance, and must not conduct inspections of new organizations during their first two years of operation. The exception is organizations belonging to the high-risk group; these are subject to visits by labour inspectors not more than twice per year, regardless of the starting date of their operations.

In this connection, the number of inspections of enterprises deemed to be high-risk under the terms of the above-mentioned Law on Inspections of Economic Entities must not exceed 10 per cent of the total number of organizations liable for inspection in a calendar year.

In 2018, in order to provide governmental support for manufacturers, create new jobs, strengthen the country's industrial potential and expertise, reduce the number of unfounded and repeat inspections, cut down on corruption, establish favourable conditions for businesses and improve the investment climate, and with technical advice from the International Finance Corporation (IFC) and the World Bank, the Government declared a moratorium on all types of inspection of manufacturing enterprises until 1 January 2021. That moratorium has now expired.

The above-mentioned legal provisions do not cover the supervisory and verification powers of trade union labour inspectors. Trade union inspection bodies are not obliged to agree their inspection plans and activities annually with the Council for the Coordination of the Activities of Inspection Bodies, attached to the Government. The main reason for this is that, under the existing national legislation, trade unions function independently from governmental bodies and any interference in their legal activities is unlawful.

In order to ensure the effectiveness of SILME's inspection work, a number of measures have been agreed with the Council for the Coordination of the Activities of Inspection Bodies. Thus, during the moratorium, on instruction from the SILME leadership and subject to reasonable grounds (serious infringements of OSH regulations at enterprises which endanger workers' lives and health, other violations of labour regulations), and also in response to complaints, claims and enquiries (in writing or online, via a hotline, and the SILME site) made by workers and other persons, labour inspectors have conducted unscheduled and surprise inspections at such enterprises (namely without the required prior written notification) in connection with issues of compliance with labour legislation, OSH standards and regulations, while guaranteeing the confidentiality and anonymity of the complaints and claims. The results of these inspections have been made available to the Council for Coordination and to the claimants, and widely publicized on the official websites of the SILME, the Ministry of Labour and the SILME Facebook page, and by information agencies and media outlets.

The inspections conducted by the SILME since the beginning of 2021 have complied fully and unrestrictedly with the provisions of the Labour Inspection Convention, 1947 (No. 81).

It is important to note that, when labour inspectors receive messages and communications suggesting sufficient grounds for the presence of violations of OSH

standards and regulations and other labour standards, unscheduled and surprise inspections may be carried out without prior notification to enterprises, provided notification is given to the Council for Coordination.

During the moratorium, the judicial authorities and the representatives of the Council for the Coordination of the Activities of Inspection Bodies regularly and without fail looked into the complaints and claims received from the persons concerned, at all industrial facilities without exception, regardless of the moratorium and moreover with the mandatory involvement of SILME inspectors.

During 2020 and the first quarter of 2021, the SILME, acting in accordance with its work plan and in response to requests from law enforcement agencies, instructions and directions from the Government and the Ministry of Labour, and also communications, claims and complaints from workers and legal persons, carried out 2,443 inspections at enterprises, of which 1,957 were scheduled, 457 unscheduled, 28 repeated and 1 supplementary.

Labour standards were at the root of 2,204 of these inspections, while 163 involved safety or OSH, 42 concerned employment and 35 migration. Over the reporting period, 155 (154 in 2019) joint inspections were conducted with other state inspection bodies and trade union inspectors.

A total of 10,922 infringements were detected, of which 8,329 concerned labour, 1,617 were breaches of safety and OSH regulations, 308 concerned migration and 668 related to employment matters. During 2020 and the first quarter of 2021, the overall activities of the SILME helped to refund to the national budget and reimburse to citizens a total amount of 42,127,000 Tajikistan somoni. Out of this sum, 30,053,400 somoni comprised unpaid earnings and 3,475,800 somoni was compensatory pay.

In all the above-mentioned cases of infringement, appropriate action was taken against the perpetrators according to the law, through the issue of mandatory compliance orders designed to eliminate the problem, and the imposition of administrative sanctions.

A total of 130 files were sent to law enforcement agencies for action. Criminal proceedings were initiated against 44 responsible officials. For having committed administrative offences in the sphere of labour, migration and employment, a total of 422 employers and other responsible officials in organizations were handed fines over the reporting period amounting to 520,000 somoni, paid into the national budget.

In the course of their inspections at enterprises and organizations, SILME officials also give special attention to OSH matters, additional safeguards for women, persons with family responsibilities and children, the prohibition of workplace discrimination, the conclusion of collective (branch and regional) agreements (contracts) and individual employment contracts, the furtherance of social justice and the improvement of working conditions for women and children.

In accordance with the requirements of the Law on Inspections of Economic Entities, and with the exception of inspections carried out by governmental decree, a state inspection body must notify an entity in writing of its intention to conduct an inspection within five working days of the starting time. Written notification is the key element in conducting a scheduled inspection and the inspection bodies are entitled to begin an inspection not earlier than five and not later than ten working days from the day when the economic entity receives such notification.

The number of inspections of high-risk enterprises, comprising those with harmful and hazardous working conditions as defined in the provisions of the above-mentioned Law on Inspections of Economic Entities, must not exceed 10 per cent of the overall total of organizations inspected in a calendar year.

It should be recalled here that the above-mentioned provisions do not cover the supervisory and verification powers of trade union labour inspections. Trade union inspection bodies are not obliged to agree their inspection plans and activities annually with the Council for the Coordination of the Activities of Inspection Bodies. The exception is organizations belonging to the high-risk group; these are subject to visits by labour inspectors not more than twice per year, regardless of the starting date of their operations.

For the purposes of ensuring that labour inspectors' work is fully in accordance with the international obligations of Tajikistan, the position of the SILME leadership regarding compliance with the requirements of Convention No. 81 was officially transmitted to the Council for the Coordination of the Activities of Inspection Bodies.

A protocol resolution of the Council for Coordination assigned the Ministry of Justice, the Committee for State Property Investment and Management, and other relevant governmental agencies the task of considering this matter and submitting the necessary proposals for harmonizing the relevant legislation.

Accordingly, on the instructions of the SILME and where there were sufficient grounds (serious infringements of OSH standards, other violations of the labour regulations), and also in response to complaints, claims and enquiries made by workers and other persons, labour inspectors have conducted unscheduled and surprise inspections at such enterprises (namely without the required prior written notification) on issues of compliance with labour legislation, OSH standards and regulations, while guaranteeing the confidentiality and anonymity of the complaints and claims.

Now, checks by SILME labour inspectors comply fully and unrestrictedly with the provisions of Convention No. 81.

The question of the frequency of visits to enterprises is decided by labour inspectors on the basis of the information available about the status of enterprises' compliance with OSH and labour regulations.

A due diligence checklist for inspections was compiled by SILME experts in accordance with the requirements of ILO Convention No. 81, the Labour Code and the SILME Statute adopted by Government Decision in 2014 and amended on 21 July 2020. This document formalized the wide powers of labour inspectors to conduct unscheduled, surprise, targeted and verification inspections. The checklist for the inspections conducted by SILME labour inspectors in 2018 was duly entered in the register of local statutory legislation of the Ministry of Justice. If necessary, the SILME can supply more detailed information on these matters.

**Information on the manner in which state labour inspectors are empowered to take steps with a view to remedying defects observed in plants, layout or working methods, which they may have reasonable cause to believe constitute a threat to the health or safety of workers, in accordance with Article 13**

Pursuant to section 3(7) of the Regulations on the SILME, adopted by Government Decision No. 299 of 3 May 2014, with amendments of 24 July 2020, SILME labour

inspectors are granted sweeping powers to take steps to deal with infringements and defects in this regard.

In 2020, the Government department responsible for assessing working conditions and SILME regional inspectors conducted 118 inspections and detected 1,218 infringements of OSH standards and regulations, while in the first quarter of 2021 they carried out 45 inspections and found 399 such infringements. Also in 2020, in connection with plans for the construction of new industrial facilities, the renovation of industrial facilities, as well as the installation of machinery, mechanisms and industrial equipment, inspectors issued 168 reports containing 1,456 requirements to take the necessary steps to remedy infringements of OSH regulations, and in the first quarter of 2021, 49 such reports containing 383 requirements. In 2020 and the first quarter of 2021, SILME labour inspectors, following review of complaints and communications from workers, acted immediately on 265 occasions to detect and remedy violations of working conditions by officials. In 2020, fines amounting to 241,044 somoni were imposed on 200 employers and other company officials for infringements of the OSH standards and regulations, while in the first quarter of 2021, the fines imposed on 95 employers and other company officials amounted to 121,020 somoni; this became income for the national budget.

#### **Information on the application in practice of inspectors' temporary suspension powers under section 30 of Law No. 1269 related to safety and health**

Under section 7(3) of the SILME Regulations, an inspector is entitled to halt the activities of enterprises and production sites in order to remedy infringements of the OSH requirements, if their activities threaten the lives and health of workers. During 2020 and the first quarter of 2021, there were 95 cases in which SILME inspectors halted activities completely at enterprises, production sites and industrial sole traderships where accidents had occurred, in order to fully remedy infringements of OSH requirements and ensure that inspectors' legal requirements were met. No legal appeals against the labour inspectors' actions over this period were recorded.

#### **Annual report concerning ILO Convention No. 81**

The State Inspection Service for Labour, Migration and Employment sends quarterly and yearly reports on its activities to the Ministry of Labour. The Ministry in turn includes the annual SILME reports in its annual report to the ILO on its implementation of the ILO Conventions ratified by Tajikistan.

In the future, the SILME will send the ILO the annual reports on its labour inspection activities under Article 20 of Convention No. 81, including information on all the subjects listed in Article 21.

#### **Statistics on violations detected and the measures taken by labour inspectors, including fines imposed, cases referred to courts, and other remedial measures taken**

To remedy the 10,922 violations detected in 2020 and the first quarter of 2021, the inspectors issued 2,089 mandatory compliance orders. As a result of their inspections, 179 files relating to employers and to other company officials guilty of violating labour legislation and the rules and regulations on safety and OSH were sent to the prosecution agencies and internal affairs authorities for further action.

The review of these files by the law enforcement agencies led to the initiation of criminal proceedings against 54 employers and other company officials.



Labour inspectors imposed fines amounting to 746,000 somoni on employers and company officials for administrative offences relating to labour, migration and employment; this money was collected and transferred to the national budget. Nine employers were fined a total of 13,100 somoni for failure to comply with orders issued by SILME inspectors, and this sum too was collected in full and paid into the national budget.

*Note: The Government submitted an annex with legislation cited. Information was also provided in reply to the direct request of the CEACR, which was not included to comply with the applicable word limits.*

## Discussion by the Committee

*Interpretation from Russian:* **Government representative, Ambassador, Permanent Representative** – The Labour Code of Tajikistan sets out provisions on the role of trade unions, as approved by the Executive Committee of the Federation of Independent Trade Unions. The Code thus sets out the rights and obligations of trade unions.

The Federation of Independent Trade Unions of Tajikistan, in line with article 357 of the Labour Code, has established its own labour inspection service. In accordance with the requirements of the Labour Code, the inspectors of the Federation have the right to inspect enterprises in accordance with OSH requirements, and to identify violations.

In order to strengthen the role of trade unions in monitoring OSH conditions, the above-mentioned legislation has been amended to comply with certain requirements, including the following: labour inspectors of trade unions have the right to record violations; carry out inquiries into cases of occupational illnesses in accordance with legal requirements; and to impose a work stoppage in the event of a threat to workers' lives. They may oblige employers and relevant state entities to remedy defects and breaches in the areas of OSH and labour standards. Trade union inspectors work closely with the state labour supervisory bodies. A Council for the Coordination of Activities of Inspection Bodies was established in order to further strengthen collaboration between the two inspection services.

The Council meets in certain intervals each year, with the participation of representatives of the Ministry of Labour, the Industrial and Mining Inspectorate, the Power Systems Inspectorate and the Health Inspectorate. However, for a number of reasons, including the pandemic, it has not been possible to hold such meetings in the recent period. It will thus be necessary to revive the Council, with technical assistance from the ILO Regional Office. The Ministry of Labour regularly exchanges information with the inspection services on a wide range of issues, and holds joint round tables, seminars and conferences on OSH, labour inspection and other topics.

In accordance with the provisions of the Labour Code, the participation of inspectors of the Federation, jointly with the state inspection service, is mandatory in inquiries into individual cases of occupational diseases.

In 2020 and the first quarter of 2021, the trade union inspectorate, together with trade union leaders and representatives, were invited to participate in the examination by the Ministry of Labour, including its OSH inspectorate, of issues such as delays and arrears in the payment of workers' earnings.

Special status is given to the work of labour inspectors, since the state labour inspectorate is the central enforcement body of the state system. As such, the

inspectorate has to ensure the proper application of the Labour Code, including with regard to migrant workers, in all enterprises, regardless of their status or form of ownership.

Labour inspectors are civil servants. During the 20-year period since the establishment of the state inspection service, the regular staff complement of the inspectorate has remained fairly stable. Labour inspectors have thus considerable experience and seniority, although the length of service of labour inspectors varies as follows: 3 inspectors with over 20 years; 16 with over 15 years; 16 with over 10 years; 12 with over 5 years. At the current time, the level of staff turnover in the labour inspectorate is the lowest among the different state bodies. Appropriate working conditions are enjoyed by all labour inspectors, regardless of whether they work in the central administration or in regional offices, and all inspectors are provided with sufficient resources, offices, technical support and other necessary resources in order to be able to carry out their work. All employees are provided with personal internet access. With the support of the ILO, it was possible to establish an information centre.

With regard to the moratorium on inspection, the number of inspections carried out in accordance with the law was not to exceed 10 per cent of the total number of organizations liable for inspection in a calendar year. Meanwhile, Government support was provided to strengthen the country's industrial potential, improve export capacity, and build the country's enterprise sector in order to support a positive environment. The moratorium was effective until 1 January 2021 with regard to the inspection of all manufacturing enterprises in order to allow time for the creation of appropriate employment conditions and a pleasant working environment. However, the moratorium came to an end on that date. It also did not affect inspections by trade union inspectors, who do not require any approval or permission for their work and whose action is independent of state authorities.

Turning to the practical implementation of the mandate of the inspectors and the exercise of their powers, the action taken depends on the level of threat to the life or safety of workers. Measures to be taken are explained to employers. Where required, the activity of the enterprise concerned is stopped so that violations of the law can be addressed and appropriate health and safety at work be ensured.

Annual reports are sent by the responsible state body to the Ministry of Labour. Concerning the reports that need to be sent to the ILO, in the future we will strive to send an annual report to the Organization, in accordance with the relevant Article of the Convention and the established procedures.

Furthermore, it is noted that in accordance with articles 357 and 358 of the Labour Code, the powers of labour inspectors are fully respected. As regards labour disputes, they are being dealt with in accordance with the Labour Code, including, where necessary, through proceedings in the courts.

The work of the labour inspectors also includes monitoring the application of the legislation on migration. Labour migration is a major issue in our country. In this regard, the Labour Ministry and the relevant state service ensure that the law is being complied with, particularly regarding voluntary migration, in line with the relevant provisions of the Convention.

Due to lack of time, I do not wish to go through the entire report, which can be found on the Committee web page.

**Worker members** – We have already had the opportunity to recall during our discussions that labour inspection is fundamental. In its general observation on the Convention, the Committee of Experts even refers to a vital public service, which is vital because it is “at the core of promoting and enforcing decent working conditions and respect for fundamental principles and rights at work”. It is not therefore by chance that Convention No. 81 is considered to be a priority governance Convention.

It is essential for workers to be able to count on fully competent inspection services that benefit from the necessary resources for their role. We have to regret the fact that the workers of Tajikistan are not able to count on these fundamental guarantees due to the violations of the Convention by Tajikistan. As we could see at previous sessions of the Committee, the weakening of inspection services is unfortunately a common practice in this region of the world.

The first serious violation of the Convention that we must note in Tajikistan is a result of Law No. 1505, which provided for a moratorium on inspections in industrial workplaces until 1 January 2021. According to the written information provided by the Government, this moratorium has not been extended beyond 1 January 2021. It is essential for Tajikistan to refrain from reintroducing such a moratorium in future, as it is incompatible with the Convention.

Alongside the moratorium on labour inspections, we must also note the restrictions on the powers of labour inspectors, in breach of the provisions of the Convention. The latest law adopted, Law No. 1269, contains restrictions on the powers of inspectors in relation to the frequency of inspections, their duration, the possibility for labour inspectors to carry out inspections without previous notice and their scope. The written information provided by the Government indicates that the restrictions on the powers of labour inspectors only apply to state labour inspectors and not trade union labour inspectors.

Such a moratorium and such restrictions on the powers of inspectors are in violation of Articles 12 and 16 of the Convention, which empowers labour inspectors to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection, and to carry out any examination, test or enquiry which they may consider necessary to satisfy themselves that the legal provisions are being strictly observed. That should apply to all labour inspectors, irrespective of whether they are state labour inspectors or trade union labour inspectors. The powers of state labour inspectors therefore need to be fully restored to ensure conformity with the Convention.

In its general observation, the Committee of Experts regrets that limitations on labour inspection are often imposed following advice from other international institutions. We note that the Government based its action on the advice of the International Finance Corporation and the World Bank when introducing the moratorium. That is extremely problematic, and the ILO should enter into dialogue with these international institutions to avoid it.

Article 13 of the Convention provides that labour inspectors shall be empowered to take steps with a view to remedying defects observed in plant, layout or working methods which they may have reasonable cause to believe constitute a threat to the health or safety of workers. While article 30 of Law No. 1269 appears to contain a provision allowing inspectors to do this, the legal scope of this provision in practice was not very clear. The written information provided by the Government enable us to understand the scope of this provision better and to receive preliminary information on the number of measures taken by labour inspectors on this basis. It is essential for the

Government to provide such information in good time in future as a basis for assessing the implementation in practice of Article 13 of the Convention.

With reference to the duality of the inspection functions assumed by the state and trade union labour inspectors, we thank the Government for the written information provided. However, we regret that this information was not provided to the Committee of Experts in good time. While this information sheds light on some of the issues raised by the Committee of Experts, it appears by the Government's own admission that the coordination of these two inspection services is currently deficient, as the Council responsible for their coordination no longer meets. Moreover, the information on the sources of financing for trade union inspection services is very limited and we must note a further decrease in their numbers in relation to the numbers indicated in the report of the Committee of Experts. The number of labour inspectors has in practice fallen from 28 to 24.

Articles 20 and 21 of the Convention lay down the obligation to publish and transmit to the ILO an annual report on the work of the inspection services, and determine its content. It appears that such annual reports have no longer been transmitted to the ILO by Tajikistan for many years. According to the written information provided by the Government, regular reports are however prepared and compiled within the Ministry of Labour. It is therefore to be regretted that such reports are not transmitted to the ILO, as required by Articles 20 and 21 of the Convention. It is important for Tajikistan to provide further information in good time on the operation of the labour inspection services and the results of their work, so that the ILO can monitor compliance with Tajikistan's obligations under the Convention.

Tajikistan ratified the Convention in 2009. Since 2012, the Committee of Experts has been commenting on the lack of information provided by Tajikistan on the application of the Convention. It is not therefore a new issue. However, what is much more worrying is that it is only recently that Tajikistan appears to have taken a further step in the violation of the Convention. The first hints of the introduction of a moratorium on labour inspections go back to 2018. It is undoubtedly this important development that has led to Tajikistan being severely singled out by the Committee of Experts through a double footnote, and with reason. And yet Tajikistan benefits from a Decent Work Country Programme for the period 2020–24, one of the objectives of which is to increase the effectiveness of labour inspection.

The ILO, and particularly the Committee, must send a strong message to Tajikistan, calling on it to ensure the full conformity of its law and practice with the Convention and to comply with its reporting obligations.

**Employer members** – I would like to start the discussion for the first case on our list, Tajikistan, by underlining the importance of Convention No. 81, both for the protection of workers and for a functioning economy.

In a previous discussion on this Convention, the Employers' group noted that "if ILO Conventions and Recommendations articulate the spirit, philosophy and principles of the ILO, labour inspection is the lifeblood that sustains ILO instruments once they are incorporated in law and regulation and ensure that ratified instruments are implemented in practice". It is no coincidence that this Convention was classified by the International Labour Conference as a priority Convention because of its importance for the governance of national institutions to promote employment and ensure compliance with labour standards.

Moreover, more than one year into what arguably is the worst public health and economic crisis since the 1918 influenza pandemic, cooperation between labour inspectorates, governments, employers and workers has never been more valuable in protecting those in the workplace and accelerating economic recovery. In particular, the pandemic has strengthened the key role of labour inspectorates as suppliers of “technical information and advice to workers and employers concerning the most effective means of complying with the legal provisions”, as mentioned in Article 3 of the Convention.

Convention No. 81 was ratified by Tajikistan in 2009. This is the first time the Committee has discussed Tajikistan’s application of this Convention. Disturbingly, however, this discussion comes under a cloud, having been classified by the Committee of Experts as a “double-footnoted” case, as the Worker members have already mentioned. This matter has been the subject of three observations since 2018, as well as of multiple direct requests since 2012.

In prior observations, the Committee of Experts expressed its concern about the limited functionality of the labour inspectorate over at least the last four years, and the lack of meaningful progress in that time. Key concerns in this regard include:

- the existence of a dual system of inspection undertaken in parallel by the State and trade unions, and the lack of a central authority entrusted with the supervision and control of labour inspection generally;
- a moratorium on all types of inspections of the activities of business entities in manufacturing from February 2018 to 1 January 2021;
- statutory restrictions on the power of inspectors regarding the frequency, duration and scope of inspections and the ability of labour inspectors to undertake inspection visits without previous notice;
- lack of clarity on the powers of inspectors to remedy defects observed in plants, layout or working methods, which could be a threat to the health and safety of workers; and
- no publication of the annual report of the labour inspection services by the central inspection authority.

The Employer members would like to thank the Government for shedding light on the functioning of labour inspection in Tajikistan, as well as for clarifying the reasons behind the moratorium. Our comments will focus on three of the most concerning issues in this case.

First, how the labour inspectorate operates. This is vital, particularly since the Convention essentially requires a system of labour inspection under the supervision and control of a central authority, and where “collaboration between officials of the labour inspectorate and employers and workers or their organisations” is required under Article 5(b).

Furthermore, Articles 3(2), 4 and 6 of the Convention respectively state that:

Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

So far as is compatible with the administrative practice of the Member, labour inspection shall be placed under the supervision and control of a central authority.

In the case of a federal State, the term central authority may mean either a federal authority or a central authority of a federated unit, such as a State.

The inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences.

Given the clarity of the wording of the Convention, it is all the more concerning that the labour inspectorate system in Tajikistan is run simultaneously by the State Inspection Service for Labour, Migration and Employment, and the Federation of Independent Trade Unions. We remain unclear whether all inspections are conducted jointly, but it is clear from the Committee of Experts' observations that there is close interaction between the two inspection branches. Since 2015, pursuant to the Law on Inspections of Economic Entities No. 1269, a Council for the Coordination of the Activities of Inspection Bodies has been created, with the power to coordinate the inspection plans of inspection bodies, to avoid duplication.

Furthermore, in its 2018 observation, the Committee of Experts noted that section 353 of the Labour Code obliges employers to fund the work of the trade union labour inspectorate. All of this is at odds with the Convention. Indeed, in the Employers' view, this seems to institutionalize a breach of the Convention.

While the Convention allows flexibility in the way inspections must be conducted and is accommodating of a variety of systems of labour inspection that are placed under the supervision and control of a central authority, the actual practice seems rooted in historical practices (sharing inspectorate responsibilities between the State and the trade unions) which were common in the past in Central and Eastern Europe. However, we are not in the past, and Tajikistan's practice is not in line with the Convention.

While on this point, the fact that labour inspection duties are covered by trade unions at all is problematic from the perspective of impartiality and independence and in breach of Article 6 of the Convention. In the 2006 General Survey, the Committee of Experts noted that "as can be seen from the preparatory work on Convention No. 81, public servant status was considered necessary for inspection staff as it was the status best suited to guaranteeing them the independence and impartiality necessary to the performance of their duties".

The Employer members consider that more than ten years into the ratification of the Convention, Tajikistan should be able to fully implement Articles 4 and 6 in law and in practice, as well as all other Articles of the Convention previously mentioned.

Under the terms of the Convention, the labour inspectorate must function as an autonomous system under the supervision and control of a central authority, in cooperation with other relevant public or private institutions and in collaboration with employers and workers or their organizations. A system whereby two separate bodies of labour inspection, one run by the trade unions (and, we understand, funded with the employers' contributions) and the other by the Ministry of Labour, is not compatible with the Convention.

The Employers therefore urge the Government to: ensure that inspection staff be exclusively composed of public officials; place the labour inspection under the supervision and control of a central authority; and replace the dual system of inspection by a system that is compatible with the Convention.

Our second key issue relates to the activities of labour inspectors. The Committee of Experts noted that Law No. 1269 partially restricts the power of inspectors, including limiting the frequency of inspection, duration, ability to undertake inspections without



previous notice and the scope of inspections. The Committee of Experts also mentioned lack of clarity around the power of inspectors to remedy defects observed in plants, layout or working methods, which could be a threat to the health and safety of workers. Such limitations are clearly incompatible with the Convention, particularly with Articles 12 and 16. The former provision outlines the power of labour inspectors “to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection” and the latter that “workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions”. These provisions are crystal clear in their intent and ambit, and lack of compliance is hard to excuse. The capacity to remedy dangerous situations should be adapted in compliance with Article 13 of the Convention.

The Employer members reiterate the need for independent and unrestricted operation of labour inspection so as to guarantee good governance, transparency and responsibility in the system for protecting workers’ rights. The Employer members urge the Government to lift these statutory limitations to inspectors’ powers as soon as possible.

The third serious issue is the moratorium, previously mentioned by the Workers, imposed by Decree on all types of inspections of the activities of business entities in the area of manufacturing until 1 January this year, and we understand this no longer exists, that it was not continued past that date. The Employers note that the moratorium, even before it was lifted on 1 January, was not universal and applied only to new organizations during the first two years of operation, except organizations belonging to the high-risk group, which were still subject to visits by labour inspectors, but not more than twice per year.

We also note that even during the moratorium, subject to reasonable grounds, including responding to complaints, claims or inquiries made by workers and other persons, labour inspectors have conducted unscheduled and surprise inspections at such enterprises in connection with issues of compliance with labour legislation, OSH standards and regulations. The moratorium did not apply to the supervisory and verification powers of trade union inspectors, as under the national legislation, trade unions function independently from government bodies and any interference in their legal activities is unlawful. This is very concerning for other reasons mentioned above related to Article 6 of the Convention. Indeed the irony of the Government being able to proscribe the activities of its officials, but not those of the union officials undertaking the same functions, is inescapable.

During the moratorium, the judicial authorities, the representatives of the Council for the Coordination of the Activities of Inspection Bodies regularly looked into the complaints and claims received from the persons concerned at all industrial facilities and without exception regardless of the moratorium. To be clear, the Convention does not allow for the exemption or exclusion of the manufacturing sector from the scope of labour inspection. There is no rational correlation between improved public service management and the suspension of labour inspection.

Finally, the Convention provides for the publication and communication to the International Labour Office of an annual inspection report, which has to include information on the legal basis of labour inspection, the composition and the distribution of inspection personnel, their areas of competence and their activities, as well as industrial accidents and cases of occupational disease. This publication provides a snapshot on the labour inspection in the country every year and must not be neglected. The Employer members request the Government to transmit in timely fashion

a copy of the annual report on labour inspection to the ILO Office in line with Article 20 of the Convention.

*Interpretation from Russian: Worker member, Tajikistan* – The trade unions in Tajikistan are recognized as entities that can represent the workers of Tajikistan in accordance with our Labour Code and fully in line with international labour standards. All standards relating to occupational safety and health are something that we are particularly concerned with. We therefore seek to ensure compliance with all relevant Conventions, including Convention No. 81. We recognize, in the light of issues that have been raised, that there is some information that has to be provided to the Committee.

First of all, in Tajikistan, the situation is that it is not possible for us to ensure that the state labour inspectorate carries out inspections fully in line with the mandate that should be borne by it. We recognize that when it comes to the State Inspection Service for Labour, Migration and Employment, they are not able to carry out inspections in the independent and autonomous way that they should.

We recognize the importance of protecting workers' rights in Tajikistan and we recognize that in the relevant texts, for instance, in Article 11, the powers that are held by the state inspection service are supposed to be exercised in a way that is agreed in accordance with the tripartite partners. Nonetheless, there are a number of questions that have to be answered, particularly relating to the sources of funding for the Inspectorate of the Federation of Independent Trade Unions. I can assure you that the budget that we have has been constantly in decline since 2008. Therefore, because of the way the budget has been decreasing, we have not been able to ensure that the labour inspectorate which operates from the budget of the employers is in fact being funded in the way that it should.

We recognize the importance of efforts to ensure that there can be a truly independent inspectorate in the country and we must recognize that the labour inspectorate does have a plan of work which is in the statutes. Nonetheless, in terms of the way its work is actually being carried out, it is not in fact in line with what it is required to do.

If you look at the functions of the state inspection service within the Ministry, alongside the Federation of Independent Trade Unions, you see that there is a situation in which it is not possible to fully guarantee the right of workers to have their fundamental rights, including occupational safety and health, fully respected. There have been a very large number of violations of the Labour Code, which have been established by the inspectorate and which have not yet been fully investigated.

On the question of the authority of the inspectorate to carry out inspections, including periodical unannounced inspections into specific issues, a certain amount of work is being undertaken, certainly within the organizations at the enterprise level. When there is an accusation of a violation of the provisions of the Labour Code and when workers feel that their rights are not being respected, there is a grievance procedure through which they can submit their complaints.

However, the periodicity of inspections is determined by the labour inspectorate itself, in accordance with the relevant provisions of the Labour Code. That being so, the state inspection service is in touch with representatives of the trade unions who do indeed have the right, through the trade union bodies, to provide information when they think there may have been a violation of the Labour Code.

Trade unions, in the way that they work with the labour inspectorate, work closely with the state inspection service. Despite the difficult situation in the country over the past couple of years because of the COVID-19 pandemic, there have nonetheless been more than 190 investigations of violations that have been flagged in this way to the state inspection service.

The state inspection service works throughout the country in all of the different administrative regions. Its work has been made very difficult because it has had to halt or interrupt some of the work as a result of certain security and safety concerns. Yet, nonetheless, it has been possible to intervene in certain specific cases where workers were able to raise concerns. They have identified a number of violations of workers' rights. These are issues that have been raised in the trade union newspaper *Solidarity* and there has also been information that has been made available over television broadcasts and radio broadcasts.

A lot of work has been done in working with different NGOs and other bodies of civil society within our country. We worked on a tripartite basis with employers and workers, as well as government bodies, and they have sought to monitor activities, especially when it has been recognized that there have sometimes been problems where there has been an overlap in terms of the two parallel inspectorate structures doing the same thing. They have recognized that they now have to work together and ensure that they do not end up duplicating the work done by another body.

**Government member, Portugal** – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The Candidate Countries, the **Republic of North Macedonia, Montenegro and Albania**, the European Free Trade Association (EFTA) country **Norway**, Member of the European Economic Area (EEA), as well as the **Republic of Moldova**, align themselves with this statement.

The EU and its Member States would like to underline the importance we attribute to the promotion, protection and respect of human rights, including labour rights, as safeguarded by ILO Conventions. We also believe that safe and healthy working conditions should be ensured for all, everywhere, and we support the recognition of the right to safe and healthy working conditions as a fundamental right at work, as laid down in numerous ILO Conventions. The EU and its Member States are therefore committed to the promotion of universal ratification, and the effective implementation and enforcement of fundamental international labour standards. Labour inspection is key in promoting and safeguarding decent working conditions, and compliance with Convention No. 81 is essential in this respect.

The EU and its Member States are long-term partners of Tajikistan, with relations guided by the bilateral partnership and cooperation agreement, which came into force in 2010. Jointly with Tajikistan, we are also considering enhancing our relations through a new enhanced Partnership and Cooperation Agreement. We welcome Tajikistan's interest in becoming a GSP+ beneficiary, which would imply an even stronger commitment to implementing ILO fundamental Conventions. An effective labour inspection system is crucial to monitoring the implementation of labour standards.

We note with satisfaction that the moratorium on all types of inspections of the activities of business entities in manufacturing since February 2018, as clarified in the written information from the Government, has now expired, with no plans for its renewal. As the Government maintains that some inspections continued during the moratorium, we invite the Government to clarify the impact of the expiry on the number and rigour of inspection activities. Furthermore, we underline the importance of

ensuring that an annual report of the labour inspectorate is published, containing information on all subjects listed under Article 21 of the Convention, and is transmitted to the ILO in due time. We are deeply concerned about the lack of clarity and the duality of inspection functions assumed by the Government and trade union labour inspectors in the Republic of Tajikistan.

We appeal to the Government to provide the requested information to the Committee on developments in this regard. In addition, information should be provided on the funding of the trade union inspectorates and the manner in which they coordinate with the state inspection service.

In line with the Committee of Experts' recommendation, the EU and its Member States urge the Government of Tajikistan to provide copies of the laws and regulations governing the status and conditions of service of state labour inspectors and the duties and powers of trade union inspectors. Additional information on state labour inspectors' conditions of service in relation to the conditions applicable to similar categories of public servants and trade union inspectors is also requested.

We expect the Government to provide information on the application of the aforementioned laws. Moreover, we appeal to the Government to remove the restrictions and limitations on labour inspectors so as to ensure that they are empowered to enter, freely and without previous notice, to undertake inspections as often and as thoroughly as necessary, and to remedy the defects observed. The EU and its Member States will continue to support the Government of Tajikistan in this endeavour.

**Worker member, France** – It is vital to recall that Convention No. 81 plays a fundamental role due to its interdependence with all international labour standards. Indeed, without a labour inspectorate that has the human, financial and legal resources required to be effective, no fundamental or labour rights can be properly enforced. Its role is currently all the more important, at a time when the pandemic is regaining ground, making the risk of infection in the workplace omnipresent. It is more necessary than ever to ensure compliance with occupational safety and health regulations in general, and specifically those related to COVID-19 risks.

The case under consideration today is problematic in that, firstly, the Government has not fulfilled its reporting obligations under the Convention, despite ratifying it in 2009 and despite the Committee of Experts already having made observations in that regard in 2018. Secondly, moratoriums were established in 2018, 2019 and 2020, up to 1 January 2021, in order to derogate from labour inspection.

The Committee of Experts expresses deep concern at these moratoriums on labour inspection, and at Law No. 1269 on inspections of economic entities, which contains similar restrictions on the powers of inspectors, particularly with regard to the frequency, duration and scope of inspections. This Law contravenes the principles and provisions set out in the Convention.

The Committee of Experts and the Conference Committee have already referred regularly to violations of the Convention in the region, for example in Ukraine and the Republic of Moldova. The Workers are therefore concerned at what could be described as a regional tendency to derogate from labour inspection by means of moratoriums on labour inspections or through laws containing similar restrictions, with the aim of fostering trade, particularly on the advice of the World Bank, which is of grave concern to us. Indeed, in several documents, such as the Tajikistan Systematic Country Diagnostic of May 2018 and the Country Partnership Framework for Tajikistan of April 2019, to name

but two, the World Bank expresses its support for the Government in reducing what it describes as “burdensome administrative procedures” caused by what it deems to be “excessive inspections” and encourages the Government to implement its reforms, which it calls the modernization of labour inspection. This is a question of coherence among the institutions of the multilateral system, some of which, clearly in this case, do not shy away from calling into question the very legitimacy of international labour standards.

The Workers are also alarmed to note that, at any moment, the Government can impose this type of moratorium or legislate with the aim of reducing the powers, and therefore the effectiveness, of labour inspectors, paying little attention to its international obligations, including its obligation to report to the Committee of Experts.

It is vital that the labour inspectorate is able to conduct its work under the Convention, in terms of both prevention and sanctions, in order to provide effective guarantees for workers’ rights.

**Government member, United Kingdom of Great Britain and Northern Ireland –**

In January 2022, the United Kingdom and Tajikistan will celebrate 30 years of diplomatic relations. Through dialogue and targeted programmes, we support Tajikistan’s economic and social development. Through our partnership we seek to ensure the promotion and enhancement of the rules-based international system, effective governance, the rule of law and human rights.

The United Kingdom notes the various and important concerns raised by the Committee of Experts in relation to Tajikistan’s coherence to the Convention. These include the recent moratorium on inspections in industrial workplaces, the incompatibility of national legislation with the Convention in relation to the ability of labour inspectors to make visits without previous notice and as often as necessary, and the failure to provide necessary annual reporting on the work of the labour inspectorate to the ILO. These are clear and serious violations of the Convention. We note Tajikistan’s response to the concerns raised. While the moratorium on inspections has now expired, we urge the Government to take all necessary measures to ensure that no further restrictions of this nature are placed on labour inspections in the future.

We note the statement that all checks undertaken by the State Inspection Service for Labour, Migration and Employment comply fully with the provisions of the Convention. We also note the willingness of the Government to ensure that mandatory annual reporting is provided to the ILO in a timely fashion. We appeal to the Government to engage closely, openly and transparently with the ILO in future and to strive towards full compliance with the provisions of the Convention.

The United Kingdom will continue to support the Government of Tajikistan on achieving this and looks forward to working further with Tajik partners on effective governance and policy innovation and in creating employment opportunities for their people.

**Government member, Switzerland** – The objective of labour inspection is to ensure good governance, transparency and the responsibility of a labour administration system, and also to contribute to the application of international standards in national labour legislation. To ensure the sound functioning of labour inspection, a solid enforcement mechanism must be established, as set out in the Convention.

Switzerland welcomes the progress made in Tajikistan over the past three decades, particularly in relation to the ratification of international labour standards. While

recognizing the efforts made by the Government to modernize labour conditions, Switzerland denounces the moratorium imposed on labour inspection. The moratorium leaves the door open to excesses in labour practices, such as the employment of minors, unpaid work, overtime, particularly in arduous work such as in mines and cement works. Switzerland would be very interested in being informed of the action taken by the Government during this moratorium, particularly to control child labour.

From this perspective, Switzerland encourages the Government to continue its efforts to take all the measures requested by the Committee of Experts. In particular, it encourages the Government to adopt all the necessary legislative measures as soon as possible to end the moratorium on labour inspections and to reinforce the operation of its enforcement system. The Government should allow inspectors to carry out inspections without previous notice and to undertake them as thoroughly as is necessary, in accordance with the Convention.

Finally, Switzerland counts on the goodwill of the Government to intensify its efforts, and to take this opportunity to reform its inspection system, combat corruption and ensure greater transparency in the system, and offer its citizens better working conditions and well-being.

*Interpretation from Russian:* **Another Government representative, the Deputy Minister of Labour, Migration and Employment** – On 19 May 2021, before the start of the International Labour Conference, the Government had the opportunity to speak with specialists from the ILO on the issue of labour inspection. As you know, in 2009, we ratified the Convention. Earlier in the discussion, another Government representative presented the information that we had sent for the consideration of the Committee. We have taken very seriously all the recommendations and conclusions of the Committee of Experts, and we have started indeed to fulfil those recommendations, and to resolve the issues identified.

We understand that there is additional information required with regard to the relationship between the state inspection service and the trade union inspection service. We believe that they are now working together quite well. The labour inspectorate of the Government of Tajikistan, we believe, is in line with ILO requirements, and we have tried to respond to the questions raised. This labour inspection service tries to ensure the necessary labour conditions for workers.

With regard to the moratorium, a law was introduced for a moratorium on inspections in manufacturing by the state inspection service, and then subsequently, the moratorium was extended. However, there were certainly inspections in areas which we considered to be critical. Our inspectors were able to inspect the factories where we had doubts.

With regard to inspection plans, we believe that we are in line with the requirements under the Convention. The plans will be considered by the Ministry of Labour, Migration and Employment of the Republic of Tajikistan, and if we believe it necessary, we will raise issues and also get in contact with other appropriate bodies in that respect.

With regard to the annual labour inspection reports, there have been concrete measures taken in this regard. Thanks to the help from the ILO in this area, every year there is a report published by the state labour inspectorate, in accordance with the reporting responsibilities under the Convention.



Under the laws of the Republic of Tajikistan, state labour inspectors are not allowed to be involved in labour disputes. However, they can be invited to court, and subpoenaed to court as witnesses.

I should note that migration control is overseen by the migration division of the Ministry of Labour, Migration and Employment, and there are labour agreements with regard to labour protection, and also with regard to the protection of workers from other countries. The state labour inspectorate also looks at issues of labour relations between foreign workers and national employers, and also between national workers and foreign workers.

Furthermore, last year, a reform of the labour inspection system in Tajikistan was undertaken, and – partly with a view to providing greater authority to labour inspectors and partly with regard to changing the way that they work – there were some structural changes of the labour inspectorate undertaken at that time.

I should like to say that the comments and the proposals from the Committee of Experts will be carefully considered. We will undertake the necessary additional measures, in terms of both providing the necessary information and in terms of activities. We would like to assure you that the Republic of Tajikistan takes very seriously its responsibilities under the Convention.

**Employer members** – The rich debate we just had in fact proves the continued relevance of the Convention for the world of work.

The Employer members consider that in a State in which the rule of law prevails, a modern labour inspectorate and an independent and judicious legal framework are essential to establishing an environment conducive to enterprise, increasing legal and economic security and reducing the social risks to which investors are exposed. Such a system is capable of maintaining fair competition, promoting investment, economic growth and employment creation. As we have said, this case presented three elements of major concern, the lack of essential authority to supervise and control labour inspections, combined with concerns over a dual system of inspection functions assumed by state and the trade union labour inspectors. The other restrictions, by virtue of Law No. 1269 on inspection of economic entities on the powers of inspectors, relate to the frequency, duration and scope of inspections, the ability of labour inspectors to undertake inspection visits without notice, and the moratorium imposed by Decree No. 990 of January 2018 on all types of inspections of the activities of business entities in manufacturing until January this year. Following the debate, the Employer members invite the Government to commit further to bring its legislation and practice into line with the Convention.

We would like to conclude this brief summary by requesting the Government: to replace the dual system of labour inspection by a system in line with the Convention, with guarantees of the independence and impartiality of labour inspectors, in particular by ensuring that labour inspection staff are composed of public officials only; to ensure that effective collaboration between the officials of the labour inspectorate and employers' and workers' organizations is established and is effective; to ensure that inspections are possible as often as necessary without prior notice and within the scope indicated in Articles 12 and 13 of the Convention; to avail itself of ILO technical assistance in order to adjust the various elements of inadequacy of the Tajik labour inspection system with the Convention; and to refrain from imposing any further moratorium on labour inspections in the future.

On the understanding, from the information provided by the Government, that the moratorium on labour inspection is no longer in effect, we call upon the Government to refrain from imposing any such restrictions in the future.

**Worker members** – These conclusions need to begin with an important reminder: any moratorium imposed on labour inspection is a serious violation of the Convention. The fact that this moratorium is no longer applicable does not take anything away from the gravity of this violation, which applied from 2018 to 2021. It is therefore essential for the Government to take all the necessary measures to guarantee that no further moratorium is imposed on the inspection services in future. To allow supervision of the situation, the Government should make sure that it provides full information on this subject and on the number of inspections carried out by the inspection services.

As we have seen, many restrictions are imposed on labour inspectors. In order to allow the independent, free and effective operation of the inspection services, it is essential to lift these restrictions. The Government must therefore guarantee the full powers of the state inspection services in accordance with the Convention.

We have also seen that the Government recognized in its written observations that the body coordinating the system of state inspection services and the system of trade union inspection services has not met for some time. It is vital to relaunch the operation of this body in order to ensure sound cooperation between these two inspection services and to ensure their effectiveness.

We also call on Tajikistan to engage fully in the achievement of outcome 2.2 of its Decent Work Country Programme established in collaboration with the ILO, which applies for the period 2020–24, namely the effectiveness of the labour inspection is increased.

While the existence of trade union inspection services does not exonerate the Government from establishing state inspection services that are fully competent and with the necessary resources for their action, in conformity with the Convention, we can only share the position of the spokesperson of the Employers' group that it would be incompatible with the Convention to entrust labour inspection functions to the trade unions, in addition to the state inspection services.

The Government must ensure in future that the central inspection authority publishes within a reasonable period an annual report, which also has to be transmitted to the ILO, in accordance with Articles 20 and 21 of the Convention. The Government should also provide the ILO with all the reports of its central inspection authority from previous years, which have not yet been communicated.

For the implementation of these recommendations, we also call on Tajikistan to ensure the full involvement of the social partners.

In general terms, we are bound to regret the lack of information provided in good time by the Government, which inevitably complicates the work of the ILO supervisory bodies. We therefore call on the Government to ensure, in general, compliance with its constitutional obligations in relation to the ILO and to provide all the information requested in good time. More specifically, we ask the Government to provide full information in good time on the powers of labour inspectors to take measures to eliminate hazards to the health and safety of workers, and statistics in this regard. We also request it to provide full information in good time on the state inspection services, with regard to their relations with trade union inspection services, their respective competences, the status of labour inspectors, sources of financing, the coordination of

state inspection services with trade union inspection services, and the respective numbers of inspectors in these services.

With a view to ensuring the effective implementation of all these recommendations, we invite the Government to accept an ILO technical mission within the framework of the ILO technical assistance that is already being provided to Tajikistan.

## Conclusions of the Committee

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

**The Committee regretted the failure of the Government to report in compliance with the Convention to the Committee of Experts.**

**Recalling the fundamental role of labour inspection in achieving decent work and in protecting workers rights, the Committee noted with deep concern the long-standing issues regarding compliance with the Convention.**

**Taking into account the discussion, the Committee urges the Government of Tajikistan to:**

- **take all necessary measures to ensure that no moratorium or other restrictions of this nature on labour inspections be placed in the future;**
- **provide information on the developments regarding labour inspections, including on the number of inspection visits undertaken by the labour inspectors, disaggregated by type of inspections and by sectors;**
- **take all necessary legislative measures to ensure that labour inspectors are empowered to make visits without previous notice, and that they are able to undertake labour inspections as often and as thoroughly as is necessary to ensure the effective application of the legal provisions and to guarantee the powers of the state inspectorate in line with the Convention;**
- **revive the functioning of the Council for the Coordination of the Activities of Inspection Bodies so as to ensure the effectiveness and the efficiency of both labour inspectorates;**
- **implement the outcome 2.2 of the Decent Work Country Programme 2020–2024, in order to increase the effectiveness of the labour inspection;**
- **publish reports on the work of the inspection services and transmit those reports to the ILO in line with Articles 19 and 20 of the Convention; and**
- **involve the social partners in implementing those recommendations.**

**The Committee urges the Government to fulfil its reporting obligations under the Convention.**

**The Committee invites the Government to accept an ILO technical advisory mission within the framework of the ongoing technical assistance of the ILO in Tajikistan.**

*Interpretation from Russian:* **Government representative** – We would like to thank you for giving us the chance to take the floor. At the beginning of May, consultations were carried out with the ILO, with the relevant Ministry of Tajikistan, relating to the Committee of Experts' comments.

The replies relating to the Convention were prepared by us and on 24 May we sent them to the Committee. They contain crucial information on the statistics and social partners' activities. Later, in the Committee, we listened to the discussion on the case, and a series of recommendations were made consequently.

We will continue working on the basis of your comments and recommendations with regard to the preparation of our annual report. Previously, the responsibility came under a separate Ministry. We have noted the comments made in relation to the publication of reports on the work of labour inspection services. At the moment, these issues are being discussed and in the future the full report will be forwarded to the Committee of Experts. It has already been published on the website with comments relating to the moratorium. The temporary moratorium was stopped this year indefinitely, and with regard to future labour inspections, further information will be provided.

**Belarus (ratification: 1956)****Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)****Written information provided by the Government****Measures taken by the Government of Belarus to implement the recommendations of the Commission of Inquiry****General comments**

The Government of Belarus takes note that, due to the deferral of the 2020 International Labour Conference session owing to the difficult epidemiological situation, during the first part of the 109th Session of the International Labour Conference in May–June 2021 the discussion in the Committee on the Application of Standards will be based on both the Committee of Experts' 2020 observations and the additional comments of the Committee, outlined in its 2021 report.

In this regard, the Government regrets that there has been a significant change in the tone of the Committee of Experts' comments prepared in 2021 regarding the country's compliance with Convention No. 87 and the implementation of the recommendations of the Commission of Inquiry, as compared to the position of the Committee set out in its 2020 report. At the same time, in the Government's opinion, a significant negative shift in assessments of the situation in Belarus in the 2021 report of the Committee of Experts is associated exclusively with the political events that took place in the country after the elections of the President of the Republic of Belarus held on 9 August 2020. As a result, on the basis of unverified information from the Belarusian Congress of Democratic Trade Unions (BCDTU) and the International Trade Union Confederation (ITUC) regarding the events that took place after the elections, it was precisely in the 2021 comments that the Committee of Experts included the so-called "double footnote", which means the automatic inclusion of Belarus in the list of countries for consideration by the Committee on the Application of Standards at the 109th Session of the International Labour Conference.

In the Government's opinion, this approach is unacceptable.

Events that were of a purely political nature and were in no way connected with the processes of social dialogue in the world of work should not and cannot be the basis for assessing the situation with the country's compliance with ILO Convention No. 87.

The Government emphasizes that external forces interested in destabilizing the situation in the country took an active organizational and financial part in the preparation and conduct of illegal street actions that took place after the elections of the President of the Republic of Belarus. The main demands put forward by the protesters included the resignation of the Head of State and the holding of new elections. The political structures created with support from abroad were actually paving the way for an unconstitutional transition of power in the country.

The Government notes the groundlessness of statements about the peaceful nature of the protests. Those mass events were carried out in violation of the law and posed a serious threat to public order, safety, and the health and life of citizens. During the protest actions, numerous facts of active resistance to the legal demands of law enforcement officials were recorded, associated with the manifestation of aggression,

the use of violence, damage to official vehicles, blocking the movement of vehicles, and causing damage to infrastructure facilities.

The State, for its part, took all the necessary measures to ensure law and order, did not allow chaos and destabilization of the situation in the country and ensured the safety of citizens.

The Government draws attention to the fact that, in the information submitted to the ILO, the BCDTU and the ITUC are deliberately attempting to link illegal protest actions with the alleged strike movement in the country. This clearly shows the desire of the BCDTU and the ITUC to unreasonably involve these issues in the sphere of ILO competence.

In this regard, the Government emphasizes that this approach is inconsistent with the real events that took place in Belarus at the end of 2020.

In practice, the protest moods affected only a small part of the workers. The country's enterprises continued their work; strikes, as a way to resolve collective labour disputes between employers and representative bodies of workers, were not announced.

At the same time, some workers, under the slogan of participation in strikes which were not announced or organized in accordance with the law, skipped work and refused to perform functions stipulated by their employment contracts. The Labour Code of the Republic of Belarus provides for disciplinary measures, up to dismissal, for such actions.

The Government explains that the application of disciplinary measures to employees is attributed by labour legislation exclusively to the competence of the employer.

Thus, the Government informs that the citizens mentioned in the BCDTU and ITUC complaints, who allegedly suffered for participation in peaceful protests and strikes, were imposed administrative and disciplinary penalties for committing specific illegal actions. This has nothing to do with the persecution of workers and trade union activists for the exercise of their civil or trade union rights and freedoms.

The Government insists that using purely political events to assess the country's implementation of the recommendations of the Commission of Inquiry is completely unreasonable and counterproductive. This can become a serious obstacle to the further development of well-established constructive interaction both within the country and with ILO experts on the implementation of recommendations.

At the same time, the Government emphasizes that over the past years there has been obvious progress in the development of social dialogue in the Republic. As part of its work on the implementation of the recommendations of the Commission of Inquiry, the Government is strictly following the agreements reached and the plans developed jointly with the International Labour Office (the Office). Thus, together with the social partners and the Office, the Government has fully implemented the proposals of the direct contacts mission, which worked in Belarus in 2014.

Currently, the main platform for making decisions on the implementation of the recommendations of the Commission of Inquiry is the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere (the Council), the concept of which was developed jointly with the Office. The Government, employers' associations and trade unions are represented on the Council on an equal basis. On the part of trade unions, the Council includes both representatives of the Federation of Trade Unions of Belarus (FTUB), the largest trade union centre in the country, and the BCDTU.



Within the framework of the social partnership system, the Government is taking targeted steps to establish constructive cooperation with all parties, including the BCDTU, which is represented not only in the above-mentioned Council, but also in the National Council for Labour and Social Issues, in the working group for preparation of the draft general agreement.

However, it should be emphasized that the possibilities of cooperation with the BCDTU are limited due to their extremely destructive position. Acting as an open opponent of the state authorities, the BCDTU representatives build their position on rejection and criticism of any measures of the Government in all areas of social and economic policy, regardless of their intended effect. In such a situation, the development of joint mutually acceptable decisions within the Council is an extremely difficult process.

Nevertheless, even in such difficult conditions, the Council plays a significant role in promoting social dialogue and implementing the recommendations of the Commission of Inquiry. So, for example, it was the Council who developed proposals to abolish the legislative requirement for 10 per cent of employees to create a trade union, and together with the ILO experts developed and implemented proposals of the ILO direct contacts mission, as well as additional measures of technical cooperation with the ILO based on the results of the implementation of the mission's proposals.

The steps taken by the Government to implement the ILO standards were positively assessed by the Committee of Experts. Thus, in the Committee's 2020 and 2021 reports, Belarus is noted among the countries in which there are cases of progress. In particular, the measures taken by the Government to implement ILO Conventions Nos 98, 144 and 149 were noted with interest by the Committee of Experts.

The Government would be grateful to the ILO supervisory bodies for their impartial attitude to the situation in the country and the absence of hasty critical assessments of the actions of the Belarusian authorities aimed at restoring law and order.

The Government appreciates the experience and expertise of the ILO and expects to continue an open and constructive dialogue on the implementation of the obligations stipulated by the ratified Conventions, as well as on a wider range of issues in the social and labour sphere in order to improve the level and quality of life of Belarusian citizens.

## Article 2 of the Convention. The right to establish workers' organizations

As practice shows, today the legal address requirement is not an obstacle to the registration of trade unions. The proof is the data on the number of registered organizations; during the last 5 years (2016–20) 6,027 new organizational structures of trade unions and 3 new trade unions were registered in the country. As of 1 January 2021, there are a total of 25 trade unions (20 republican, 1 territorial, 4 trade unions in organizations), 4 trade union associations and 26,522 organizational structures of trade unions operating in Belarus.

The cases of refusal to register the organizational structures of trade unions are rare and have objective reasons, in most cases not related to the legal address requirement. The main reasons for refusal are non-compliance with the legislation regarding the procedure for creating trade unions and the submission of an incomplete package of documents for registration.

## Articles 3, 5 and 6 of the Convention. The right of workers' organizations, including federations and confederations, to organize their activities

### The procedure for organizing and holding mass events

The procedure for organizing and holding mass events established in Belarus does not conflict with the principles of freedom of association and assembly and is fully consistent with the provisions of the International Covenant on Civil and Political Rights. The exercise of the right of peaceful assembly is not subject to any restrictions, except those that are imposed in conformity with the law and are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, the protection of the rights and freedoms of others.

The norms of legislation stipulating punishment for violation of the procedure for organizing and holding a mass event, which entailed serious negative consequences, are aimed at preventing socially dangerous unlawful acts that pose a real threat to the life and health of citizens. Here we are talking about the unconditional need to maintain a balance of interests and rights of individual groups of citizens and society as a whole. Maintaining and keeping this balance is the direct task of the State.

The fundamental point is that the decision to terminate the activities of the trade union for violation of the legislation on mass events, which caused serious damage and significant harm to the rights and interests of citizens, organizations, society and the State, can only be taken in court.

No decisions were made to liquidate trade unions for violating the procedure for organizing and holding mass events in Belarus.

### The procedure for obtaining and using foreign gratuitous aid

The legislation does not prohibit the receipt of foreign gratuitous aid by trade unions, including from international trade union organizations and associations. At the same time, the law clearly defines the purposes of using such aid and the procedure for its registration, which is applied to all legal entities.

It should be noted that there have been no refusals to trade unions to receive foreign gratuitous aid, as well as no cases of liquidation of trade unions for violation of the procedure for its use.

The established procedure for obtaining funding from abroad is unreasonably linked to Articles 5 and 6 of Convention No. 87. The prohibition on the use of foreign aid for carrying out political and mass propaganda work is due to the interests of national security, and the need to exclude the destructive influence of external forces on the situation in the country.

### Development of the situation in the case of Gennady Fedynich and Igor Komlik

The Government once again draws the attention of the ILO supervisory bodies to the fact that the prosecution of the REP trade union officials, Mr Fedynich and Mr Komlik, took place solely due to their violation of the procedure for carrying out economic activities (tax evasion). The guilty verdict is based on evidence that has passed an objective check during the trial. This case is in no way connected with the activities of the REP trade union and should not be considered as a persecution of trade union activists for the exercise of civil or trade union rights.

The Government has previously submitted detailed information on this issue to both the Committee of Experts and the Committee on Freedom of Association. The comments of the Government, among other things, contained information about the position of the BCDTU chairperson, Mr Yaroshuk, who publicly admitted the unlawfulness of the actions of Mr Fedynich and Mr Komlik. In particular, in his interview under the heading “The REP Trade Union Leadership Seriously Set Themselves Up”, posted on the internet on the day of the arrest of Mr Fedynich and Mr Komlik on 2 August 2017, commenting on the arrest of his colleagues, Mr Yaroshuk, among other things, noted the following:

To put it bluntly, all the correspondence that was conducted with the Danish trade union 3F and the Danish Ministry of Foreign Affairs is in their hands [the investigators of the Financial Investigation Department]. It was a pretty high-profile story that went far beyond the trade union movement.

[The project] works for separatism and splits in the independent trade union movement in Belarus.

I wrote to the investigators that I do not know anything about how the financing was carried out, or about who exactly was bringing or was not bringing the money. I believe that at one time I made a worthy decision not to get into this mud. After all, I will not achieve anything, except that I will create an appropriate reputation for myself. But what I and we all were afraid of – this abscess has burst, to our deep regret. Today the situation seems to dictate to me to say that the “bloody regime” bore down on my people, my organization, but I have to be objective. Today I cannot speak about the “bloody regime” and my “white and fluffy” colleagues. They messed things up.

Currently, in view of the application of amnesty legislation to the convicts, the main punishment in the form of restriction of freedom has been served by Mr Fedynich and Mr Komlik in full.

The further fate of the information storage devices seized during the investigation of the criminal case will be decided after the completion of the check on the fact of committing other crimes of a similar nature by the indicated persons.

### The right to strike

In the Republic of Belarus, the right of citizens to strike is enshrined in article 41 of the Constitution. Thus, citizens have the right to protect their economic and social interests, including the right to establish trade unions, conclude collective contracts (agreements) and the right to strike.

The right of trade unions to declare strikes is enshrined in article 22 of the Law of the Republic of Belarus “On Trade Unions”.

The procedure for organizing and conducting strikes is regulated in Chapter 36 of the Labour Code of the Republic of Belarus.

The legislative provisions that regulate the procedure for organizing and conducting strikes are aimed at creating conditions for resolving a dispute that has arisen through consultations and negotiations within the framework of conciliation procedures. A strike is an extreme way to resolve a dispute if the parties fail to reach an agreement.

In accordance with article 393 of the Labour Code, in the case of a real threat to national security, public order, public health, the rights and freedoms of others, as well as in other cases provided for by law, the President of the Republic of Belarus has the right to postpone the strike or suspend it, but for no more than three months.

The Government considers that the current procedure for organizing and conducting strikes in the Republic of Belarus does not contradict international labour standards.

### Consultations with employers' and workers' organizations

There is a system of social partnership in the Republic of Belarus, and within the framework of this system government bodies, associations of employers and trade unions interact in the process of development and implementation of the socio-economic policy of the State.

The development of draft legal acts regulating issues of the social and labour sphere is carried out with the direct participation of social partners.

The provisions providing for the participation of social partners in the development of draft legal acts are reflected in the General Agreement between the Government of the Republic of Belarus, republican-level associations of employers and trade unions for 2019–21.

So, according to clause 50 of the General Agreement, the Government of the Republic of Belarus:

- submits for preliminary discussion in the National Council for Labour and Social Issues draft legal acts that fall within the competence of this Council;
- when preparing legal acts affecting the labour and socio-economic rights and interests of citizens and the related economic interests of employers, sends to the side of trade unions and the side of employers represented by the co-chairs of the National Council for Labour and Social Issues the relevant draft legal acts for consideration and introduction of comments and proposals, and considers their positions before making a decision.

Despite the fact that the number of workers who are members of trade unions affiliated to the BCDTU and the FTUB is incomparable (the FTUB trade unions represent the interests of 4 million workers), the BCDTU, along with the FTUB, is represented in the main tripartite body of the country – the National Council for Labour and Social Issues, as well as in the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere.

### Discussion by the Committee

*Interpretation from Russian:* **Government representative, Minister of Labour and Social Protection** – In my statement, I intend to touch upon issues concerning compliance with the Convention by Belarus, and our implementation of recommendations made by the Commission of Inquiry. Those recommendations were adopted in 2004 and we have often heard people say that, so far, they have not been fully implemented.

I would urge the Committee not to jump to conclusions, however. Anybody who looks carefully at the Commission of Inquiry's 12 recommendations will see that they instruct the Government and the social partners to work continually and systematically in cooperation with the ILO and they do not give any specific deadlines.

In the recommendations, references are made to the judicial system, to the system for the resolution of disputes and to tripartite cooperation. We are asked to review our system of labour relations to ensure distinct roles for the Government and the social

partners. Many countries have to do this. There is not a single country in the world anywhere at the moment that does not have conflicts between its employers and workers. The Government of Belarus is working systematically to further develop its labour relations, its procedures for social dialogue and its tripartism. Over the last few years, we have tackled specific issues covered in the recommendations and we have informed the ILO supervisory system of them.

What has been done? We distributed the recommendations of the Commission so that society could get to know about them. We have also taken systematic steps to brief representatives of the judicial system and the prosecutor's office about the need for a detailed consideration of any allegations of discrimination against trade unions. Together with the ILO, we have also organized and held several seminars.

In order to simplify the conditions for the registration of trade unions, two major decisions have been taken. First of all, the Republican Committee on Registration has been done away with. Furthermore, the 10 per cent minimum membership requirement for setting up a union has been removed. According to the recommendation of the Commission of Inquiry, the National Council on Labour and Social Issues (NCLSI), our main tripartite body, includes a representative of the Belarusian Congress of Democratic Trade Unions (BKDP).

Now, let me make it clear that the BKDP does not meet the criteria of representativeness set out in the NCLSI's regulations. However, the Government and the Federation of Trade Unions of Belarus (FPB), as well as the Confederation of Industrialists and Entrepreneurs (employers), have shown goodwill and have implemented that recommendation.

I am dwelling on these individual issues covered in the recommendations because we believe that the position of the Commission of Inquiry and the Committee of Experts in respect of these issues does not take into account the situation as it is in reality. We believe that the legislation of the Republic of Belarus governing the organization of mass events and strikes, as well as the receipt of foreign gratuitous aid, is in line with ILO standards. It guarantees the appropriate social processes and the safety, health and security of the people. We need to maintain a balance of interests and that between the rights of various groups of society; that is our main task.

As to the reception and use of foreign gratuitous aid, the legislation does not prohibit trade unions to receive it. Rather, the legislation defines the purposes for which it can be used and provides for rules on its registration, which must be complied with by everyone.

I would like to refer to certain machinations involving money received from abroad by representatives of the Belarusian Union of Radio and Electronics Workers (REP) – Gennady Fedynich and Igor Komlik. Unfortunately, these facts show that we need more transparency in the system governing the receipt and use of foreign gratuitous aid.

I would like to underline that there is no prohibition on the use of foreign aid to conduct international seminars and conferences, which do take place in the country. The financing of political actions through such aid is, however, prohibited; that is in line with international practice. The current rules for the organization and holding of mass events are not in contradiction with the principles of the freedom of association or assembly. The restrictions set out by the legislation are aimed at guaranteeing the security of the State, society and ensuring the rights and freedom of persons. The provisions of the legislation are fully in compliance with the provisions of the International Covenant on Civil and Political Rights.

It should be noted that the recommendations of the Commission of Inquiry do not cover the question of holding a strike. However, the Committee of Experts, for a few years now, has been suggesting to the Government that it change certain provisions of the Labour Code governing the organization and holding of strikes. The Government's position is clear and comprehensible. Any guarantees of the right of citizens to hold strikes in the Republic of Belarus are covered in the Constitution, the Labour Code, and the Law on Trade Unions. We believe that a strike is a very extreme way of resolving a dispute. Therefore, the provisions in the legislation are there to provide the best possible conditions for solving disputes through consultations and negotiations as part of conciliation procedures. This approach is not in contradiction with international labour standards.

As already said, the content of the Commission of Inquiry recommendations provides for long-term and systematic work to improve social dialogue in our country. In doing this, we have set up a tripartite Council for the Improvement of Legislation in the Social and Labour Sphere (tripartite Council). The proposal to set it up was worked out during a tripartite seminar with participation of the ILO, the International Organisation of Employers (IOE) and the ITUC, held in Minsk in 2009.

Guy Ryder made a personal contribution to the development of this concept. At the time, he was the General Secretary of the ITUC. Now, of course, he is the Director-General of the International Labour Organization, and Mr Kari Tapiola was ILO Deputy Director-General at the time. The Council is a forum in which issues of freedom of association are discussed and compliance with the Commission's recommendations is monitored.

The Government, and employers' and workers' organizations are represented at the Council on an equal footing. I would like to stress that out of seven trade union representatives in the Council, four represent the FPB and three represent the BKDP, regardless of the fact that the trade union membership of the latter does not reach 1 per cent of the FPB membership. I believe that in no country in the world such small trade unions can participate in the decision-making process at the national level. The activity of the tripartite Council was positively assessed by the direct contacts mission which came to Minsk in 2014, and it is an important part of trade union pluralism in Belarus, which was recognized by the mission.

The tripartite Council has coordinated the work to implement the proposals made by the direct contacts mission, including by organizing seminars and training sessions on tripartism, collective bargaining and the settling of labour disputes. All agreements worked out together with the ILO have already been acted upon and this has actually strengthened trade union pluralism in Belarus. The general agreements for 2016–18 and for 2019–21 regulate the conclusion of collective agreements at the enterprise level where several trade unions operate. Concretely, all trade unions active at the enterprise have the right to participate in collective bargaining through a joint bargaining body.

In 2019, at the time of the 100th anniversary of the ILO, we made further progress: we ratified two ILO Conventions – the Holidays with Pay Convention (Revised), 1970 (No. 132) and the Safety and Health in Mines Convention, 1995 (No. 176). Both came into force in Belarus in February this year.

In February 2019, with the participation of ILO experts, we held another two events: a tripartite conference on issues of tripartism and social dialogue and a session of the tripartite Council on agreements at branch and regional level. This gave a kick-start to a series of consultations with ILO experts on questions of collective labour disputes.



Unfortunately, due to the COVID-19 pandemic, we have temporarily had to stop our cooperation with ILO experts in the framework of the Council. Once the situation improves, we will begin to cooperate actively again.

I would like to draw the Committee's attention to the fact that the Republic of Belarus has not rested on its laurels over the last few years. On the contrary, we have done a great deal to develop social dialogue and tripartism in our country.

We have been recognized in terms of what we have done by the Committee of Experts. In its reports of 2020 and 2021, it put Belarus on a list of countries that had made progress. It noticed, for example, with interest, measures we had taken to implement the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and the Nursing Personnel Convention, 1977 (No. 149). We are happy and ready to go further. For example, the proposal of the Committee of Experts about setting up additional mechanisms for the settlement of labour disputes will be examined by the tripartite Council as soon as the epidemiological situation makes that possible.

We are also going to continue our work on local and branch agreements. I am not going to hide anything from the Committee; the Government is seriously concerned by the change in the tone in the comments made by the Committee of Experts in the report this year. The Committee of Experts seems to be looking at Belarus in a more negative way, simply for political reasons, as a result of the events which took place in our country after the presidential election, which was held on 9 August last year. I am convinced that if politics were not dragged into this, Belarus would not have received this so-called double footnote which has automatically put us on the list of individual cases to be reviewed at the Committee. Such an approach is unacceptable to us. The events which were only political, and in no way related to the processes of social dialogue in the area of labour rights, cannot and should not be a basis for assessing whether or not Belarus is acting in conformity with the Convention. Certain people are going to talk today, I am sure, about trade union leaders and members allegedly being persecuted for their trade union activity. I would like to put it on record that that is not so. These events had nothing to do with trade union activity. They were illegal street protests and attempts of organizations in enterprises and businesses to take protest action for purely political reasons; these had nothing to do with collective labour disputes.

Furthermore, outside forces interested in the destabilization of the situation in the country were involved in the organization of protest action. Certain structures, set up with support from abroad, were basically trying to lay the ground for an unconstitutional overthrow of the Government in Belarus. These actions were illegal, not peaceful and constituted a serious threat to social order and the safety and security of Belorussia's citizens. The Government will be grateful for the ILO supervisory bodies' unbiased review of the situation in the country. The Government calls upon the Committee to objectively and comprehensively review the question, taking into account the position and information provided in my statement.

In conclusion, I would like to underscore that the Government of Belarus is very appreciative of the support and assistance of the ILO. We want to continue an open and constructive dialogue with the Organization, not only to meet our commitments under ratified Conventions but also to tackle a wider range of issues which we face in our labour system.

**Employer members** – This is a discussion of Convention No. 87, which is a fundamental Convention. It was ratified by the Government of Belarus in 1956. It has been discussed 13 times in the Committee, most recently in 2014 and 2015.

I would firstly like to address the follow-up to the recommendations of the Commission of Inquiry, appointed under article 26 of the Constitution, and the comments made by the Committee of Experts in that regard.

First, the Committee of Experts noted the ITUC and BKDP allegations of violence in respect of protests that took place following the presidential election in August 2020. We thank the Government representative for her submissions with respect to those issues today. We note that recommendation 8 of the Commission of Inquiry refers to adequate protection against administrative detention to be guaranteed to trade union officials in the performance of their duties or when exercising freedom of speech, freedom of association and freedom of assembly.

The Employer members note that full recognition of civil liberties, in particular freedom of opinion and expression, freedom of assembly, freedom from arbitrary arrest and detention, and the right to a fair trial by an independent and impartial tribunal or judiciary, are basic preconditions for any meaningful exercise of freedom of association for both workers and employers, and therefore, compliance with the Convention.

The Employer members therefore urge the Government to restore, without delay, full respect for workers' rights and freedoms of association. The Employers urge the Government to implement recommendation 8 of the Commission of Inquiry on guaranteeing adequate protection against administrative detention, for trade union officials, in the performance of their duties or when exercising their civil liberties.

The Employer members urge the Government to take measures for the release of all trade unionists who remain in detention and for the dropping of criminal charges related to participation in peaceful protest action. The Employers also urge the Government to investigate without delay alleged instances of intimidation or physical violence, through an independent judicial inquiry.

Turning now to the Committee of Experts' observations with respect to Article 2 of the Convention. These observations concern an urgent request to the Government in an earlier observation by the Committee of Experts to consider, within the framework of the tripartite Council, the measures to ensure that the matter of legal addresses ceases to be an obstacle to the registration of trade unions in practice. The Government has provided information that the requirement to provide confirmation of legal address is not an obstacle to the registration of a trade union, and the Government has advised that there were no cases of refusal to register trade unions in the first nine months of 2020.

The Employer members therefore note that, in the absence of further explanations to the Government by the affected trade unions, the BKDP, the Free Trade Union of Belarus (SPB) or the REP, it is difficult to say if, and to what extent, the refusal of registration in Orsha or Babruysk was in contradiction with Article 8 of the Convention.

The BKDP and the ITUC have not argued that the refusal of registration in the two cases was linked to the issue of legal address, and they have not claimed that the refusal of the registration in these cases constituted an undue restriction of the right to establish a trade union without previous authorization.

The BKDP, SPB and REP do not seem to have appealed the refusal decisions in court, nor do they seem to have called for discussion on the issue in the tripartite Council.

Therefore, the Employers' group does not think it is for the Government to initiate a discussion on the issue of legal address in the tripartite Council, if those that are potentially affected by it have not asked for such a discussion. Nevertheless, the Employers' group does point out that the Government should continue to provide information on further developments on this point, in particular any discussions held and the outcomes of these discussions, in the tripartite Council.

The Committee of Experts also noted under this Article the televised meeting between the Chairperson of the FPB and President Lukashenko, in which the President urged the setting up of trade unions at all private enterprises by the end of 2020, under the threat of liquidation of those private companies that did not organize trade unions upon the FPB demands. The Employer members note that, in line with Article 2 of the Convention, freedom of association implies that workers and employers must be able to decide freely, without interference from the State, whether or not to set up their own organizations. In the Employers' view, exerting pressure to set up workers' organizations in this way is a clear disrespect and violation of freedom of association and an infringement of Article 2 of the Convention.

The Employers' group has a different view than the Committee of Experts. We consider less relevant the fact that the President urged the setting up of a particular trade union organization, namely the FPB. Rather in our view, the violation of Article 2 would have been no less serious if the President had demanded, under threat, the formation of any trade union in a private company.

The Employer members therefore call upon the Government to refrain from any interference with the establishment of trade unions in private companies, in particular from urging the setting up of trade unions under threat of otherwise liquidating the respective private companies. The Employer members also call upon the Government to publicly clarify that the decision whether or not to set up a trade union in private companies is solely at the discretion of the workers in those companies.

Turning now to Articles 3, 5 and 6, the Committee of Experts noted concerns with respect to the Commission of Inquiry's request to the Government to amend Presidential Decree No. 24 of 28 November 2003 on Receiving and Using Foreign Gratuitous Aid. The Employer members note that acceptance by a national employers' or workers' organization of financial assistance from an international employers' or workers' organization without the need for approval by the Government and without sanctions, in cases of receipt of such financial assistance, is part of the right in Article 5 to affiliate with international organizations of employers and workers.

We also note the Committee of Experts' comments with respect to the Commission of Inquiry's request to the Government to amend the Law on Mass Activities, regarding setting out clear grounds for the denial of requests to hold trade union mass events in conformity with freedom of association principles. The Employer members note that the right to organize public meetings and demonstrations constitutes an important aspect of the activities of employers' and workers' organizations under Article 3 of the Convention. In view of this, the revised Law on Mass Activities, along with the accompanying Regulation that limits the use of foreign gratuitous aid for the conduct of mass events, unduly restricts trade unions in the possibility to carry out their public activities.

The Employer members therefore urge the Government to amend the Law on Mass Activities and the accompanying Regulation, in particular, with a view to set out clear grounds for the denial of requests to hold trade union mass events in conformity with

freedom of association principles, to widen the scope of activities for which foreign financial aid can be used, and to abolish the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation.

The Employer members also call upon the Government to repeal the Ordinance of the Council of Ministers No. 49, as amended, to enable employers' and workers' organizations to exercise their right to organize mass events in practice.

The Employers' group urges the Government, in consultation with the social partners including in the framework of the tripartite Council, to address and find practical solutions to the concerns raised by trade unions in respect of organizing and holding mass events.

The Employer members note that the Committee of Experts has requested the Government to amend various sections of the Labour Code as regards the exercise of the right to strike. The Government has submitted to the Conference Committee that the right to strike is not expressly provided for in the Convention and that national constitutional and legislative provisions provide for the right to strike in line with applicable principles.

The Employers' group, as has been pointed out on numerous occasions by both the Employers and certain Governments, must take this opportunity to remind this Committee that a right to strike is not regulated in and is not part of the obligations under the Convention. The Committee of Experts' view that a right to strike is nevertheless covered by the Convention, in our view, does not have the support of the Employers' group and does not have the support of the Government group of the ILO Governing Body. It is regrettable therefore that the Committee of Experts nevertheless continues to make such extensive observations on the issue and in our view continues to overstep its mandate.

The Employer members therefore must point out that the Government of Belarus in our view is not obliged under the Convention to make amendments to the provisions of the Labour Code or any other changes requested by the Committee of Experts on this topic.

Finally, we note that there are several comments by the Committee of Experts regarding consultations with the workers' and employers' organizations, as well as the Committee of Experts' observations in respect of the unsatisfactory functioning of the tripartite Council.

The Employer members note that according to the submission made by the Government, the FPB appears to be given preferential rights in the process of consultation on legislation affecting workers' rights and interests. The Employers' group does not believe this to be justified. The BKDP, we understand, is also considered representative and is a member of both the NCLSI and the tripartite Council. Therefore, any impression of favouritism towards a particular workers' organization would not be compatible with the Convention and should be avoided. The Employers therefore urge the Government to amend Regulation of the Council of Ministers No. 193 to ensure that all representative employers' and workers' organizations enjoy equal rights in consultations during the preparation of legislation.

Finally, the Employer members note that the tripartite Council plays a key role in the implementation of the recommendations of the Commission of Inquiry and other ILO supervisory bodies. However, its ability to contribute towards full implementation of these recommendations has been unsatisfactory.

The Employer members therefore call upon the Government to take the necessary measures in cooperation with the social partners to strengthen the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere so that it can play an effective role towards full implementation of the recommendations of the Commission of Inquiry and other ILO supervisory bodies.

**Worker members** – The Conference examined the application of the Convention in Belarus in 13 of its 17 past sittings. Since the report released by the Commission of Inquiry in 2004, the Committee of Experts has issued observations on Belarus's observance of the Convention 15 times. Despite the many extensive examinations of freedom of association and the right to organize, the situation for workers in Belarus is deteriorating.

In 2020, the Committee of Experts double footnoted Belarus with respect to the Convention and noted that, and I quote, "there has been no meaningful progress towards full implementation of the 2004 Commission of Inquiry recommendations". The ongoing repression and attacks on civil liberties and trade union rights indicate a retreat on the part of the Government from its obligations under the Convention.

Workers in Belarus continue to be denied the right to participate in peaceful demonstrations and meetings. In 2020, security forces unleashed violent attacks during massive democratic and peaceful protests that took place in Belarus. Hundreds of trade union members and leaders were intimidated, arrested and charged under the various laws, which entailed heavy prison charges, and were repeatedly subjected to administrative arrests and fines for exercising their right to peaceful assembly.

The security forces failed to protect peaceful protestors. Workers were dismissed for exercising their right to strike and to peacefully protest. The Government retaliated against trade union leaders by sending them to prison.

On 1 February 2021, the court in Zhlobin sentenced trade unionists from the Belarusian Steel Works (BMZ), Igor Povarov, Alexandre Bobrov and Yevgeny Govor, to three years in prison for organizing a strike on 17 August 2020 in support of democratic protests.

We emphasize that the handling of the protests by the authorities has been condemned by the UN High Commissioner for Human Rights and by various UN experts, including the UN Special Rapporteur on Torture, the Special Rapporteur on the Situation of Human Rights in Belarus on the freedom of opinion and expression, on the freedom of peaceful assembly and of association, as well as a working group on arbitrary detention.

In its last report, the Committee on Freedom of Association clearly asked the Government to address violations of the freedom of association standards that took place in the aftermath of the 2020 protests.

Accordingly, the Government must immediately stop persecuting trade unionists released from detention, all those participating in peaceful protests and industrial action, and drop all the charges. The affected persons should be adequately compensated for damage suffered. The Government must provide to the Committee of Experts all court decisions upholding detention and imprisonment of workers and furnish the Committee with a list of those affected.

This crackdown on peaceful protesters, once again, demonstrates the failure by the Government to comply with recommendation 8 of the Commission of Inquiry, which considers that adequate protection or even immunity against administrative detention

should be guaranteed to trade union officials in the performance of their duties, or in exercising their civil liberties. We also deplore the reported cases of violent mistreatment of workers participating in last year's demonstrations and the Government's failure to provide any information to the Committee of Experts in this regard.

Without independent investigations into these serious allegations, the Government of Belarus, yet again, fails to ensure a climate free from violence, threats or pressure against peacefully protesting workers. We strongly urge the Government to immediately commence an independent judicial inquiry into the violent mistreatment of workers and to share the outcome with the Committee of Experts.

Further, workers in Belarus still do not enjoy the right to establish unions without previous authorization. This contravenes recommendation 2 of the Commission of Inquiry.

According to the law, workers are required to provide a legal address as a condition to obtain registration. This prerequisite turns out to be a massive obstacle to the registration of trade unions at enterprise level as previously documented by the Commission of Inquiry and by previous conclusions of this Committee. Unless their employer agrees, enterprise-level unions may not indicate their workplace as the legal address on the registration form.

The ILO supervisory bodies have repeatedly requested the Government to adopt the necessary measures in order to ensure that the matter of legal address ceases to be an obstacle to the registration of trade unions in practice.

In its latest report to the Committee of Experts, the Government did not indicate any measures taken to address this concern. We reiterate that the legal address requirement puts organizing efforts in a vicious cycle by blocking legalization of newly created trade union organizations and exposing workers who are trying to establish a trade union organization to anti-union discrimination. Workers are even more exposed to such discrimination and other retaliatory measures when they are on short-term contracts. Furthermore, often their relatives are exposed to similar threats and actions. We recall that in Belarus, up to 90 per cent of workers were shifted from permanent to one-year contracts under Presidential Decree No. 29.

In the absence of any protection, anti-union discrimination and short-term contracts are used as retaliation to deny workers their right to form or join independent trade unions.

This practice was applied to prevent unionization by penalizing worker activists, who tried to legalize unions, over their choice and to dissuade any further attempts by others. Since 2001, only one independent union has been registered.

We note the Government's response that on 1 October 2020, some trade unions were registered and that in November 2020, President Lukashenko announced that the creation of trade union organizations affiliated to the state-controlled FPB will be required at even single private sector companies. In this light, we are extremely concerned about the exercise of discretion by officers responsible for registration of trade unions. There must not be favouritism to a particular trade union or unions. Favouritism towards a particular union or the exercise of discretion to deny trade union registration creates a situation in which the interference in the free establishment and operation of trade unions is almost absolutely contrary to the Convention.

Moreover, workers' organizations are denied the right to organize their activities. Presidential Decree No. 3 of 25 May 2020 which replaced Decree No. 5 of 2015, still



requires previous authorization for foreign gratuitous aid and restricts the use of such aid. Despite repeated calls for amendment, the Government has not taken satisfactory action on this issue.

The picture does not change much when we turn to the Law on Mass Activities that establishes a stringent procedure for the authorization of mass activities, demonstrations and pickets. Instead of amending the law, as repeatedly requested by the ILO supervisory bodies, the Government has recently adopted regressive amendments that make the exercise of the right to organize public meetings and demonstrations even more restricted. This, coupled with the fact that the executive authorities in several cities failed to grant permission to hold mass trade union events, renders the exercise of this right almost impossible in practice.

There has been equally no progress in relation to the amendment of the Labour Code, which seriously limits the exercise of the right to strike. The ILO supervisory bodies have pointed out numerous shortcomings in relation to this law. Sections 388 and 393 of the Labour Code permit legislative limitations on the right to strike in the interest of rights and freedom of other persons, which could be used in a manner so as to restrict the legitimate exercise of the right to strike.

In section 392, the Labour Code imposes the obligation to notify the strike duration as a prerequisite in order to hold strike action. In addition, section 392 provides for the obligation to provide minimum services during the period of the strike. Minimum services should only be provided in essential public services of fundamental importance where certain strikes could threaten the existence of the population. Even in such cases, the determination of the minimum services should be left to the social partners or be decided upon by an independent body which has the confidence of all the parties.

Lastly, contrary to the tripartite General Agreement for 2019–21, the Government fails to include trade unions in the adoption of new pieces of legislation affecting the rights and interests of workers. Consequently, the tripartite Council, which should serve as a platform for such consultations, is unable to play its role.

We discussed the same issues in our discussion on Belarus in 2015. Seventeen years after the ILO Commission of Inquiry, the Workers' group fails to see any significant change in Belarus. On the contrary, the situation has deteriorated dramatically, both in law and in practice, over last months. This is unacceptable. The Government is clearly not willing to implement the Commission of Inquiry's recommendations and optimism that this Committee expressed in some previous sittings was short-lived. We hope that today's discussion will make a difference in finally initiating long-due reforms.

*Interpretation from Russian:* **Employer member, Belarus** – The Committee is considering the compliance of Belarus with the Convention and the implementation of the Commission of Inquiry's recommendations. The report on these issues focuses, in our view, on political events that took place after the elections of August 2020. We consider that actions that were purely political in nature, and only affected a small part of the workers, were behind these events. There have been proposals to amend legislation on strikes. The Employer members said today that you should not allow use of the Convention to regulate the right to strike, which is part of national competence, and is a purely domestic issue which applies to sovereign States.

In recent years, there has been progress in social dialogue in our country. The space for considering these issues is the tripartite Council on the Improvement of Legislation in the Social and Labour Sphere. This is something that was worked on with the Office. The Council includes Government representatives, employers and workers and it is this

Council that has come up with proposals to apply dispute resolution and mediation mechanisms.

At the initiative of employers, the Council unanimously agreed to conduct collective negotiations and conclude collective agreements in enterprises in which several trade unions operate. This has been included in the Trilateral General Agreement since 2016 and is working in practice. The technical assistance of the ILO allowed – in 2014, 2015 and 2016 – the carrying out of seminars and later meetings on tripartism and social dialogue covering the tripartite experience of the various bodies, the role of trade unions in enterprise and mechanisms to resolve dispute and mediation.

The Employers are in favour of the involvement of trade unions. Employers in Belarus are categorically against the growing wave of economic sanctions imposed by the European Union and others and new sectoral sanctions for political reasons. This affects and destroys business, economic activity and leads to a reduction in jobs, employment, lower wages, income, and to a worsening situation for workers' families, especially during a pandemic.

We reaffirm our commitment to working closely with the International Labour Organization and the Committee to achieve progress on social and labour issues on the basis of mutual responsibility and respect. We would ask you to objectively assess the positive dynamics in the development of social and labour relations in the country, positive steps taken by the Government and social partners to implement the recommendations of the ILO and to make a decision in favour of working people and business.

*Interpretation from Russian: Worker member, Belarus* – We have reviewed very closely the comments of the Committee of Experts, and I would like to state that we do not agree with the position expressed, given that most of the comments are of a biased political nature. Further, we see that there are clear double standards when assessing the labour situation in our, and in other, countries. Let me give you some clear facts.

Firstly, the Committee sees it as a violation that there were illegal strikes in our country, which were of a purely political nature and did not relate in any way to labour and socio-economic issues, and also that various workers were responsible for participating in illegal strikes. I have a very relevant question: why does the Committee not then look at similar situations today in Germany, the United Kingdom of Great Britain and Northern Ireland, where political strikes are also not legal. Why do they not look at France and Belgium, where there were cases of offences by workers in organizing strikes? I would speak to the organizers of the Workers' group. Would you be willing for the trade-union movement and the right to strike to be used as a political instrument? I would turn to the representatives of the Employers. Would you be happy if there were endless strikes in your enterprises because of the political views of your workers? And I am convinced that every one of you will say "No". And it is on that basis that we ask you to assess the situation in Belarus.

Secondly, the Committee has made observations about the independence of the trade unions in the country. In 2019, amendments were made to the Labour Code. The social partners disagreed significantly on the drafting of this document, but through negotiations and amendments, the FPB was able to introduce 30 rules improving the situation of workers and getting rid of those provisions that would have worsened their situation. That demonstrates trade union independence.

Thirdly, and with regard to the comment that the FPB has privileges compared to other trade union federations: I can assure you that they are all subject to equal

conditions, and because of the work of all trade unions, the work of all trade unions depends upon their determination to achieve their objectives. The federation of trade unions last year was able to return the equivalent of US\$8 million to workers which had been illegally withheld; reinstate 500 illegally dismissed workers; and further, hundreds of labour disputes were resolved by labour commissions and through mediation.

The trade unions also represent the interests of workers in court. All of this reflects that workers in Belarus have the right to see their interests represented and applied. I would call for an objective, unbiased assessment of the situation in our country.

**Government member, Portugal** – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The Candidate Countries, the **Republic of North Macedonia, Montenegro and Albania**, the EFTA country **Norway**, member of the European Economic Area (EEA), as well as **Ukraine**, 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 right to organize and the freedom of association. We actively promote the universal ratification and implementation of fundamental international labour standards, including Convention No. 87 on freedom of association. We support dialogue in its indispensable role to develop, promote and supervise the application and implementation of international labour standards and of fundamental Conventions in particular. We are deeply concerned about the steep deterioration of the situation of human rights, including labour rights, in Belarus in the aftermath of the 2020 presidential elections, which were neither free nor fair. Freedom of peaceful assembly and association, freedom of opinion, expression and information, as well as freedom of the media both online and offline, are being more and more heavily curtailed, whereas the right to organize is actively oppressed instead of being protected.

The EU and its Member States strongly condemn the violence employed by the Belarusian authorities against peaceful protestors, including youth and women, and the numerous cases of torture and sexual violence.

We call on the authorities to investigate all human rights violations and abuses in a truly independent and impartial manner, ensure full respect for workers' rights and freedoms, protect the right to organize and release immediately and unconditionally, all arbitrarily detained persons, including political prisoners, trade unionists and members of national minorities. 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 protest or strike.

We strongly condemn the detention by Belarusian authorities of journalists Raman Pratasevich and Sofia Sapega and demand their immediate release and that their freedom of movement be guaranteed.

The case of persistent violations of fundamental ILO Conventions by Belarus has been on the agenda of this Committee regularly since 1997. Even before the continuous deterioration of the situation, since the fraudulent elections in 2020, there has been no meaningful progress towards full implementation of the 2004 Commission of Inquiry recommendations, including limited advancements of discussions within the tripartite Council. Belarus must step up its efforts without further delay. Significant progress is needed to fully implement these recommendations.

In this context, we want to recall that the failure of Belarus to implement these recommendations has led to the suspension of Belarus from the European Union Generalized System of Preferences since 2007.

We strongly urge the Government, in consultation with the social partners, to amend the Law on Trade Unions, the Labour Code, the Law on Mass Activities and the accompanying Regulation, as well as Presidential Decree No. 3 of 25 May 2020, concerning the use of foreign gratuitous aid, to bring them into conformity with freedom of association principles.

The right to establish workers' organizations, the right to strike and to organize their activities, including public meetings and demonstrations without any interference of public authorities, constitute fundamental aspects of trade union rights and should be protected.

We stress the importance of treating with impartiality all trade union organizations, including as regards consultations and not only refraining from interference in their establishment but ensuring and protecting the right of workers to establish and join organizations of their own choosing.

The EU and its Member States stand with the Belarusian people and support their democratic choice and fundamental freedoms and rights. The EU continues to call on the Belarusian authorities to seek a peaceful and democratic solution to the crisis through an inclusive national dialogue with broader society, in particular the Coordination Council.

*Interpretation from Russian:* **Government member, Russian Federation** – First of all, I would like to thank the representative of Belarus for the comments on this issue. The Russian Federation fully follows the argument of our Belarusian colleagues with regard to the implementation by Minsk of the provisions of the Convention. Particular attention has been given this year by the Committee of Experts to the application of the Convention by Belarus and the implementation of the recommendations of the Commission of Inquiry. There have been significant changes over the position expressed in 2020 and this change has been brought about by well-known political facts not linked to processes in the sphere of labour or socio-economic issues.

At the same time, we would emphasize that, in recent years, the development of social dialogue in the Republic has followed a transparent process implementing the recommendations of the Commission of Inquiry. Minsk has followed the plan put together with the International Labour Office.

The space for drafting and implementing decisions is the tripartite Council in which, on an equal footing, representatives of Government, trade unions and employers' representatives, among the trade unions, the FPB and BKDP, as well as the International Trade Union Confederation (ITUC), were represented. It is part of a social partnership.

Minsk is adopting systematic measures to promote constructive cooperation with all parties including the BKDP, which is represented not only in the Council but in other bodies as well.

In conclusion, the intentional fuelling of anti-Belarusian rhetoric including in the UN is worrying. There should be condemnation of linking thematic country reports with domestic political issues in Belarus. This approach leads to politicization of decisions, which makes it practically impossible for Minsk to fulfil. We consider it unacceptable that the ILC and its committees are taking a biased political approach. We would ask to put aside a confrontational approach in favour of cooperation and constructive collaboration

in order to address the shared problems relating to improving the situation and rights and interests of workers and employers.

*Interpretation from Russian:* **Observer, International Trade Union Confederation (ITUC)** – Belarus is known to be one of the most problematic countries when it comes to labour and trade union rights. Almost all workers and employers have been moved onto fixed-term employment contracts. Along with a system of excessive sanctions, this has resulted in workers being totally deprived of their rights, including the right to freedom of association.

The State carries out a policy of favouritism in relation to trade unions. Workers are discriminated against on the grounds of union affiliation, and are fired for belonging to independent unions. The situation has deteriorated dramatically over the past year. The regime, having lost the presidential elections, has begun brutal repressions and violence against workers who came out to peaceful protest rallies and strikes. Hundreds were sentenced to administrative arrest, or received huge fines, were fired, and three were sentenced to lengthy prison terms for participation in strikes. Pressure on independent trade unions and their members has increased. They are denied registration and cannot therefore carry out their activities or hold mass events.

The social dialogue, which was only really there for show, has been completely swept aside. Employers are also being deprived of their rights, and cannot enjoy their right to the freedom of association. A week ago, amendments were made to the Labour Code that critically limited the rights and freedoms of workers; it made it possible to fire them, punish them for any attempts to express their civil rights and protect their trade union and/or labour rights. In fact, a strike ban has effectively been imposed on unions and their members.

Only by tough and decisive action we can help the workers of Belarus regain their lost rights and freedoms and bring an end to repression and violence against them.

**Government member, Cuba** – The Government of Belarus has repeatedly shown its willingness to engage in dialogue with the ILO supervisory bodies; not only has it responded to the Committee of Experts' comments, it has also provided a wealth of information during this Committee.

The Government has reported on the country's progress as regards social dialogue and on the Government and social partners' joint measures to move forward with the ILO's recommendations and proposals. It highlights the tripartite Council, on which the Government, employers' organizations and trade unions are represented on an equal footing. Together with ILO experts, the Government has introduced additional technical cooperation measures based on the results of the implementation of the direct contacts mission's proposals.

The measures taken by the Government of Belarus were commended by the Committee of Experts in its 2020 reports and 2021 Addendum, and were listed among examples of progress.

Cuba is convinced that only through respectful dialogue and cooperation can progress be made in fulfilling the ILO's mandate, by satisfactorily implementing international labour standards and promoting and protecting workers' rights. Let us focus on a spirit of dialogue and cooperation and cast aside political motivations and interests that are at variance with this Organization's founding objectives. I conclude by reaffirming Cuba's solidarity with the people and the Government of Belarus.

**Worker member, Canada** – I am speaking on behalf of the Canadian Labour Congress and this statement is endorsed by the American Federation of Labor–Congress of Industrial Organizations (AFL–CIO). More than 25,000 citizens and workers of Belarus exercising their right for freedom of expression and peaceful public protest have been sanctioned and hundreds imprisoned. Anyone can lose their job, freedom and health for defending democracy, rights and dignity. The short-term contract system and suppression of freedom of association, long criticized by this Committee, are the key means of the state repressive machinery.

Healthcare workers were the first to see the brutality of police violence in protests but were prohibited from speaking about the injuries they treated. Even before the protests, healthcare workers were threatened with dismissal and criminal action for speaking about the gravity of the COVID situation. When universities started suspending and expelling students for joining protests, many teachers tried to intervene to protect the students. For this, they faced reprimands and dismissals. Healthcare workers and university teachers turned to the independent unions, but all the attempts to get union registration were refused and activists faced dismissals and discrimination.

Freedom of expression and freedom of the press are also denied and suppressed. Two journalists, Katerina Bakhvalova and Daria Chultsova, were sentenced to two years for filming and streaming the protests, as a lesson to others.

The International Labour Conference 1970 resolution emphasizes that the civil liberties essential for the normal exercise of trade union rights are freedom of opinion and expression, freedom of assembly, freedom from arbitrary arrest and detention and the right to a fair trial.

Recommendation 8 of the Commission of Inquiry on Belarus considered that adequate protection against administrative detention should be guaranteed to trade union officials in the performance of their duties or when exercising their civil liberties. The application of this recommendation is essential to prevent human rights violations and ensure full respect for workers' rights and freedoms.

*Interpretation from Russian:* **Worker member, Russian Federation** – The Workers' delegates of Armenia, Georgia, Kyrgyzstan and the Republic of Moldova associate themselves with this statement. The Workers' delegate of the Russian Federation and those other delegations would like to thank the Committee of Experts for their carefully balanced and detailed analysis of the situation of workers' rights in Belarus.

Fifteen years have passed since the ILO Commission of Inquiry in 2004 adopted 12 recommendations to correct the appalling situation of workers' rights in that country. Those recommendations have not been complied with in the reasonable amount of time provided by the Committee for that, but the situation has worsened year on year.

Many workers have been put on short-term contracts and pressure has increased appallingly on workers participating in peaceful protest actions. Many of them have been fired. Union activists have been arrested. They have seen their possessions confiscated, such as materials, money, property, etc. Approximately 100 activists of independent unions have been arrested and sentenced to a total of 2,075 days of administrative detention in total. The situation has got worse and worse, particularly with recent amendments to the Labour Code. Those make it much easier to dismiss workers en masse if they try and participate in a strike action. That is now made a criminal offence. Belarus for many, many years now has been paying no attention to, and indeed pouring scorn on, the opinion and the procedures of the ILO. They continue to treat workers



harshly and to be stubbornly refusing to respect the rights of over 4 million short contract workers in that country.

**Government member, United Kingdom of Great Britain and Northern Ireland –**

The United Kingdom of Great Britain and Northern Ireland remains concerned about the situation in Belarus and, recalling the conclusions of the Commission of Inquiry, about the lack of progress made by the Belarus authorities in addressing the recommendations set out by the Committee of Experts.

We note the Belarus delegation's response to the issues raised by the Committee of Experts. However, there is clear evidence that the Belarus authorities continue to pressure members of independent trade unions and strike committees, through threats on their jobs, salaries, psychological pressure and the removal of parental rights, if they take part in strike action or protests.

The right to establish and join trade unions is enshrined in article 41 of the Belarus Constitution, but individuals are discouraged from joining independent unions and the activity of these unions is hindered by interference from government authorities and managers of state-owned enterprises. This, and wider restrictions on freedom of association, render it difficult for trade unions to engage in collective bargaining.

Following last August's fraudulent presidential election, we have seen a further infringement of the rights of freedom of association and protection of the right to organize and the independent report by Professor Benedek shows that intimidation and persecution of labour activists has intensified. Strikes and protest activity in state factories and other institutions is met by repressive measures, including people losing their jobs, being detained by security forces, and facing criminal charges.

The recent amendments to the Law on Mass Activities further increase restrictions and make it even more difficult for workers' committees and trade unions to function effectively.

The United Kingdom encourages the Belarus authorities to engage constructively with the ILO to address the recommendations set out by the Committee of Experts. We also encourage them to take note of, and action, the recommendations set out in Professor Benedek's report, in particular: to respect legitimate protests – including by labour activists – and refrain from taking reprisals for such action, and to reform the law and registration procedures for public association and other relevant legislation relating to labour unions in line with international standards on the right to assembly.

**Worker member, Netherlands –** This contribution is also on behalf of workers from Germany, Spain, France and the Nordic countries. We want to express our deep concern over the continuous attack on the civil liberties and trade union rights in Belarus. We have noted that workers who have used their legal rights of union organization and union actions at their workplaces have been met with repression and intimidation by the authorities. These are obvious violations of the freedom of association, a fundamental international human and trade union norm, enshrined in the Convention, ratified by Belarus.

The repressive short-term contract system and trade union registration procedure, meaning in practice the sanctioning of the existence of trade unions by the state authorities, are installed to prevent workers from exercising their rights for freedom and solidarity. Only the loyal can act collectively; those disagreeing are labelled as traitors and enemies. In the 20 years that this Committee has been dealing with this case, only one independent union has been registered.

Last year, many workers joined collective actions in protest at police violence and repressions. Many turned to independent unions, but the authorities responded with new repressions against workers who decided to leave the pro-Government FPB. Since January workers have been reporting being forced to sign a letter to the ILO allegedly by the FPB. Workers, including their family members, were thereby threatened with disciplinary actions, dismissals, cutbacks in pay.

The questioning of the comments and recommendations of the Committee of Experts by the Belarus Government is for us unacceptable. The ILO tripartite Committee on Freedom of Association has clearly condemned the repressions against trade unions and civil freedoms. We consider the Government's reply as a total rejection of the ILO supervisory bodies.

In its resolution of 1970, the International Labour Conference already explicitly pointed out that the absence and disrespect for civil liberties "removes all meaning from the concept of trade union rights".

*Interpretation from Chinese: **Worker member, China*** – We consider that activities related to political situations have nothing to do with social dialogue in the labour domain. Hence, we think that this should not and cannot be the basis on which we formulate comments on the implementation by this country of the Convention. As far as we know, the tripartite Council has equal representation from Government, and employers and workers and, in recent years, this country has made significant progress in social dialogue. We should encourage the country's Government to advance its constructive cooperation with employers and workers.

*Interpretation from Chinese: **Government Member, China*** – In recent years the Government of Belarus has earnestly implemented the Convention and made effort and progress, which was positively assessed in the report of the Committee of Experts. The Government is firmly committed to the fundamental principles and rights at work, has an open attitude to social dialogue and has cooperated constructively with social partners. It plays a critical role in facilitating cooperation between Belarus and the ILO in advancing the implementation of recommendations made by the Commission of Inquiry and greatly promotes the compliance of Belarus with the Convention on the basis of work done by the direct contacts mission. The Government, supported by the ILO, has conducted a series of international technical cooperation activities which have bolstered its implementation of the Commission's recommendations.

On the social dialogue front, the Government has made notable progress. To improve legislation in the social and labour spheres, the tripartite Council was set up in which Government, employers' associations and trade unions are represented equally. The Council, having overcome difficulties and obstacles, plays an important role in fostering social dialogue and implementing the Commission's recommendations. Constructive tripartite collaboration is also created.

We believe that the Committee was considering the case to focus on the Government's compliance with the Convention rather than to politicize the case. We note that the Belarusian Government always values and protects freedom of association and the right to organize. It is worth stressing that it is every government's responsibility to safeguard domestic social order and rule of law and protect the safety of its citizens. No illegal protest is allowed in any country. If one violates the law while exercising one's rights, undermining the lawful rights and interests of other citizens, one will have to be sanctioned by the law. The Belarusian Government's measures in safeguarding rule of law and social order are thus necessary and appropriate.

We call on relevant parties to objectively view the compliance of the behaviours of Belarus and hope that the ILO can continue its constructive dialogue with the Government on this compliance matter so as to invigorate the country's economic and social development and improve its people's living standards and qualities.

*Interpretation from Russian:* **Government member, Turkmenistan** – Turkmenistan appreciates the efforts being made by the Republic of Belarus to implement measures to further develop social dialogue in the country, and to comply with agreements and plans signed and recognized with the International Labour Office. We also support what the Government has done to implement ILO labour standards.

The country did get a positive assessment from the Committee of Experts in its reports of 2020 and 2021 on its implementation of Conventions Nos 98, 144 and 149. Those reports put Belarus on a list of countries which had made progress. We think there are perfectly good grounds for recognizing that the trade union movement in the country is operating freely and can contribute to the development of society.

There may well be disagreements between organizations and the authorities, but that happens everywhere. We suggest continuing with a constructive and open dialogue on implementing ratified Conventions and the provisions therein, and on other wider social and labour issues to improve the quality of life and the living standards of the people of Belarus.

We also urge that further measures be taken to support the people of Belarus to enhance levels of employment, to protect workers, and to cooperate in all areas of daily life, including cooperation with international organizations. We believe that focus should be on increasing the level of and timely payment of salaries, ensuring full and productive employment, supporting the most vulnerable workers in society, improving labour discipline, increasing productivity, and therefore increasing the amount of goods produced.

*Interpretation from Arabic:* **Worker member, Egypt** – With regard to the consideration of the situation of the case of the Republic of Belarus, I would like to note the following. Some progress has been made in Belarus in recent years with regard to the development of social dialogue. Collegial bodies, with the participation of trade unions, government and employers, were established to address the most pressing issues in the labour sphere. Trade unions have a strong voice in decision-making and decisions that are important for workers. According to our information, trade unions thus achieved the introduction of a number of standards into the Labour Code, which significantly strengthen the guarantees to workers. These did not allow the adoption of decisions at the legislative level which worsens the situation of workers. This is a good practice, which suggests that trade unions in the country have the opportunity to fulfil their main function, that is to protect the labour and socio-economic interests of workers.

In addition, I would like to separately note the close interaction of Belarusian trade unions with authorities and employers' organizations during the COVID-19 pandemic, which made it possible to avoid massive job cuts in the country and to provide support to the most vulnerable categories of the population. In this regard, we believe that it is necessary to note and support the commitment of the Republic of Belarus for the further development of social dialogue in the country.

**Government Member, Switzerland** – Switzerland supports the content of the statement by the European Union. Switzerland regrets the lack of progress made in implementing the Commission of Inquiry's recommendations dating back to 2004.

Switzerland also refers to the reports of the Committee on Freedom of Association in this regard. Switzerland notes with particular concern that collective and peaceful action is extremely limited, or even non-existent, in practice and that mechanisms such as tripartism and social dialogue are highly restricted. Notwithstanding the repeated requests, Switzerland insists that Belarus allow collective and peaceful demonstrations. Independent trade unions must not be subject to repression by the State; they must be allowed to develop freely. The Swiss delegation calls for the release of all arrested trade unionists.

Equally, it expects improvements to the legislation on social partners' rights and interests. Freedom of association is one of the four fundamental principles and rights at work, is central to a democracy and an essential aspect of social justice. This principle makes it possible, through collective action, to fight against forced labour, to help protect children and to develop measures based on non-discrimination and equality for the benefit of all. Switzerland calls on the Belarusian Government to amend its legislation in collaboration with the social partners and to include in its report all information requested by the Committee of Experts.

**Government member, United States of America** – I am speaking on behalf of the Governments of the **United States of America** and **Canada**.

The ILO supervisory bodies have consistently monitored the Government of Belarus's application of Convention No. 87 in follow-up to the findings of the 2004 Commission of Inquiry. After 17 years, the Government has yet to address the underlying issues and recommendations covered by the Commission. At the same time, new issues have emerged.

The Committee of Experts notes with concern that recent developments constitute a retreat by the Government from its obligations under the Convention. The Committee reports the use of extreme violence to repress peaceful protests and strikes, and the detention, imprisonment and torture of workers while in custody. Government interference in the activities of trade unions continues, as evidenced recently by a high-level official who expressed a preference for a particular trade union while making a televised statement.

Respect for worker rights in Belarus has deteriorated in both law and practice. We urge the Government of Belarus to fully implement all measures recommended by the ILO supervisory bodies, in particular:

- to release all trade unionists who remain in detention and drop all charges related to peaceful participation in industrial action;
- investigate all alleged instances of intimidation or physical violence against trade unionists through an independent judicial inquiry;
- immediately cease acts of favouritism and interference in the establishment of trade unions;
- amend the Law on Mass Activities and the accompanying Regulation to ensure individuals and trade unions are able to freely exercise their right to freedom of association and peaceful assembly;
- repeal the Ordinance of the Council of Ministers No. 49, which makes the exercise of the right to organize public meetings and demonstrations nearly impossible in practice;

- make all necessary amendments to the Labour Code, following genuine consultation with the social partners, to allow workers' organizations to organize their activities in full freedom;
- ensure the BKDP and the FPB enjoy equal rights to consultation on legislative issues; and
- to engage with the social partners, the ILO, and relevant national institutions to improve the functioning of the tripartite Council.

The Government of Belarus needs to take immediate action to resolve these long-standing issues. To that end, we strongly urge the Government to avail itself of ILO technical assistance to ensure full compliance with its obligations under the Convention.

**Government member, Nicaragua** – The Government of Reconciliation and National Unity of Nicaragua recognizes the will of the Government of Belarus to work transparently and with commitment to international labour standards. We also welcome the information shared by Belarus on the application of the Convention. We regret that this Committee is assuming a role that exceeds its authority, of working impartially, with political motivations. Belarus has indicated that it responded in line with the powers granted to it in law by restoring order and guaranteeing the safety of citizens, who were affected by the violent demonstrations, which were political in origin. Those protests were not linked to problems of unionization or other related matters.

The Government of Nicaragua appreciates the ILO's experience and specialist knowledge and looks forward to continued constructive, open dialogue on compliance with the obligations set out in ratified Conventions. We wish to take advantage of the forum provided by this important Committee to reject any action that encourages the erosion of the institutions and sovereignty of ILO Member States. We also encourage the Member States and organizations participating in this 109th Session of the International Labour Conference to redouble their efforts to establish true cooperation mechanisms, ensuring equal conditions and respect for all participants.

We reiterate our support for the position of the Government of Belarus and emphasize its legitimacy and legality as a sovereign State.

**Government member, Bolivarian Republic of Venezuela** – The Government of the Bolivarian Republic of Venezuela thanks the distinguished Minister of Labour of Belarus for her presentation on compliance with the Convention. We welcome the attention drawn by the Government of Belarus to the country's progress and constructive interaction with the social partners, as well as with ILO Committee of Experts on the implementation of the Commission of Inquiry's recommendations in relation to the Convention, particularly the development of social dialogue.

We have duly noted the information from the Government of Belarus that in the last five years the number of trade union organizational structures, trade unions and workers' associations in the country has increased within the framework of its labour legislation.

We welcome the emphasis placed by the Committee of Experts in its 2020 report on the progress made in Belarus with regard to activities to ensure compliance with the Commission of Inquiry's recommendations. It is regrettable that in the 2021 Addendum to the report, the Committee of Experts comments extensively on the country's political situation following the presidential elections of August 2020 and does not express appreciation for the Government's actions and arguments to maintain peace and restore public order.

We value the Government of Belarus' commitment to continue making progress in giving effect to the Convention, and we call on the ILO supervisory bodies to distance themselves from political considerations as, if they go beyond the limits in their comments, that will undermine their seriousness and credibility and harm our Organization's noble objective.

Lastly, the Government of the Bolivarian Republic of Venezuela hopes that the Committee's conclusions, resulting from this debate, are objective and balanced so that the Government of Belarus may continue making progress in giving effect to the Convention.

**Government member, Sri Lanka** – The Government of Sri Lanka believes that the Government of Belarus is making every effort to ensure the implementation of the provisions of the Convention. We understand that the Government of Belarus has implemented the proposals of the Commission of Inquiry by giving due consideration to the agreements reached and the plans developed jointly with the International Labour Organisation. Recent developments in social dialogue with the participation of employers' associations and trade unions including the largest trade union in the country, have helped to bring some important changes in the labour and social domain. We note that the Committee of Experts in its reports has acknowledged the positive developments in Belarus with regard to the measures taken by the Government of Belarus to implement ILO Conventions.

We note the removal of obstacles for the registration of trade unions and the increasing number of registrations of trade unions in the recent past. In this regard, recently developed proposals to abolish the legislative requirement for 10 per cent of employees to create a trade union, is a move that needs appreciation. Furthermore, a training course on international labour standards for judges, lawyers and legal educators as well as a tripartite conference, "Tripartism and Social Dialogue in the World of Work", has been held, giving effect to the recommendations of the Commission of Inquiry. We also would like to indicate that a country should be given enough time to implement the recommendation made by the Committee of Experts by giving due consideration to the fact that it takes time to bring changes to local legal systems and practices. We hope that with the passage of time, the enhanced social dialogue system has the potential to address the issues raised by the Committee of Experts. We request in this context a balanced and comprehensive approach with regard to the situation in Belarus. We support efforts of the Government of Belarus to improve the labour standards of its citizens and encourage an open and constructive dialogue on the implementation of the ILO Conventions.

**Observer, IndustriALL Global Union** – I am speaking here on behalf of IndustriALL Global Union representing more than 50 million workers worldwide in the mining, manufacturing and energy industries, including in Belarus. Every day, IndustriALL affiliates and their members in Belarus face dismissals, intimidation, raids of their offices, interrogations, beatings, arrests, fines and heavy prison sentences under any reason. The systematic denial to register independent unions and the extended use of fixed-term contracts seek to eliminate the presence of independent union leaders and activists in all enterprises of Belarus.

Since 2000, at least 100 independent union organizations were denied registration there. In August last year, 200 workers joined the newly established local union branch of Belarusian Independent Union (BNP). The union was denied registration and all the activists who initiated the creation of the union were dismissed. Three activists, Igor Povarov, Alexander Bobrov and Yevgeny Govor, were sentenced to two and a half and



three years in jail for striking at the same company in August 2020 and many other workers were subjected to administrative arrests.

The BNP reported at least two other denials of registration in 2020. SPM, the free trade union of metalworkers, reported that in a wave of mass layoffs in Minsk, 400 union members were fired from at least five companies for joining the union of their choice between November 2020 and to February 2021.

Police forces raided the offices of another independent union, the REP, on 16 February this year seizing everything they could get their hands on, including personal money of staff, union properties, communication devices, union documents and campaign materials. The official refused to give a copy of the search record or to supply an inventory of the seized items.

All these recent facts show that the Government has not implemented the majority of the recommendations of the ILO Commission of Inquiry released in 2004, 16 years ago. We consider that the situation has actually dramatically deteriorated for workers and civil society. In the light of these continued and systemic violations denying workers' rights and freedom, stronger measures need to be applied in order to secure compliance of the Belarusian Government with the ILO Constitution.

**Observer, International Union of Food and Allied Workers' Associations (IUF) –** For the first time, the issue of violations of workers' rights was considered by the ILO in March 2001, 20 years ago. For 20 years since then, the ILO has been calling on the authorities of the Republic to recognize in practice the principles described in the ILO Constitution and fundamental documents to which Belarus must adhere as an ILO Member. Recommendations were formulated by the ILO Commission of Inquiry back in 2004. The Commission set a time frame. They were to be completed at the latest by 1 June 2005. Sixteen years later, we can see that not only there has been no meaningful progress in implementation of these recommendations, but there are obvious steps backwards.

The reports of the ILO Committee on Freedom of Association, Committee of Experts, UN Human Rights Council and UN Special Rapporteur on Belarus provide shocking numbers of mass repressions against civilians, including labour leaders and workers' activists in peaceful actions. The escalation of human rights violations is not only the issue of workers. Employers cannot establish their own independent associations and, at the same time, are now forced to violate workers' freedom of association by forcing their employees into state-controlled trade union structures.

In the recent reply, the Government goes as far as to accuse the Committee of Experts of using supposedly unverified information in the report. This is not only a refusal to accept the obvious fully confirmed facts, but also a manifestation of the Government's disrespect for the process and attempt to depreciate the Committee and its recommendations. What happens in Belarus today indicates a retreat of the Government from its obligations under the Convention. The above would warrant the adoption of conclusions calling upon the Governing Body, the Committee of Experts and the Office to continue taking all possible measures to secure the observance by Belarus of the recommendations of the Commission of Inquiry. This contribution of the IUF is complementary to the statement of the IndustriALL Global Union and represents a common position of four global unions, including Building and Wood Workers' International and UNI Global Union.

*Interpretation from Russian:* **Government member, Tajikistan** – First of all I would like to note the positive developments in the area of the application of the Convention

by the Government of Belarus. There has certainly been movement in the last few years, moving towards a positive social dialogue and with regard to the application of recommendations of the Commission of Inquiry, there has been agreement achieved and, together with the ILO, a road map has been produced. The ILO and the social partners have fully implemented the recommendations of the direct contacts mission, which took place in 2014. We note the work of the tripartite Council. This is a space for development of suggestions on legislation and policy, which is done with the powerful participation of worker, employer and government representatives. We consider that there should not be a linking of the ILO report with any political issues.

**Government representative** – Thank you for giving me the opportunity to explain the position of the Government of the Republic of Belarus and thank you to the representatives of those countries that have supported Belarus. Everything that has been said today will be closely considered by us, analysed and taken into account in our future work to implement the recommendations of the Commission of Inquiry.

I do not want to set out to oppose those critical voices we have heard. I will only draw attention to some issues which we believe can help Members to understand in a more objective way the situation in Belarus. Every country has issues between employers and workers, that is unavoidable, and the objective of the Government of Belarus is to form fair and balanced systems of labour relations in which the interests of workers and employers are given equal weight. Representatives of trade unions are allowed to fully participate in the development of provisions in the social and labour sphere. Nobody in Belarus can be brought to responsibility for participating in legitimate trade union activities. However, any person participating in illegal mass events will have to face legal consequences; the law applies equally to all.

Once again, I would emphasize that during the events of 2020, no strikes were called at the enterprise level pursuant to the rules set forth by the legislation. Therefore, if a workers did not come to work because he or she participated in an illegal political protest, for an employer this meant that the worker did not show up for work without providing a reasonable excuse. In this regard, Belarus is the same as many other countries.

With regard to changes in the Labour Code, I would say the following: the Republic of Belarus is an independent sovereign State and has full authority to improve national legislation in accordance with the current interests of residents and the State and social partners. These rules are applied in the specific areas and in this particular case, the Convention would apply. There are requirements that apply to the organization of strikes and those are covered in international instruments. However, it is important to recognize the role that the interests of citizens play when there is a threat to life and health.

With regard to amendments made to the Law on Mass Activities, they set up additional conditions to ensure social safety when it comes to the holding of mass events. There is no contradiction in this legislation with the Convention and we have informed the Committee of Experts in our report in accordance with article 22 of the ILO Constitution.

I took the floor initially to inform the Committee about the efforts that have been undertaken by the Government of Belarus in developing social dialogue and tripartism. We have had some success. That is something that has been recognized by the Committee of Experts and the direct contacts mission but, unfortunately, this is a situation that does not please everybody. There are forces within and beyond the country who want to undermine the existing labour system in Belarus. The BKDP speaks

out against the Government. It does not adopt a balanced position and takes steps against the interest of the State and Government, calling for a boycott of Belarusian goods and application of sanctions. The Government is trying to hold dialogue with the BKDP and has allowed it to participate in the tripartite bodies, the NCLSI and the tripartite Council. However, all we have heard is criticism relating to the policies of the Government regardless of the effect. The BKDP is lobbying its destructive position in the ITUC, which unquestionably accepts all of this criticism and takes it as truth about the situation in Belarus. The ITUC has attempted to tie the illegal protest to the question of strikes. There is an unfounded attempt to link questions which fall outside the ILO with the work of the ILO.

Once again, allow me to emphasize that these attempts are exclusively political in nature and they are not linked to the recommendations of the Commission of Inquiry. This can become a serious obstacle to constructive cooperation in the future, within the country, as well as with the ILO's experts regarding the question of implementation of the recommendations. We count on the Committee to take the Government's concern into account.

In conclusion, once again allow me to reaffirm the commitment of the Republic of Belarus to the fundamental principles of the ILO and our willingness to work together with social partners and the ILO on the essential developments to ensure that we continue applying these recommendations.

**Worker members** – We note the comments of the Government of Belarus and indeed there has not been any progress regarding freedom of association in practice in Belarus, despite the fact that the case has been before our Committee for many years.

The Government has failed to make any meaningful progress to comply with the recommendations of the Commission of Inquiry. Workers are facing constant repression. Independent unions are not able to conduct their activities freely, facing restrictions in holding demonstrations and public meetings and in receiving foreign financial aid. Trade union offices are raided by the law enforcement forces. Leaders and members who take part in peaceful demonstrations and strikes are dismissed, criminally charged and subjected to administrative arrest and fines. Independent unions are not consulted during preparation of legislation. The Government actively interferes in freedom of association by favouring establishment of the FPB-affiliated unions in both public and private sectors. The requirement of a legal address is still an obstacle to the registration of independent unions in the country, contrary to the statements made by the Government.

These violations on freedom of association constitute a completely unacceptable continuation and escalation of anti-union repression in Belarus. The Government needs to ensure that unions that chose not to be part of the FTB can be created and registered and are able to operate freely. Legislation must be finally brought into line with the principles of freedom of association. Independent unions must enjoy equal rights. The Government must implement all the recommendations of the Commission of Inquiry as well as the Committee of Experts and the recent report by the Committee on Freedom of Association.

In response to the Government's comments this afternoon, we are extremely concerned that the Government outright rejects the concerns expressed by the experts related to civil liberties. The supervisory bodies of the ILO have emphasized that the rights conferred upon employers' and workers' organizations must be based on respect for civil liberties. We must emphasize that the Government of Belarus has an obligation

to respect international labour standards and the independent guidance provided by the Committee of Experts in line with their mandates. The Government must respect the guidance provided by the Committee of Experts. We must recall that democracy and respect for civil liberties, including freedom of assembly, protest strikes, expression and opinion, is fundamental to the free exercise of trade union rights.

The BKPD and other free trade unions must be free to undertake their trade union activities without intimidation or threats. We urge the ILO to monitor the development and to consider any other appropriate measures to make sure that the Government respects freedom of association and the independence of trade unions. We urge the Government to welcome ILO monitoring in this regard.

Given the absence of progress after many years, the failure to fully implement the Commission of Inquiry recommendations and the gravity of recent developments, the Committee should include the country in a special paragraph.

**Employer members** – I would like to thank Madame Minster for the Government's detailed submissions to the Committee today. The Employers' group takes note of both the written and oral information made by the Government representative, and the discussion that followed.

The Employer members express deep concern about the violations of civil liberties and the rights of workers following the 20 August 2020 elections. The Employers urge the Government to restore, without delay, full respect for workers' rights and freedoms, to implement recommendation 8 of the Commission of Inquiry on guaranteeing adequate protection against administrative detention for trade union officials in the performance of their duties or when exercising their civil liberties. We urge the Government to take measures for the release of all trade unionists who remain in detention and for the dropping of all charges related to the participation in peaceful protest action. We urge the Government to investigate, without delay, alleged instances of intimidation or physical violence through an independent judiciary inquiry.

As regards the issue of legal address as an obstacle to trade union registration, the Employer members request that the Government keep it informed of further developments on this matter, in particular any discussion held, and outcomes of these discussions, in the tripartite Council.

In respect of the demand by the President of Belarus for the establishment of trade unions in all private companies by 2020 on the request of the FPB, the Employer members urge the Government to refrain from any interference with the establishment of trade unions in private companies, in particular from demanding the establishment of trade unions under the threat of liquidation of private companies as a penalty. The Employer members urge the Government to clarify publicly that the decision whether or not to set up a trade union in a private company is solely at the discretion of the workers in those companies.

In respect of the restrictions of organization of mass events by trade unions, the Employer members urge the Government, in consultation with the social partners including in the framework of the tripartite Council, to amend the Law on Mass Activities and accompanying Regulation, in particular, with a view to set out clear grounds for the denial of requests to hold trade union mass events, in conformity with freedom of association principles, to widen the scope of activities for which foreign financial assistance can be used, to abolish the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation.

The Employer members urge the Government to repeal the Ordinance of the Council of Ministers No. 49, as amended, to enable employers' and workers' organizations to exercise their right to organize mass events in practice. The Employers urge the Government to address, and work to find practical solutions to the concerns made by trade unions in respect of organizing and holding mass events in practice.

In respect of consultations regarding the adoption of new pieces of legislation affecting rights of workers, the Employer members request the Government to amend the Regulation of the Council of Ministers No. 193 to ensure that all representative organizations of employers and workers enjoy equal rights in consultation during the preparation of legislation.

In respect of the functioning of the tripartite Council, the Employer members urge the Government to take the necessary measures to strengthen the tripartite Council so that it can play an effective role in the implementation of the recommendations of the Commission of Inquiry and other ILO supervisory bodies, such as the Conference Committee, toward full compliance with the Convention.

Recent developments have indicated a step backwards, much to our deep regret and a further retreat on the part of the Government with respect to its obligations under the Convention. The Employer members therefore urge the Government to take, at its earlier convenience, in close consultation with the social partners, all necessary steps to fully implement all outstanding recommendations of the Commission of Inquiry. The Employer members invite the Government to avail itself of ILO technical assistance where that would be useful and helpful.

Finally, the Employer members request the Government to provide detailed and complete information on all measures taken, and progress on all of the above issues and to transmit all of the relevant legislative texts to the Committee of Experts before its next meeting.

## Conclusions of the Committee

**The Committee took note of the written and oral information provided by the Government representative 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 2015.**

**The Committee noted with great concern and deeply regretted the numerous allegations of extreme violence to repress peaceful protests and strikes, and the detention, imprisonment and torture of workers while in custody following the presidential election in August 2020 as well as the allegations regarding the lack of investigation in relation to these incidents.**

**The Committee expressed its deep concern that, 17 years after the Commission of Inquiry's report, the Government of Belarus had failed to take measures to address most of the Commission's recommendations. The Committee recalled the outstanding recommendations of the 2004 Commission of Inquiry and the need for their rapid, full and effective implementation.**

**Taking into account the discussion, the Committee urges the Government to:**

- **restore without delay full respect for workers' rights and freedom;**
- **implement recommendation 8 of the Commission of Inquiry on guaranteeing adequate protection or even immunity against administrative detention for**

trade union officials in the performance of their duties or when exercising their civil liberties (freedom of speech, freedom of assembly, etc);

- take measures for the release of all trade unionists who remain in detention and for the dropping of all charges related to participation in peaceful protest action;
- refrain from the arrest, detention or engagement in violence, intimidation or harassment, including judicial harassment, of trade union leaders and members conducting lawful trade union activities; and
- investigate without delay alleged instances of intimidation or physical violence through an independent judicial inquiry.

As regards the issue of legal address as an obstacle to trade union registration, the Committee calls on the Government to ensure that there are no obstacles to the registration of trade unions, in law and in practice, and requests the Government to keep it informed of further developments on this matter, in particular any discussions held and outcomes of these discussions in the Tripartite Council.

As regards the demand by the President of Belarus for the setting up of trade unions in all private companies by 2020 on the request of the Federation of Trade Unions of Belarus (FPB), the Committee urges in the strongest terms the Government:

- to refrain from any interference with the establishment of trade unions in private companies, in particular from demanding the setting up of trade unions under the threat of liquidation of private companies otherwise;
- to clarify publicly that the decision whether or not to set up a trade union in private companies is solely at the discretion of the workers in these companies; and
- to put an immediate stop to the interference with the establishment of trade unions and refrain from showing favouritism towards any particular trade union in private companies.

As regards the restrictions of the organization of mass events by trade unions, the Committee urges the Government, in consultation with the social partners, including in the framework of the Tripartite Council:

- to amend the Law on Mass Activities and the accompanying Regulation, in particular with a view:
  - to set out clear grounds for the denial of requests to hold trade union mass events, ensuring compliance with freedom of association principles;
  - to widen the scope of activities for which foreign financial assistance can be used;
  - to lift all obstacles, in law and practice, which prevent workers' and employers' organizations to benefit from assistance from international organizations of workers and employers in line with the Convention;
  - to abolish the sanctions imposed on trade unions or trade unionists participating in peaceful protests.



- to repeal the Ordinance No. 49 of the Council of Ministers, as amended, to enable workers' and employers' organizations to exercise their right to organize mass events in practice; and
- to address and find practical solutions to the concerns raised by the trade unions in respect of organizing and holding mass events in practice.

As regards consultations in respect of the adoption of new pieces of legislation affecting the rights and interests of workers, the Committee requests the Government to amend the Regulation of the Council of Ministers No. 193 to ensure that social partners enjoy equal rights in consultations during the preparation of legislation.

As regards the functioning of the Tripartite Council for the Improvement of Legislation in the Social and Labour Sphere, the Committee urges the Government to take the necessary measures to strengthen the Tripartite Council so that it can play an effective role in the implementation of the recommendations of the Commission of Inquiry and other ILO supervisory bodies towards full compliance with the Convention in law and practice.

The Committee expresses its disappointment at the slow process in the implementation of the recommendations of the Commission of Inquiry. Recent developments indicated a step backward and further retreat on the part of the Government from its obligations under the Convention. The Committee therefore urges the Government to take before the next conference, in close consultation with the social partners, all necessary steps to fully implement all outstanding recommendations of the Commission of Inquiry.

The Committee invites the Government to avail itself of ILO technical assistance.

The Committee requests the Government to provide detailed and complete information on measures taken and progress made on all of the above issues and to transmit all relevant legislative texts to the Committee of Experts before its next meeting in consultation with the social partners.

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

*Interpretation from Russian: Government representative* – We have listened closely to the Committee's comments with regard to the fulfilment of the Convention. The conclusions are not objective and they are not fair. The information provided by the Government is not taken into account. We provided it before the Conference and on the hearing of the case during the Committee.

Everything that was done by the Government in previous years has been ignored. Nor has the position of countries who supported Belarus been taken into account, including two countries who have been permanent members of the Governing Body of the ILO. Our fears were confirmed. Those who oppose our Government used the Committee to level unfounded accusations.

Protests took place in violation of the law, putting the health and security of citizens in danger. That was the reason for the response. We do not believe that this approach, in the Committee, is acceptable. It is political in nature, not linked to the process of social dialogue in the sphere of labour, nor can it be a basis for an assessment of the situation with regard to the application of the Convention.

A lot has been done in Belarus to develop tripartism and social dialogue in recent years and I talked about this when I addressed the Committee. However, this has not been reflected in the Committee. What is in the recommendations is a recommendation for a special paragraph. We do not believe this is fair.

Today, a number of countries are seeking to destabilize our Republic. A mass information attack has been unleashed against our country, bringing us to answer unfounded accusations in the international arena. Therefore, in this regard, I would like to recall that in accordance with the resolution on combating the pandemic, all countries have to fight against the consequences of the crisis by developing local and regional cooperation, strengthening global solidarity, and increasing the effective policies in the economic and social spheres.

It is clear that we will only be able to overcome this crisis by working together. Only in that way, can we achieve decent work for all. The effects of sanctions run opposite to this objective and harm the health and security of citizens and in that way, undermine the principles of the ILO. We are convinced that the ILO should not be using its authority to allow such unfounded approaches.

## Ghana (ratification: 2000)

### Worst Forms of Child Labour Convention, 1999 (No. 182)

#### Written information provided by the Government

##### Article 3. Worst forms of child labour

Clause (a). All forms of slavery and practices similar to slavery. Sale and trafficking of children

A total of 556 human trafficking cases have been investigated, out of which 89 accused persons have been prosecuted and 88 convicted. Out of the convictions, 41 were under the Human Trafficking Act, 20 under the Children's Act, 1998 (Act No. 560), and 27 other related offences; 65 out of the 88 convicts were given jail terms ranging from 5 to 7 years and the remaining 23 convicts fined up to 120 penalty units each (a penalty unit is 12 Ghanaian cedis).

Clause (b). Use, procuring or offering of a child for the production of pornography or for pornographic performances

The Government wishes to draw the attention of the Committee to section 101A(b) of the Criminal Offences Act, 1960 (Act No. 29), as amended by the Criminal Offences (Amendment) Act of 2012, which covers the use of children in pornography and pornographic performances, and establishes penalties for offenders.

Section 101A(2)(b): "A person who sexually exploits another person who is a child commits an offence and is liable on summary conviction to a term of imprisonment of not less than seven years and not more than twenty-five years."

Clause (d) and Article 7(2)(a) and (b). Hazardous work in cocoa farming and preventing children from being engaged in and removing them from such hazardous work

The Government wishes to assure the Committee that its effort to prevent children under 18 years of age from being engaged in hazardous types of work in this sector continues relentlessly. The Government has taken measures to improve access to education in its efforts to implement the constitutional provision of free compulsory universal basic education (FCUBE) through the expansion of school infrastructure, continues training of competent teachers, and Capitation Grant and School Feeding Programmes. The Government has progressively reduced the average distance to schools from 4.5 km in 2010 to about 2.1 km in 2020. As a result of these interventions, school enrolments at the primary and junior high school stands at 98 per cent and 95 per cent, respectively. The Government introduced the Free Senior High School policy in 2017 and through this intervention, around 300,000 children who could not have accessed secondary education due to financial and other factors have accessed secondary education. In addition to these interventions, the Government, in collaboration with partners has intensified child labour awareness-raising and sensitization activities throughout the country. The Government has, since 2000, implemented interventions in the cocoa sector with the aim of improving cocoa productivity and ensuring that children do not engage in hazardous work. These include mass cocoa spraying, mass pruning, fertiliser subsidies, artificial pollination, and extension services. The Government and the cocoa and chocolate industry players have initiated a public-private partnership arrangement aimed at accelerating the elimination of child labour in all cocoa-growing areas.

### Article 4(1) and (3). Determination and revision of the list of hazardous types of work

The Government wishes to bring to the attention of the Committee that it has since 2008 developed, in accordance with Article 4(1) and (2) of the Convention, comprehensive a Hazardous Activities Framework (HAF) for the Cocoa Sector in 2008 and a General HAF for 17 other sectors in 2012. The HAF, which was validated by the National Steering Committee on Child Labour, became the reference point for child labour-related surveys including the 2014 National Survey conducted by the Ghana Statistical Service and the UCW report of 2017, entitled “Not Just Cocoa: Child Labour in the Agricultural Sector in Ghana” which was reference by the Committee of Experts in the 2020 Report. In accordance with Article 4(3) of the Convention, the Ministry has commenced the review of the HAFs. The Ministry will liaise with the Ministries of Gender, Children and Social Protection and the Justice and Attorney-General Department will discuss how to adopt the HAF into law after the review.

### Article 7(2). Effective and time-bound measures. Clauses (a) and (b)

The Government has taken note of the Committee’s request and will continue to intensify its efforts towards the elimination of human trafficking, particularly child trafficking. Under the Child Protection Compact Agreement in 2018, the Government renovated, refurnished and commissioned one children’s shelter which has since been in operation. The Government is also working with ten private shelters. There are 71 children in the shelters; 14 in government and 57 in private shelters. The Government has also recruited six professionals and four non-professionals to run the children and adult shelters and four psychologists and mental health workers are on call 24/7. The Anti-Human Trafficking Secretariat, the Human Trafficking Unit of the Ghana Police Service and the Anti-Human Smuggling and Trafficking in Persons Unit of the Ghana Immigration Service have strengthened their collaboration with CSOs as well as international partners, particularly the International Organization for Migration in this course. The Human Trafficking Secretariat and the Human Trafficking Units of Police and Immigration Services collaborate with CSOs to undertake monitoring and rescue exercises on the Lake and in Central Region. The Human Trafficking Secretariat, the Human Trafficking Unit, the Anti-Human Smuggling and Trafficking in Persons Unit and partners undertake awareness-creation and sensitization activities in the targeted areas. Stakeholder groups including CCPCs, Child Rights Clubs, Farmer Co-operatives and Associations, etc. were formed to create awareness and monitor child trafficking and child labour.

The Ghana Police Service has introduced child-friendly policing in all training institutions for all levels of officers who go for training at the Institute to ensure effective management of child victims and children in conflict with the law. The Service has developed curriculum and standard operating procedures on child trafficking. The Government and partners over the period 2017–20 have rescued a total of 1,088 child labour victims, comprising 1,017 males and 71 females.

### *Trokosi* system

*Trokosi* has been outlawed in Ghana and there are no known official data on it by public institutions responsible for data collection. All forms of servitude which include the *trokosi* system have been prohibited in the Human Trafficking Act and its related legislations such as the Children’s Act. Again, the engagement of children in hazardous work on cocoa farms and in fishing has been prohibited in the Children’s Act.

The Government, in partnership with stakeholders, has been sensitizing and educating stakeholders such as fetish priests/priestesses, family heads, traditional rulers, religious bodies and indigenes on the abolition of *trokosi*.

### **Article 3(c). Use, procuring or offering of a child for illicit activities**

The Government wishes to state that the provision under section 200B(4) of the Criminal Offences (Amendment) Act, 2012 (Act No. 849) covers the procuring or offering of a child for illicit activities.

### **Article 6. Programmes of Action. National Plan of Action for the elimination of worst forms of child labour (2017–21)**

As part of implementation of NPA2, the Government, in partnership with stakeholders, has undertaken interventions aimed at preventing, protecting, prosecuting and fostering partnerships. Various stakeholder groups have been formed, provided sensitization and capacity-building to help prevent the WFCL and protect victims.

#### **Formation of groups for sensitization**

Fourteen groups have been formed in 1,023 communities and the groups have been able to sensitize about 7,357,170 individuals. The groups formed included the Community Child Protection Committee (CCPC), Child Right Clubs, Civic Education Clubs, SCREAM Clubs, Farmers Groups Cooperative, Farmers Associations, Faith-Based Organizations, etc. The awareness-creation and sensitization activities have been carried out in all the 260 districts of the country through durbar, campaigns, radio programmes and through community information centers.

#### **Capacity building to identify and remove child labourers**

The Government in partnership with the social partners provided capacity-building for 4,474 representatives from various institutions and groups to enhance their capacity to identify and remove children in child labour and make referrals for rehabilitation, where necessary. Beneficiaries included: members of Parliament; labour inspectors/labour officers; GAWU field coordinators and regional officers; community leaders/facilitators CCPC members/operational agents; community-based CLMRS data collectors, teachers; COCOBOD field officers (extension agent); associations and or heads of associations; ECOM franchise holders and regional managers; Cargill farmer coaches and managers; journalist; and law enforcement agencies.

The Ghana Police Service has introduced child-friendly policing in all training institutions for all level of officers who go for training to ensure that cases involving child victims and children in conflict with the law are effectively managed. The Service has developed curriculum and standard operating procedures on child trafficking.

The Government, through social partners and other stakeholders, identified and withdrew a total of 1,088 children from the worst forms of child labour for the period 2017–20; 1,017 of the children were males while the remaining 71 were females. A total of 783 victims were rescued and cared for. Out of the number, law enforcement agencies rescued 611 and NGOs rescued 172 victims.

## Prosecutions

Some 556 human trafficking investigations were conducted, 89 accused persons prosecuted and 88 convicted; 65 out of the 88 convicts were given jail terms ranging from 5 to 7 years and the remaining 23 convicts fined up to 120 penalty units each (a penalty unit is 12 cedis/US\$2.5).

## Implementation of NPA for human trafficking

As part of the implementation of the Human Trafficking Act, 2005, (Act No. 694), the Human Trafficking Fund as provided for under section 20 of the Act has been established. Since the establishment of the Fund, the Government has deposited an amount of 1,500,000 cedis to support the fight against human trafficking. The Human Trafficking Management Board visited Kete Krachi in connection with the CNN documentary on trafficking on the Volta Lake. The Board visited some communities and together with the member of Parliament for the area organized a community durbar to educate and sensitize the people on the dangers associated with child exploitation, child labour and child trafficking. The Human Trafficking Secretariat and the Units of the Police and Immigration Services collaborate with CSOs to undertake awareness-raising and sensitization as well as regular monitoring and rescue exercises on the Lake and in the Central Region. To intensify efforts at prevention, a community dialogue was instituted as part of the Honorable Ministers actions to engage community members to understand the issues of vulnerability and 28 community dialogues and engagements were organized. All High Court and Appeal Court Judges nation-wide were sensitized on issues and modern trends in human trafficking in Ghana and globally 78 judges were trained to strengthen child protection and child-friendly courts.

## ILO-IPEC Project

The CCPCs are the fulcrum around which the Child labour Monitoring System revolves. They monitor and identify child labourers and children at risk and refer them for remediation services. A total of 2,612 CCPCs have been formed and as a result, 7,543 children at risk and in child labour cases have been identified through the routine monitoring exercises.

## CARING Gold Mining Project

The project created a platform for stakeholders in mining, notably the organized labour and CSOs to engage in preventing child labour in mining. It enhanced the knowledge of stakeholders in programme management and occupational safety and health. It strengthened law enforcement at the local level through community regulations and support for district assemblies' subcommittees. It facilitated the linkage of project communities to social protection interventions, notably the National Health Insurance Scheme and the Ghana School Feeding Programme.

## **Article 7(2)(d). Identifying and reaching out to children at special risk. Child orphans of HIV/AIDS and other vulnerable children (OVCs)**

Orphaned and vulnerable children (OVCs) continue to be one of the three main criteria for benefiting from LEAP. Child victims and orphans of HIV/AIDS are continuously protected through free medical care, and free education, among others, in addition to the cash transfer. Currently, there are 335,015 households benefiting from LEAP. Out of this, 150,765 are OVC households, with a total household membership of 362,562, comprising 190,438 males and 172,124 females.



## Discussion by the Committee

**Government representative, Chief Labour Officer** – Ghana’s commitment to the international labour standards and such opportunities to provide further clarification on this core Convention cannot be underestimated. The country has never relented in its effort to provide responses to all direct requests and observations. It is important to note that Ghana has ratified 51 ILO Conventions of which eight are fundamental Conventions.

The Government of Ghana, recognizing that child labour has adverse effects on children’s rights, health and education and constitutes a serious hindrance to the achievement of national education and human resource development goals, has developed a legal and policy regime to address child labour comprehensively. In this regard, we have ratified key international instruments and enacted the relevant national laws to deal with child labour. It is important to mention that Ghana has ratified the Minimum Age Convention, 1973 (No. 138), and Convention No. 182. Beyond these, Ghana has enacted various legislations which also find their root in the 1992 Constitution of the Republic of Ghana. These laws include the Children’s Act; the Human Trafficking Act; the Criminal Offences Act; the Juvenile Justice Act; the Labour Act; and the Labour Regulations. These laws are aimed at providing effective protection to children and preventing them from being victims of child labour.

There is a robust institutional framework which has the National Steering Committee on Child Labour as the apex body providing for effective networking of stakeholders and partners. The Child Labour Unit, under the Labour Department of the Ministry of Employment and Labour Relations, is the National Secretariat of the National Steering Committee and coordinates all child labour interventions in the country. This arrangement provides for lead agencies to implement specific activities towards the elimination of child labour. It also provides for the identification of collaborating partners, comprising the private sector, development partners, civil society organizations (CSOs) and non-governmental organizations (NGOs), in complementing the efforts of the lead agencies and the National Secretariat. The institutional arrangement provides for various subcommittees that handle specific thematic issues including policy planning and implementation; monitoring and evaluation; resource mobilization; advocacy and communication; and, importantly, child labour, social protection and labour inspections. Ministries, departments and agencies have desk officers who coordinate child labour interventions in their various institutions.

It is important to note that the Government’s role in the fight against human trafficking is commendable. Available data gathered indicates that 556 human trafficking investigations were conducted, 89 accused persons prosecuted and 88 convicted. Out of the 88 convicted individuals, 65 were given jail terms ranging from five to seven years and the remaining 23 fined up to 120 penalty units each.

The Government wishes to draw the attention of the Committee that section 101A(b) of the Criminal Offences Act, 1960 (Act 29), as amended by the Criminal Offences (Amendment) Act, 2012, covers the use of children in pornography and pornographic performances, and establishes penalties for offenders. Thus, section 101A(2)(b) states as follows: “A person who sexually exploits another person who is a child commits an offence and is liable on summary conviction to a term of imprisonment of not less than seven (7) years and not more than twenty-five (25) years.” Article 28(5) of the 1992 Constitution and section 1 of the Children’s Act 1998 define a child to mean a person below the age of 18 years.

The Government assures the Committee that its efforts to prevent children under 18 years of age from being engaged in hazardous types of work continues relentlessly. To address child labour and prevent children from indulging in any hazardous activity that will ruin their health, safety and education, the Government has taken measures to improve access to education in its efforts to implement the constitutional provision of free compulsory universal basic education (FCUBE) through the expansion of school infrastructure, continued training of competent teachers, a capitation grant covering over 5 million pupils in all public basic schools from kindergarten to junior high school, and the Ghana School Feeding Programme covering about 10,000 basic schools with a student population of over 2 million. Also, the technical vocational educational system is undergoing reforms to create further opportunities for the youth in terms of skill development and job creation.

Again, between 2010 and 2020, the Government progressively reduced the average distance to schools from 4.5 km to about 2.1 km, thus increasing school enrolments in primary and junior high school to 98 per cent and 95 per cent, respectively. The Government introduced the free senior high school policy in 2017 and this has facilitated over 300,000 children who hitherto could have ended in child labour now have access to free secondary education.

The Government has collaborated effectively with social partners, the private sector, development partners (including the ILO, UNICEF, the United States Department of Labor (USDOL) and the European Union (EU)) to take pragmatic measures through prevention, protection, prosecution and partnership in the design and implementation of the National Plan of Action for the elimination of the worst forms of child labour between the years 2009 and 2015, and the second phase spanning the period 2017 to 2021. It involved awareness-raising, monitoring, removal and reintegration of child labourers and children at risk and ensuring their enrolment into schools and vocational training institutions.

To help prevent children from engaging in hazardous work on cocoa farms, the Government has, since 2000, implemented mass cocoa spraying, mass pruning, fertilizer application and subsidies, artificial pollination, and extension services undertaken by adults and farmer groups. These interventions further contribute to improving cocoa productivity and incomes of farmers, hence reducing poverty and vulnerability, which are known to be the main causes of child labour.

In 2010, the Governments of Ghana and Côte d'Ivoire, representatives from the international chocolate and cocoa industry and USDOL, signed a declaration and framework tied to the Harkin-Engel Protocol to take action towards the goal of achieving a 70 per cent reduction in the worst forms of child labour in the cocoa sectors of the two countries in the aggregate by 2020. This effort resulted in tremendous improvement in the fight against child labour culminating in a public-private partnership initiative.

In the determination and revision of the list of hazardous types of work, the Government wishes to bring to the attention of the Committee that since 2008 it has developed, in accordance with Article 4(1)(2) of the Convention, a comprehensive Hazardous Activities Framework (HAF) for the cocoa sector (2008) and a general HAF for 17 other sectors (2012). Among many others, these include: fishing in open waters; fish processing; mining and quarrying; livestock; domestic work; and street hawking.

The HAF, which was validated by the National Steering Committee on Child Labour, became the reference point for child labour-related surveys, including the 2014 National Survey conducted by the Ghana Statistical Service and the Understanding Children's

Work (UCW) report of 2017, entitled *Not Just Cocoa: Child Labour in the Agricultural Sector in Ghana*, which was referenced by the Committee of Experts in the 2020 report. In accordance with Article 4(3) of the Convention, the Ministry has commenced the review of the HAF. The Ministry is collaborating with the Ministry of Gender, Children and Social Protection, the Ministry of Justice and the Attorney-General's Department to discuss how to adopt the HAF into law after the review exercise.

The Government has taken note of the Committee's request and will continue to intensify its efforts towards the elimination of human trafficking, particularly child trafficking. It is important to note that under the Child Protection Compact (CPC) agreement in 2018, a total of 11 government and private shelters are in place. There are 71 children in the shelters (14 in government shelters, 57 in private shelters). The Government has also recruited six professionals and four non-professionals to run the children and adult shelters and four psychologists and mental health workers are on call 24/7. The Anti-Human Trafficking Secretariat, the Anti-Human Trafficking Unit of the Ghana Police Service and the Anti-Human Smuggling and Trafficking in Persons Unit of the Ghana Immigration Service have strengthened their collaboration with CSOs as well as international partners, particularly the International Organization for Migration in this discourse. These institutions collaborate with CSOs to undertake monitoring and rescue exercises on Lake Volta and in the Central Region. Their secretariats undertake awareness creation and sensitization activities in the targeted areas. Stakeholder groups including Community Child Protection Committees (CCPCs), child rights clubs, farmers' cooperatives and associations, were formed to create awareness and monitor child trafficking and child labour.

The Ghana Police Service has introduced child-friendly policing in all training institutions for all levels of officers to ensure effective management of child victims and children in conflict with the law. The service has developed a curriculum and standard operating procedures on child trafficking. The Government and partners over the period 2017–20 have rescued 1,088 child labour victims comprising 1,017 males and 71 females. Interestingly, Ghana has been upgraded from the Tier 2 watchlist to Tier 2 of the Trafficking In Persons (TIP) Global Report since 2018.

The practice of *trokosi* has been outlawed in Ghana and there are no known official data on it by public institutions responsible for data collection. All forms of servitude which include the *trokosi* system have been prohibited in the Human Trafficking Act and its related legislation such as the Children's Act. Again, the engagement of children in hazardous work on cocoa farms and in fishing has been prohibited in the Children's Act. The Government, in partnership with stakeholders, has been sensitizing and educating stakeholders such as fetish priests/priestesses, family heads, traditional rulers, religious bodies and indigenes on the abolition of *trokosi*.

The Government wishes to indicate that Ghana will intensify labour inspections all over the country and especially in areas around the Lake Volta region to address child labour in fishing and other child-related matters.

We will also intensify community sensitization programmes for the public and community leaders to desist from unlawful traditional cultural practices and their negative impact on the child. The CCPCs are the fulcrum around which the child labour monitoring system revolves. They monitor and identify child labourers and children at risk and refer them for remediation services. Some 2,612 CCPCs have been formed and as a result 7,543 children at risk and in child labour cases have been identified through the routine monitoring systems.

The Caring Gold Mining (CGM) Project created a platform for stakeholders in mining, notably organized labour and CSOs, to engage in preventing child labour in mining. It enhanced the knowledge of stakeholders in programme management and occupational safety and health. It strengthened law enforcement at the local level through community regulations and support for district assembly subcommittees. It facilitated the linkage of project communities to social protection interventions, notably the National Health Insurance Scheme (NHIS) and the Ghana School Feeding Programme.

Child orphans of HIV/AIDS and other vulnerable children (OVCs) continue to be one of the three main categories benefiting from the Government's Livelihood Empowerment Against Poverty (LEAP) programme. Child victims and orphans of HIV/AIDS and over 2,145,018 indigents are continuously protected through free medical care (NHIS) and free education, among others, in addition to the cash transfer. Currently, there are over 335,015 households benefiting from LEAP. Of these, 150,765 are vulnerable households with total household membership of 362,562, comprising 190,438 males and 172,124 females.

As I bring my remarks to a close, I wish to state that Ghana was the only country that subjected itself to the Economic Community of West African States (ECOWAS) peer review in 2013 of nine different areas in our effort, from substantive issues including the legal framework to activities undertaken. Ghana has further demonstrated its commitment to eradicating all forms of child labour by joining Alliance 8.7 as a pathfinder country.

Ghana wishes to mention that the Government will continuously require technical assistance from the ILO to enhance its reporting system through capacity-building, resources and outreach programmes in collecting information from stakeholders. This will go a long way towards assisting other agencies and social partners to understand child labour and the need to submit input in a timely manner to facilitate the reporting system.

**Worker members** – This is the first time our Committee is examining Ghana's application of Convention No. 182 and we are examining this Convention as a double-footnoted case, given the seriousness and persistence of the problem and the inexcusable absence of responses to the issues raised by the Committee of Experts.

We note that in 2015, 2017, 2018 and 2019 the Committee of Experts raised serious concerns regarding Ghana's application of the Convention and between 2004 and 2020 addressed 12 direct requests to the Government. We deplore the repeated failure by the Government to prioritize the supply of information to the Committee of Experts in response to its observations and direct requests on such a serious matter as the worst forms of child labour.

In particular, we deplore the failure of the Government to provide information on the actions taken to address the urgent situation of children trafficked for exploitation in the fishing industry, domestic servitude, the cocoa industry and those exploited in harmful practices such as the *trokosi* system of servitude and debt bondage.

You recall at the very essence of the ILO supervisory system is the dialogue between its constituents at the national and international level, and this dialogue is based on information provided on the application of the Conventions in law and in practice. Failure to submit reports, comments or replies undermine the supervisory system and the very functioning of the ILO. The Government of Ghana, as a matter of urgency, must seek ILO technical assistance to build the necessary capacity to live up to its reporting obligations.

The Committee of Experts has raised a number of very serious concerns with regard to the Government of Ghana's application of the Convention. With respect to Article 3 of the Convention, we welcome the Government's information that an Anti-Human Trafficking Unit has been established and that in November 2015 the Human Trafficking Legislative Instrument was adopted together with a national plan of action for the elimination of human trafficking. We also welcome the information that a total of 556 human trafficking cases have been investigated, following which 89 accused persons were prosecuted and 88 convicted and punished with various jail terms and fines. We are, however, deeply concerned that whereas it appears that the Government has made some progress in adopting legislation and an action plan, in practice there has been not much progress in prohibiting and eliminating the worst forms of child labour.

Regrettably, according to reports, over 2 million children between 5 and 14 years of age are engaged in some form of economic activity for pay, profit or family gain with over 78 per cent of them working in agriculture, forestry and fishing and under circumstances that harm their health, safety and morals. It is alarming that Ghana continues to be a source, transit and destination country for trafficking of persons, in particular the trafficking of boys and girls for labour and sexual exploitation. The number of children engaged in street hawking, begging, portering, artisanal gold mining, couriering, herding and agriculture is on the rise, heightening the risk of exposure of these children to exploitation in trafficking of illicit drugs. This situation requires urgent, continuous and focused attention from the Government in consultation with the social partners in order to meet its obligations under the Convention. The Government must step up the investigation and prosecution of persons engaged in the sale and trafficking of children and ensure that in law and in practice, sufficiently effective and dissuasive sanctions are imposed.

Regarding the use, procuring or offering of a child for the production of pornography or for pornographic performances, we note that the Government has indicated in its latest response that section 101A(b) of the Criminal Offences Act, 1960, as amended, protects children from being used in pornography and pornographic performances, providing for penalties for offenders. However, the Government's response does not address the question of whether the Criminal Offences Act expressly defines a child as one under the age of 18 in line with the Convention.

The Government must work in consultation with the social partners to amend the legislation in accordance with the observations of the Committee of Experts. Also, the Government must provide information on the application of section 101A(b) of the Criminal Offences Act in practice, including the number of infringements reported, investigations, prosecutions, convictions and penalties applied in this regard.

We are deeply concerned at reports that an estimated 10 per cent of children working on cocoa farms are engaged in hazardous activities. According to the report, the incidence of child employment in cocoa appears to be rising faster than elsewhere. Over 200,000 children in the principal cocoa-growing regions are exposed to hazardous work and suffering serious injuries. Cocoa brings in about 40 per cent of Ghana's total earnings and has a prime place in the economy of Ghana. Child labour in its worst forms in Ghana also has implications for Ghana's cocoa supply chains in the global economy. We note that since 2000, the ILO has been providing technical assistance to the social partners in Ghana to eliminate child labour and its worst forms.

The Government must take advantage of the assistance of the ILO in this direction to ensure that it doubles up its efforts to prohibit and eliminate the worst forms of child labour in the cocoa industry. Similar challenges exist in the fishing sector, with children

engaged in hazardous work under very poor working conditions and suffering serious injuries.

The other pernicious issue here is that many of these children are victims of trafficking and forced labour and are exposed to sexual slavery. The Government must urgently and seriously intensify its efforts in consultation with social partners to prevent children under 18 years of age from being exploited and engaged in hazardous types of work in this and any other sector. More efforts need to be put into rescue, rehabilitation and social reintegration of child victims. The Government must provide information on the measures taken in this regard, as well as the measures taken to ensure that child victims have access to education, training and skills development, including measures to enforce and monitor the effective implementation of policies and programmes to eliminate and prohibit the worst forms of child labour.

The Government has provided latest information indicating that it adopted a list of hazardous types of work in line with Article 4(1) and (3). We request the Government to provide to the Committee of Experts at its next sitting the list including its road map and action plan for its urgent review.

In the same direction, in compliance with Article 7(2) of the Convention, the Government must, in consultation with the social partners, and as a matter of urgency, design an effective comprehensive and time-bound plan to prevent the engagement of children in the worst forms of child labour in all areas, 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.

With respect to the traditional practice of *trokosi*, the Government's response indicates that the system has been outlawed in Ghana and there are no known official data on it. In our view it is not enough for the Government to proscribe the practice in law. The Government must ensure that, in practice, children are not subjected to this very harmful practice of servitude and debt bondage. The Government must put in place measures to monitor the enforcement of the law in practice and to submit a report to the Committee of Experts on progress.

**Employer members** – The present case is a double-footnoted case dealing with the application in law and in practice of a fundamental Convention, Convention No. 182, in Ghana. This is the first ILO Convention to achieve universal ratification by all 187 ILO Member States. This is a historic achievement that the Employers' group praises and has always supported. Furthermore, 2021 marks the International Year for the Elimination of Child Labour. However, the universal ratification does not mean automatic implementation in law and in practice. It is the first time the Committee has discussed the application in law and in practice of the Convention by Ghana. Ghana ratified the Convention in 2000. Unfortunately, the Government did not submit its report on the application of the Convention to the Committee of Experts, so the latter's comments are based on previous government submissions and other sources of information. The Committee of Experts made prior observations, noting gaps in the compliance of Ghana with the Convention in 2015, 2017, 2018 and 2019, and more recently in the reports issued in 2020 and 2021.

We thank the Government of Ghana for having submitted additional information to the Committee, while we find some issues regarding the application of this Convention. We regret the information was not transmitted in time for its analysis by the Committee of Experts. The Committee of Experts' observations outline very serious elements of inadequacy with the implementation of the Convention in Ghana. These elements have



finally been backed by government information. Let me summarize them around three issues.

First, regarding Article 3(a) and (b) of the Convention, which prohibits all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, and using, procuring or offering of a child for the production of pornography or pornographic performances. The Committee noted that Ghana continues to be a source, transit and destination country for trafficking of persons, as trafficking of persons both for labour and sexual exploitation are more prevalent within the country than just national trafficking, and urged the Government to submit further information on the issue.

We again thank the Government for providing information on the application of the Human Trafficking Act, and the Human Trafficking Legislative Instrument adopted in 2015, and for shedding light on the extent of the conduct described in section 101A of the Criminal Offences Act, as amended in 2012. Despite this new information, and considering the prevalence of these practices, the Employer members request the Government to redouble its efforts and take measures to ensure that in practice thorough investigations and robust prosecutions are carried out in all cases regarding children under the age of 18, and that sufficient effective and dissuasive sanctions are imposed.

Second, as for provisions in articles 752(a) and (b) on prevention, removal, rehabilitation and social integration of children engaged in the worst forms of child labour, the Committee of Experts expressed deep concern regarding the situation of victims of the worst forms of child labour, including: the significant number of children engaged in hazardous conditions of work in the agricultural sector, and particularly in cocoa-specific hazardous activities. Children are trafficked into fishing activities or they are otherwise engaged in hazardous fishing activities, or in the domestic sector in the Lake Volta region. There is the persistence of the *trokosi* system, notwithstanding its prohibition by law and despite the Government's efforts to withdraw children from *trokosi*.

The Government submitted and shared today some relevant information regarding the measures taken in this regard. We welcome these efforts and the commitment to combat these extremely serious issues. We encourage the Government to continue working as a matter of urgency with international development partners and the social actors to tackle the socio-economic circumstances that either lead to or result in the exploitation of children. In particular, we commend the programmes developed within the cocoa sector, ensuring that children do not engage in hazardous work.

The Employer members encourage the Government to continue adopting, as a matter of priority, the measures concerning child labour awareness and community sensitization, as well as capacity-building for district labour inspectors, social workers and the private sector. Also, taking into consideration the role of education in preventing children from being engaged in the worst forms of child labour, the Employer members suggest that the Government should intensify its efforts to facilitate access to free basic education for all children, especially girls, increasing the school enrolment rates and decreasing their dropout rates.

We request the Government to continue reporting on the National Plan of Action for the elimination of the worst forms of child labour, and the other programmes concerning measures to prevent and remove children from these worst forms of child

labour, providing for their rehabilitation, social integration and providing, if possible, data disaggregated by gender and age.

Third, regarding Articles 4(1) and 4(3) on the determination and revision of a list of hazardous types of work, the Committee of Experts noted the lack of information regarding the state of the review process on the Ghana hazardous child labour list and asked what measures are being taken to adopt and include the list into the Children's Act. According to the submission by the Government, the Ministry has commenced a review of the Hazardous Activities Framework for the cocoa sector and will later liaise with the Ministry of Gender, Children and Social Protection, the Ministry of Justice and the Attorney-General's Department to discuss how to adopt the Hazardous Activities Framework into law after the review.

It is not yet clear whether there have been any advances made regarding other economic sectors on the list, or the role of consultation with organizations of workers and employers in this process. Against this background, we request the Government to ensure the finalization and adoption of the list to submit information on any progress made in this regard to the Committee of Experts, and to provide a copy of the list once it has been adopted.

The Employer members thank once again the Government for the written and other information submitted to the Committee. We note that the ILO is already providing its precious assistance under the framework of the EU-ILO Trade for Decent Work Project implemented as of 2021, and we encourage the Government to seek further technical assistance from the ILO to increase capacity of tripartite constituents in order to implement effective strategies to eradicate the worst forms of child labour, built upon timely and effective consultation with the social partners.

To conclude, we want to emphasize that as long as the last case of the worst forms of child labour exists on the planet, more work needs to be done by governments, employers and workers' organizations and the ILO itself.

**Worker member, Ghana** – Ghana's application of Convention No. 182, in law and in practice, raises serious concerns. Child labour and its associated phenomena continue to be a challenge in Ghana. According to the Ghana Living Standard Survey (GLSS), round seven, of 2017, over 2 million children aged between 5 and 14 are engaged in some economic activities for pay; 78 per cent of these children are in agriculture, forestry and fishing. Children are also found in the wholesale and retail trade, mining, quarrying, manufacturing, construction, transportation, storage, accommodation and food services.

Child labour denies children their childhood and their future. They miss educational opportunities, they are exposed to exploitation, including commercial and sexual exploitation, and early marriages. Children engaged in child labour are denied social mobility, thus denying them gainful employment opportunities to access higher incomes in future earnings, and in some cases they remain trapped in a cycle of poverty. Ghana will ultimately be the worse for it, since by implication, the country loses the much-needed human resources capacity for development.

We also note that with the growing participation of children in the labour market, adults are denied employment opportunities and their negotiated rights also undermined.

In spite of the fact that Ghana was the first to ratify the United Nations Convention on the Rights of the Child and has ratified many regional, continental and international

instruments and have passed laws at the national level, the bane of Ghana's child labour phenomenon in Ghana is ineffective implementation of its own laws and policies.

The setting up of the National Steering Committee on Child Labour and the development of the National Plans of Action (1 and 2) aimed at developing holistic strategies including promotion, implementation and monitoring of child labour free zones.

We recognize that this and other initiatives targeted at dominant sectors such as agriculture (cocoa/fishing), mining, quarrying, construction, transport and services (street hawking, begging and portering) have led to mixed successes. These interventions have resulted in the withdrawal of a total of 1,088 children from the worst forms of child labour for the period 2017 to 2020. Other results include a total of 556 human trafficking cases investigated, in which 89 accused persons have been prosecuted and 88 convicted. However, these direct interventions have not been widespread given the magnitude of child labour especially in areas such as cocoa, Lake Volta/marine fishing, oil palm, construction, mining, among others. With regard to fishing on Lake Volta, for example, which has over 12 districts, the direct interventions have focused on 3 of the districts, leaving 9 out of the 12 districts unattended to, and in Lake Volta fishing we have much work to do. The Government will have to intensify efforts to ensure that districts and municipal assemblies prioritize the issue of child labour in their medium- to long-term planning processes and provide adequate resources.

Social partners have played a key role in the progress that has been made so far. We are working together to include child labour clauses in collective agreements in workplaces. The evidence is overwhelmingly clear: where social partners effectively collaborate, child labour is either absent or totally eradicated. Within the last decade, for instance, the General Agricultural Workers' Union (GAWU) of the Trades Union Congress-Ghana, using the child labour-free zone concept, have identified, removed, reintegrated and resettled over 6,000 children from child labour within fishing, cocoa, oil palm and rice-producing communities. These children were either put in formal schools or provided with employable skills.

The Government must redouble, scale up and accelerate its efforts towards eradicating child labour and complying with its obligations under the Convention. The Government must ensure that section 101A of the Criminal Offences Act, 1960 (Act 29), as amended by the Criminal Offences (Amendment) Act, 2012, is further amended, in consultation with the social partners to align with the Convention No. 182. In relation to the hazardous work list, we urge the Government, in consultation with the social partners, to ensure that the list is without delay finalized and a progress report sent to the ILO. With respect to *trokosi*, we are concerned that being linked to culture and tradition, the practice could be going on underground and it is important that the Government monitors to ensure that *trokosi* is not only proscribed in law but also in practice.

In conclusion, as Workers' delegates, we will request ILO technical assistance to ensure that we have the necessary support, capacity and resources to tackle all forms of child labour, especially the worst forms, in accordance with the tenets of Alliance 8.7 and Ghana's obligations under the Convention.

**Government member, Portugal** – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The Candidate Countries, the **Republic**

of **North Macedonia, Montenegro and Albania**, and the 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, together with freedom of association and the abolition of forced or compulsory labour and child labour. We actively promote the universal ratification and implementation of fundamental international labour standards, including Convention No. 182.

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. We thank the Office and give our full support for its constant engagement in promoting labour rights in Ghana.

Ghana is a major partner of the EU in the region including on security matters. Ghana has a commendable track record on democracy, as demonstrated once again with the December 2020 elections. Ghana and the EU have a close and constructive relationship under the Cotonou Agreement, enhanced by the Economic Partnership Agreement (EPA) covering trade and development cooperation. The recent negotiators' deal on a new post-Cotonou EU/Africa, Caribbean and Pacific (ACP) Partnership Agreement reaffirms not only our joint commitment on trade aspects of sustainable development but also in general to protect, promote and fulfil human rights, fundamental freedoms and democratic principles and to strengthen the rule of law and good governance.

Ghana has ambitions for its economic transition, with "Ghana Beyond Aid" implying significant reforms of its economy and governance, which include serious measures to reduce child labour.

Based on the observations of the Committee of Experts, we note with regret that there is a significant number of cases of sale and trafficking of children, and that offences related to the use, procuring or offering of children for the production of pornography and for pornographic performances are still being reported, as well as practices under the *trokosi* system despite their prohibition by law.

Furthermore, the EU and its Member States are concerned at the enduring practice of children being engaged in hazardous work. We urge the Government to continue their efforts in implementing and strengthening effective and time-bound measures to prevent children from becoming victims of trafficking and to remove child victims from all forms of child labour, in particular the worst forms of child labour, and ensure their rehabilitation and social integration. We also ask the Government to promptly take the necessary measures to incorporate the list of hazardous types of work into its legislation.

We welcome the written information provided by the Government. We also note the progress made in investigations and prosecutions of trafficking cases and the advancements in the implementation of the National Plans of Action for the elimination of the worst forms of child labour and for the elimination of human trafficking.

We encourage the Government to pursue its efforts and engagement with the Office and seek further technical assistance from other relevant actors, including within Alliance 8.7. We support these efforts, including through close cooperation with the Ministry of Employment and Labour Relations, and encourage the Government to strengthen their engagement through initiatives such as the partnership for sustainable cocoa production including multi-stakeholder dialogue and operational support, as well as the EU-ILO Trade for Decent Work Project. In the context of the latter, the ILO Office

is providing technical assistance to the tripartite constituents. We also can expect that Ghana's efforts to eliminate child labour will be further amplified by additional support under the EU's 2021–27 programming of cooperation, specifically targeting the abolition of child labour, trafficking and abuse.

The EU and its Member States remain committed to their close cooperation and partnership with Ghana to promote decent work worldwide, and the abolition of child labour, especially in its worst forms, and child trafficking and abuse in particular.

**Government member, Mali** – I am taking the floor on behalf of the Government of Mali to support the Republic of Ghana regarding its efforts and to encourage it to pursue its current reforms in relation to the application of Convention No. 182. Furthermore, the Government of the Republic of Mali would like to ask the International Labour Office to continue to assist the Government of Ghana with a view to the full application of the Convention.

**Government member, United Kingdom of Great Britain and Northern Ireland** – The UK and Ghana have a strong and historic partnership. We are working together to support the vision of “Ghana Beyond Aid”, tackle inequality, and create the foundations for future, mutual prosperity. Progress to remove children from the worst forms of child labour is essential, and we urge the Government of Ghana to continue their efforts to tackle this issue.

Children are one of the most vulnerable groups exploited by perpetrators of forced labour and require specific solutions to protect them from harm. The UK Government continues to push for elimination of the worst forms of child labour from global supply chains.

Cocoa production is important for Ghana's economy, supporting millions of farming households but we are concerned that there has been an increase in hazardous child labour within the sector. We welcome the measures that the Government of Ghana is taking, particularly access to education.

The impact of COVID-19 includes the increased risk of child labour. We welcome the commitments by the Minister of Education to keep schools open, and that the vast majority of children have now returned. COVID-19 has had a disproportionate impact on women and girls, and ensuring girls return to school is important in tackling child labour.

We were pleased to see the commitments by the Minister for Gender, Children and Social Protection to tackle child trafficking and the information from the Government on the number of cases investigated, prosecuted and convicted. We hope the Ministry can strengthen social protection systems, including cash transfers to reduce the risks of trafficking and child labour.

We welcome the number of children withdrawn from the worst forms of child labour and urge the Government to share further information relating to cases of children drawn into pornography. Furthermore, while it is important that the *trokosi* system has been outlawed and the Government is engaging with communities to support its abolition, we urge the monitoring of continued suspected incidences.

We urge the Government of Ghana to continue its important efforts.

**Worker member, Norway** – I will speak on behalf of the trade unions in the Nordic countries. Human trafficking is modern-day slavery, a crime and a grave violation of human rights. Ghana continues to be a source, transit and destination country for trafficking in persons. However, the worst forms of internal trafficking for hazardous labour relate to children. Many Ghanaian children up to the age of 4 are trafficked from

their homes and home villages to work in fishing activities on Lake Volta. For most of us, they are just stories and statistics we read in ILO publications. In March 2019, CNN, through their “Freedom Project” programme, brought into our homes heart-breaking documentaries on the reality of children engaged in fishing on Lake Volta. Each day they go down in that lake to retrieve nets, they do not know if they will come up alive or become another anonymous corpse at the bottom of the lake. To the “master”, as the slave owner is commonly called, these are not human beings but simply tools of production. CNN made us realize that these children are visible human beings, they have dreams, they also have names. One of them is Adam, he would like to be in school but he is forced to fish for up to 12 hours a day, 7 days a week, with no break.

The Nordic trade unions are deeply concerned about these violations. We urge the Government to take immediate action towards the elimination of the worst forms of child labour. The Government should further improve access to free basic education for all children. Ghana has a relatively good legal framework for combating trafficking, The challenge lies in its application. This calls for close collaboration with social partners, traditional rulers and local communities to isolate and address the root causes of these forms of child labour and why they still persist today. Ghana, as the pioneer of freedom from colonial rule on the African continent, is expected to take the lead in eliminating any form of servitude on its soil. All it takes is political will.

**Government member, Switzerland** – The eradication of the worst forms of child labour, in which Convention No. 182 plays a role, is a universal principle applicable to all children aged under 18 years and is one of the ILO’s most important objectives. Switzerland attaches great importance to this fundamental Convention.

While recognizing the efforts made by the Government of Ghana to eliminate child labour and to make primary education compulsory, many children, particularly in the agricultural sector (including cocoa and fishing) and domestic work, and also in artisanal gold mining, continue to be exploited and exposed to the worst forms of labour. Moreover, children under 18 continue to be exposed to pornographic forms of labour.

Switzerland believes that there are gaps in the implementation of the National Plan of Action for the elimination of human trafficking in Ghana. However, the fight against trafficking in persons that involves children must be as intense as possible, for all countries.

A number of gaps in law and in practice remain. In that respect, Switzerland encourages the Government of Ghana to take the necessary steps to bring its legislation into line with the Convention. In particular, it recommends adopting all necessary measures without delay to improve its mechanism for reporting the number of criminal proceedings relating to trafficking in persons aged under 18 years and on the number of victims of trafficking. Criminal offences must be subject to sanctions that are sufficiently dissuasive and strictly applied to the perpetrators in all cases.

Switzerland will continue to combat child labour in cooperation with the cocoa sector in Ghana. The number of children compelled to engage in hazardous types of work remains excessive. Lastly, Switzerland encourages the Government to eliminate the *trokosi* system in practice too, and to raise awareness of its dangers among the indigenous peoples, thereby intensifying its efforts to eliminate all forms of child labour.

*Interpretation from Arabic:* **Government member, Algeria** – The Algerian delegation would like to support and assist the efforts of the Republic of Ghana in relation to the implementation of the Committee of Experts’ recommendations regarding Convention No. 182. The Algerian delegation would like to welcome the efforts and work undertaken



by the Government of Ghana and its close involvement in consultation with all relevant partners, particularly trade unions and employers, in order to strengthen protection for children against all forms of abuse and exploitation. As we have seen, the establishment of a National Steering Committee on Child Labour as a supreme organ providing an effective network and an institutional partnership is a strong sign of the Ghanaian Government's will to share good practice and strengthen cooperation.

Lastly, the Algerian delegation would like to encourage the Republic of Ghana to strengthen its supervision and investment in the area of education and training in order to tackle the worst forms of child labour sustainably and to win the fight ongoing at different levels of social development, while taking into account the complexity of the socio-economic and cultural issues in Ghana.

**Government member, United States of America** – The United States Government has worked closely with the Government of Ghana for over 20 years to eliminate the worst forms of child labour. Through this cooperation, we have also engaged with the Government, social partners and civil society to reduce the prevalence of child labour in the country, particularly in the cocoa, gold mining and fishing sectors. We are encouraged by the political will demonstrated by the Government to combat child labour in the country, including the Government's coordination efforts on child labour and its significant increase in investigations and convictions of those who violate child labour laws.

Still, significant challenges remain. We strongly urge the Government to fully implement the Committee of Experts' recent observations, including by taking immediate action to revise the list of hazardous occupations and activities for children. It is also imperative that the Government address issues related to the absence of information in its reports to the ILO. To that end, we note that the US Department of Labor's 2019 findings on the worst forms of child labour report urges the Government to implement the following key recommendations: ensure that laws criminally prohibit all forms of commercial sexual exploitation of children, including by prohibiting the use of children in pornographic performances; ensure that laws criminally prohibit the use of children in all illicit activities, including in the production and trafficking of drugs; strengthen the labour inspectorate by authorizing inspectors to assess penalties for labour violations and providing adequate resources to carry out their mandate; and to replicate, create and expand effective models for child labour.

The United States remains committed to collaborating with the Government of Ghana, in particular through our ongoing technical assistance projects that aim to combat forced labour and labour trafficking of children, economically empower adolescent girls and strengthen the capacity of cocoa cooperatives to address child labour issues. We encourage the Government to continue to work closely with the ILO and other international stakeholders.

*Interpretation from Arabic:* **Government member, Egypt** – We took note of the statement made by the Government of Ghana with reference to the application of Convention No. 182. We have also read the information about the efforts undertaken by the Government of Ghana. We see that its legislative, institutional and political framework has now been adopted and this sends a strong signal that they wish to combat all forms of exploitation in the country and ensure that children can develop as they should.

We also note the work done by the Government in seeking to enhance access to education and to prevent children being involved in any hazardous work. We have seen

that the school system has been strengthened and that competent teachers are now being hired. School programmes have also been enhanced. We also note that the Government of Ghana has made secondary education free of charge and obligatory. This is something that started in 2018. Measures have been taken by the Government in seeking to improve productivity in the cocoa sector with a view to increasing the income of farmers in that sector; this is intended to overcome the problem of poverty which does result in child labour.

The Government of Ghana and social partners have also sought to make the country more aware of child labour and efforts have been undertaken at national level to that end. We see that a lot of societal work is now being done and different groups are involved in trying to get children out of labour and to support their families and to ensure that the children can be directed to education and other activities. All of this within a legislative framework that seeks to fight against human trafficking.

We wish to commend all of this work. In conclusion we wish to express our support for all that has been done by Ghana in seeking to implement the Convention.

**Government member, Canada** – We thank the Government of Ghana for the updated information provided on its implementation of Convention No. 182. Canada strongly believes that all children, particularly girls, have the right to reach their full potential through safe and equitable access to education, which is a critical element in eradicating child labour. In this regard, we commend the Ghanaian Government's efforts to provide, and improve access to, free compulsory universal basic education to its citizens.

However, we are deeply concerned at continued reports of the worst forms of child labour in Ghana, including in the procurement of children for use in pornography, hazardous child labour in cocoa farming and gold mining, trafficking in children for the purposes of forced labour in fishing and domestic service and, lastly, ritual servitude under the *trokosi* system.

The Government of Ghana must act to protect its children from the worst forms of child labour and rehabilitate its youth. We therefore urge the Government to take immediate action to:

- adopt a law prohibiting the procurement or offering of children under 18 years of age for use in pornography or pornographic performances;
- adopt the necessary Hazardous Activities frameworks to prevent children from working in hazardous sectors;
- intensify all measures to investigate, arrest, and prosecute cases related to the worst forms of child labour, including trafficking in children;
- provide multisectoral services such as psycho-social support, education, and family economic empowerment, and invest in child protection systems, particularly for children removed from the worst forms of child labour;
- finally, track and provide annual gender-disaggregated statistics to the ILO.

We sincerely hope that the next report of the Government of Ghana to the Committee of Experts will highlight positive developments and we wish the Government every success as it moves forward.

**Government member, Ethiopia** – We would like to thank the Chief Labour Officer of Ghana for this presentation. Ethiopia would like to take due note of the several

measures taken by the Government of Ghana in reviewing its legislative framework towards complying with the Convention. These measures in our view are positive steps in the right direction as the legal instruments will assist the eradication of child labour, forced labour and human trafficking in Ghana. The Government of Ghana has also informed this august body that it is working closely with social partners and other stakeholders in reviewing its legal system. We applaud the readiness of the Government of Ghana to continue working with social partners and indeed with the ILO to give effect to the principles enshrined in the Convention in point.

The efforts undertaken by the Government of Ghana in the advancement of the application of the Convention is commendable. We would therefore like to encourage the ILO to provide technical assistance to complement the Government's efforts to strengthen the labour inspectorate system in the country and ensure the full application of the Convention. Finally, we hope the Committee in its conclusions will take into consideration the efforts made by the Government of Ghana.

**Observer, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)** – 2021 is the International Year for the Elimination of Child Labour. It was declared as such with the aim of encouraging legislative and practical actions to eradicate child labour worldwide. We know that most of child labour happens in Africa and most of it in agriculture. No progress will be possible globally if we fail to provide support to the African countries in addressing this problem.

Ghana was one of the first countries to ratify Convention No. 182. This happened over 20 years ago and it was an encouraging sign of the commitment to take relevant action. The ratification campaign laid the ground for several important initiatives proposed by the trade unions and civil society of the country. These initiatives are carefully studied and critically evaluated by the international experts of the ILO and other UN agencies, including the FAO (Food and Agriculture Organization), for agriculture and fisheries. The conclusion is that they deserve serious support and multiplication.

At the IUF, we are well aware of the efforts to end the use of child labour undertaken in Torkor, one of the Lake Volta settlements. Children were massively used there in lake fishing and there were numerous accidents, also fatal. This came to an end when local inhabitants, authorities, moral leaders inspired by activists of the General Agricultural Workers' Union of the Trades Union Congress-Ghana joined forces and with the support of the State removed children from the fishing boats. But Torkor is only one of more than 1,000 villages around Lake Volta where children are still being trafficked and exploited. The Torkor example should be replicated 1,000 times, which is only possible with the adoption of a relevant state policy and action programme. There are other initiatives that require immediate support from the Government with the child labour-free zones being one of them.

Today, 2 million children are still desperately waiting for the Government to act. The Committee of Experts produced a solidly-grounded report and straightforward recommendations. The Government of Ghana should be encouraged to make full use of the provided expertise and cooperate with trade unions in the development, adoption, and implementation of the urgently needed measures. This, of course, will require technical assistance from the ILO.

**Government member, Cameroon** – Indeed, the document submitted by the Ghanaian Government demonstrates clearly the efforts made by the public authorities in Ghana to apply and enforce the Convention. Cameroon, taking into consideration all

these laudable efforts, commends the Government of Ghana for all the efforts and steps undertaken. Cameroon requests the Committee to take into account Ghana's efforts and recognize the country's resolute commitment to the fight against the worst forms of child labour. To that end, the Government of Cameroon encourages its brother country, Ghana, to continue to request support from the Office in order to win the fight against child labour.

**Government member, Zimbabwe** – Zimbabwe has taken note of the statement made by the representative of the Republic of Ghana and the interventions by other delegates, especially the Workers' and Employers' groups.

Eradicating child labour, especially the worst forms, is a goal that we collectively undertook to pursue when the International Labour Conference adopted Convention No. 182. Zimbabwe is pleased to learn that Ghana is precisely working towards eradicating the worst forms of child labour. The representative of the Republic of Ghana informed this august house about several interventions that are addressing the worst forms of child labour in different sectors including in the communities. Zimbabwe therefore urges the Office to continue supporting Ghana's efforts to address in full the worst forms of child labour.

**Government member, Namibia** – Namibia takes this opportunity to join this discussion on the Convention, and on the six observations and five direct requests which were made by the Committee's 2020 report on the Republic of Ghana. Namibia notes the progress made by the Republic of Ghana on the Convention under discussion by the Committee, notably, the total number of 556 human trafficking cases that have been investigated and in which 89 accused persons have been prosecuted and 88 persons convicted. This is indeed commendable progress.

Namibia also notes that the Republic of Ghana's laws and policies conform to the purpose and spirit of Article 3(b) of the Convention in highlighting the prioritization of the fight against child exploitation by ensuring that cases are investigated and minimum sentences are set in policy with respect to the conviction and the term of imprisonment. In our view, this stance underpins the seriousness with which the Government is tackling the worst forms of child labour.

Namibia further notes the progress made and measures taken by the Government of Ghana with respect to preventing children from being engaged in, and removing them from, hazardous work, in the form of improving access to education, training competent teachers, the capitation grant and the Ghana School Feeding Programme. This has ultimately resulted in an improved enrolment rate at primary and junior high school level of 98 per cent and 95 per cent, respectively.

In conclusion, Namibia takes this opportunity to thank the Committee for its constructive observations and direct requests and, in the same spirit, we call upon the International Labour Organization to continue supporting the Government of the Republic of Ghana with the full technical assistance they may require to ensure that they effectively eliminate all forms of child labour as they build forward better.

**Government representative** – Thank you for the opportunity given me to do a summary and let me take this opportunity to thank all those who have contributed to the debate. I also thank the Committee of Experts for the exhaustive analysis of the situation in Ghana.

I want to reiterate the point that Ghana is a champion of human rights, and as a champion of human rights we will not relent in our efforts to get every Ghanaian free,

especially children, until we have zero cases of child labour. We are never going to relent in our efforts to make sure that we succeed in our war to reduce or to eliminate all forms of child labour.

We will continue to improve on our legislation. No doubt a deeper cooperation especially with all of our development partners to make sure that at least we explore all avenues and new techniques in making sure that this menace of child labour is eradicated from our soil.

By this I am trying to say that the already extensive cooperation between Ghana and institutions like the ILO, UNIDO, EU, UNICEF, GIC and many other organizations will continue. We will also explore the possibility of making sure that we add on to so many of these development partners, who have equal responsibility for making sure that we work to eradicate child labour.

We will continue to extend an open invitation to any organization that is prepared to work with Ghana in the area of making sure that children are not exploited. We believe strongly that our children are our future. Our children are the next generation, so if we do not take very good care of them, if we do not prepare for them, if we do not give them the liberties to be able to develop themselves, perhaps we will not be able to bequeath to them a future that would be worth dying for.

We will continue to work with our tripartite partners to ensure that we reach our collective aim of eradicating child labour from Ghana. Yes, the Ghana labour survey in 2014 indicated that some 1.9 million children are involved in productive work. But between 2014 and now, together with our collective efforts, we have made quite a strong effort. We have 95 per cent of our schoolchildren, especially at the junior high level, in school and even for primary school we have 98 per cent, but our commitment is this: the 5 per cent and the 2 per cent rates, what is happening to them? It is possible they are being exploited. We will work to ensure that we have a 100 per cent enrolment and 100 per cent retention rate, with quality teaching and quality services at the school level.

May I at this juncture also plead that Ghana, for its part, together with its development partners have done all that we can, but we also need the cooperation of actors that we will work with.

The number one exports of Ghana have been gold and cocoa. Cocoa is predominately an agro-based product, which is grown not on a plantation basis in Ghana but on a small agro-wide system. Most of these farmers who engage in cocoa farming are poor. Their products are bought at very low prices and many of them do not make enough income to be able to cater for themselves as well as even cater for their farms. Going forward, I will want to plead with all those involved in the cocoa global chain to also make sure that at least cocoa farmers get what their efforts deserve so that they will also not involve their children in cocoa production.

To wind up, I once again want to reiterate the point that Ghana is committed to making sure that the least child is removed from all forms of child abuse and we will continue to cooperate and collaborate with any organizations, with the ILO being the lead organization, to make sure that this goal is reached, especially having in mind our own targets of eradicating child labour by the year 2025. I am confident that we will be able to break that and I need your support to join us.

**Employer members** – In its concluding remarks on this case, the Employer members would like to recall that the global estimate, as mentioned in an ILO publication of 2018 entitled *Ending Child Labour by 2025: A Review of Policies and Programmes*,

indicates that 152 million children, 64 million girls and 88 million young boys, are in child labour globally, accounting for almost one in ten of all children worldwide.

These numbers have certainly been exacerbated by the COVID-19 pandemic, which has pushed vulnerable groups towards increased poverty levels. We have some extremely serious allegations regarding this case and we cannot turn a blind eye on child labour practices, not least the persistence of cases of the worst forms of child labour.

It has been indeed good to hear that the Government of Ghana is taking this case seriously, working in partnership with national and international stakeholders, and receiving the ILO's technical assistance. The Employer members would like to thank again the Government and Workers for their useful information, especially on the implementation in practice of the Convention. We would like to thank also all delegates for their presentations and insights.

We are pleased to hear all the measures that have been undertaken by the Government of Ghana to deal with this persistent and serious problem. There is a real, urgent need to act and the Employers' group hopes that the Government's efforts will be equal to the task. Ghana must take prompt action to ensure a concrete impact on children's lives. The Employer members certainly hope that the Government will continue to develop in terms of the concrete measures to ensure the protection of a significant number of boys and girls who remain vulnerable to being trafficked and being subject to commercial sexual exploitation, and that we can soon witness some progress regarding the state of affairs described.

Once more the Employer members recall the importance of submitting the report to the Committee of Experts in due time because this is the only way the ILO supervision can work properly and provide adequate information prior to the case discussion. In the light of the debate, the Employer members invite the Government to redouble its efforts and explore new ways to fight child labour and its worst forms and deal with the root causes of the problem. Moreover, the Employer members would like to recommend the Government to: intensify its efforts to ensure that any practice of child labour and the worst forms of child labour are no longer a reality in the country; ensure that the scope of section 101A of the Criminal Offences Act, as amended in 2012, extends to young boys and girls under the age of 18 and 16 years old and that offences are properly prosecuted also for this age range; ensure that the political review of the list of hazardous types of work contained in section 91 of the Children's Act of 2008, in line with Articles 4 and 3 of the Convention, is conducted, approved and communicated by the Government in its periodical report and detailed information is provided on the programmes of action, especially on the National Plan of Action for the elimination of human trafficking and its actual impact.

**Worker members** – We listened carefully to the very interesting discussion and we note the comments of the Government of Ghana. Everyone will agree as regards the very serious and deleterious effects of child labour on the social mobility of children and the curtailed development they suffer. In many cases, this sentences them to a life cycle of poverty and delinquency.

We share the deep concerns and regrets expressed by the Committee of Experts in this report and, in particular, we highlight the failure of the Government to provide reports in response to the requests of the Committee of Experts, the resurgence of child labour in the cocoa industry and the terrible conditions of slavery under which children work especially in the Lake Volta area. We highlight also the increased risk of exploitation



of children engaged in street-hawking, portering, artisanal mining and agriculture, noting that the exploitation of children is also rife in the oil production region in Ghana.

The Government must therefore urgently institute effective and timely measures, including a truly updated and comprehensive National Plan of Action for the elimination of the worst forms of child labour to prevent children from becoming victims of trafficking and to remove child victims from the worst forms of child labour.

Resourcing labour inspectors will be important. The Government must ensure that children who are rescued are rehabilitated and reintegrated into society. We urge the Government to continue to work with the ILO, including under the ILO-IPEC and the EU-ILO Trade for Decent Work Project to effectively monitor and remove child labour in the supply chains and address the comments of the Committee of Experts.

The Government must take immediately all effective measures to prevent the engagement of children into *trokosi* servitude and to put an end to this practice as a matter of urgency. It is a matter of deep concern that the Government does not have information on the current state of the practice, including whether or not the practice has been eradicated or gone underground.

The Government has indicated that, in partnership with stakeholders, it has sensitized and educated traditional authorities on the abolition of the practice. The Government must provide a report on these activities, the response of the traditional authorities and any progress made, including information on the number of children under 18 years of age who are affected by the *trokosi* system in Ghana; and on how many have been removed from this system, rehabilitated and reintegrated.

The Government must make an unrelenting effort and focus on addressing the rising incidence of the worst forms of child labour in Ghana. We welcome the ongoing ILO assistance through the EU-ILO Trade for Decent Work Project, implemented as of 2021, and call on the Government to accept an ILO technical mission within the context of the current technical assistance provided by the ILO to help expedite its efforts to eliminate the worst forms of child labour without any delay.

## Conclusions of the Committee

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

**The Committee noted with serious concern the Government's failure to make progress on eliminating the worst forms of child labour in the country and deplored its repeated failure to provide detailed information to the Committee of Experts.**

**The Committee deeply deplored the current situation where a high number of children continue to be involved in hazardous work in the cocoa and fishing industries and in domestic servitude. It further noted with grave concern information relating to the trafficking of children for labour and sexual exploitation, as well as the unacceptable conditions experienced by teenage girls trapped in the *trokosi* system. The Committee also expressed serious concern that protection from offences related to the production of pornography or pornographic performances only applied to children under the age of 16 in breach of the Convention.**

**Taking into account the discussion, the Committee urges the Government of Ghana, together with technical assistance, to take effective and time-bound measures to:**

- eliminate the worst forms of child labour, notably in the cocoa industry, fishing sector and domestic services, 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;
- adopt the *Ghana Hazardous Child Labour List* and incorporate it into the Children's Act without delay and provide a copy to the Committee of Experts once it has been adopted;
- effectively enforce the Human Trafficking Act and Human Trafficking Legislative Instrument, 2015 and provide information to the Committee of Experts before its next session on the progress made in this regard, including the number of investigations, prosecutions, convictions and penal sanctions applied since 2015;
- prevent children from becoming victims of trafficking and to remove child victims of trafficking from these situations, including through the National Plan of Action for the Elimination of Human Trafficking;
- protect children from the practice of *trokosi* as well as to withdraw child victims of such practices;
- provide for the rehabilitation and social integration of child victims of human trafficking and the *trokosi* system and to provide information on the measures taken in this regard and on the results achieved; and
- amend section 101A of the Criminal Offences Act, 1960 (Act 29), as amended, to ensure that all persons under the age of 18 are protected from offences related the production of pornography and pornographic performances in conformity with the Convention.

The Committee calls on the Government to accept an ILO Technical Advisory Mission, within the context of the current technical assistance provided by the ILO, to help expedite its efforts to eliminate the worst forms of child labour without delay.

**Government representative** – Ghana acknowledges the conclusions of the Committee in relation to its submission on the implementation of Convention No. 182, and thanks the Committee for taking action on the subject. We also have taken note of the concerns raised in the conclusions, as well as the five recommendations of the Committee to support Ghana in this case to eliminate child labour in all its forms.

Ghana has also noted with great concern the Committee's non-acknowledgement of all the information concerning country interventions repeatedly mentioned in our submission. Notably among them are the robust legal framework, strengthened law enforcement, prosecution, time-bound programmes, opportunities offered to over 300,000 children who, hitherto, would not have had access to high-school education.

Ghana, however, wants to repeat its unfailing commitment in upholding respect for human rights, including the abolition of child labour in all its forms as presented in the previous mitigating intervention put before this august Committee. Ghana's efforts were supported by a number of governments and other formidable partners. Ghana will continue to engage its tripartite constituents and partners on the Committee's conclusions and recommendations, especially in relation with the legal reforms, notably the review of the Ghana Hazardous Child Labour List.

Ghana welcomes the Committee's recommendation for an ILO technical advisory mission within the context of the current technical systems provided by the ILO to help expedite its efforts to end the worst forms of child labour.

## Turkmenistan (ratification: 1997)

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

#### Written information provided by the Government

##### Response to the observations of the ITUC

The observations of the International Trade Union Confederation (ITUC) on the widespread use by the State of forced labour in cotton harvesting are groundless and do not reflect the real situation and, most importantly, recent achievements in law and in practice aimed at:

1. preventing forced labour in general and in particular in cotton harvesting;
2. the mechanization of cotton harvesting to reduce manual harvesting. Information on ongoing work on both dimensions is provided below.

##### Clarification on the State of Emergency Law

The Act on the legal regime governing emergencies of 1990 was voided by the State of Emergency Law of 2013. However neither the Act on the legal regime governing emergencies of 1990 nor the State of Emergency Law of 2013 refer to or use the notion of “needs of economic development”, which is mentioned in the CEACR’s observations.

##### Preventing forced labour

###### Legal norms

An important step in this direction is the fact that the Constitutional Law of 2016 introduces in the new version of the Constitution of Turkmenistan a rule prohibiting forced labour and the worst forms of child labour.

###### National programme documents

###### National Plan of Action on Human Rights for 2021–25

By the decree of the President of Turkmenistan of 16 April 2021, the National Action Plan on Human Rights for 2021–25 (NAPHR) was adopted.

Lessons from the Plan for the previous five-year period (2016–20) and international best practices were taken into account while drafting the Plan – a process which involved a wide range of stakeholders, including government agencies, non-governmental organizations, civil society organizations, academia and international organizations.

The current NAPHR includes a special section on “Freedom of Labour” in the chapter on “Social, Economic and Cultural Rights” which foresees measures aimed at:

- improving the legislation on the prohibition of forced labour;
- cooperation with the International Labour Organization on the issue of preventing forced labour;
- the development of measures to prevent the use of forced labour, including by ensuring compliance with legislation and strengthening control over its observance;
- ensuring the right of workers to join trade unions;

- bringing trade union legislation into line with the provisions of the International Covenant on Economic, Social and Cultural Rights;
- ensuring the prosecution of employers who violate labour legislation in terms of compliance with labour safety rules and compensation for damage to injured workers.

The official presentation of the NAPHR to stakeholders, including international organizations, took place on 19 May 2021.

The Government of Turkmenistan expresses its readiness and invites the ILO to cooperate in the implementation of the relevant provisions of the National Action Plan on Human Rights for 2021–25.

### Plan of Cooperation with International Organizations for 2021–23

Another national document which provides a basis for cooperation with the ILO on issues of mutual interest is the Plan of Cooperation with International Organizations for 2021–23 adopted by decree of the President of Turkmenistan on 30 April 2021.

One of the provisions of this plan suggests introducing a new form of cooperation with the ILO, namely the *development of a yearly cooperation programme on specific topics*. The cotton industry may be one of the priority items to start with in the cooperation programme, where we can envisage measures aimed at increasing cotton industry efficiency and ensuring compliance with international labour norms.

*We have already had a preliminary discussion with the ILO Moscow Office and the Office of the United Nations Resident Coordinator in Turkmenistan on ways of cooperating on cotton issues and have suggested bringing international financial institutions like the World Bank into the discussions.*

## International cooperation

### Cooperation framework on sustainable development

The Cooperation Framework between the Government of Turkmenistan and the United Nations on Sustainable Development is an important legal basis for cooperation between Turkmenistan and the ILO on promoting international labour norms.

This document was signed on 14 March 2020.

All key strategic directions of the Cooperation Framework are closely related to the SDG Goals and indicators adopted by Turkmenistan, and provide for further interaction between Turkmenistan and the United Nations in various areas, including maintaining economic stability and growth, protecting the social rights of the population, improving the healthcare system and maintaining an ecological balance.

The joint implementation of the Cooperation Framework in practice involves a significant number of United Nations agencies, including the ILO.

### Mechanization of cotton harvesting

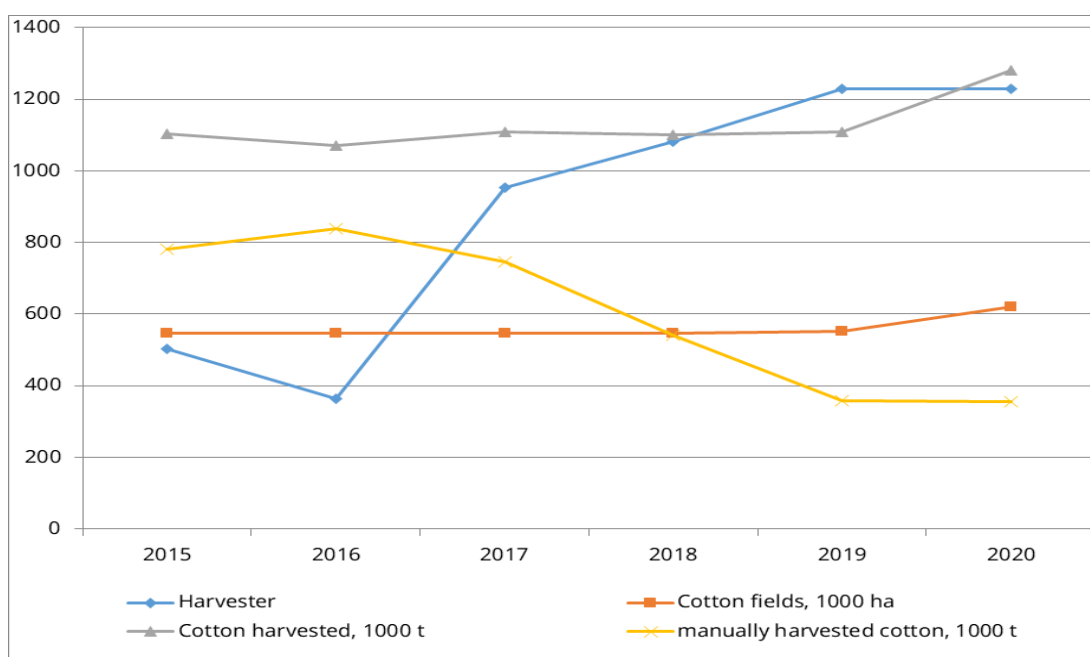
The cotton industry, namely the export of cotton and textile products in 2020, constituted only 1 per cent of national GDP. In 2015, this figure was equal to 1.8 per cent of GDP (see table below).

► **Export of cotton fiber, cotton yarn and textile products in 2015–20**  
(US\$ million)

	2015	2016	2017	2018	2019	2020
<b>Cotton fibre</b>	<b>421.0</b>	<b>335.3</b>	<b>277.4</b>	<b>170.1</b>	<b>38.6</b>	<b>8.8</b>
<b>Textile products, total</b>	<b>227.9</b>	<b>251.1</b>	<b>252.6</b>	<b>310.4</b>	<b>439.1</b>	<b>434.2</b>
<i>Including:</i>						
Yarn	131.6	165.1	127.9	174.9	224.5	220.8
Fabrics	47.3	46.5	89.1	86.0	123.6	112.4
Other textile products	49.1	39.5	35.7	49.5	91.0	101.0
<b>Export, total</b>	<b>648.9</b>	<b>586.3</b>	<b>530.0</b>	<b>480.5</b>	<b>477.7</b>	<b>443.0</b>
<b>Ratio of GDP (%)</b>	<b>1.8</b>	<b>1.5</b>	<b>1.3</b>	<b>1.1</b>	<b>1.0</b>	<b>1.0</b>

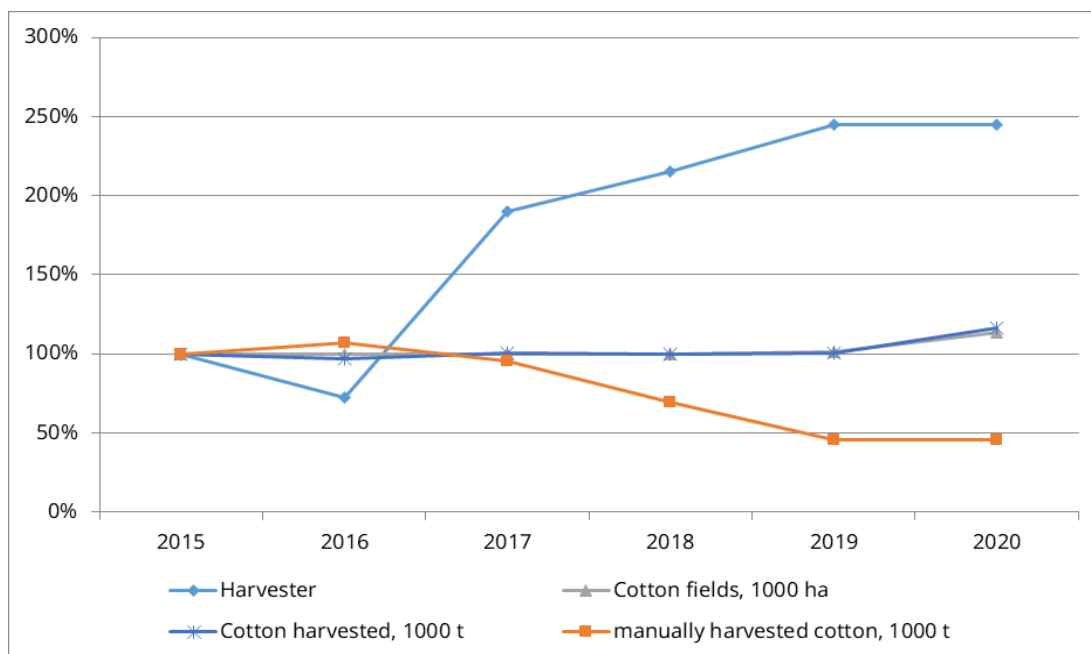
However, the cotton industry is still one of the important sectors of the national economy of Turkmenistan. Its importance mainly consists of its ability to create jobs in textile mills, etc., but not in cotton harvesting.

Turkmenistan has introduced practical measures to reduce the manual harvesting of cotton. The figure below gives statistical data for harvesters (more than 90 per cent are from Case New Holland and John Deere), cotton fields and harvested cotton during the period between 2015 and 2020.



The next figure shows changes in the percentage of those parameters over the same period of time with the year 2015 as the starting point.

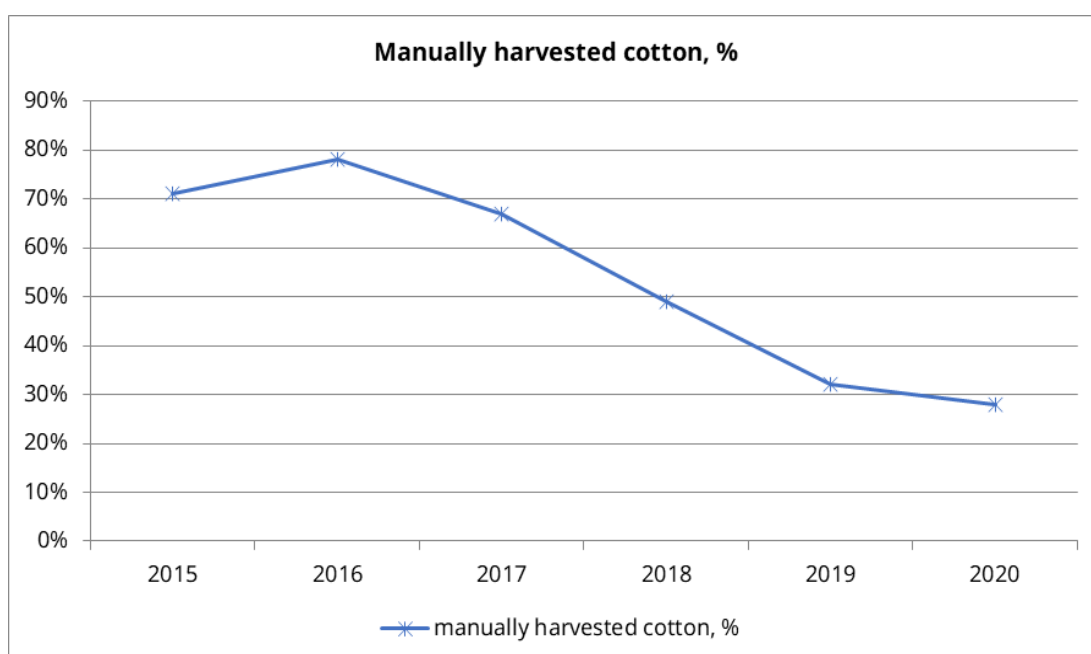




The figure shows that the cotton fields and volume of harvested cotton are changing slightly, whereas the number of harvesters has increased significantly.

The widespread use in the country's agricultural sector of the latest generation of cotton harvesters in the process of picking cotton demonstrates the absence of the need to massively involve human resources in this process.

The figure below shows that the percentage of manually harvested cotton dropped from 71 per cent in 2015 to 28 per cent in 2020.



The figures for the cotton industry provided above are proof that the Government is undertaking all measures in order to reduce the manual harvesting of cotton and that the accusations of the ITUC are baseless.

In order to fulfill their obligation to prevent forced labour in cotton harvesting, the state authorities are taking appropriate measures. Regarding the comments of the

Committee on the issues on the requirement for teachers, medical staff, employees of municipal services and communal enterprises, etc. to engage in the forced harvest of cotton, violations of sanitary standards, violations of the rules for their transportation in vehicles not intended for that purpose, it should be noted that, based on the results of inspections carried out by the law enforcement agencies of Turkmenistan, the above information has not been confirmed. Statements on these issues, as well as materials regarding the coercion of payments by citizens of funds intended for cotton harvesting, have not been registered.

The personnel of the Police Department for Road Surveillance of the Ministry of Internal Affairs of Turkmenistan are constantly on duty in rural areas, including on roads adjacent to farmland, where they responsibly approach the issue of preventing the transport of people in trucks that are not intended for that purposes.

In addition, the personnel of the traffic police, as well as employees of the firefighting units of the Ministry of Internal Affairs of Turkmenistan, during the harvest season, are instructed on compliance by tenants, persons engaged in the harvesting and transportation of agricultural products, as well as farm managers and local authorities, with the rules respecting road traffic, the technical serviceability of vehicles and agricultural machinery, as well as fire safety rules.

The above activities and ongoing work for the prevention of forced labour, the use of illegal methods of forcing citizens to perform duties that are not within the scope of their activity, show the State's commitment to the implementation of universally recognized norms and provisions, within the framework of the international agreements and treaties to which Turkmenistan has acceded, as well as continued compliance with the obligations arising out of the resolutions adopted by United Nations institutions.

## Discussion by the Committee

*Interpretation from Russian:* **Government representative, Minister of Labour and Social Protection of Population** – The Government of Turkmenistan, having carefully studied the Addendum to the 2020 report of the Committee of Experts and the comments of the International Trade Union Confederation (ITUC) on the use of forced labour by the State in the cotton harvest, would like to provide the Committee with information on the main elements of its policy to implement the provisions of the Convention.

First of all, in May of this year, Turkmenistan provided additional information at the request of the international workers' and employers' organizations, highlighting the situation of the country's cotton industry. In that information, the Government responded in detail to the comments. In this regard, let me draw your attention to some economic indicators in the cotton industry. In particular, the export of cotton and textiles in 2020 amounted to only 1 per cent of the country's GDP, while in 2015 this figure was 1.8 per cent. These indicators reflect the prevailing use of cotton products on the domestic market, resulting from the creation of new products in the agricultural and textile industries, medical and food industries, and other sectors of the economy. This, in turn, contributes to the creation of jobs, both in the public and private sectors of the economy.

The widespread use of the latest generation of cotton harvesters in the country's agricultural sector, with little change in the area of cotton harvested, and the volume of harvest, made it possible to reduce the rates of manual harvesting from 71 per cent in 2015 to 28 per cent in 2020. This data indicates clearly that the Government is taking

effective measures to reduce the manual picking of cotton, and that there is no need to involve mass human resources in this process.

Further, on the issue of mobilizing the population and using the labour force for the needs of economic development, I would like to note that the 1990 Act on the Legal Regime governing the State of Emergency was superseded by the State of Emergency Act in 2013. However, neither of these Acts, nor the Act on Emergency Situations, as amended in 2021, address the concept of economic development needs nor do they provide for the mobilization of the population to this end, which is again noted in the comments of the Committee of Experts.

Turkmenistan, a Member of the ILO since 1993, is committed in its policies to creating conditions for decent work and social justice for all. This is confirmed by the ratification by Turkmenistan of the United Nations (UN) Conventions on human rights, and the fundamental and technical Conventions of the ILO. The implementation of the Conventions is provided for, in the first instance, by the new draft of the country's Constitution, which provides for the prevention of forced labour and the worst forms of child labour. The signing, on 14 March 2020, between the Government of Turkmenistan and the UN of the Partnership Framework for Development for 2021–25, should be noted. The implementation of this programme provides for the participation of a significant number of UN organizations, including the ILO, in key strategic areas of cooperation.

The new Action Plan on Human Rights for 2021–25, approved by decree of the President of Turkmenistan on 16 April 2021, has a chapter on social, economic and cultural rights, including a section on freedom of labour that covers measures aimed at developing cooperation with the ILO to prevent forced labour, developing measures to prevent the use of forced labour, including by ensuring compliance with legislation and strengthening controls over its implementation, ensuring the comprehensive implementation of programmes to improve the employment sector in Turkmenistan, especially in order to ensure the maximum level of employment of persons with disabilities, improving legislation prohibiting forced labour, protecting the rights of workers to join trade unions, bringing trade union legislation into line with the provisions of the UN International Covenant on Economic, Social and Cultural Rights, and ensuring that employers who violate labour legislation with regard to compliance with labour safety rules are effectively held responsible, including for compensation for injured workers. The new plan was developed in light of the concluding remarks to the Government after the review of its national reports to the UN treaty bodies, the universal periodic review and the ILO's 2016 recommendations.

A further national document that lays the foundations for our cooperation with the ILO on issues of mutual interest is the plan for cooperation with international organizations for 2021–23, approved by decree of the President of Turkmenistan on 30 April 2021. One element of this plan involves the introduction of a new form of partnership with the ILO, namely through the development of annual cooperation on specific topics. One example of successful cooperation is the implementation of annual work plans and projects with UN agencies and other international organizations.

The cotton industry can be one of the main areas for further cooperation within this programme, where we can establish measures to further compliance with international labour standards. Further, in the part of the plan on strengthening the legal framework for cooperation with international organizations, there is a provision to consider joining international Conventions and multilateral agreements, including ILO international instruments. Our focus will be on ratifying ILO labour inspection Conventions.

Representatives of the private sector at the international level have already had experience in assessing the situation under discussion. In line with ILO recommendations provided between 2016 and 2020, inspection visits to the cotton fields were organized for representatives of consulting groups at the request of major companies among the main buyers of Turkmen cotton. Following these visits, reports were prepared for interested parties. The visits were carried out during the cotton season when the workers themselves were in the fields and during these visits no violations or irregularities were found, and those present clearly were able to establish that there was no practice of using forced labour.

All this reflects the Government's desire to conduct an open and trustful dialogue with its partners. In this regard, the Government would like to express its willingness to cooperate with the ILO going forward. In addition, we have already had preliminary discussions with the ILO Office in Moscow and the Office of the UN Coordinator in Turkmenistan on forms of cooperation on issues relating to cotton, and proposals were made to involve international financial institutions in these discussions.

Further, I would like to respond to the recommendations relating to the application in law in the context of relations between different stakeholders in the agricultural sector. Currently, work is being done to improve procedures for concluding contracts between local executive authorities and local self-governing bodies, as well as agricultural producers and persons involved in the cotton harvest.

In conclusion, Turkmenistan is open to receiving further technical assistance from the ILO and, for its part, will take specific measures to ensure the full application of the provisions of the international treaties. At the same time, we can develop further cooperation and reach agreement in the near future.

**Employer members** – This fourth double-footnoted case on the agenda of the Committee relates to another fundamental Convention ratified by Turkmenistan in 1997. Convention No. 105, together with the Forced Labour Convention, 1930 (No. 29), ratified respectively by 176 and 179 countries, are of crucial importance for the abolition of all forced labour practices in all countries and under all jurisdictions. The Employer members are highly involved and committed to the eradication of forced labour. We cannot turn a blind eye on any forms of forced labour especially if they are planned, conducted or tolerated by the central authorities.

This is the second time the Committee is discussing Turkmenistan's application in law and in practice of this Convention. The first discussion of these issues took place in 2016. The Government of Turkmenistan has provided the Committee of Experts with its report on Convention No. 105 in due time. It has also provided the submission to the Conference Committee that we read with interest. We thank the Government for this additional information.

The Employer members deplore the fact that a second discussion in this forum is necessary to drive further change. At the same time, we want to emphasize the positive attitude of the Government, deriving both from the statement we have just heard and from the written submission. This is what the Committee represents – a forum for dialogue and a precursor of improvements.

The case refers to practices of forced labour in cotton production which affects employees of a wide range of private and public sector institutions, under threats of punishment for a lack of fulfilment of production quotas. Punishment includes wage cuts, providing a replacement worker or other forms of harassment. The Committee of Experts' observation reports on those practices by quoting different sources of

information including the ILO technical and advisory mission of September 2016; ITUC submissions from 2019 and 2020; the UN Committee on the Economic Social and Cultural Rights observation of October 2018; and the stakeholder submission of February 2018 to the UN Human Rights Council for the universal periodic review.

On the other side, the Government denies the existence of such practices. In its written submission, it states “the observations of the ITUC on the widespread use by the State of forced labour in cotton harvesting are groundless and do not reflect the real situation, and most importantly, recent achievements in law and in practice aimed at: (1) preventing forced labour in general and, in particular, in cotton harvesting; (2) the mechanization of cotton harvesting to reduce manual harvesting. Information on ongoing work on both dimensions is provided below”. This contradictory information is not helpful for the discussion and it is clearly adding a layer of difficulty to the open and frank debate we aim at in this forum.

So let us focus on the positive changes reported by the Government in its submission and in its presentation just recently. The first relevant change is legislative advancements, since forced labour and the worst forms of child labour are now prohibited under the Constitution, which was modified in 2016.

The second point referred to the adoption of the National Action Plan on Human Rights for the period 2021–25 in April of this year that foresees measures aimed at improving the legislation on the prohibition of forced labour and establishing cooperation with the ILO on the issue of preventing forced labour, as well as strengthening the monitoring of application of legislation that prohibits forced labour.

The third change is the plan of cooperation with international organizations for 2021–23, adopted by the Government in April this year that should speed up the request for assistance to the ILO on yearly cooperation programmes on specific topics, including on the cotton industry.

The fourth change will further the adoption of a cooperation framework with the UN on sustainable development that also involved the ILO.

Finally, the fifth change is the mechanization of cotton harvesting that has drastically reduced manual harvesting from 71 per cent in 2015 to only 28 per cent in 2020. These are all positive developments that the Employer members praise. They certainly constitute a good basis for further improvement. However, we would like to remind the Government that already in 2016, it stated its readiness for constructive dialogue and further cooperation with the ILO. This cooperation, even if preliminary discussions with the ILO Moscow Office have started, has not been signed yet. We reiterate, as a priority and a way forward, the importance for the Government of Turkmenistan of availing itself of the technical assistance of the ILO.

Nevertheless, the positive developments mentioned above deal only with legislative changes and the intention of strengthening cooperation with international institutions but add little to the application in practice of the Convention. Twenty-four years have passed since the ratification of the Convention in Turkmenistan, and important steps are still to be made to fully implement the Convention. The Employer members recall that a similar situation was discussed by the Committee for the case of Uzbekistan and became a success story. As shown in the case of Uzbekistan, in countries with specific systems of “mobilizing labour for the purpose of economic development” some alternatives and adequate macroeconomic solutions are possible. Implementation of the Convention in practice may imply, for instance, awareness-raising of local authorities and society; fighting against bribery and zero tolerance on corruption of public officials in the cotton

fields; capacity-building of labour inspectors and other relevant officials; and involvement of social partners and relevant stakeholders in the monitoring of compliance with national laws.

Such an approach may require additional laws and financial resources, as well as the establishment of new institutions, possibly in cooperation with the most representative workers' and employers' organizations in the country. The ILO is the key actor to ensure the proper implementation of the Convention through its technical assistance and very constructive approach, and should be addressed to develop a national action plan to eliminate forced labour in connection with the cotton harvest. Important information that the ILO and the Committee of Experts could benefit from would include information on the number and nature of contraventions reported for forced labour in the cotton fields, and the penalties applied.

To conclude, the Employer members would also like to express concerns at the information reported in the Committee of Experts' direct request to the Government that refers to the practice of forced labour imposed for expressing political views.

**Worker members** – Forced labour within the context of cotton production is unfortunately an issue that is too common in certain countries in various regions of the world. And also in Turkmenistan, where the Government still has massive recourse to forced labour for cotton production. This use of forced labour is truly institutionalized and is still guided by the highest authorities in the country. Through the imposition of production quotas and threats of reprisals against all those who do not achieve them, the authorities create an environment that is conducive to abuse throughout the production chain of cotton in the country.

Workers who are forcefully mobilized for the cotton harvest are the principal victims, as they are obliged to stop their occupational activity to go and work in the cotton fields. Many students, often very young, are also requisitioned. The proper operation of many public institutions and enterprises is therefore affected. In addition to being forcefully mobilized, these workers and students have to work under health and working conditions that are not decent. They are subjected to pressure and threats. They are forced to work long hours and are refused personal protective equipment, which is indispensable in a context of health crisis.

According to the 2019 observations of the ITUC, workers in all sectors were sent by force to work in the cotton fields. The observations indicate that 70 per cent of the teachers in the region of Mary were mobilized to participate in the harvest in 2018. The latest ITUC observations indicate that the forced mobilization of workers in many sectors continued for the 2019 and 2020 harvests.

And yet Turkmenistan ratified Conventions Nos 29 and 105 in 1997. The first observations by the Committee of Experts on these forced labour practices for the purposes of economic development go back to 2011 and, despite a first discussion in 2016 in this Committee, we have seen no improvement in the situation in Turkmenistan and we deplore the fact that the Government does not even recognize the existence of a very serious problem in the country.

Other international bodies have also made the same observations and express concern with regard to the situation in the country, including the 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 bears witness more generally to the failure to comply with many fundamental rights in the country.



Article 1 of the Convention provides that Member States that have ratified the Convention undertake to suppress and not to make any use of any form of forced or compulsory labour, among others as a method of mobilizing and using labour for purposes of economic development. Section 7 of the Act on the Legal Regime governing the State of Emergencies of 1990 allows the State and government authorities to recruit citizens to work in enterprises, institutions and organizations with a view to mobilizing labour for the purposes of economic development and to prevent emergencies. The Government denies that this concept of economic development is used in its legislation and refers in preference to the concept of emergency contained in the State of Emergency Act, the Emergency Response Act and the Act on preparation for and carrying out mobilization in Turkmenistan, which seem to serve as the legal basis or pretexts for forced labour in the cotton fields.

In so doing, the Government is endeavouring to avail itself of an exception set out in Article 2(2)(d) of Convention No. 29, which provides that forced or compulsory labour shall not include any work or service exacted in cases of emergency. We must however agree with the Committee of Experts on this point, as the annual cotton harvest does not constitute a case of emergency as envisaged in this provision. The Government cannot therefore avail itself of this exception. And even if the concept of economic development is not used in the legislation, it appears in practice that it is indeed for the purposes of economic development that the Government allows forced labour campaigns.

It also appears from the report of the Committee of Experts that section 19 of the Labour Code provides that an employer may require a worker to undertake work which is not associated with his or her employment in cases specified by law. The Government has not provided a response on this subject in its written information.

Even though the Turkmen legislation also includes provisions prohibiting recourse to forced labour, it seems clear that these legal provisions are not applied in practice. However, the absence of freedom of the press and the non-existence of independent trade unions in Turkmenistan make it very difficult to monitor the application of this legislation in practice.

The Government refers to various draft national plans of action to bring an end to forced labour, although free and independent social partners do not appear to have been involved in these processes. The Government adds that it is investing in the mechanization of the cotton harvest so that it will no longer be necessary to have recourse to too much labour. The mechanization of the cotton harvesting process does not however appear to us to offer the necessary guarantees to bring an end on a lasting basis to the systematic practice of forced labour in Turkmenistan.

While we appreciate the openness of the Government to closer cooperation with the ILO with a view to developing and implementation plans of action to bring an end to forced labour, it seems to us that an important step for the Government is to finally recognize the extent of the problem and to take measures in practice to demonstrate its expressed will to end forced labour. For that purpose, Turkmenistan will also in future have to facilitate investigations by international organizations on its territory as a basis for effective and useful technical cooperation. Indeed, it is to be regretted that the ILO technical advisory mission in September 2016 encountered the greatest of difficulties in visiting cotton fields to make the usual observations.

We invite the Government to engage in a new positive process similar to those that we have already seen in other countries on this issue. The success of such a process will be conditional on guaranteeing the true exercise of freedom of association, the

involvement of independent trade unions and the freedom of action of civil society organizations. The opening of tripartite dialogue with the social partners is fundamental for the sustainable changes that are required in the country.

*Interpretation from Russian: **Employer member, Turkmenistan*** – I would like to provide comments on the recommendations of the Committee of Experts with regard to the participation of farmers and private business in the cotton sector. I cannot agree that farmers are being forced to harvest cotton. Cotton growth is a traditional sector and we have much experience in this area.

There is state purchasing and businesses are attracted by the possibility of having the right to farm land for a period of 99 years. Why is agricultural cotton production attractive for farmers? There is credit available at an interest rate of 1 per cent over ten years. That means that agricultural enterprises can acquire farming equipment. More than 3,000 John Deere agricultural technical units have been acquired and there is interest in Case IH and CLAAS brands as well. There is also a release from the duty to pay taxes and levies, and a release from rental payment. Cotton, which goes beyond the amount recovered by the State purchase, is available to farmers to dispose of as they wish, and there are also attractive leaseholds available on land for 99 years. At the moment there are 517 associations in the cotton sector, 180 of which have become part of the private sector, and the remaining will do so by 2025. The agricultural enterprises are attracted by the possibility of making profits in this area and in no way would be attracted to or could use forced labour. The association of enterprises for Turkmenistan receives thousands of statements from our enterprises each year but none of them contain information about being forced to grow or harvest cotton.

Our association does a huge amount of work in supporting our enterprises and represents their legitimate interests in the state bodies. We are aware of the information on cases of forcing enterprises to farm cotton contained in the report, and we are willing to consider any case where there is objective and concrete information. We are aware of the information provided by the Committee of Experts but we would ask that our opinion be considered as well.

*Interpretation from Russian: **Worker member, Turkmenistan*** – Let me begin by saying that in 2016 the delegation of Turkmenistan was heard at the 105th Session of the Conference on Convention No. 105. We have studied the comments and recommendations made by the ITUC on the issue of the use of forced labour during the cotton harvest and I would like to use the opportunity of this meeting to provide information about some measures that have been taken by the unions to ensure the implementation of those recommendations.

The unions of Turkmenistan are very much attached to the principle of “tripartism”, as representatives of workers. According to our trade union law and its charter, trade unions exercise social control over the implementation of labour legislation in the country. For this purpose, we have carried out legal and technical labour inspections.

We have also worked in many government and parliamentary working groups and expert groups on the development and improvement of labour legislation and other laws and regulations related to labour and its protection and the implementation of the provisions of ILO Conventions in our law.

One of the activities of trade unions is to assist the Government in implementing international labour standards. I have to say that in comparison with past years, the outcome of this year has been much more positive. We regularly participate in the work

of a special tripartite commission on labour issues in accordance with the law that was adopted in 2019.

The country ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), a couple of years ago which is now in force in the country. In addition, this year Turkmenistan became a State party to the Employment Policy Convention, 1964 (No. 122). Turkmenistan has ratified 11 Conventions and of those, 9 are fundamental and 1 is technical. This is an indication of our attachment to ILO values.

We participate actively in the work of the tripartite commission set up in Turkmenistan in the Social Affairs and Labour Ministry. We have made various proposals there on improving our labour legislation and, at this very moment, we are working on a new draft of our Labour Code which is going to have provisions added to it to improve what it can do with respect to the issue under discussion.

Between 1 January and April this year we concluded 121 agreements between workers' and employers' organizations. Over 2,000 – nearly 3,000 – collective agreements are in force in institutions and businesses. Furthermore, and despite the restrictions placed on us at the moment by the pandemic, we are working as far as we can with regional branches of our unions in the country so that they can continue their work. Some 113 inspections were carried out last year and 15 have been carried out on compliance and legislation this year.

As far as the question of forced labour is concerned, we have not received any comments either from individual citizens or from businesses, not this year. Special seminars, meetings and training courses are being offered to make sure that farmers and workers are aware of the situation and their rights. Eighteen such seminars have been held this year.

In the last couple of years, we have also stepped up our cooperation with international institutions, including the ILO. A delegation of the National Centre of Trade Unions of Turkmenistan, headed by its chairman, visited ILO headquarters in Geneva last year and fruitful consultations were held with officials there. So, we understand your concern, we do and we are doing whatever we possibly can in order to ensure that our legislation is in line with our country's commitments. We are sure that the cooperation we have will lead to further positive results. At the moment, progress has certainly been made and we hope it will continue.

**Government member, Portugal** – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The Candidate Countries, the **Republic of North Macedonia, Montenegro** and **Albania**, and the EFTA country **Norway**, Member of the European Economic Area, as well as the **Republic of Moldova**, align themselves with this statement.

The EU and its Member States are committed to the promotion, protection and respect of human rights, including labour rights, freedom of association and the abolition of forced or compulsory labour as specified in Article 1 of the Convention. We actively promote the universal ratification and implementation of fundamental international labour standards, including the Convention and we support the ILO in its indispensable role to develop, promote and supervise the implementation of international labour standards and of the fundamental Conventions in particular.

We thank the Office and give our full support for its constant engagement in the promotion of labour rights and the abolition of forced labour in Turkmenistan.

We regret that no meaningful progress has been achieved in addressing the issue of the mobilization of persons for forced labour in the cotton harvest since the discussion of the case by the Committee and the visit of an ILO technical advisory mission to the country in 2016.

The EU and its Member States are deeply concerned by the enduring practice of forced labour in the cotton sector and the poor working conditions of workers employed in this sector. Forced labour affects not only farmers, but it also impinges on businesses, private and public sector workers, such as teachers and doctors, and students.

We would also like to express our disappointment that the draft cooperation programme developed by the Government of Turkmenistan together with the social partners, has not been agreed upon, and urge the Government to avail itself of ILO technical assistance.

In this context, the EU and its Member States urge the Government to take the necessary measures to completely eliminate the use of compulsory labour of public and private sector workers, as well as students in cotton farming.

Furthermore, we fully share the Committee of Experts' observations calling for the amendment of the legislation to bring it in conformity with the Convention, and to ensure, in law and in practice, that no penalties involving compulsory labour may be imposed for the peaceful expression of views opposed to the established system. Pending the adoption of such measures, we expect the Government to provide information on the application of the aforementioned legislation.

We welcome the written information provided by the Government of Turkmenistan and the recent adoption of the second National Plan of Action on Human Rights and strongly urge the Government to step up efforts towards its implementation.

The EU and its Member States stand ready to assist Turkmenistan in meeting its obligations and will continue to closely follow and analyse the situation in the country.

**Worker member, France** – The practice of forced labour is of particular concern in the public sector in Turkmenistan. Because of their dependence on the State for their livelihoods, public sector workers are among the most vulnerable to be sent to the fields at harvest time. An in-depth report by Solidarity Center explains that official instructions are issued requiring these workers to be sent to harvest cotton, even if it is not economically viable. This information was confirmed at an advocacy meeting by a representative of the authorities, which state that they have to produce daily reports on the number of people sent to the cotton fields and the tons harvested; and which force those who cannot go to the fields to pay for someone to go in their place.

In 2020, owing to low yields and the refusal of farmers to use this workforce, workers were paid derisory amounts and had to find fields to harvest of their own accord, work by night and without equipment. In the region of Dashoguz, one worker testified to earning barely 1.5 manats per day. For comparison, a bottle of vegetable oil costs 15. To those who are not happy, the farmer replied that he did not even have to give them that. Neither medical certificates nor family circumstances justifies an absence. In the region of Lebap, the decision brought on 28 August 2020 exempting cleaners from organizations and institutions, given the risks associated with the pandemic, was overturned two weeks later and these workers alternated between cleaning and cotton picking every other day.

The situation for women is even worse, as they are even more vulnerable. They represent the lowest paid section of the public sector workforce. They cannot, therefore,

under any circumstances hire someone to do the work in their place and must go to the fields themselves, irrespective of their age or state of health.

**Government member, Canada** – I am speaking on behalf of the Governments of **Australia, New Zealand, United Kingdom of Great Britain and Northern Ireland, United States of America** and my own country, **Canada**. We thank the Government of Turkmenistan for the recent information provided on its implementation of the Convention. We note that the information highlights measures by the Government that aim to address the observations of the Committee of Experts, including measures under the 2021–25 National Action Plan on Human Rights. Nonetheless, we remain deeply concerned by reports of persistent use of forced labour in Turkmenistan, including state-sponsored mobilization of public and private sector employees, as well as students, under threat of penalties. In 2016, this Committee urged the Government to end that practice. However, the recent observations of the Committee of Experts note no meaningful progress on the part of the Government to effectively address these issues over the past five years.

We therefore urge the Government of Turkmenistan to take immediate and effective action to: first, use all legislative and investigative measures available to eliminate, in both law and practice, the mobilization and use of forced labour in connection with the state-sponsored cotton harvest; second, to provide information to the ILO on the measures taken to end forced labour and the results achieved, including the number of violations detected and the penalties applied; and third, avail itself of ILO technical assistance towards eliminating forced labour and improving recruitment and working conditions in the cotton sector.

We welcome the Government's recent stated intention to cooperate with the ILO and other international organizations to prevent the use of forced labour in the country moving forward. To that end, we call on the Government to allow these organizations access to the cotton fields in order to observe the harvest.

Forced labour is a grave issue. State-sponsored forced labour in Turkmenistan is a clear violation of the Government's obligations under the Convention and inconsistent with the 1998 ILO Declaration on Fundamental Principles and Rights at Work. We sincerely hope that the Government's next report to the Committee of Experts will highlight positive developments towards the elimination of forced labour in Turkmenistan.

**Worker member, United States of America** – Unfortunately, independent monitors and news outlets continued to document systematic forced labour in all cotton-growing regions of Turkmenistan during the 2020 harvest, as they have in previous years.

The Committee of Experts' report notes that there has been no meaningful progress to address the issue of mobilization of persons for forced labour in the cotton harvest since the discussion of this case by the Committee and the visit of an ILO technical advisory mission to the country in 2016. The State continues to set mandatory quotas for cotton production with severe penalties, including land confiscation, termination of employment and denial of social benefits, to force farmers and citizens to grow and harvest the crop. It is impossible to produce cotton in Turkmenistan outside of this system.

In May 2018, the US Government issued a sweeping order banning the importation of goods made in whole or in part with Turkmen cotton due to the overwhelming nature of the evidence that it is produced in a closed state-run system that relies on forced

labour. Companies and importers who import products containing Turkmen cotton in violation of the ban may face steep fines and even criminal charges.

Forced labour is the antithesis of decent work and an egregious violation of labour and human rights. We ask the Committee to condemn this practice in the strongest possible terms and demand that the Government of Turkmenistan take concrete, verifiable measures to end forced labour during its annual cotton harvest.

*Interpretation from Russian: **Government member, Russian Federation*** – The Russian Federation fully aligns itself with the points made by the representative of Turkmenistan with regard to the application of the Convention. We consider the allegations of widespread use of forced labour in cotton farming against Turkmenistan to be completely unfounded. They fail to take account of the significant efforts by Ashgabat to mechanize the sector and fully eliminate forced labour.

We hope that the Committee will note with satisfaction the detailed report that has been provided today by the Minister from Turkmenistan and resolve the consideration of this issue. As a general remark, it is unacceptable that thematic country reports be tied to the internal events in any country. The Russian Federation calls upon the International Labour Conference – rather we call upon the ITUC and its committees – to forgo politically biased and confrontational agendas, in favour of a constructive and mutually respectful approach to promote decent work and improve instruments that protect the interests of workers and employers.

*Interpretation from Russian: **Worker member, Russian Federation*** – The Committee of Experts has more than once noted that Turkmenistan does not comply with the Convention. Turkmenistan is one of the most closed countries in the world, and there is no freedom of expression. We know it also has severe problems with observing freedom of association and the right to organize. There are no free trade unions as such in the country. Therefore, it is very difficult to get information about the labour rights situation in the country. However, there does seem to be systematic and organized use of forced labour in agriculture by the Government, particularly in the cotton industry.

Forced child labour has been documented as well. Those who are conscripts also have to participate in the cotton harvest without pay, and that is the case for others too. In many regions, it seems that some people are forced to pay 20 manats, two or three times a week, for their keep while they are engaged in the cotton harvest.

Farmers are not allowed to use more profitable types of farming as the Government prevents them from doing so. The authorities have used the coronavirus pandemic as an excuse for forcibly mobilizing workers in the course of last and this year. Many of the workers mobilized in this way did not receive any salary, protection, or transport for getting them to where they were working, as for those fighting against the virus. We urge that urgent measures be taken to protect the workers of Turkmenistan and their rights and to bring the situation in that country fully into line with the commitments under the Convention. That is what needs to be done.

**Government member, Switzerland** – Switzerland regrets having to discuss, yet again, compliance with Convention No. 105 – a fundamental Convention – by Turkmenistan. According to various sources, recourse to forced labour by mobilizing and using labour for cotton production is common practice in Turkmenistan. This practice constitutes a serious violation of the international standards that guarantee democracy and the rule of law, including the fundamental freedoms of expression and association, such as peaceful expression of political opinions. Furthermore, this practice is harmful to workers and farmers.



Despite certain measures taken in 2016, the Government of Turkmenistan continues, according to various sources, to practice forced labour in the cotton sector. Such a practice cannot be justified for reasons of economic development. May I recall that the Convention prohibits compulsory labour as a method of mobilizing and using labour for purposes of economic development. It is in this context that Switzerland encourages the Government to establish specific measures to abolish, in law and in practice, forced labour in conformity with the Convention.

Lastly, Switzerland supports the conclusions and recommendations of the Committee of Experts to provide information on the measures taken and the concrete results achieved, and to continue to use ILO technical assistance to improve recruitment and working conditions in the cotton sector.

**Government member, Azerbaijan** – My delegation thanks the delegation of Turkmenistan for providing the latest update on the application of the Convention to the Committee. Azerbaijan appreciates the efforts made by the Government to ensure the effective application of the Convention and to enforce prohibition and eradication of forced labour in the country. We note that the prohibition of the use of forced labour is enshrined in the new Constitution of Turkmenistan, adopted in 2016, which demonstrates its commitment to complying with all its obligations under the Convention and the relevant international instruments.

We understand the Government has continued to introduce policy frameworks such as the recently adopted National Plan of Action on Human Rights and Plan of Cooperation with International Organizations. The National Plan of Action on Human Rights particularly foresees a set of measures aimed at improving legislation on the prohibition of forced labour; developing cooperation with the ILO on the prevention of forced labour; and strengthening control over legislation enforcement. We also welcome the practical measures by the Government to reduce manual harvesting of cotton.

These actions by the Government demonstrate its commitment and willingness to address the concerns raised with the active engagement of the ILO. We encourage the Government to continue working closely with the ILO and increasing its efforts to implement ILO standards. At the same time, in fulfilling its labour-related obligations, we invite the ILO to fully support the Government of Turkmenistan and provide any technical and consultative assistance that it may seek in this regard.

**Government member, Uzbekistan** – The Government delegation of the Republic of Uzbekistan welcomes the openness and active interaction of the Government of Turkmenistan with the ILO on the application of fundamental international norms and standards, including Convention No. 105. This is illustrated by the implementation of the National Plan of Action on Human Rights in the country, which was developed taking into account previous successful practices and has been approved by the President of the country. We highly appreciate the efforts of the Government of Turkmenistan in improving national legislation on the eradication of forced labour, enhancing cooperation with the ILO to prevent forced labour and engaging in fruitful cooperation with other international organizations.

We are convinced that the steps taken by Turkmenistan represent the commitment of the Government to ensure the labour rights, and they deserve recognition from the Committee.

**Observer, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)** – All agricultural land in Turkmenistan belongs to the State. Farmers' associations rent their land from the State,

which has the monopoly right to purchase from tenant farmers at prices set by the State. If tenants fail to fulfil their obligations, they are fined and might have their land taken away from them. A system where farmers have no freedom to decide what they grow, where they have no opportunity to negotiate the selling price for their produce, and where workers have no opportunity to organize and bargain wages and working conditions, is a system which will inevitably depend on the use of forced labour.

We have sufficient evidence to conclude that this issue in Turkmenistan's agriculture is indeed endemic. The independent monitors have been documenting this case in spite of the Government's efforts to silence their voices, which was observed in the case of Gaspar Matalayev who was sentenced to three years imprisonment in October 2016 for his attempt to report the working conditions in cotton plantations. The warrant for his arrest was issued just a few months after this Committee examined the issue of forced labour in Turkmenistan for the first time, when the Government stated its readiness for constructive dialogue and cooperation.

Several times the Committee issued recommendations. All of them were but marginally accepted by the Government, as it persistently denied any use of forced labour in the country. This position was yet again reiterated in the Government's communication to the Committee on 20 May 2021. The Government repeatedly maintains that it is open to cooperation with the ILO, yet we do not see any tangible proof of this openness. The ILO should continue taking all possible measures to secure the observance by Turkmenistan of its obligations under the Convention.

*Interpretation from Russian:* **Government representative** – On behalf of the delegation of Turkmenistan, I would like to express our gratitude to the Committee for the work that it has done and for the constructive dialogue we have had with delegates, particularly those who spoke in support of Turkmenistan. We are grateful to the spokesperson of the Employer members, as well, for his constructive approach to dialogue and for the material provided by Turkmenistan for this meeting. We have been doing, and continue to do, a great deal of work in order to comply with the Convention, not only in terms of enacting legislation, but also in the way we apply it.

To the spokesperson of the Worker members, I would ask him to pay perhaps a little more attention to the comments made by the Government. Comments about institutionalized forced labour in Turkmenistan are groundless and inaccurate. They do not reflect the real situation on the ground. Once again, I would like to say that Turkmenistan's Emergency Law, 1990, was replaced by a law in 2013, which does not contain any provision about the cotton harvest. Neither, as I said, do we use the concept of "for the purposes of economic development". We are trying to further mechanize our cotton industry, and the statistics which we have provided illustrate that. In addition, the Government is clearly trying to make mechanization of agriculture a priority.

Some positive recommendations and comments have been made by the Committee of Experts and we will, of course, carefully study those in Ashgabat and carry out an analysis of them. On behalf of my Government, I would like to say – and I can say this with certainty – that we see cooperation with the ILO as something we would like to become more regular and systematic. We will be happy to do whatever is necessary to ensure that we are in full compliance with our obligations under ILO Conventions and we are sure we can bring that about. Further cooperation can be carried out through transposing the provisions of ILO Conventions into our legislation, providing training and awareness-building to our people, and monitoring the compliance with Conventions through tripartite cooperation. We are happy to do all of that.

**Worker members** – We thank the Government representative for the information that he has been able to provide during the discussion. And I can assure him that I have listened to him very carefully. We also thank the various speakers for their contribution to the discussion.

It cannot be denied that Turkmenistan is still making massive use of forced labour for the cotton harvest. These are not mere allegations, but information that has been verified with the different sources present on the ground. It is not reasonable to weigh this information against the Government's repeated denials concerning the verified problem of forced labour in the country. We share the deep concern of the Committee of Experts at the persistence of forced labour practices and the bad working conditions of those who are forced to work in the cotton sector, in manifest violation of the Convention.

It is essential for the Government to take every measure, in both law and practice, to eliminate the use of the forced labour of workers in the public and private sectors, as well as students, particularly by ensuring that the State of Emergency Act, the Emergency Response Act and the Act on preparation for and carrying out mobilization in Turkmenistan, section 7 of the Act on the legal regime governing the State of Emergency of 1990 and section 19 of the Labour Code cannot be used as a legal basis for forced labour in cotton fields.

The Government must cease to make threats against those who do not manage to meet the quotas set by the authorities. This pressure exerted by the authorities at all levels for the fulfilment of the quotas leads to many abuses, of which workers are the first victims. The Government must take action that is in conformity with the Convention and the national legislation that prohibits recourse to forced labour, by issuing clear instructions on the prohibition of forced labour and by prosecuting and punishing, where necessary, officials who have recourse to it even so.

The Government must develop a national plan of action in collaboration with the social partners for the lasting elimination of forced labour in the context of the cotton harvest organized by the State.

The report of the Committee of Experts indicates that preliminary contacts have been made with the ILO to engage in cooperation with a view to bringing an end to these practices that are contrary to the Convention, but have not however led to specific commitments. We therefore invite the Government to intensify these contacts now and to involve the social partners and all civil society organizations that are following the situation in Turkmenistan. For this purpose, it will be essential to grant the social partners access to the cotton fields, as well as the press and all civil society organizations, with freedom to report their observations without fear of reprisals. It is clear that the involvement of the social partners in the development and implementation of such a national plan of action will involve the full and complete recognition of freedom of association in the country so that the workers and employers of the country can be represented.

In order to guarantee the achievement of all these objectives, we invite the Government to accept a visit by a high-level ILO mission before the next International Labour Conference and during the harvest period. Such a mission must be granted full capacities so that it can carry out its work effectively.

**Employer members** – The Employer members would like to thank the Government for the useful information, especially on the willingness to cooperate with the ILO. We would like to thank also the trade unions and Government delegates for sharing their

views on this case, and emphasizing their commitment towards the eradication of forced labour.

In the light of the debate, the Employer members invite the Government to truly commit to bring its practice in line with the Convention. The first priority is the ILO's support and the Government should seek technical assistance from the ILO in order to comply with the Convention in law and in practice and to develop a national action plan to eliminate forced labour in connection with the state-sponsored cotton harvest.

The Employer members conclude the discussion on this case by recommending the Government to: take effective measures in law and in practice to ensure that no one, either from the public or private sector amid threats of punishment for the lack of fulfilment of production quotas, is forced to work in the cotton harvest; adopt any possible measure to ensure that local authorities, labour inspectorates and public officials are adequately informed of the applicable legislation on forced labour; prosecute and sanction appropriately any public official who participates in the forced mobilization of workers for the cultivation or harvest of cotton in contravention of the Convention; allow the social partners and civil society organizations to monitor and document any incidents of forced labour in the cotton harvest without fear of reprisals; and finally, provide the Committee of Experts with information on the number and nature of contraventions reported of forced labour in the cotton fields and the penalties applied.

## Conclusions of the Committee

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

**The Committee noted with deep concern the persistence of the widespread use of forced labour in relation to the annual state-sponsored cotton harvest in Turkmenistan and its failure to make any meaningful progress on the matter since the Committee last discussed the case in 2016.**

**Taking into account the discussion, the Committee urges the Government of Turkmenistan to take effective and time-bound measures to:**

- **in compliance with Article 1(b) of the Convention, ensure in law and in practice that no one, including farmers, public and private sector workers and students, is forced to work for the state-sponsored cotton harvest, or threatened with punishment for the lack of fulfilment of production quotas;**
- **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;**
- **report on the status of section 7 of the Law on the Legal Regime Governing Emergencies of 1990;**
- **eliminate the compulsory quota system for production and harvesting of cotton;**
- **prosecute and sanction appropriately any public official who participates in the forced mobilization of workers for the cultivation or harvest of cotton;**
- **develop, in consultation with the social partners and with ILO technical 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; and**

- **allow independent social partners, press and civil society organizations, to monitor and document any incidences of forced labour in the cotton harvest without fear of reprisals.**

**In order to effectively implement all those recommendations, the Committee calls on the Government to accept a high-level mission of the ILO which will be granted all accommodations so as to carry out its duties before the next International Labour Conference and during the harvest season.**

**Another Government representative** – First of all, I would like to take this opportunity to thank all parties that were involved in the examination of the application by Turkmenistan of Convention No. 105. We take note of the conclusions of the Committee.

We consider the observations of widespread and systematic use of forced labour in cotton farming in Turkmenistan to be completely unfounded. The Committee has failed to take into account the significant efforts by Turkmenistan to mechanize the cotton sector and fully eliminate forced labour.

The statement of the Minister of Labour on 8 June 2021 highlighted concrete statistical data on the mechanization process in the sector. Unfortunately, the Committee's conclusions once again illustrate that the Committee or its members adopted a prejudiced attitude and selective approach to the facts that were brought to light during the dialogue. In particular, point two of the third paragraph of the conclusions deals with the application of the Act on the Legal Regime governing the State of Emergency of 1990 and the State of Emergency Act of 2013. I would like to inform you that in the history of independence of Turkmenistan, a state of emergency has never been declared to use those provisions. So this point is not relevant at all.

Point 3 of the same paragraph contains a request to report under the Act on the legal regime governing emergencies of 1990, which was replaced in 2013 by the State of Emergency Act. However, we have already reported that neither the Law of 1990 nor the Law of 2013 contain the expression "needs of economic development" at all. We are ready to provide the texts of these two laws for your examination.

In conclusion, as has been repeatedly stated by our head of delegation, Turkmenistan is committed and ready to cooperate with the ILO in fulfilling its obligations under the labour Conventions. We have already proposed various forms of cooperation with the ILO and are ready to consider other options acceptable for both parties.

## Zimbabwe (ratification: 1998)

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

#### Written information provided by the Government

##### Information provided on 20 May 2021

The Government of Zimbabwe wishes to report on new developments relating to matters raised by the Committee of Experts on the Application of Recommendations and Convention (CEACR) under Convention No. 105 that it ratified in 1998. The new developments also relate to the Freedom of Association and the Protection of the Right to Organise Convention, 1948 (No. 87), that the CEACR cited in its comments under Convention No. 105. Following the promulgation of the Maintenance of Peace and Order Act (MOPA) in November 2019, that replaced the Public Order and Security Act (POSA), the Government is to work with the social partners within the realm of the Tripartite Negotiating Forum (TNF) to strengthen the interface between the law enforcement agencies and the trade unionists. This will be pursued to ensure that the law enforcement agencies throughout the country fully understand, appreciate and apply the provisions of section 9 of MOPA. Section 9 of MOPA explicitly exempts meetings held by a registered trade union for bona fide trade union purposes for the conduct of business in accordance with the Labour Act (Chapter 28:01), from the requirements stipulated under sections 5, 6, 7 and 8 of the same Act. The planning and execution of new activities involving law enforcement agencies and trade union activities have been affected by the COVID-19 pandemic. Even the direct contacts mission that was accepted by the GoZ and scheduled to take place in 2020 had to be put on hold due to the pandemic. However, during a meeting organized jointly by ILO Harare Office and the Pretoria Regional Decent Work Team held on 11 March 2021, the leaders from Government, the Zimbabwe Congress of Trade Unions (ZCTU) and the Employers Confederation of Zimbabwe (EMCOZ) agreed to prioritize activities to strengthen the engagement of law enforcement agencies and trade unionists. Subsequent to the meeting, the ILO officials held separate consultations with officials from Government, ZCTU and EMCOZ with a view to planning the activities around trade unions in the context of MOPA, among others. One such activity identified is the review of the implementation of the Code of Conduct for the State Actors in the World of Work and the National Handbook on Freedom of Association and Civil Liberties in the World of Work.

The Government also wishes to report that the twenty (20) ZCTU members who were arrested for participating in the October 2018 strike and cited in the report of the CEACR on Convention No. 105 were acquitted by the court on 12 November 2020. Furthermore, the GoZ wishes to report that during the 44th session of the Human Rights Council (June to July 2020) it responded to and corrected the unfortunate impression about the thrust of the then Maintenance of Peace and Order (MOPO) Bill (now MOPA) which had been created by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association that is also cited by the CEACR.

On labour law reform, the Government wishes to report that the Labour Amendment Bill is currently before Cabinet. The Bill seeks among other things to repeal sections 102(b), 104(2)–(3), 109(1)–(2) and 122 of the Labour Act (Chapter 28:01) in line with the comments made by the CEACR. The Health Service Act is also set to be amended. Consultations around its review commenced in 2019 but they have been affected by the lockdowns associated with the COVID-19 pandemic. Last but not the least, the



Constitutional Amendment Bill passed on 4 May 2021 paves the way for the stakeholder consultations around the amendment of the Public Service Act so as to harmonize it with the Labour Act. The Bill will be considered by the TNF before being tabled for consideration by Cabinet in due course. Previously, the Government submitted that the review of the Public Service Act was awaiting some constitutional amendments.

### **Additional information provided on 4 June 2021**

The CEACR alleges that the Zimbabwe Prisons Act and the Prison (General) regulations are not in conformity with Article 1 of the Convention. The committee further argues that penalties of imprisonment including compulsory labour under the Prison Act and its regulations may be imposed under circumstances falling within Article 1(a) of the Convention, in the Public Order and Security Act and Criminal Law (Codification and Reform) Act (Cap. 9:23).

There is no forced labour in Zimbabwe in general and in the prisons. The Prison Act and regulations are in sync with the Constitution as well as international and regional best practices. These are not in violation of Article 1(a) of the said Convention. The sentencing of prisoners to labour was outlawed in Zimbabwe's jurisdiction.

### **Discussion by the Committee**

**Government representative, Minister of Public Service, Labour and Social Welfare** – It is an historic session as we are conducting the Committee's business online for the first time. I have no doubt that your collective experience will ensure that the business is conducted smoothly, and that your conclusions to each of the cases will be fair. My delegation therefore looks forward to a focused discussion and to a fair conclusion that takes into account the terms of listing the submissions as well as objective and constructive interventions by members that take part in this discussion. It is important to note that the credibility of the supervisory machinery rests on fair conclusions. Predetermined and misdirected conclusions are a danger to the mechanism which is at the heart of the ILO. We would like conclusions that are embraced by the examined governments for their soundness, fairness and veracity. It is self-defeating to hear of conclusions that may be ridiculed. With your permission let me say a few words about the criteria used in coming up with this list of 19. My delegation believes that the listing criteria, together with fair discussions and fair proposals, speak to the credibility of this august Committee.

At this session, three countries from Southern Africa, one of the five subregions of Africa, are lined up for discussion. One would want to question the criteria used to list three countries from the same subregion, albeit under different Conventions. My delegation is of the view that the geographical spread criterion was not applied within Africa as a region. Furthermore, the three cannot be regarded as cases of serious violations nor situations that require urgent attention.

The three were not the only countries provisionally listed under fundamental and priority Conventions. The final list lacked a balance between developing and developed countries. I can go on and on citing and analysing all the remaining criteria listed in document CAN/D.1, dated 13 May 2021. The final list lacks a balance of the criteria. One would have expected at most one country from Southern Africa to be discussed in this session of the International Labour Conference, especially with the final list of 19 countries instead of 24.

Secondly, the parties responsible for listing need to pay full attention to the reforms of the working methods of this Committee that we agreed to in 2015. Zimbabwe is not against the mechanism, but it is after objectivity and transparency. These are the pillars of a credible mechanism. Collectively we should strengthen the mechanism for each to remain relevant.

Let me turn to the issues raised by the Committee of Experts concerning Zimbabwe under the Convention. I wish to start by pointing out that there is no forced labour in Zimbabwe, be it in prisons, workplaces or society at large.

The Committee of Experts has never established that there is forced labour in the prisons of Zimbabwe. The rehabilitative labour of the prison system in Zimbabwe is consistent with the Constitution and international and regional best practices. Offenders are sentenced to imprisonment under the presumption that the term of imprisonment is adequate punishment. The Committee of Experts argues that penalties of imprisonment, including compulsory labour under the Prisons Act and its regulations, may be imposed under circumstances falling within Article 1(a) of the Convention in the Public Order and Security Act (POSA) and the Criminal Law (Codification and Reform) Act [Chapter 9:23]. I wish to point out that the POSA was repealed in 2019. I will come back to it later on. Furthermore, I wish to submit that the proposition being advanced by the Committee of Experts is unfortunately based on the submission made by the Zimbabwe Congress of Trade Unions (ZCTU) within the realm of freedom of association and the present system. The Committee of Experts cites unfounded fears expressed by the ZCTU that 20 of its members who were arrested in 2018 were to face forced labour in prison if they were convicted.

The sentencing of prisoners to labour was outlawed in Zimbabwe's jurisdiction. Imprisonment for violating a provision cannot be interpreted to mean forced labour. Such an imprisonment is in fact a criminal punishment that is in sync with the criminal justice system. At any rate, the members who are feared to be subjected to that, to what the Committee of Experts terms "forced labour", were acquitted by the courts in 2019, before it produced the report which is the subject of this discussion.

In its report, the Committee of Experts also made reference to the repealed POSA and its successor, the Maintenance of Peace and Order Act (MOPA). That was gazetted in November 2019. Unfortunately, the bulk of what is in the report of the Committee of Experts is an analysis of the Maintenance of Peace and Order Bill, which is now an act, which was submitted to it by the ZCTU. Furthermore, the Committee of Experts cites in its report the comments on the Bill made in September 2019 by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association. Ironically, in the same report the Committee of Experts acknowledges the statement by the Government that the POSA was replaced by the MOPA. One wonders about the logic of the Committee of Experts in proceeding to analyse a bill when an act was, or is, already in place. Alternatively, why should it include an analysis of a bill in its supplementary report in which it is making reference to an act.

It is given that the Committee of Experts is still to analyse the MOPA. Hence it becomes an academic exercise for us to dwell on provisions that were in a bill. However, let me point out that section 9 of the MOPA explicitly exempts meetings convened by registered unions for bona fide trade union purposes for the conduct of business, in accordance with the Labour Act [Chapter 28:01], from the requirements stipulated under sections 5, 6, 7 and 8 of the same Act which include notifying police about public gatherings being planned.

Last but not least, the Committee of Experts was informed some time ago about the agenda to remove from the Labour Act reference to penal sanctions involving compulsory labour as a punishment for having participated in an illegal strike. This has been done so that the Labour Act is in conformity with the Convention, and more importantly for it to be in sync with the criminal justice system.

Sections 102(b), 104(2) and (3), 109(1) and (2), and 122 of the Labour Act [Chapter 28:01] will be repealed. The Committee of Experts acknowledges this aspect and also the totality of the labour law reform. However, it regrets the lack of progress. Let me point out that the labour reform has been affected by the COVID-19 pandemic. Despite the pandemic, the amended labour bill is now before the Cabinet.

**Worker members** – We are examining the Government of Zimbabwe’s application of Convention No. 105. Over many years, our Committee has examined Zimbabwe’s application of one Convention or another or its failure to comply with reporting obligations. This is the 14th such examination. This is the first time we have examined the application of this Convention with respect to Zimbabwe, but the issues are certainly not new – many of them have been raised over the 13 examinations of individual cases.

Workers in Zimbabwe still face penal sanctions involving compulsory labour as a punishment for the expression of views opposed to the established political, social or economic system or for having participated in strikes. This is in spite of the five observations and ten direct requests of the Committee of Experts.

In the 2009 Commission of Inquiry report, a number of concerns were raised about provisions in the then POSA, the Criminal Law (Codification and Reform) Act and the Labour Act, which were applied in a manner that limited the civil liberties and fundamental labour rights of the workers of Zimbabwe, exacting heavy fines and long-term prison terms with compulsory labour for any infringement.

We deplore the fact that the Government has failed to fully implement the Commission of Inquiry’s recommendations in law and in practice and has sought to criminalize the exercise of civil liberties with the threat of exorbitant fines and long-term imprisonment to deny workers their rights.

In January 2019, the President and Secretary-General of the ZCTU, Peter Mutasa and Japhet Moyo, were arrested following a ZCTU protest action against unjustified increases in petrol prices and general economic hardships. They were both charged for “subverting constitutional government” under section 22 of the Criminal Law (Codification and Reform) Act which made them liable, on conviction, to imprisonment for a period not exceeding 20 years without the option of a fine. Section 76(1) of the Prisons Act and section 66(1) of the Prisons (General) Regulations make compulsory prison labour, in practice, the norm for all prisoners.

On 18 December 2020, a gender officer of the Amalgamated Rural Teachers Union of Zimbabwe (ARTUZ) was arrested and convicted, under section 37 of the Criminal Law (Codification and Reform) Act, after a trade union protest action against the erosion of teachers’ salaries by the Government. She was jailed for 16 months and underwent compulsory prison labour until she was granted bail.

In practice, nothing has changed with regard to the MOPA. We recall that the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, after his visit to Zimbabwe in September 2019, stated as much. We point to the example of notification to hold public gatherings. In sections 25 to 27 of the POSA, failure to notify the authorities of the intention to hold public gatherings and violations

of the prohibition of public gatherings or public demonstrations was sanctioned with imprisonment of up to six months. Now under sections 7(5) and 8(11) of the MOPA, a similar offence will earn you one year in prison, and compulsory labour is guaranteed by virtue of the Prisons Act.

Further, let us consider the provisions of the Criminal Law (Codification and Reform) Act. This law accords excessively harsh prison penalties for acts covered by Article 1(a) of the Convention. Section 31 of the Act creates and sanctions the offence of “publishing or communicating false statements prejudicial to the State” with imprisonment of up to 20 years. Section 33 accords the penalty of imprisonment of up to one year for “undermining authority of or insulting President”. Section 37 of the Act sanctions “participating in gathering with intent to promote public violence, breaches of the peace or bigotry” with imprisonment of up to five years. Section 41 accords the penalty of imprisonment of up to six months for “disorderly conduct in public place”. These provisions were clearly mentioned in the Commission of Inquiry report as legislation that must not be used to undermine the exercise of civil liberties and trade union rights. However, these criminal provisions, together with their prison terms and compulsory prison labour, are used to drag trade union leaders and workers seeking to exercise their civil liberties and fundamental rights through the criminal justice system. The associated judicial harassment and pre-trial detention is to stop them from expressing views opposed to the established political, social or economic system, contrary to the Convention.

We emphasize that these laws and regulations have a profound impact on the trade union movement in Zimbabwe. We note that 20 members of the ZCTU faced criminal charges under section 37 of the Criminal Law (Codification and Reform) Act for having participated in a public protest organized by the ZCTU in October 2018. There are many more cases, which my colleagues from the Workers’ group will elaborate upon.

Now, we would like to discuss laws that allow for penal sanctions involving compulsory labour as punishment for having participated in strikes. Sections 102, 104, 109 and 112 of the Labour Act contradict Article 1(d) of the Convention. These provisions allow workers engaged in peaceful collective action to be punished with excessive penalties, including lengthy periods of imprisonment, deregistration of trade unions and dismissal of employees involved in collective job action. The Committee of Experts has been calling on the Government to repeal these provisions since 2002. The provisions remain the same.

Violations of the Convention where arrests, criminal charges, imprisonment and compulsory labour are imposed as punishment for the expression of views critical of the Government or for having participated in strikes or public protests continue in Zimbabwe. The interrelationship between the two fundamental Conventions, Convention No. 87 and Convention No. 105, is in this case clear for all to see. The Government is using the criminalization of civil liberties and freedom of association, imprisonment and compulsory prison labour in violation of Convention No. 105 to further violate Convention No. 87 and disregard the recommendations of the Commission of Inquiry.

The Government has failed to bring its laws and practices into line with the Convention despite numerous opportunities to do so and ILO technical assistance to comply with these obligations.

**Employer members** – At the outset, the Employer members would like to remind all the ILO Member States of the importance of respecting the eight ILO fundamental

Conventions, which includes Convention No. 105. This fundamental Convention prohibits forced or compulsory labour as a means of political coercion or punishment for holding or expressing political views or views opposed to the established political, social or economic system.

Such forms of forced labour seriously undermine fundamental human rights, including the right to freedom of expression and the right to freedom of assembly and association.

Zimbabwe ratified the Convention in 1998. The Committee of Experts has issued observations in respect of the Government of Zimbabwe's application of this Convention five times since 2010. We note, however, that this is the first time that the Committee has discussed this case. The Employer members would like to thank the Government for the information provided here today on the developments of the legislative reforms and the written information submitted for this case.

We are pleased to hear that the 20 members of the ZCTU who were arrested for participating in the October 2018 strike have since been acquitted by a court in November 2020.

We also thank the Government for its report of 2019 and the supplementary information provided in light of the decision adopted by the Governing Body at its 338th Session in June 2020.

This case relates to the Government's forceful response to the nationwide protests sparked by the worsening economic conditions in the country. Reports indicated that many civil society activists, political opposition leaders and other critics of the Government were arbitrarily arrested, abducted, beaten and tortured. Some reports have also indicated that the Government used excessive, disproportionate and lethal force against protestors, through the use of teargas, batons and live ammunition. We are deeply concerned as employers at these allegations of human rights violations.

Turning now to the two main issues that have been observed by the Committee of Experts. The first issue is penal sanctions involving compulsory labour imposed as a punishment for the expression of views opposed to the established political or socio-economic system.

The Committee of Experts identified penalties of imprisonment involving compulsory prison labour in a number of provisions of national legislation, namely the POSA and the Criminal Law (Codification and Reform) Act. In particular, these provisions aim to punish those who engage in publishing or communicating false statements prejudicial to the State, undermine authority or participate in meetings or gatherings with the intention of disturbing peace, security or public order.

The Committee of Experts noted that the new Maintenance of Peace and Order Bill had been introduced to replace the POSA, but noted with concern that the new Bill potentially violates international human rights norms and standards. Under the Bill, the exercise of the right to peaceful assembly is not fully guaranteed as law enforcement agencies are still given broad regulatory discretion and powers.

We note that Article 1(a) of the Convention expressly prohibits any form of forced or compulsory labour as a means of political coercion or education or as punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. This is important not only for the recognition of the freedom to express political or ideological views, but also for other rights, such as the

right of association and of assembly which citizens should be able to enjoy free from political coercion.

We agree with the Committee of Experts in its urging of the Government to take the necessary measures to ensure that sections 31, 33, 37 and 41 of the Criminal Law (Codification and Reform) Act and sections 7(5) and 8(11) of the Maintenance of Peace and Order Bill are repealed and amended to bring them into conformity with the Convention.

We trust that the Government will repeal these laws in consultation with the most representative employers' and workers' organizations through the Tripartite Negotiating Forum (TNF) and provide up-to-date information to the Committee of Experts on the application of these provisions in law and in practice, including those people who have been arrested under these laws.

The second issue observed by the Committee of Experts relates to penal sanctions involving compulsory labour as a punishment for having participated in strikes. The Committee of Experts noted in its earlier comments that several provisions of the Labour Act punish persons with compulsory prison labour for engaging in an unlawful collective action. Such provisions are directly incompatible with Article 1(d) of the Convention, which prohibits any form of forced or compulsory labour imposed as a punishment for having participated in strikes.

We highlight that the Committee of Experts noted with deep regret the lack of progress made by the Government on the labour reforms and the lack of information provided in this regard. We take note from the written information provided by the Government, and also the statement made by the Government, that a labour amendment bill is currently before Cabinet to repeal the provisions of concern in line with the comments made by the Committee of Experts.

We understand that the COVID-19 pandemic has delayed this progress, but we trust that the Government will continue its efforts to make progress on these reforms in consultation with the most representative employers' and workers' representatives through the TNF.

We echo the Committee of Experts' strong urging of the Government to ensure that the provisions of the Labour Act are amended so that no sanctions of imprisonment may be imposed for organizing or peacefully participating in strikes in conformity with Article 1(d) of the Convention.

We also call on the Government to provide the Committee of Experts with information on the progress made on these law reforms and the application of these provisions in law and in practice.

**Worker member, Zimbabwe** – My country is here again, before this Committee, for the 14th time. The continuous appearance of my country before this Committee tells us a big story about the strength of its commitment to its obligations.

As already stated by the Worker members, and in accordance with the findings of the Committee of Experts on this matter, my country's criminal laws and labour laws remain an impediment to the enjoyment of our rights under this Convention. The Criminal Law (Codification and Reform) Act; the MOPA, which replaced the POSA; the Labour Act and the Prisons Act have provisions that trample on our rights as workers and as citizens in the broader sense. The Constitution guarantees the freedom to demonstrate and petition as well as political rights.



Let me demonstrate how the said laws continue to infringe our rights. I will start with the case of Sheila Chisirimunhu, of ARTUZ. She was arrested and charged under section 37 of the Criminal Law (Codification and Reform) Act with “participating in gathering with intent to promote public violence, breaches of the peace or bigotry”. She was convicted on 18 December 2020 by a magistrates’ court after a trade union protest action against the erosion of teachers’ salaries. She was jailed for 16 months. She endured forced labour in prison for 18 days at Mutimurefu prison and was released on 5 January 2021 following an appeal in the High Court. If this appeal is dismissed, she will go back to prison to perform forced labour.

On 31 July 2020, civil society organizations called for a protest action against economic hardships. The protest was banned, and the military and police were deployed and ordered people to stay indoors. Scores of people who came out to protest were arrested for participating in the protest action. Those arrested include prominent author Tsitsi Dangarebga and journalist Hopewell Chin’ono, who later got another charge of communicating falsehoods prejudicial to the State. They endured time in prison that varied from 7 days to 50 days, with bail being denied by the lower courts. Their cases are still pending and, if convicted, these people will be subjected to forced labour.

In June 2020, nurses on the front lines contributing to the fight against COVID-19 protested against poor wages and a lack of personal protective equipment. They had their leaders arrested and prosecuted under the Criminal Law (Codification and Reform) Act.

In February 2020, a ZCTU labour forum in the city of Mutare was banned by the Zimbabwe Republic Police under the MOPA for providing insufficient notice, despite the exemption provided in law.

In January 2019, Japhet Moyo, the Secretary-General of the ZCTU, Masaraure of ARTUZ and I were arrested following a ZCTU protest action against unjustified increases in petrol prices and economic hardships. After two years of court appearances, the charges were then withdrawn before plea. The State can still resume this matter and, if we are convicted, we will go to jail for 20 years without the option of a fine and be subjected to forced labour. Again, on 19 December 2019 ARTUZ members on a salary march were arrested and charged with criminal nuisance. A court discharged them.

With regard to the Labour Act, the provisions identified by the Committee of Experts remain unchanged. The right to strike, though recognized in section 65 of the Constitution of Zimbabwe, is very difficult to exercise in practice because of complicated procedures. A good example is a Labour Court judgment in the case of *the Zimbabwe Banks and Allied Workers Union (ZIBAWU) v. People’s Own Savings Bank (POSB)* in which the court declared the strike illegal for failing to comply with section 104, which the Committee of Experts identified as problematic. Labour law reforms remain stalled with Government producing drafts that ignore some of the comments of the Committee of Experts. When we complain we are accused of delaying the process.

The International Labour Conference resolution concerning trade union rights and their relation to civil liberties, adopted in 1970, is very clear on these issues. It provides that the absence of these civil liberties removes all meaning from the concept of trade union rights.

Let me end by urging the Committee to consider that we have now witnessed the Government disrespecting the Committee of Experts’ comments on freedom of association and civil liberties, which are interlinked with the Convention, for 19 years, and snubbing the recommendations of the Commission of Inquiry for 11 years. Follow-

up missions and technical assistance have been provided by the Office, but here we are, with our empty hands. A special paragraph is an appropriate conclusion on this matter.

**Government member, Portugal** – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The Candidate Countries, the **Republic of North Macedonia, Montenegro and Albania**, 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 and the abolition of forced and compulsory labour.

We support the indispensable role played by the ILO in developing, promoting and supervising the application of international labour standards and of fundamental Conventions in particular, in law and in practice.

We welcome Zimbabwe's efforts to increase the protection of labour rights and eliminate child and forced labour. We strongly encourage further stepping up of these efforts, including on improving the effectiveness of tripartite social dialogue and the functioning of the Tripartite Negotiating Forum (TNF). We will continue to closely monitor these developments, not in the least in the context of ongoing negotiations aiming at deepening the existing Economic Partnership Agreement, where special attention is paid to freedom of association and collective bargaining, non-discrimination and forced labour and child labour.

Regarding Convention No. 105, we note with deep regret the Committee's observations on penal sanctions involving compulsory labour in Zimbabwe. According to the Committee of Experts, under various provisions of national legislation, such as the earlier Public Order Security Act (POSA), the current Maintenance of Peace and Order Act (MOPA) and the Criminal Law Code, penalties of imprisonment, involving compulsory prison labour and forced labour are being used to ban trade union protests and criminalize peaceful expression of views opposed to the established political, social or economic system.

Moreover, the provisions of the Labour Act continue to enable the imprisonment, with compulsory prison labour, of trade union activists engaged in organizing or peacefully participating in strikes.

In line with the Committee of Experts' recommendation, the EU and its Member States strongly urge the Government of Zimbabwe to take the necessary measures to ensure that legislation, such as sections 31, 33, 37 and 41 of the Criminal Law Code, sections 7(5) and 8(11) of the MOPA and certain provisions of the Labour Act, are repealed or amended in order to bring them into conformity with the Convention.

With reference to the related Forced Labour Convention, 1930 (No. 29), we commend the Government for having ratified the Protocol of 2014 in 2019. In line with the second Trafficking in Persons National Plan of Action (NAPLAC 2019–21), we call on the Government to take the necessary measures to ensure the effective implementation of the Trafficking in Persons Act and to provide information on the convictions and penalties applied, both for cases of sexual and labour exploitation.

The EU and its Member States will continue to support the Government of Zimbabwe in its endeavours to respect all Conventions it has ratified, including, in particular, the fundamental labour Conventions, both in law and in practice.

*Interpretation from German:* **Worker member, Germany** – I am speaking on behalf of the German Confederation of Trade Unions (DGB) and the Netherlands Trade Union

Confederation (FNV). The Government of Zimbabwe persistently ignores the findings of the ILO monitoring bodies. Where problematic regulations are supposedly being changed, they are being reintroduced elsewhere or expanded with more drastic provisions. This is what is happening with the Patriotic Bill, which seeks to criminalize activities that go against the national interest. Such a law is a blanket authorization for the criminalization of any view that the State dislikes, and the case is exactly the same when it comes to replacing the POSA with the now enacted MOPA. This MOPA continues to contain sweeping restrictions on freedom of association, a fundamental civil liberty at the core of union activity.

Completely out of proportion is the law's provision to punish violations of the MOPA with imprisonment of up to one year, which is also linked to forced labour through the provisions in the Labour Act. An analysis of the POSA and the MOPA also shows that the period for giving notice was increased from four days under the POSA to five days' notice in the case of public meetings and seven days in the case of demonstrations and processions, and the penalties were also increased from six months' imprisonment to one year. Even a mere failure to notify the authorities of a postponement or cancelled meeting attracts the same sanction.

Although certain provisions of the MOPA exempt unions from the notification requirement, this section is ignored in practice. In February 2020, the police banned a ZCTU labour forum in Mutare and threatened to arrest participants if they gathered, despite the notice from the ZCTU. How can union members freely exercise their rights when repressive laws put them at risk of being punished with imprisonment and forced labour just for the actions they are taking. "Worse than hell" is how the reality in Zimbabwe's prisons is described. We therefore call on the Government of Zimbabwe to finally adjust the regulations of the MOPA, the Criminal Law (Codification and Reform) Act and the Labour Act, and the application of these laws in practice in a way that it is in line with the Convention.

*Interpretation from Russian:* **Government member, Russian Federation** – The Russian Federation shares the assessment given by Zimbabwe with reference to its implementation of the Convention. The accusations levelled at Zimbabwe are accusations that we consider to be groundless when it comes to the use of forced labour within the framework of the national penitentiary system. Our basic premise is that punishment by way of corrective work under the country's Criminal Law (Codification and Reform) Act bears no relation whatsoever to the shameful practice of forced labour.

Further, the legislation in question is fully in line with the Constitution of Zimbabwe and with regional and international legal standards. We hope, then, that the Committee will reach a favourable conclusion with reference to the detailed report presented today and with reference to all the information submitted to the Committee by our Zimbabwean colleagues, and will thus conclude its consideration of the issue.

Generally speaking, we think it is unacceptable to use the platform of the ILO in a way that attempts to link thematic and country reports with the internal events that take place in a particular country. Such a practice leads to acute politicization of materials and to decisions being taken that, in fact, cannot be implemented by the respective capitals. We will therefore call upon the ILO and its Committees to refrain from partial and confrontational behaviour and rather to focus on constructive, mutually respectful cooperation, focusing on finding common solutions to our common problems relating to the concept of decent work and improving the instruments that we have available to protect the interests of both workers and employers.

**Worker member, Canada** – I am speaking on behalf of the Canadian Labour Congress. By virtue of Zimbabwe's Criminal Law (Codification and Reform) Act and the MOPA, forced labour may be imposed as a penal sanction for the expression of political views. This includes placing restrictions on participating in public gatherings, demonstrations or meetings. While this, in itself, is in contravention of the Convention, it is important to also note that this threat of forced labour is moreover being used as a means to discourage trade union organizing and activities, and is undermining freedom of association in Zimbabwe.

Following their participation in a 2018 protest action, criminal charges were brought against 20 members of the ZCTU. After enduring two years of trial where, if convicted, they may have been subject to forced labour, they were finally acquitted in November 2020. In another instance, on 6 June 2020, security forces disrupted a nurses' strike and arrested and then judicially persecuted 12 strike leaders. These nurses were striking for an improvement in their wages and working conditions, and for adequate personal protective equipment. These 12 individuals have since been acquitted by a magistrates' court, but without a strong legal team they may have easily found themselves subjected to imprisonment and forced labour.

It is increasingly clear that the penal sanction of forced labour is a key tactic used by the Government to dissuade workers from organizing and is undermining the right to freedom of association in Zimbabwe.

As such, we support the Committee of Experts' recommendation that the Government take the necessary measures to ensure that sections of the Criminal Law (Codification and Reform) Act and the MOPA are repealed or amended in order to bring them into conformity with the Convention.

*Interpretation from Arabic:* **Government member, Egypt** – We have taken due note of the measures undertaken by the Government of Zimbabwe in seeking to implement the Convention. We have also noted, with satisfaction, all of the efforts that have been made by the Government of Zimbabwe in seeking to bring its national and domestic legislation into line with international labour standards, especially when it comes to laws governing the penitentiary system.

We heard the Government of Zimbabwe state that the penitentiary system in Zimbabwe was a system that had nothing whatsoever to do with forced labour. We also heard it stated that the POSA was going to be repealed and that there would be new legislation on the maintenance of good order and peace in the country that would then be introduced.

We wish to congratulate the Government on all of these positive steps intended to bring domestic legislation into line with international labour standards and other instruments. We would encourage the Government to continue to pursue dialogue with the social partners, especially through the TNF.

This should also allow them to work in consultation with trade unions as well as the forces of law and order. We have noted that the Government intends to revise the Labour Act, as well as the National Handbook on Freedom of Association and Civil Liberties in the World of Work. All of this will be done again in consultation with employers' and workers' organizations.

**Worker member, South Africa** – I am speaking on behalf of the Southern Africa Trade Union Coordination Council (SATUCC). We note that for the past two decades, the Government of Zimbabwe has used both violence and the law to restrict the ability of

their citizens to express political views or views opposed to the political, social and economic order, resulting in sanctions involving compulsory labour. Such restrictive measures have seen trade union leaders and their members arrested for exercising their rights.

The restrictive measures have even been broadened to cover even ordinary citizens posting messages on Twitter, Facebook or WhatsApp about the economic and government ills and mishap. Citizens face arrest, abduction, intimidation and threats, among others. By speaking against government policies that negatively affect the welfare of workers and citizens at large, some civil society organizations and the ZCTU have been labelled terrorist organizations.

The right to demonstrate, which is enshrined in the Constitution of Zimbabwe, is not available in practice. On 1 August 2018 in Harare, citizens who were protesting at delayed election results were shot, and six killed, for expressing their political views. The Motlanthe Commission of Inquiry that investigated the incident noted the excessive use of force by the security forces and made recommendations that are still to be fully implemented. The families that lost family members due to the shooting are still to be compensated, and the security forces that shot them are still to be prosecuted. During the January 2019 protest actions, ZCTU leaders were arrested and charged with subversion. They face a 20-year jail sentence. If convicted, they will be subjected to forced labour.

The inability to express political views or views opposed to the political, social and economic order has impacted the region through immigration.

**Government member, India** – India thanks the Government of Zimbabwe for providing the latest update on the issues under consideration. India appreciates the commitment of the Government of Zimbabwe to fulfilling its international labour obligations, including those related to the Convention, and to progressing the implementation of the relevant recommendations of the ILO, and its willingness to constructively work with it.

We take positive note of the efforts made by the Government of Zimbabwe in carrying forward the labour reforms, despite the difficulties caused by the current pandemic situation. We also look forward to the completion of the labour reform process as soon as the pandemic situation normalizes.

We welcome the enactment of the progress and maintenance of the MOPA that replaced the previous POSA of 2019 and duly incorporates provisions for the convening of meetings by the registered trade unions in accordance with the Labour Act of Zimbabwe.

We request the ILO and its constituents to fully support the Government of Zimbabwe and provide all necessary technical assistance that it may seek in fulfilling its labour-related obligations. We take this opportunity to wish the Government of Zimbabwe all success in its endeavours.

*Interpretation from Chinese:* **Government member, China** – We would like to thank the representative of Zimbabwe for the statement he read, the Committee of Experts for its report and the Government of Zimbabwe for its submission of written materials.

We note that, since the promulgation of the MOPA, the Government has adopted various measures to strengthen cooperation with the social partners within the framework of the TNF. This greatly facilitates communication between the law enforcement agencies and trade unionists.

The national law enforcement agencies have a full grasp of, and implement seriously, section 9 of the Act, which provides for the safeguarding of lawful activities by registered trade unions. We would like to commend this.

Although gravely affected by COVID-19, the Government of Zimbabwe has overcome all kinds of difficulties to make important progress on labour law reform, which is being amended currently, following the Committee of Experts' recommendation. After adopting, in May of this year, the Constitutional amendment, the Public Service Act is also set to be amended so as to play a greater role once harmonized with the Labour Act.

We would like to remind the Committee to attach great importance to the following information provided by the Government. Zimbabwe's judicial system does not permit forced labour, and its Prisons Act and Prisons (General) Regulations are in conformity with both the Constitution and international or regional customs. We believe that, in the process of this review, the progress made by the Government of Zimbabwe on the Convention should be fully acknowledged. We hope that the ILO will continue its dialogue with Zimbabwe and provide them with the necessary support in regard of the Convention's application to further promote the concrete implementation of the Convention.

**Government member, Cuba** – The Government of Zimbabwe has indicated that its penal regulations bear no relation with forced labour and are based on the Constitution of the country, as well as on regional and international good practices. It has also indicated that amendments have been made to the legislation and that processes of labour legislation reform are being carried out, which have been affected by the COVID-19 pandemic. However, the Government has indicated its willingness to continue in that direction. In that light, my delegation considers that dialogue, cooperation and technical assistance can provide support for the Government of Zimbabwe.

**Government member, Ethiopia** – My delegation has listened carefully to the statement delivered by the Minister of Zimbabwe. We have noted from the information provided by the Government that, first, its prison system is not associated with forced labour; second, the POSA was repealed and replaced by the MOPA in conjunction with the Convention; and third, there is progress in the reforming of their labour laws. These measures, in our view, are positive steps towards the full application of the Convention in law and in practice.

That said, we are of the view that the economic and social circumstances of certain countries may not be adaptable to the ILO supervisory system, which justifies complexity and the need for flexibility to take into account national realities.

The efforts undertaken by the Government of Zimbabwe in the advancement of the application of the Convention at hand is encouraging. We would like therefore to encourage the ILO to provide technical assistance to complement the Government's efforts to strengthen the labour inspectorate system in the country and ensure the full application of the Convention. Finally, we hope the Committee in its conclusions will take into consideration the efforts taken by the Government.

**Government member, United Kingdom of Great Britain and Northern Ireland** – The United Kingdom supports the role of the ILO in developing, promoting and supervising the application of international labour standards and fundamental Conventions. We are committed to the promotion, protection and respect of human and labour rights and safeguarding by the fundamental ILO Conventions. The Government of the United Kingdom is also committed to the eradication of all forms of modern



slavery, forced labour and human trafficking as set out in the Sustainable Development Goals.

Zimbabwe is one of the United Kingdom's top 30 human rights priority countries, and we are seriously concerned about the arrests of prominent opposition and civil society figureheads. We have been clear that the Government of Zimbabwe must meet its international and domestic obligations by respecting the rule of law, safeguarding human rights and committing to genuine political and economic reform for the benefit of all Zimbabweans.

We recall that the need to ensure public order and security should not be used as an argument to limit the rights of trade unions and ban protest actions. In this context, we welcome the Government of Zimbabwe's efforts to roll back key repressive Mugabe-era legislation, including the Access to Information and Protection of Privacy Act and the POSA, and bringing these in line with the Constitution. We note with interest that the POSA stipulates that the Government will work with the social partners through the TNF and encourage Zimbabwe to build on this step to institutionalize tripartite dialogue.

We note progress in bringing the labour and public service legislation into conformity with the Convention. We call on the Government to amend the Labour Act and Public Service Act without delay and in full consultation with key stakeholders.

The United Kingdom continues to be on the side of the Zimbabwean people. We will readily engage with the Government of Zimbabwe and we hope we can work together on human rights.

**Government member, Switzerland** – Switzerland has taken note of the conclusions and recommendations of the Committee of Experts. It calls on the Government of Zimbabwe without delay to bring its law and practice into conformity with the new Constitution of the Republic of Zimbabwe of 2013, and with the Convention.

The citizens and workers of Zimbabwe are at risk of compulsory labour as a punishment for having participated in non-violent strikes and demonstrations. That is contrary to the Convention, the objective of which is the elimination of all forms of forced or compulsory labour.

Switzerland calls on Zimbabwe to give effect to the reforms initiated a few years ago with a view to ensuring the conformity of the Criminal Law (Codification and Reform) Act with the Convention, in accordance with fundamental rights, such as freedom of expression, assembly and association.

**Government member, Malawi** – Malawi has taken note of the comments raised by the Committee of Experts in reference to Zimbabwe regarding the application of the Convention, as contained in the 2020 supplementary report of the Committee of Experts. At the same time, the Government of Malawi has taken note of the information provided by the Government of Zimbabwe regarding the implementation of the Convention.

Malawi notes that there is no forced labour in Zimbabwe, as stated by some delegates from Zimbabwe. Malawi applauds the positive steps taken by the Government of Zimbabwe in its legislative reforms to ensure that the country's jurisdiction and laws are in line with the provisions of the Convention. In particular, the Government of Malawi notes with appreciation that the Labour Amendment Bill is currently with the Cabinet and is hopeful that Zimbabwe will ensure that it is duly adopted and implemented.

The Government of Malawi would like to encourage the social partners to continue to cooperate and provide their input to the ongoing process of reviewing the development of laws in Zimbabwe.

**Government member, Ghana** – Convention No. 105 and Convention No. 87 are two fundamental Conventions on the rights of workers that were ratified by Zimbabwe as far back as 1999 and 2003, respectively.

It is important for this Committee to acknowledge the effort of the Government of Zimbabwe in putting in place measures to ensure that their legal systems address the major requirements of the two Conventions. It is refreshing to know that the Government has gone further to initiate reforms towards the full provisional requirements of the two Conventions. We support the honest admission by the Government of Zimbabwe that COVID-19 has further delayed the implementation of the necessary reforms by the Government due to country restrictions.

The Government of Ghana supports any attempts to ensure mutual respect, social dialogue, the promotion of social justice and cooperation among the tripartite constituents in championing this cause. Ghana has rich experience in tripartism and social dialogue, and we look forward to the same for the Government of Zimbabwe, as well as the greater participation of trade unions in matters that affect workers as a way of deepening tripartism and social dialogue at the country level.

We urge the ILO Office to provide the Government of Zimbabwe with the necessary technical support in its quest to reform its laws, in compliance with the requirements of the Conventions. With the above in place, we are convinced that the Government of Zimbabwe will be in a position to adopt measures to align its laws and practice with the comments of the Committee of Experts.

**Government member, Kenya** – The Kenyan delegation thanks the representative of the Government of Zimbabwe for the detailed response to the issues raised by the Committee. Kenya takes note of the legislative reforms being undertaken to ensure conformity with the provisions of the Conventions, including the enactment of the MOPA and other proposed legislative amendments and reforms currently before the Cabinet. These measures represent important steps towards full compliance and should be encouraged. We urge the Government of Zimbabwe to expedite the process.

The Kenyan delegation further welcomes the Government's commitment to fully consulting with the social partners in the process of implementing the legal and political reforms and calls on the social partners, particularly the workers, to take advantage of such initiatives to advance the workers' concerns.

Finally, it is our view that this Committee in its conclusion should take note of the efforts undertaken by the Government of Zimbabwe while continuing to monitor progress under the existing reporting mechanisms.

*Interpretation from Arabic:* **Government member, Algeria** – The Algerian delegation fully supports the statement made by the Government of Zimbabwe, and we welcome the progress made in terms of implementing the Convention. This progress is documented in the additional information received. We take note of the legislative measures taken to ensure that the penitentiary system has no links with forced labour and that the system does not violate the physical and psychological integrity of persons who might be victims of this system. Furthermore, the Algerian delegation would like to encourage the implementation of strategies that will make it possible to guarantee that any work done or services rendered by prisoners occur in conditions which are akin to those governed by labour contracts, thus ensuring that there is a ban on the use of any kind of forced labour.

Finally, Algeria would like to lend its support to the Republic of Zimbabwe with respect to its new vision, which strives to update its labour legislation and ensure that there is consistency between practices in the criminal justice system and the penitentiary system and international human rights protection instruments and fundamental rights at work.

**Government member, Namibia** – Namibia takes this opportunity to join the discussion on the application of the Convention by the Government of Zimbabwe.

Namibia notes the Committee of Experts' concerns that the ZCTU members who were arrested for having participated in a strike in 2018 could be subjected to forced labour, if convicted. We are reliably informed that those members of ZCTU were acquitted already, in 2019.

The world of work has been disrupted by the COVID-19 pandemic, and this affected the work on the amendments to the Labour Act. Thus, we call upon the Committee to take note of the progress of the Labour Amendment Bill which is before the Cabinet and to allow the Zimbabwean Government to conclude the labour law reform process.

**Government member, Botswana** – We have carefully reflected on the statement presented by the representative of the Government of Zimbabwe. Clearly, the statement shows that the Government of Zimbabwe has addressed some of the concerns and issues raised in the report of the Committee of Experts and is continuing to address others. We therefore consider the enthusiasm and commitment of the Government of Zimbabwe to addressing the concerns raised by the Committee of Experts a step in the right direction. Most importantly, the Government of Zimbabwe has reported progress on the labour law reforms which will result in the repeal of the problematic sections of the Labour Act. Although the pace of the labour law reform has been adversely affected by the COVID-19 pandemic, it is evident that the bill to this effect has been drafted and is ready for consideration by the Cabinet.

On the basis of the measures undertaken by the Government of Zimbabwe thus far on this matter, we consider it appropriate for this Committee to note the progress made and to urge the Government of Zimbabwe to bring all the pending issues to a conclusion.

**Government member, United Republic of Tanzania** – My delegation thanks the delegation of Zimbabwe for its constructive engagement on the deliberations of the Committee. We welcome various efforts by the Government of Zimbabwe in fulfilling its obligations under the ILO Conventions, including the steps taken in labour law reforms despite the challenges of the COVID-19 pandemic. We note with gratitude that the prison system of Zimbabwe is not associated with forced labour and congratulate the Government of Zimbabwe on the enactment of the MOPA, which has replaced the POSA, as well as the progress made by the Government in reforming the labour laws.

In conclusion, we would like to encourage the Government of Zimbabwe to continue engaging with the social partners in fulfilling its international obligations, and we request the ILO to provide the necessary support to the Government of Zimbabwe in addressing challenges in the labour reforms and the implementation of the international labour Conventions.

**Government member, Angola** – Angola would like to congratulate the Zimbabwean delegation for the presentation of the report, as well as for its willingness to continue to collaborate with the mechanisms of this Organization regarding the application of Conventions and Recommendations.

The Government of Zimbabwe is once again asked to present to this Committee the developments made regarding the recommendations issued during the last session of the Committee of Experts regarding the Convention. It appears that certain changes in labour legislation have been requested. We acknowledge that the process of legislative amendment and modifications takes time. Therefore, we commend the Government of Zimbabwe on the progress made in response to the recommendations issued by revoking the POSA and relacing it with the MOPA.

Bearing in mind the progress made, the Angolan delegation encourages the Government of Zimbabwe to continue with the process of legislative reforms under way in order to improve its labour legislation and bring it into line with the ILO standards in force.

**Worker member, Democratic Republic of the Congo** – Everywhere, and on each occasion that forced labour is practised, and particularly when it is used as a tool for repressing and silencing dissidence, democracy, freedom and justice are endangered. And, specifically in the case of Zimbabwe, which is under examination for failure to comply with the Convention, the workers of the Democratic Republic of the Congo remind the Government that Article 2 of the Convention requires States that have ratified it to secure the immediate and complete abolition of forced labour.

The workers of the Democratic Republic of the Congo note that Zimbabwe has established a process of dialogue to deal with the issue of forced labour. However, when even the Government knowingly has recourse to forced labour for production and the suppression of rights, the real purpose behind this process invites suspicion.

Moreover, the process established seems to us to be inadequate, as the victims of this practice will continue to suffer atrocities during the process, which is still long. While awaiting the outcome of the process, the workers of the Democratic Republic of the Congo urge Zimbabwe and other countries that have been questioned on this issue to adopt transitional measures or an immediate moratorium in order to attenuate the negative effects of this practice on victims, in accordance with Article 1 of the Convention.

We urge Zimbabwe to launch a true broad-based process of collaboration to rid the country of forced labour.

**Government representative** – Allow me to thank all delegates who have contributed to the discussion concerning my country. However, I wish to give particular and sincere thanks to those speakers who took note of the present system in Zimbabwe and commended the legislative agenda that we have embarked upon.

The Government of Zimbabwe also took note of the various constructive ideas that were flagged during the discussion. Indeed, the whole purpose of the discussion and discussing individual countries is to help them to improve where necessary. However, there were some unfortunate interventions that defied the logic of the engagement. They were not in good faith. They might, of course, have been driven by political motivations. I want to inform this Committee that Zimbabwe is not being discussed under Convention No. 87; yes, it was discussed several times under Convention No. 87, but this does not mean we continue to discuss all issues as Zimbabwe is listed under Convention No. 105.

The comments by the Workers' delegate of South Africa on behalf of SATUCC are unfortunate as, by and large, they are not in the context of the terms of this discussion. Earlier on, I indicated that it will not do for delegates to dwell on issues that do not form the basis of this discussion. It is not about the particular areas related to Convention

No. 105 that need improvement. We should be focused. I raised this aspect in my opening statement with a view to reminding all of us about the need to adhere to the terms of listing and discussion.

It will not help us to dwell on issues that are not linked to Convention No. 105 on the abolition of forced labour. Forced labour is non-existent in Zimbabwe. My Government is serious and committed to achieving its set goals as a Member of the ILO and does not tolerate the derailment of its well-meaning national programmes by those who are bent on furthering political goals or supporting the wrong causes in my country.

We should shun negativity and refrain from scoring cheap political goals. Playing to the international gallery is not the solution. If there are genuine issues which the ZCTU believes ought to be looked into, or to be revisited, surely they should bring them to the TNF. The TNF is our collective forum that exists to recommend to government action to be taken on socio-economic issues affecting the country, and the workers in particular. And what ought to be done to advance the Decent Work Agenda in our context? The ZCTU knows that the door to dialogue is always open, and we have collaborated well with them. Yet, they give presentations portraying a different picture in international meetings. This is unfortunate, and retrogressive. They cannot be allowed to abuse the ILO structures to play political games. The individuals in the various cases cited by the Workers' delegation from Zimbabwe, including the nurses' representatives and the amalgamated rural teachers' representatives, were arrested for violating COVID-19 lockdown measures meant to contain and manage the pandemic. So that presentation was very unfortunate and misleading.

Let me also take the opportunity to respond to some of the issues raised during the debate. However, I will not respond to issues that are intrinsically predicated in the political domain. These are issues for another platform and another day. In my initial address to this august house, I did indicate that there is no forced labour in the prisons of Zimbabwe, which is the subject of the Convention. There is no forced labour in the prisons of Zimbabwe.

It will be misleading for the Committee of Experts to focus on things that are not there if we allow it to be preoccupied by suppositions. In my opening statement, I did point out that the Committee of Experts should not have engaged in the academic exercise of examining and providing us with comments on a view when the Act is already there. For the benefit of the Employer members, I want to repeat that the Committee of Experts did not analyse Zimbabwe's new public order legislation, the MOPA. They analysed a bill when the Act was already in place. We are not talking of a bill, but a new act, which is now in force.

Unfortunately, some interventions present glaring evidence of motivated false moves and distort the positive realities on the ground in Zimbabwe. Presumptive definitions are even proffered, as amply illustrated by the speculation that had the 20 ZCTU members been convicted, they would have been subjected to forced labour. Why use these hypothetical suppositions? The people were not convicted, and where do we get this notion that they would have been forced, that they would have been subjected to forced labour? The motives that inspire such claims are at best obscure. We should therefore be worried about using the ILO as a machine to advance political agendas. The ILO stands for social justice in the world of work. Let us always be guided by these values.

The laws, other than the prison legislation system that the Committee of Experts dwelled on, largely do not feed into what happens in the prisons of Zimbabwe. It is not

disputed that the Committee of Experts did not establish that forced labour exists in the prisons of Zimbabwe. Indeed, we acknowledged the need to repeal sections of the Labour Act that are not in line with our criminal justice system. We are proceeding to repeal them. That bill is in its final stages within the Cabinet, and will soon be going to the legislature.

Regarding the maintenance of public order, the Committee should appreciate that the Committee of Experts has not examined it in any context. My delegation suggests that the Committee of Experts should examine the Act with a caveat: it will not create unnecessary linkages with the Convention. This submission is premised on the fact that the Act in question addresses broader issues that fall under the purview of Convention No. 87, to which the Committee of Experts made reference in this report.

These broader issues were unfortunately raised in the discussion. Without getting into the political arena, I should want to inform this august house that my Government respects the freedom of association and expression on the part of all Zimbabweans, and indeed on the part of all workers, as under the Bill of Rights in our Constitution.

Finally, my delegation looks forward to sharing conclusions. Conclusions are deemed to be fair if they relate to the terms of appearance and to positive elements that are flagged in the discussion.

**Employer members** – The Employer members would like to thank the Government of Zimbabwe for the useful information, especially on the developments in the law reforms. We are pleased to hear that those consultations have been undertaken by the Government with the social partners under the TNF. Nevertheless, once more the Employer members would like to recall the importance of respecting the ILO fundamental Conventions as well as the fundamental rights to freedom of speech and the freedom of association.

In light of the debate, the Employer members would like to recommend the Government to:

1. intensify its efforts to amend and repeal the Criminal Law (Codification and Reform) Act, at least the provisions that offend Article 1 of the Convention;
2. submit any information to the Committee of Experts in respect of its observations on the Maintenance of Peace and Order Bill, which is now an act, as well as to amend or repeal those provisions of the Labour Act that conflict with Article 1(d), in consultation with the most representative employers' and workers' organizations through the TNF and to bring these legal instruments into conformity with the Convention;
3. ensure that no penalties involving forced labour may be imposed for the peaceful expression of political opinions opposed to the established system of order;
4. ensure that no penalties involving forced labour may be imposed on those who participate in strikes;
5. to provide detailed information on the developments in the legislative reforms and the application of those in practice as well as to seek ILO technical assistance to align these laws with the Convention.

**Worker members** – We thank the Government of Zimbabwe for its comments. We note that the examples discussed by my colleagues show clearly that the Government uses the criminal provisions in the MOPA, the Criminal Law (Codification and Reform) Act and the Labour Act, which has stiff punishments including compulsory prison labour, to



deny workers and trade unionists the right to exercise their fundamental rights and civil liberties.

In the 2019 conclusions of this Committee regarding the Government of Zimbabwe's compliance with Convention No. 87, it called upon the Government to repeal the POSA and ensure that the replacement legislation on public order does not violate workers' rights.

But as we have already indicated, the replacement legislation, the MOPA, according to the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, "has worrying similarities to the POSA" in that the exercise of the right to peaceful assembly is not fully guaranteed. In fact, in many ways, the maintenance of the MOPA is more draconian than the POSA.

Again, the Committee of Experts has expressed regret that the repealed provisions of the POSA remain potent and well under the provisions of the Criminal Law (Codification and Reform) Act.

The Government must fully implement the recommendations of the 2009 Commission of Inquiry without further delay to ensure that no forms of forced or compulsory labour are used in law or practice as punishment for exercising civil liberties or fundamental trade union rights, including holding or expressing political views or views ideologically opposed to the established political, social or economic system.

The Government must immediately take the necessary measures to ensure that the relevant sections of the Criminal Law (Codification and Reform) Act imposing sentences and penalties involving compulsory labour are not imposed on persons who hold or express political views or views ideologically opposed to the established political, social or economic system.

The Government must provide to the Committee of Experts, at its next meeting, information on the application of any such provisions in practice, including court decisions.

The 2019 conclusions of the Conference Committee also called on the Government to ensure that the Labour Act is amended in compliance with Convention No. 87. As we have clearly seen, the provisions relating to the punishment of persons engaged in unlawful collective actions, with sanctions of imprisonment and with compulsory prison labour, remain in the Labour Act and are applied in a manner that violates Convention No. 105. The Government must, as a matter of urgency, amend the law to ensure that no sanctions of imprisonment may be imposed for organizing or peacefully participating in strikes, noting that the Committee of Experts has been calling on the Government to repeal these provisions since 2002.

After five observations since 2010, ten observations since 2002, a failure to implement the recommendations of the 2009 Commission of Inquiry on relevant legislation and a failure to implement the conclusions of the Committee on relevant provisions, including in 2019, and given the numerous times Zimbabwe has failed to comply with obligations affecting civil liberties and the exercise of fundamental rights in law and in practice, we call on the Government to avail itself of all the opportunities for technical assistance by the ILO, including the pending direct contacts mission, to ensure that it complies with the conclusions of the Committee, including the conclusions adopted today, with respect to the Convention.

We will request that this Committee include its conclusions on this case in a special paragraph of its report.

## Conclusions of the Committee

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

The Committee deplored the continued use of penal sanctions involving compulsory labour as a punishment for the expression of views opposed to the established political or social system.

The Committee recalled the outstanding recommendations of the 2009 Commission of Inquiry and the need for their rapid, full and effective implementation.

Taking into account the discussion, the Committee urges the Government of Zimbabwe to:

- ensure that no penalties involving forced labour may be imposed so as to be in compliance with Articles 1(a) and 1(d) of Convention No. 105;
- repeal or amend sections 31, 33, 37 and 41 of the Criminal Law Code, sections 7(5) and 8(11) of the MOPO Act, and sections 102(b), 104(2)–(3), 109(1)–(2), and 112(1) of the Labour Act in order to bring them into conformity with the Convention in consultation with the social partners without delay; and
- provide information to the Committee of Experts before its next session on the application of the above provisions in practice, including copies of court decisions and details of penalties imposed.

The Committee urges the Government to comply fully with the recommendations of the 2009 Commission of Inquiry before the next International Labour Conference. The Committee urges the Government to avail itself of technical assistance and to report to the Committee of Experts prior to its 2021 session.

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

**Government representative** – My Government has taken note of the conclusions and would like to point out that technical assistance from the Office is never rejected. However, the context of technical assistance arising from an examination of the country has to be in line with the terms of appearance and the related issues discussed. Therefore, issues that are not related to the Convention, including previous conclusions on other Conventions, should not be examined. To this end, the conclusions on the discussion under Convention No. 105 cannot be grounded in the recommendations of the 2009 Commission of Inquiry relating to the observance by Zimbabwe of Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

With the concurrence of this Committee, the Government of Zimbabwe would like to proceed to engage with the Office in order to streamline the technical assistance that is being recommended. My Government wants it on record that it is accepting the technical assistance to address, through labour law reform, aspects of the Labour Act [Chapter 28:01] that are not in sync with Convention No. 105 and, more importantly, to align the Act with the national criminal justice system.

Regrettably, my Government does not accept a special paragraph. This position is based on the following: there is no forced labour in the prisons of Zimbabwe; the Committee of Experts has never proved that the practice exists in the prison system; and

most issues contained in the report of the Committee of Experts and those presented by the Workers' delegates, in particular the spokesperson of the Workers' group, during the discussion relate to Convention No. 87 on freedom of association, for which Zimbabwe is not listed. For the record, once again, the Committee of Experts did not analyse the new MOPA that was promulgated in November 2019, and it does not dispute the commitment of the Zimbabwe Government to addressing the issues in the Labour Act that relate to Convention No. 105.

The conclusions do not take into account the submissions made by several delegates which noted the absence of forced labour in the prison system of Zimbabwe and commended Zimbabwe on the progress regarding labour law reform. Equally relevant was the call by some delegates for engagement, not condemnation. My Government reserves the right to make an intervention during the presentation of the Committee's report in the plenary.

## Ethiopia (ratification: 1963)

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

#### Written information provided by the Government

#### 1. Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish organizations. Teachers

*The Committee observed a complaint by Education International (EI) received on 20 September 2019, which refers to the denial of registration of the National Teachers' Association (NTA).*

The Government of the Federal Democratic Republic of Ethiopia (FDRE) would like to candidly inform the Committee in this case that there was no request whatsoever for registration submitted by the National Teachers' Association (NTA) to the Ministry of Labour and Social Affairs.

On the other hand, the Ethiopian Teachers' Association (ETA) which is affiliated to Education International (EI) with more than 600,000 members is legally registered since 1949 and is functionally operating towards advancing the interests and rights of teachers at different levels in the country. This show case, therefore, can be considered as progress towards the application of the Convention in law and practice in Ethiopia.

In view of the above, the observation submitted by the EI (received by the Committee on 20 September 2019) which refers to the denial of registration of the NTA by the Ministry of Labour and Social Affairs of the FDRE is an unfounded allegation.

The Government would like to take this opportunity to bring to the attention of the Committee that the NTA like any other association (namely the ETA) can register at any time if it so wishes with a competent authority, provided that it complies with the relevant domestic legislation that governs such registration.

#### 2. Articles 2, 3 and 4. Legislative matters. Civil Society Organizations Proclamation (No. 1113/2019)

The Government would like to commend the Committee for its acknowledgments with regard to significant changes made in a newly enacted Civil Society Organizations Proclamation No. 1113/2019 that repealed the previous Charities and Societies Proclamation No. 621/2009.

That said, the Government took due note of the Committee's comments on sections 59(b) and 78(5) of the new Proclamation No. 1113/2019. In this regard, the Government would like to bring to the attention of the Committee that the assimilation of international Conventions (including Convention No. 87), standards and norms into the national laws is a complex process as circumstances vary from country to country.

In view of this, the FDRE newly enacted the Civil Society Organizations Proclamation No. 1113/2019 taking into account the country's circumstances with the main aim to register and closely monitor civil society organizations (CSOs) and non-governmental organizations (NGOs) that seek to engage in mobilizing resources domestically and internationally for the purpose of supporting vulnerable and disadvantaged segments of the population through projects and programmes at the grassroots level.

In light of the above, the FDRE is of the view that sections 59(b) and 78(5) of Proclamation No. 1113/2019 primarily aim to prevent wrongdoing by CSOs and NGOs and takes the necessary measures against organizations for misconduct and engaging in activities that are contrary to the rights and interests of their beneficiaries in particular, and the social norms, moral values and beliefs of society at large.

That said, the Government is ready and open to engage in constructive dialogue on issues at hand with concerned stakeholders including the social partners and will provide updated information to the Committee in its next report.

### **3. Civil servants and employees of the state administration**

As the Committee rightly pointed out, the FDRE has been seriously engaged in carrying out comprehensive and in-depth reforms (including civil service reform) that encompasses administrative and civil service reforms, public expenditure management, tax administration, public enterprises reform, and legal and judicial reform and their interface with sectoral institutions that aim at promoting good governance. To this effect, the Government endeavours to realize these reforms in collaboration with development partners and stakeholders, and is at a good and promising stage although it is a complex and painstaking process. In connection with this, a Job Evaluation and Grading System (JEGS) for the civil service sector (as part of the reform) has been developed and it is at the pilot testing stage. The JEGS is expected to place the right people (civil servants) in the right place. The JEGS also intends to improve the pay system.

With this information, the Government will provide in its next report progress made thereon, taking into account the observations and comments made by the Committee.

### **4. Labour Proclamation No. 1156/2019**

#### **(a) Workers covered**

The Government took note of the observations and comments of the Committee with regard to certain categories of workers (workers whose employment relations arise out of a contract concluded for the purpose of upbringing, treatment, care of, rehabilitation, education, training [other than apprenticeship]; contract of personal service for non-profit-making purposes; managerial employees, as well as employees of the state administration; and judges and prosecutors, who were governed by special laws).

To this effect, the FDRE, with possible technical assistance from the ILO, will carry out in-depth studies on the matter at hand and engage in effective and constructive dialogue with social partners; and provide information to the Committee on development thereon in its next report.

#### **(b) Essential services**

The Government would like to commend the Committee for acknowledging measures taken by the Government (in consultation with the social partners) to minimize the list of undertakings (while revising the labour law) that are providing essential services to the public.

That said, the FDRE took note of the observation of the Committee with regard to the deletion of urban light rail transport from the list of essential services. In this regard, we would like to bring to the attention of the Committee that the Government is exerting

its maximum effort to progressively assimilate the Convention into the national laws and practice.

In view of the above, the Government will engage in constructive dialogue with concerned stakeholders and social partners as regards the observation of the Committee and provide updated information on the outcome in its next report.

#### (c) Quorum required for a strike ballot

As regards the quorum required for a strike ballot (section 158(3) of Labour Proclamation No. 1156/2019), the Government noted the observations and comments of the Committee and wishes to provide the following illustrative explanations on the same.

As section 159(3) of the Proclamation stipulates, a strike motion has to be supported by a majority of the workers concerned in a meeting in which at least two thirds of the members of the trade unions are in attendance. This does not, however, mean that a two-third majority is required in order to decide on a strike motion. So, the intention of section 159(3) is to give an opportunity to the majority of the attendant members to discuss the issue. Otherwise, a decision will be passed by the majority out of the two thirds attending. To clarify the matter with a concrete example, let us assume that a trade union has 100 members. According to section 159(3) of the Proclamation, two thirds of the trade union members (that is, 67 members) are required to attend the meeting and a simple majority vote of the attendants (namely 50 per cent +1 of 67 = 34) is required to authorize a strike resolution; which in effect is one third of the total members. We hope this illustration clarifies the intention of section 159(3) of the Proclamation.

#### (d) Cancellation of registration (section 121(1)(c))

The Government took due note of the Committee's observation with regard to the cancellation of registration of an organization as stipulated in section 121(1)(c) of the Proclamation, and wishes to clarify as follows.

As is stipulated in section 121 of Labour Proclamation No. 1156/2019, the Ministry (namely the Ministry of Labour and Social Affairs at national level) or the appropriate authority (namely the Bureaux of Labour and Social Affairs in their respective regions) may file before the competent court to cancel the certificate of registration of an association on any of the grounds provided in section 121(1)(a)–(c).

It is clear from the above that the Ministry or the appropriate authority has no mandate to revoke the certificate of registration of any association, except if filing the case with good grounds (that are specified under section 121(1)(a)–(c)).

We hope this clarifies the concern of the Committee and we are of the view that section 121(1)(c) is in conformity with the Convention in point.

In conclusion, while the Government is committed to progressively assimilate the Convention to ensure its conformity with the national laws and practice, the FDRE look forward to the ILO's technical assistance in this regard.

### Discussion by the Committee

#### **Government representative, Ambassador, Deputy Permanent Representative –**

Allow me to first of all congratulate you, Madam Chairperson, on your election to preside over this Committee and the Vice-Chairs for assuming their role. We have full confidence in your wise and able leadership that ensures the success of our session.



We have carefully taken note of the observations of the Committee of Experts pertaining to the application of the Convention. From the very outset, I would like to affirm to this august assembly that Ethiopia attaches great importance to the ILO supervisory mechanism. We believe this unique platform assesses the application of labour standards in a manner that takes into account the universality, interdependence and indivisibility of fundamental human rights and civil liberties. For a country like Ethiopia, which is undergoing an overall reform process aimed at revitalizing the enjoyment of human rights, this platform will not only afford it a great opportunity to deliberate on issues, reinforce the progress achieved, but also address the multitude of challenges in terms of its endeavour to protect human rights in general and labour rights in particular. It is in this spirit that I am going to deliver my intervention.

To demonstrate our serious engagement with regard to the application of the Convention in question, I would like to inform this august assembly that Ethiopia provided written replies. However, Ethiopia was regrettably included in the final list of individual cases and appeared before this Committee for reasons which we still fail to understand. Following the specific comments and observations made by the Committee of Experts on the application of the Convention in Ethiopia, allow me to make the following comments.

First, the Committee observed a complaint received from Education International (EI) on 20 September 2019 – a denial of registration of the National Teachers' Association (NTA) by the Government of Ethiopia. It should be noted that the Constitution of Ethiopia, which is the supreme law of the land, incorporated international instruments, including international labour standards, which were ratified by Ethiopia, into the national laws of the country. Accordingly, I wish to state that individuals and workers in Ethiopia are free to form any sort of association of their choosing based on applicable national laws.

In light of the enabling policy environment in Ethiopia for the formation of an association, I would like to inform the Committee that a request for registration by the NTA has not – and I repeat has not – been received by any competent authority to date. I would also like to bring to the attention of the Committee that the Ethiopian Teachers' Association (ETA), that is affiliated to Education International (EI) with more than 600,000 members, is legally registered and is functional, operating towards advancing the interests and rights of teachers at different levels in the country.

This demonstrates that teachers are enjoying their constitutional right to organize and freely form associations without interference by the Government whatsoever. Therefore, I am afraid that the complaint submitted by Education International to the Committee of Experts, which refers to the denial of registration of the NTA by the Ministry of Labour and Social Affairs of Ethiopia, is an unfounded allegation. I would also like to take this opportunity to bring to the attention of the Committee of Experts that the NTA, like any other association, can register at any time if it so wishes, with a competent authority, provided that it complies with the relevant national laws that govern such registration process.

Second, we welcome the Committee's positive observation with satisfaction regarding the progress made in terms of the newly enacted Civil Society Organizations Proclamation No. 1113/2019 that repealed the previous Charities and Societies Proclamation No. 621/2009. That said, we took due note of the Committee's comments on sections 59(b) and 78(5) of the new Civil Society Organizations Proclamation No. 1113 of 2019, regarding the grounds to register and right to appeal to the court by civil society organizations.

In this regard, I would like to bring to the attention of the Committee that the domestication of international conventions (including Convention No. 87), standards and norms in national laws is a complex process, as circumstances vary from country to country. In view of this, we are of the view that sections 59(b) and 78(5) of Proclamation No. 1113 primarily aim to prevent wrongdoing by civil societies and NGOs. It urges to take the necessary measures on organizations with misconduct and engaging in activities that are contrary to the rights and interests of their beneficiaries, in particular, and the social norms, moral values and beliefs of the public at large.

That said, however, we would like to express our readiness and openness to engage constructively through dialogue on the issues at hand with the concerned stakeholders, including the social partners, and we will provide updated information to the Committee of Experts in our next report.

Third, as the Committee of Experts rightly noted, the Government has been seriously engaged in carrying out comprehensive and in-depth reforms that encourage administrative and civil service reforms, public expenditure management, tax administration, public enterprise reform and legal and judicial reform and their interface with sectoral institutions that aim to promote good governance. To this effect, although a complex and painstaking process, our endeavour is to realize these reforms, in collaboration with development partners and stakeholders, and this is at a very promising stage.

In this connection, a Job Evaluation and Grading System (JEGS) for the civil service sector has been developed and it is at the stage of pilot testing. This JEGS is expected to help place the right people (civil servants) in the right place. The Job Evaluation and Grading System also intends to improve the pay system of the civil service sector. With this updated information, I would like to reassure you that we will provide in our next report the progress made thereon, taking into account the observations and comments made by the Committee of Experts.

Fourth, we took note of the observations and comments of the Committee of Experts with regard to certain categories of workers (workers whose employment relation arises out of a contract concluded for the purpose of upbringing, treatment, care of, rehabilitation, education, training; contract of personal services for non-profit-making purposes; managerial employees, as well as employees of state administrations; judges and prosecutors, who are governed by special laws). In this regard, we wish to carry out in-depth studies on the matter at hand with ILO technical assistance and we are ready to engage in constructive dialogue with our social partners; and we will provide updated information to the Committee of Experts on developments thereon in our next report.

Fifth, we would also like to commend the Committee of Experts for its positive indication regarding the progress in relation to measures taken by the Government to minimize the list of undertakings that provide essential services to the public under our revised Labour Law. Moreover, we have also taken into account the observation of the Committee of Experts pertaining to the deletion of urban light rail transport from the list of essential services. In this regard, we would like to bring to the attention of the Committee that the Government is exerting maximum effort to progressively domesticate the Convention into national laws and practices. In this regard, we stand ready to learn and share experiences of other countries with ILO technical support. In view of this, we will engage in a constructive dialogue with concerned stakeholders and social partners on the observation of the Committee of Experts and provide updated information on the outcome in our next report.

As regards the quorum required for a strike ballot (section 158 of Labour Proclamation No. 1156/2019), we noted the observations and comments of the Committee and wish to provide the following illustrative explanations on the matter. Section 159 of the Proclamation stipulates that a strike motion has to be supported by a majority of the workers concerned in a meeting in which at least two thirds of the members of the trade unions are in attendance. This does not, however, mean that a two-thirds majority is required in order to decide on a strike motion. So, the intention of section 159 is to give an opportunity to the majority of the attending members to discuss the issue. Otherwise, a decision will be passed by the majority of the two-third attendants.

To clarify the matter with a concrete example, let us assume that a trade union has 100 members. According to section 159 of the Proclamation, two-thirds of the trade union members – that is 67 members – are required to attend the meeting and a simple majority vote of the attendants – 50 per cent + 1 of 67, that is 34, is required to authorize a strike resolution; which in effect is one third of the total members. We hope this illustration clarifies the intention of section 159(3) of the Proclamation.

Last but not least, we took due note of the Committee's observation with regard to the cancellation of registration of an organization as stipulated in section 121(1)(c) of the Proclamation. I would like to clarify that as per section 121 of Labour Proclamation No. 1156 of 2019, the Ministry, that is the Ministry of Labour and Social Affairs, at the national level, or the appropriate authority (Bureaux of Labour and Social Affairs in their respective regions) may file before the competent court to cancel the certificate of registration of an association on any grounds provided in section 121(1)(a)–(c). Therefore, the Ministry or the appropriate authority has no mandate to revoke the certificate of registration of any association except filling the case with good grounds that are specified under section 121(1)(a)–(c). We hope this clarifies the concern of the Committee of Experts and we are of the view that section 121 is in conformity with the Convention on this point.

In conclusion, I would like to seize this opportunity to affirm the commitment of the Government for the full application of the Convention in point and other ILO instruments. We believe that the ILO's technical assistance in this regard is of great importance for the full implementation of labour standards and the human-centred Centenary Declaration for the Future of Work for advancing social justice, promoting decent work for all, and achieving the 2030 Agenda.

**Worker members** – The Government of Ethiopia made a firm commitment in 2013, in the joint statement drawn up following the visit by the ILO mission, to finally register the NTA. Although there were other problems at the time, the difficulties faced by teachers' unions are recurrent in Ethiopia and go back to the 1990s.

We are now in 2021, and we must unfortunately conclude that teachers in the country are still facing the same difficulties. While the request by the NTA now appears to have failed, it is still the case that the ETA, referred to in the Government's written information, is only recognized as an occupational organization. The ETA has been requesting recognition as a trade union for a long time, but such recognition is still impossible as the Government has failed to keep its promises to introduce the necessary legal reforms, as we will see below. Such recognition as a trade union would enable the ETA to fully represent teachers in collective bargaining and to affiliate with a trade union confederation.

At the legislative level, the Civil Society Organizations Proclamation of 2019 has replaced the Charities and Societies Proclamation of 2009. The Committee of Experts noted certain improvements in the 2019 text in relation to the 2009 version. Nevertheless, the Committee of Experts still raises two problematic issues in relation to the Convention.

The first issue relates to the reasons for the refusal of registration maintained in section 59(b), which are still excessively broad. The section provides that the Civil Society Organizations Agency shall refuse to register an organization where it finds that the aim of the organization or the activities' description in the organization's rules are contrary to law or public morals. We are bound to agree with the view of the Committee of Experts, as the concept of public morals could result in the arbitrary refusal to register certain organizations. This legislative provision is therefore contrary to Article 2 of the Convention, as it is of a nature to impede the right of workers to establish organizations of their own choosing. The Government refers in its written information to another provision of the Proclamation, section 121(1), which provides for the intervention of a court. In this regard, the issue is not so much whether or not a court can intervene, but the criteria set out in these provisions, which are too broad.

The second issue relates to section 78(5), which does not grant suspensive effects in the event of appeals against decisions to suspend, withdraw or cancel trade union registration. We also recall that Article 3 of the Convention provides that the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

The previous observations of the Committee of Experts noted that civil servants and employees of the state administration, including teachers, did not all benefit from freedom of association. Despite the reforms that were being undertaken, the Government does not appear to have found a solution to this problem and confined itself to reiterating its commitment to guarantee freedom of association for civil servants and employees of the state administration, in collaboration with the social partners. We hope that this commitment will lead to specific measures.

The Labour Proclamation of 2019, which replaced that of 2003, also raises issues of conformity with the Convention. The Proclamation excludes several categories of workers from its scope of application, thereby denying them the rights and freedoms set out in the Convention. They include: workers covered by contracts to care for a child, provide treatment, care or rehabilitation; workers with a teaching or vocational training contract, other than apprenticeships; workers who provide their services to private individuals free of charge; managerial employees, as well as employees of state administrations; and judges and prosecutors, who are governed by special laws. To achieve conformity with the Convention, the Government must ensure that these restrictions are lifted.

Section 137(2) provides that urban light rail transport services are considered to be essential services for which the right to strike is not recognized. However, these services do not constitute essential services defined as services the interruption of which may endanger the life, personal safety or health of the whole or part of the population. The Government must therefore remove these services from the list of essential services.

The Labour Proclamation also includes rules on the quorum required for a strike ballot. The Committee had already in the past informed the Government that the quorum of two thirds was not reasonable, in accordance with the interpretation of the Committee of Experts in its 1994 General Survey. The Government appears to be

ignoring these considerations and has deliberately maintained this quorum, which unduly impedes the right to strike contained in the Convention.

Despite the differences of views that persist on the issue of the right to strike between the Workers' group and the Employers' group, we have managed to reach an understanding around this issue. It nevertheless appears to us to be important to recall that the Workers' group unequivocally reaffirms that the right to strike must be recognized within the context of this Convention. This right is related to freedom of association, which is an ILO principle and fundamental right. This right is also a fundamental element of any democracy.

As we can see, Ethiopia still has a long way to go to achieve full conformity with the Convention. We hope that the commitments given by the Government to resolve the numerous difficulties that remain will result in concrete action.

**Employer members** – I would like to first thank the Government representative for her presentation and the information she provided. This additional information has been very helpful in our understanding in consideration of this case.

In respect of Article 2 of the Convention and the Committee of Experts' observations regarding the request by the NTA for recognition and registration under the Civil Society Organizations Proclamation No. 1113, the Committee had noted that the Government had not responded to that request for registration. The Government in its submissions has indicated that there has not been a request for registration submitted by the NTA to the Ministry of Labour and Social Affairs, and has explained that the ETA is affiliated with Education International, with more than 600,000 members, is legally registered and has been since 1949.

The Worker members provided different information in their submissions today, noting a number of restrictions on the freedom of association that exist, that have impacted the NTA in particular. Therefore, the Employer members note that there appears to be a lack of clarity about the facts that are relevant for our full understanding of this case and we request that the Government provide this information so that the Committee of Experts can carefully consider the information about this issue.

The Employer members take this opportunity to remind the Government of its commitment to guarantee freedom of association, in consultation with the social partners, and therefore urges the Government to take the necessary measures to ensure that the NTA may be registered, that there are no obstacles to that process and to provide information to the Committee of Experts on progress made in this regard.

Turning now to the issue of the Civil Society Organizations Proclamation, the Committee of Experts noted that the Charities and Societies Proclamation No. 621 of 2009 has been replaced by the Civil Society Organizations Proclamation No. 1113 of 2019. The Committee of Experts noted with satisfaction that the Civil Society Organizations Proclamation addresses some of their previous outstanding comments by removing certain provisions of the Charities and Societies Proclamation that were not in conformity with the Convention. The Committee of Experts also observed that there were issues that remained necessary to be addressed and that included section 59(b) of the new Civil Society Organizations Proclamation, noting that narrowing the grounds for registration refusal was still necessary. While that occurred, overall the restrictions were still unnecessarily broad and the Committee of Experts requested the Government to revise section 59(b) in consultation with the social partners and requested the Government to provide information on developments in this regard to the Committee of Experts.

The Committee of Experts also noted section 78(5) of the Civil Society Organizations Proclamation and requested that the Government indicate whether the appeal under this section had the effect of a stay of execution and, if not, to take the necessary measures to provide for such effect. The Government has expressed the view that sections 59(b) and 78(5) of the Proclamation have a justified objective, but expressed a readiness to engage in constructive social dialogue on this issue and would provide information to the Committee of Experts in its next report.

The Employer members note this information and request the Government to consult with the social partners with respect to the issue of section 59(b) of the Civil Society Organizations Proclamation in order to achieve its stated objectives and the Employer members also request the Government to provide information on developments in this regard so that they can be more fully considered.

Turning to the issue of civil servants and the employees of state administrations, the Committee of Experts expressed in its previous comments, in view of the ongoing comprehensive civil service reform, the expectation that the right to organize would be granted to all civil servants, including teachers in public schools and employees of state administrations, including care workers, judges, prosecutors and managerial employees. The Government has affirmed its readiness to address the matter and in full consultation with the social partners stated that it would take the necessary measures to grant civil servants and employees of the state administrations the right to establish and join organizations of their own choosing.

The Committee of Experts noted the absence of concrete information concerning the civil service reform in the Government's report. Therefore, the Employer members request that the Government provides information regarding the civil service reform and on all developments in this regard so that it may be properly considered. We do welcome the Government's comments in this regard of its process of engaging in social dialogue with the social partners in this aspect of reform and encourage the process to continue.

Turning now to the Labour Proclamation No. 1156 of 2019, the Committee of Experts expressed concerns over provisions of the prior Proclamation No. 377 of 2003 and noted that that Proclamation of 2003 has been replaced by the Labour Proclamation No. 1156 of 2019. Nevertheless, the Committee of Experts still noted some concerns with the new Proclamation, including the exclusion in section 3 from the scope of its application and from the right to organize of certain workers. Therefore, the Committee of Experts requested the Government to either amend this section or adopt adequate legal provisions to recognize and guarantee the right to organize for the certain categories of workers discussed in its observations. The Government in its submissions points out that, with the possible technical assistance of the ILO, it will be in a position to carry out in-depth studies on the matters in hand and engage in effective and constructive dialogue with the social partners and has also indicated an ability with technical assistance to provide information on developments thereon, for the Committee of Experts' next report. The Employers' group welcomes these comments from the Government and encourages this process.

Another issue that the Committee of Experts addressed in respect of the Labour Proclamation No. 1156 of 2019 was the quorum required for a strike ballot and we did listen to the Government representative's comments about those rules. However, the Employers' group position is very clear on this point. The Employer members are of the view that the right to strike and related issues are excluded from the scope of Convention No. 87. Those issues fall outside of the scope of the Convention and we therefore do not believe the Government has to provide details to the Committee of Experts or to the



Conference Committee on strike ballot rules or rules regarding the quorum required for a strike. It is our view that this falls within the purview of national legislation and does not fall under scrutiny under the Convention.

In closing, we are very heartened by the Government representative's submissions and the willingness to work together with the ILO in order to address the remaining challenges for the application of the Convention in practice in Ethiopia, and we encourage the Government to continue to engage in a process of social dialogue with employers' and workers' organizations.

**Worker member, Ethiopia** – The Confederation of Ethiopian Trade Unions fully supports the report of the Committee of Experts on Ethiopia regarding the Convention, which the country ratified in 1963.

According to article 9(4) of the Constitution(1995), "all international treaties ratified by Ethiopia are integral parts of the law of the land". Relevant ratified Conventions, such as Convention No. 87, are therefore an integral part of the legal framework governing labour relations in Ethiopia. Article 13 of the Constitution provides that fundamental freedoms shall be interpreted per the main international human rights instruments adopted by Ethiopia. This implies that interpretations of Ethiopia's labour rights must conform to international human rights instruments. Article 31 of the Constitution states that: "Every person has the right to freedom of association for any cause or purpose. Organizations formed, in violation of appropriate laws, or to illegally subvert the constitutional order, or which promote such activities are prohibited."

In stark contradiction with the provisions of these legal frameworks, the Federal Democratic Republic of Ethiopia's Labour Proclamation No. 1156/2019, in section 3, excludes some categories of workers from freely forming and joining trade unions of their choice. While the laws are relevant and proper, the gaps in practice are deep and deliberate.

What is clear is that Ethiopia's industrial relations practices pick and choose what aspect of laws to respect and apply. This is the case for workers in the national airline who are allowed to organize under the Labour Proclamation No. 1156/2019. The management of the national airline group thinks otherwise and so flagrantly violates the freedom of association rights of workers. The national airline group is victimizing workers who belong to an independent workers' union. They are deprived of benefits and punished, including being sacked. Six leaders of the Ethiopian Airlines Group Basic Trade Union (EAG BTU), including the president, a pilot, and the vice-president, a technician, were dismissed. A mediation meeting was organized by the Ministry of Labour and agreements reached by all parties. While other parties to the agreement have complied, the national airline group whimsically breached the provisions of the agreement by continuing to deny the workers' union recognition and refusing to reverse the punitive actions against the leaders.

The Government has demonstrated deliberate and disguised weakness in enforcing the provisions of the Convention. It is fair to say that the Government has continued to display bias. This is the case with the issue relating to the national airline group. While our organization has written 16 letters to the Ministry to enforce the outcome of the mediation, we are yet to receive a single response. However, to our dismay, the Ministry quickly responded to the management letter wherein it claimed that workers were using telegrams to undermine the company, while in the real sense the workers were simply conducting their affairs similarly to what this Committee is now doing.

The Government is also using a blanket and wide definition of essential services to deny workers the right to organize. Several sectors, which are not defined and contained in the ILO essential services list, are currently being classified as such. For instance, railway and aviation are classified as essential services. The Government should be advised to conform to the universally accepted list.

Finally, Ethiopia is aiming to industrialize and grow national prosperity. Ethiopian workers fully support these aspirations and are at the heart of the efforts for their realization. However, it is wrong and unacceptable for such aspirations to be driven by the direct denial of the rights of workers. This is the case with industrial parks, where workers are not allowed to form and join trade unions. The Government must be assisted to ensure that its recently launched Decent Work Country Programme fully and genuinely complies with the provisions of the extant laws and standards it has ratified.

**Government member, Portugal** – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The Candidate Countries, the **Republic of North Macedonia, Montenegro and Albania**, the EFTA country **Norway**, member of the European Economic Area, as well as the **Republic of Moldova**, 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 right to organize and freedom of association.

We actively promote the universal ratification and implementation of fundamental international labour standards, including ILO Convention No. 87. 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 engaged in development dialogue and cooperation for more than 40 years with Ethiopia. We recognize the progress made on the implementation of international labour standards.

In line with the Committee of Experts' assessment, we note with regret, however, the insufficient progress with regard to freedom of association and the right to organize, in particular the fundamental right of social partners to form organizations and, subsequently, the right to official recognition through legal registration. Having this in mind, we urge Ethiopia to take the necessary measures to ensure the immediate registration of the teachers' associations. It is the fundamental right of all workers, including civil servants and other employees of the state administration, to form organizations of their own choosing for furthering and defending their occupational interests.

We commend the replacement of the Charities and Societies Proclamation by the Civil Society Organizations Proclamation in 2019, which removed certain provisions that were not in conformity with the Convention; among others, provisions that gave governmental authorities great discretionary powers to interfere in workers' and employers' freedom of association and their right to organize. We call on the Government to revise, in consultation with the social partners, the remaining outstanding provisions not in line with the Convention, in particular on the registration and effect of appeals.

We also note with satisfaction the recent revision of the Labour Proclamation in 2019, however we regret that it still unlawfully restricts the application of the Convention,

in particular in relation to the coverage of all categories of workers, the list of essential services in which strike action is prohibited and the quorum required for a strike ballot.

We welcome the written information provided by the Government, underline the importance of technical assistance and hope for close cooperation by the Government with the ILO and the social partners in addressing all the outstanding issues.

Furthermore, we note that the Committee of Experts, in its report of 2021, has requested the Government to take measures or provide information with respect to child labour. We appreciate many of the measures put in place by the Government in recent years, but encourage further efforts to eliminate child labour, including by moving towards compulsory and free primary and secondary education for all children until they reach the minimum age for admission to work. Particular attention should be paid in this respect to gender equality and the informal sector.

The EU and its Member States will continue to cooperate with Ethiopia and stand ready to support the country in their continuous work towards the full implementation of ILO Conventions.

**Government member, Namibia** – Namibia welcomes the detailed response from Ethiopia and commends it for its readiness and openness to engage in a constructive dialogue on the issues at hand with the concerned stakeholders, including the social partners. Namibia equally notes the Ethiopian Government's efforts in collaboration with development partners and stakeholders in carrying out comprehensive and in-depth reforms, including civil service reform, and the Job Evaluation and Grading System for the civil service sector, which is at the stage of pilot testing. In conclusion, Namibia would like to underscore the efforts being made by the Federal Democratic Republic of Ethiopia in so far as Labour Proclamation No. 1156/2019 is concerned, and we call upon the ILO to provide technical assistance to the Government, which will carry out in-depth studies on the matters at hand and engage in effective and constructive dialogue with the social partners.

**Worker member, Somalia** – This intervention is made on behalf of the workers and trade unionists in the Horn of Africa. It is aimed at providing additional information to the report of the Committee of Experts. Convention No. 87 is a fundamental labour right. It is essentially an enabling right, a means of facilitating the realization of further rights, rather than just a right in itself. Without the right to freedom of association, workers are at risk of being isolated and voiceless. It is the essential means through which workers may promote and defend their economic and social rights and interests.

The unethical and skewed labour relations practices being implemented in the national airline group is deplorable and unacceptable. The actions of this company are clear violations of the spirit and letter of the Convention. The company is openly and recklessly breaching the rights of workers, including victimizing pilots for belonging to the union. This, even though the Ethiopian Industrial Employers' Confederation states that: "Captains or pilots have the right to organize based on ILO Convention N87 on freedom of association, the Constitution of the Federal Democratic Republic of Ethiopia and the National Labour Proclamation." This, even though Ethiopia ratified the Convention decades ago and that the spirit of the Convention should be an integral part of the legal framework governing labour relations in Ethiopia.

The management of the national airline group has reportedly stopped some benefits to pilots who have joined the independent and democratic trade union. It has also applied intimidation tactics by contacting the Ministry of Labour to prevent the registration of the union.

The Federation of Somali Trade Unions supports calls for those pilots, dismissed or laid off by the group due to their union involvement, to be immediately reinstated. No law has been broken that warrants that pilots should be punished.

*Interpretation from Chinese:* **Government member, China** – We have carefully read the report of the Committee of Experts and the written information of the Government on the case. The Ethiopian Government gave a detailed response and clarification to the recommendations or observations of the report. We commend this. Over the years, both in legislation and practice, the Government has earnestly implemented the Convention and made positive progress. We highly acknowledge the enacting of the Civil Societies Organizations Proclamation and its positive effects. The Proclamation is for the purpose of registration, management, inspection and supervision of civil society organizations and NGOs that support vulnerable groups. In order to prevent misconduct engaged by such organizations that runs counter to people's rights and interests, social norms, moral values or social beliefs, we welcome the Government's attitude in maintaining constructive dialogue with the social partners and stakeholders.

We welcome the comprehensive and in-depth reforms by the Government in areas such as public administration and civil service, tax administration and judiciary, and look forward to more fruitful results coming out of the reforms in the future.

Meanwhile, we would also like to remind this Committee to duly note that countries have different national circumstances and development stages. The domestication of various labour Conventions, standards and norms, including Convention No. 87, is in itself an incremental and complex process. While we stress the enhancement of the ratifying country's capacity to apply the Convention, we should also look into the question from a historical, involving and dialectical perspective.

We hope the ILO will continue to provide technical support and keep strengthening constructive dialogue with the social partners so as to further promote the concrete implementation of the Convention.

**Government member, Ghana** – Convention No. 87 is a very important fundamental Convention for union formation and social dialogue. The effort by Ethiopia in response to its compliance with the provisions of the Convention by allowing workers to register their unions at any time in conformity with the relevant ratified instruments is commendable.

Ethiopia repealed the Charities and Societies Proclamation (No. 621/2009), which was very limiting to freedom of association, and replaced it with the Civil Society Organizations Proclamation (No. 1113/2019), which gives effect to freedom of association as provided for in the Convention. This is very positive, especially as we are reliably informed that it has created an enabling environment for the enhancement of democracy and the desire to organize.

Ghana believes that union pluralism in the industrial space creates the opportunity for new and emerging unions to be registered, thereby meeting the letter and spirit of this Convention. This has progressively positioned Ethiopia as a country which is accountable and encourages transparency in the implementation of same.

Ghana firmly believes in supporting a worthy cause that culminates in a rich tripartite experience for national development and we are convinced that Ethiopia is in a position to adopt measures to align its laws and practice with the comments made by the Committee of Experts.

**Worker member, Norway** – I will speak on behalf of trade unions in the Nordic countries. The right to organize is a key element of ILO Conventions. Most importantly, being organized in a trade union gives workers a sense of belonging, representation and legitimacy. It is sad that Ethiopia, under its labour laws, precludes several workers from exercising their fundamental right to organize because their work is termed as “essential services”. This applies to transport workers, air transport and urban bus services.

Sadly, we note that civil servants, such as teachers in public schools, employees of the state administration, care workers and others, do not enjoy the right to organize. It is unfortunate that despite earlier promises given by the Government, the trade unions of teachers are still not registered or recognized.

All Nordic workers enjoy the right to form and join trade unions of their choice and the right to bargain collectively. This includes workers in the public sector, such as teachers, police, prison staff and armed forces, as well as those in the private sector. They all have the right to strike. We are aware that there are countries on the African continent which have unionized public sector workers. We would encourage the Government to share experiences with these countries.

Accordingly, we urge the Government to take the necessary measures to ensure the immediate registration of the NTA so that teachers can fully exercise their right to form organizations of their choice and defend teachers’ rights. We further urge the Government to revisit and reassess its “essential services” policy.

*Interpretation from Arabic:* **Government member, Algeria** – Algeria notes the information provided by Ethiopia, indicating that no request has been submitted to register the NTA. However, it states that the ETA is affiliated to Education International (EI), has a large number of members and seeks to promote teachers’ interests and rights.

Algeria further notes the satisfaction expressed by the Committee of Experts regarding the amendments to the Civil Society Organizations Proclamation. Algeria also supports Ethiopia’s efforts in the reforms undertaken in the public service, public enterprises and the tax administration and in the establishment of a job evaluation and classification system, which will result in improvements in pay.

Algeria welcomes the Government’s announcement regarding its willingness to launch a constructive dialogue with the social partners on the issues raised and regarding the transmission of updated information to the Committee of Experts in its next report, in which it will indicate the progress made, taking account of the Committee’s observations.

Algeria encourages cooperation between Ethiopia and the ILO with a view to the provision of the technical assistance outlined for the application of the Convention.

**Government member, Burkina Faso** – My country reaffirms its attachment to the principles and values enshrined in Convention No. 87. The question of the defence of freedom of association is a fundamental concern of our Organization. Indeed, in its 1919 Constitution, the 1944 Declaration of Philadelphia and the 1998 Declaration on Fundamental Principles and Rights at Work, the ILO has made the promotion of freedom of association its flagship issue.

The Government of Ethiopia has been summoned to appear before our Committee regarding the application in law and in practice of certain provisions of the Convention, which it ratified on 4 June 1963.

My country’s delegation notes with satisfaction the useful information provided by the Government of Ethiopia through the various efforts made by this fellow country to

give full effect to the principles contained in the Convention. It is happy to note that on all the questions raised by the Committee of Experts, Ethiopia has shown its willingness to take the necessary remedial action to ensure adequate application of the Convention on the ground. To this end, it has shown its readiness to engage in dialogue with the social partners and to receive ILO assistance. For this reason, while encouraging the Government of Ethiopia to continue its efforts in the context of the planned reforms, we hope that the Committee will show leniency and understanding towards Ethiopia.

**Employer member, Ethiopia** – The last two years, we have been working hand in hand with the Confederation of Ethiopian Trade Unions. We have been solving lots of problems that have arisen between employers and workers. We have solved legal issues that we have on the table today. The last two years, even our tripartite forums were going smoothly with us employers, with the Government, and with the workers. We have achieved a new labour law that has taken seven years to come to a conclusion.

This shows that the relationship between employers, workers and the Government is getting better than ever. This year, the Government is trying to make things very smooth for all parts of society, the economy and the political situation. Although there were some social unrests here and there, we have been approaching the Government to give us a fair playground as far as work is concerned.

It is our belief, as the Confederation of Ethiopian Employers Federation, that whatever has been done so far will even be better in the coming years. Of course, by the end of the year, there will be a new Government, a new hope, a new development, and we believe that, as an employers' organization, by coming together with the Confederation of Ethiopian Trade Unions (CETU), the workers' organization, we will make a very impressive approach to let the Government abide with the Convention that has been ratified by Ethiopia a very long time ago.

It is also our belief, as employers, to work hand in hand with workers to bring better working conditions, better dialogue and social forums, and even to work in enhancing and influencing other policies which the Government will be implementing.

As far as the national airline company is concerned, we have been working with CETU in a bilateral forum to make things better for the pilots, for the mechanics and, in general, for all the staff of the national airline company. We believe that our involvement has brought things to a better level. And it is still our mandate and our obligation to work with CETU to resolve whatever problems remain as far as teachers' conditions are concerned, and vital essential services are concerned.

We have been working bilaterally, and tripartitely, in solving all kinds of problems that the Ethiopian economy has been facing. We do not exist if the workers do not exist. In the same fashion, workers will not exist if we employers do not exist. As a matter of fact, what the workers are complaining about, and what we are complaining about, is not a big issue that cannot be resolved among us, the tripartite solution that we are working on.

With the end of this election period, which will take us to end of July and August, we will come back again with a better solution that will satisfy the workers, the Government, and us, the employers. So, it is our belief that there is nothing bigger than our tripartite forum and solution mechanism.

I thank you for giving us the chance and I promise, on behalf of Ethiopian employers, that we will be resolving, and will stand hand in hand with our workers, CETU, and the Government itself.



**Government member, Kenya** – The Kenyan delegation thanks the representative of the Government of Ethiopia for the response to the issues raised by the Committee of Experts. In regard to the complaint by Education International on the failure to register the teachers' association, we note that the Government of Ethiopia is ready to undertake their registration as long as they comply with the national legislations.

We further note that Ethiopia is ready to engage with the social partners in the implementation of the Civil Society Organizations Proclamation. These measures represent an important step towards resolving the concerns raised, even as the Government retains its oversight role.

The Kenyan Government further notes the willingness of the Government of Ethiopia to engage with the social partners in discussions on aspects of the Labour Proclamation 2019, namely: workers covered; essential services; and the quorum required for a strike ballot. Tripartite consultations and meaningful and effective dialogue are essential elements for the application of fundamental principles and rights. In conclusion, we urge the ILO to provide technical assistance to complement the Government's efforts in addressing challenges in the implementation of its obligations under the Convention. We believe it is necessary to note and support the commitment of Ethiopia to engage in social dialogue, while continuing to monitor the progress under existing reporting mechanisms.

**Observer, International Transport Workers' Federation (ITF)** – As you have already heard today, as a consequence of corporate restructuring, workers at the national airline group registered a trade union – the basic trade union – in September 2019. Shortly thereafter, another trade union was registered to represent the same group of workers – the basic primary union – despite protestations from the incumbent. The airline actively supported the registration of the second union and began a hostile anti-union campaign.

The airline has dismissed a majority of the basic union's leadership. It also initiated a check-off system for the primary union, but refused to do so for the basic union. This system then became the basis of the "representativity" certificate issued by the Ministry to the primary union. The airline now makes membership of the primary union a prerequisite for accessing employee support measures, including bank loans. Furthermore, the basic union is not allowed to recruit members and workers who express an interest in joining are effectively threatened with dismissal. These are acts of gross anti-union discrimination and employer interference in the establishment and functioning of trade unions.

We deplore the dismissal of workers on grounds of their leadership roles in the basic union. These workers must be reinstated into their original jobs and compensated for loss of income immediately.

The intervention by the airline to promote the establishment and functioning of the parallel primary union constitutes an extreme act of interference. Intimidation of trade union members under the threat of termination constitutes a denial of these workers' fundamental rights. Finally, the provision of employee benefits only to members of the employer's favoured union amounts to another egregious act of anti-union discrimination.

We trust that the Government will take measures to ensure that the airline adopts a neutral stance on union representation. Further, the airline must be called on to remedy all acts of anti-union discrimination without delay.

**Observer, IndustriALL Global Union** – I am speaking in the name of IndustriALL Global Union, representing over 50 million workers, including the textile and garment sectors, to deplore ongoing violations of workers' rights to organize in Ethiopia's industrial parks.

Although we welcome Ethiopia's Labour Proclamation of 2019 to integrate international labour standards, our affiliates report that unfortunately these same labour standards are violated daily in the industrial parks, which are special economic zones for export-oriented light manufacturing, in which the majority of foreign investors enjoy many advantages, including tax and duty exemptions.

Over 45,000 workers from the textile, garment, shoe and leather sectors are employed in these industrial parks, owned by state bodies, namely the Ethiopian Investment Commission (EIC), and managed by the Ethiopian Industrial Parks Corporation.

In 2019, IndustriALL Global Union carried out an investigation in an industrial park, which showed that the majority of workers from the main garment factories were not unionized. The investigation also found that in these industrial parks, workers in some cases earned the lowest wages in the sector – some only earning between US\$17 to US\$30. We wonder how it is possible for workers to live on those kinds of wages. It was also found that unfortunately the employers at this park behave somewhat like a cartel, in which they decide to pay exactly the same wages to the workers to avoid workers moving from one factory to another seeking to improve their wages. The union still has no access to the workers in industrial textile parks, meaning no freedom of association and dramatically low wages. To date, our affiliate in Ethiopia, the Industrial Federation of Garment, Leather and Textile Workers Union (IFGLTWU) has been unable to organize workers at this park because union organizers are not allowed to enter the park.

**Government representative** – I would like to thank all those who have contributed to the discussion. Let me also use this opportunity to thank in particular and express sincere appreciation to the interventions made by the Governments of Namibia, China, Ghana, Algeria, Burkina Faso and Kenya. We take note of the various constructive ideas raised during the discussion and the appreciations reserved for the country in the implementation of the Convention.

I would like to underline once again that Ethiopia attaches great importance to the ILO supervisory mechanism. We are encouraged by speakers' positive observations regarding the progress we have made in terms of the newly enacted Civil Society Organizations Proclamation that repealed the previous Charities and Societies Proclamation.

Please note that Ethiopia is still undergoing an overall reform process, as well as an in-depth reform encompassing administrative and civil service reforms.

I reaffirmed the commitment of the Government to engagement and social dialogue with partners. We will continue to engage in constructive dialogue with concerned stakeholders and the social partners on the various observations and, as I said earlier, provide updated information on the outcome in the next reports.

Allow me to briefly restate some pertinent issues. Please note that individuals and workers in Ethiopia are now free to form any sort of association of their choosing based on the applicable national laws. The request for registration by the NTA has not been received by any competent authority. If it so wishes, the NTA can, like any other association, register at any time provided that it complies with relevant regulations.

In conclusion, let me reiterate once again the commitment of the Government to the full application of the Convention in point and other ILO instruments.

**Employer members** – I would like to begin by thanking the Ambassador from Ethiopia for the information that she provided today and the Employers' group takes note of the written and oral information provided by the Government representative and the interesting discussion that followed. Taking into account the Government's submissions and the discussion, the Employer members note that a number of compliance issues regarding Articles 2, 4 and 6 of the Convention appear to remain outstanding.

In this regard, the Employers call upon the Government to revise, in consultation with the social partners, section 59(b) of the Civil Society Organizations Proclamation No. 1113 of 2019 in order to ensure that the grounds for refusal of trade union registration are not excessively broad.

We call upon the Government to make sure that appeals by members, founders or managers against the dissolution of their organization to the Federal High Court, which is regulated in section 78(5) of the Civil Society Organizations Proclamation, has suspensive effect.

The Employers also call on the Government to either amend section 3 of the new Labour Proclamation 1156 of 2019 in order to recognize the right to organize for the categories of workers currently excluded from its scope, or to adopt adequate legal provisions to this end to respect the principles of freedom of association fully.

The Employers also request the Government to provide information on the status of the ongoing comprehensive civil service reform as regards the granting of the right to organize to civil servants and to inform the Committee of Experts on progress made in this regard.

In conclusion, the Employers' group wishes to remind the Government of its commitment to guarantee freedom of association in compliance with the Convention. This is to be done in consultation with the social partners and must take into account compliance both in law and practice. The Employers, in closing, express our appreciation for the Government's stated willingness to work towards full compliance with the Convention in both law and practice and we would encourage the Government to avail itself of technical assistance in order to make this happen.

**Worker members** – We thank the Government representative for the information that she has been able to provide during the discussion, and we also thank the speakers for their constructive contributions.

According to our information, the request for the registration of the NTA has now lapsed. In effect, the association has been dissolved following the numerous deliberate obstacles that were raised during the registration process, which was not successful. Although the request for the registration of this association has now lapsed, the practices that prevented it from being registered have not, and other associations are today facing difficulties in achieving full recognition as trade unions.

It is now the ETA that is facing these difficulties, since it is only recognized as an occupational association, but not as a trade union. We therefore invite the Government to make every effort to remove the obstacles, in both law and practice, to the recognition of representative trade unions of teachers, and accordingly to enable them to fully represent the interests of Ethiopian teachers.

The Government must also ensure that the necessary legislative reforms are adopted to bring the Civil Society Organizations Proclamation of 2019 into conformity with the Convention.

First, it is necessary to revise sections 59(b) and 121(1) of the Proclamation, as the criterion of being contrary to public morals, which can be used by the authorities to refuse to register an organization, is excessively broad and arbitrary.

Second, it will also be necessary to revise section 78(5) of the Proclamation in order to grant suspensive effect to any appeal made against decisions to suspend, withdraw or cancel the registration of a trade union.

Another issue concerns the rights and freedoms guaranteed by the Convention, which are unfortunately not applicable for many categories of public servants and state employees. The Government must therefore ensure that these categories of workers are included within the scope of application of the legislation that guarantees the rights and freedoms protected by the Convention.

In addition to these difficulties relating to state employees, the Labour Proclamation of 2019 is also contrary to the Convention with regard to the exclusion of a number of categories of workers, which we enumerated in our introductory intervention, and in relation to which the Government must guarantee the full application of the principles set out in the Convention.

With a view to the effective implementation of all of these recommendations, we encourage the Government to have recourse to ILO technical assistance.

## Conclusions of the Committee

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

**Having examined the matter and taking into account the Government's submissions and the discussion that followed, the Committee notes that, while some compliance issues have been addressed in the new Civil Society Organizations Proclamation No. 1113/2019, serious problems applying the Convention nevertheless persist.**

**In this regard, the Committee calls upon the Government of Ethiopia to:**

- **take all necessary measures, in law and in practice, to ensure that teachers' trade unions are registered and recognized as such and can join other trade unions;**
- **revise, in consultation with the social partners, section 59(b) of the Civil Society Organizations Proclamation No. 1113/2019 in order to ensure that the grounds for refusal of trade union registration are not excessively broad;**
- **make sure that the appeal of members, founders or managers against the dissolution of their organization to the Federal High Court, which is regulated in section 78(5) of the Civil Society Organizations Proclamation No. 1113/2019, has suspensive effect; and**
- **amend section 3 of the new Labour Proclamation No. 1156/2019 to recognize and guarantee the right to organize for the categories of workers excluded from its scope.**

**The Committee also requests the Government to provide information on:**

- the status of the ongoing comprehensive civil service reform as regards the granting of the right to organize to all civil servants; and
- progress made on all the issues referred to above.

**The Committee invites the Government to avail itself of ILO technical assistance to effectively implement all of the Committee's recommendations.**

**Government representative** – I am taking the floor to reflect on some of our views on the conclusions of the Committee with regard to Convention No. 87. I would like to reiterate our position to this august assembly for the record that, despite the fact that Ethiopia provided written replies to the observations and comments made by the Committee of Experts, my country was regrettably included in the final list of individual cases and appeared before this Committee for reasons which we still fail to understand.

Allow me to take this opportunity to reflect on our views on the supervisory mechanism of the ILO. We strongly believe that this mechanism should be clear, open, fair, balanced, consistent, and recognize countries' context and realities. Its task should strictly be confined within the purview of the ILO so as to maintain the credibility of the Organization, and should not be dictated by any other factor or motivation.

As I said previously, I have taken good note of the discussions that transpired in our individual case. Let me express my thanks once again to the representatives of Employers, Workers and Governments for their interest and constructive interventions.

Based on the previous discussions on our individual case, and the draft conclusions drawn, I would like to bring the following major points to the attention of the Committee.

1. In relation to the case of the NTA, the complaint which refers to the denial of registration of the NTA is indeed baseless. I would like to reiterate that the so-called NTA, like any other association, can register in Ethiopia at any time if it so wishes with the competent authority, provided that it complies with the relevant domestic legislation that governs such registration.
2. Civil servants and employees of the state administration. As I have already pointed out in my previous intervention, my Government has been seriously engaging in carrying out a comprehensive reform, including civil service reform, with the aim to promote democracy and good governance. In light of this, we can provide progress made thereon, taking into account the conclusions of the Committee.
3. Labour Proclamation No. 1156/2019. As regards the conclusions of the Committee in reference to certain categories of workers that are excluded from the scope of application of labour law, we are ready to learn from other countries' experiences, and engage in effective and constructive dialogue with the social partners with possible technical assistance from the ILO.

In conclusion, I would like to put on record Ethiopia's commitment to comply with the Convention and domestic legislation on the right to organize. Ethiopia endeavours to improve the right of workers to organize and maintains healthy practice of consultation with the social partners on legislation and implementation. Some conclusions of the Committee are exceedingly onerous. We see the Committee could make advisory suggestions to Member States. To this effect, we look forward to the ILO's continued technical assistance.

## Honduras (ratification: 1995)

### Indigenous and Tribal Peoples Convention, 1989 (No. 169)

#### Written information provided by the Government

#### **Protection measures implemented as a result of violent deaths and threats to members of indigenous and Afro-Honduran peoples (PIAH)**

- (1) Protection measures requested for indigenous leaders Cándido Martínez Vásquez and Manuel Salvador Sánchez, from the Lenca San Tomas community, Gualcince, Department of Lempira, who have received death threats;
- (2) members of the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH) in the context of precautionary measures MC-112-16;
- (3) executive committee and advisers of the Garifuna de Cristales and Rio Negro community, Trujillo, Colón;
- (4) members of the Independent Lenca Indigenous Movement, La Paz (MILPAH);
- (5) Lenca indigenous leader Cándido Roberto Martínez (Gualcince, Lempira);
- (6) Lenca indigenous leader Manuel Salvador Sánchez (Gualcince, Lempira);
- (7) Lenca indigenous leader Felipe Benítez, La Paz (MILPAH);
- (8) Francisco Gámez, Lempira (COPINH);
- (9) Rosario García Rodas, representative of the Lenca Indigenous Organization of Honduras (ONILH);
- (10) Luis Antonio Gonzáles, Luquique, Yorito Yoro;
- (11) José Isabel López (Guaruma Montaña de la Flor);
- (12) executive council of the Tolupán de Candelaria tribe, Yoro;
- (13) José Camilo Rodríguez, José Adán Medina, Simeon Rodríguez (Candelaria tribe, Yoro);
- (14) members of the Pech Santa Maria del Carbon tribe, Olancho;
- (15) Lenca indigenous leader Apolinario Vásquez (La Paz).

#### **Measures needed to promote a climate free of violence for the members of indigenous communities and their representatives, and to ensure the full and effective exercise of their human and collective rights, as well as their access to justice**

From its creation in 2018 until February 2021, the Prevention and Context Analysis Unit has drawn up a total of 14 plans for prevention and guarantees of non-recurrence, which have been formulated in conjunction with the population groups benefiting from protection measures in different areas of the country, such as the Lenca indigenous people of La Paz, the Tolupán indigenous people of La Montaña de La Flor, Garifuna communities of Puerto Cortés, Lenca indigenous communities of Intibucá; defenders of the LGBTI community; journalists and media representatives, human rights defenders in the south of Honduras, and also defenders of the right to land through agrarian reform in Bajo Aguán.



Moreover, the above-mentioned Unit has organized 43 dissemination days in relation to the Protection Act, training 814 individuals, including human rights defenders, defenders of indigenous communities, members of the Garifuna people, trade unionists, journalists, media representatives and justice officials.

In 2020, with technical assistance provided through the Letter of Understanding of the Office of the United Nations High Commissioner for Human Rights and the Human Rights Secretariat, the “Handbook for the implementation of gender and intersectional mainstreaming” in assistance provided by the National Protection System.

Also in 2020, with technical assistance from the European Union rights programme, two protocols were drawn up to provide comprehensive assistance for beneficiaries of the National Protection System: (i) Protocol for the implementation and follow-up of temporary relocation, in the context of a pandemic or similar scenarios, by the Implementation and Monitoring Unit, and its guide to implementation; and (ii) Protocol for a comprehensive response to requests for protection measures in the context of a pandemic or similar scenarios by the Case Reception and Immediate Response Unit, and its guide to implementation; and a Protocol for institutional coordination between the Department for Preventive Risk Management in relation to Human Rights Violations and Social Conflict and the Prevention and Context Analysis Unit (UPAC) of the Department for the System of Protection for Human Rights Defenders, Journalists, Media Representatives and Justice Officials, attached to the Human Rights Secretariat.

### **Appropriate measures to ensure that responsibility is apportioned and the instigators are punished in the Berta Cáceres case**

According to a report issued by the Special Prosecutor’s Office for Crimes against Life with regard to the instigators, proceedings are currently under way against Mr Roberto David Castillo Mejía. Here no judgment has yet been issued because of delays in the proceedings, owing to the fact that the Public Prosecutor’s Office has continued its investigations in order to determine whether any other individuals have been involved in this murder and if so on what basis. Even with the existing delays, the trial against Mr Castillo was opened on 6 April 2021. However, the defence of the accused and suspected instigator, Mr David Castillo, submitted a challenge against the trial court, specifically against the judges who will decide whether or not the accused is guilty, resulting in the deferral of the trial until the Court of Appeal decides whether or not to replace the judges conducting the proceedings. These proceedings have been dismissed, with the requested replacement resulting in the rescheduling of the oral and public trial.

### **Measures implemented with regard to the process of prior, free and informed consultation**

- The Bill was shared with private enterprise institutions, organizations from civil society and international cooperation, and human rights defenders, not only to publicize the Bill but also to obtain a technical opinion in this regard and seek cooperation in the process of dissemination, consultation and adoption of the Bill.
- Meetings were held with various sectors to pinpoint the precise objective and content of the Bill.
- The Evaluation Committee, with support from the National Congress Legislative Management Department in the process of planning consultations, and in order to ensure the opening up and inclusion of the sectors involved, sent a request for advice

and support in the formulation of the consultation strategy to the Office of the High Commissioner for Human Rights in Honduras, to the Inter-American Commission on Human Rights, and to the office of the International Labour Organization in Honduras. Meetings were arranged with the respective parties and the Bill document currently before the Evaluation Committee was shared. The organizations were also asked for their technical opinions on the Bill.

- The Office of the High Commissioner for Human Rights in Honduras agreed to collaborate with the Evaluation Committee, providing technical assistance to the National Congress for capacity-building in relation to international standards on the subject of prior, free and informed consultation, for both deputies and officials of the National Congress, who will participate in the process of adoption of the Act so that the process is accomplished in the optimum manner. Support was also requested from them in the revision and restructuring of the Bill in conjunction with the participation of all indigenous and Afro-Honduran peoples in Honduras, and in the design of an appropriate methodology involving indigenous peoples in the preparation of the Bill. On this last subject, no agreement has been reached so far.
- The ILO representative on indigenous matters, after a meeting with the Evaluation Committee on the premises of the National Congress and further to a request by email, agreed to provide his technical opinion on the shared document, though this opinion has not yet been received.
- As part of the planning process, emphasis was placed on the importance of mapping the indigenous and Afro-Honduran institutions which need to participate in the consultation process that must be undertaken to give legitimacy to the process. For the preparation of the mapping, meetings were held with a number of organizations bringing together institutions representing the peoples. Through their collaboration information was gathered forming the basis, together with another investigation being carried out by National Congress technical staff, for the current analysis so that it will be ready when the consultation process for the adoption of the Bill is launched.
- Two bridge-building meetings were held using digital videoconference platforms with a number of representatives of the indigenous peoples.
- A meeting was held between the pro tempore President of the G16, the Evaluation Committee, a team of advisers from the National Congress and a number of indigenous representatives with the purpose of informing the aforementioned of the current status of the Bill.

### **Specific measures to improve the situation of Miskito dive-fishers**

- reforms to the Regulations on occupational safety and health in underwater fishing: Executive Decree STSS-577-2020;
- practical guide for safe dive-fishing in Honduras; considerations relating to dive-fishing in the context of underwater fishing;
- Plan of Action (for the implementation of the Regulations on occupational safety and health in underwater fishing);
- Tripartite Cooperation Agreement on providing comprehensive health services for the population engaged in dive-fishing (SSIPPB), with priority given to divers suffering from decompression sickness, between the Ministry of Development and Social

Inclusion (SEDIS), the Ministry of Health (SESAL) and the Association of Industrial Fishers of the Honduran Caribbean (APICAH);

- formulation of a Pluriannual Strategic Plan of the Inter-Institutional Commission for Problem Prevention and Assistance in Dive-Fishing (CIAPEB), drawn up by the United Nations Development Programme (UNDP) in 2013 as an instrument for facilitating intervention in identified priority areas;
- repair, refurbishment and delivery of ten motorboats to facilitate productive and organizational activities;
- alternative special care for dive-fishers with disabilities, on account of difficulties of access to hospital care and to avoid long waiting times for basic and/or special medical care;
- provision of economic support to individuals in transit through Tegucigalpa referred by the health system in La Mosquitia;
- Project 8 – 002-2017: Development of business capacities in the community of Benk, Marine Resources Collection Centre, Villeda Morales;
- Project 9 – 003-2017: Support for the development of agricultural production and supplies of staple grains in the community of Belén, Brus Laguna;
- social project to reinforce the assistance centre of the Association of Honduran Miskito Divers with Disabilities (AMHBLI);
- project for the reinforcement of CIAPEB;
- construction of AMHBLI one-stop centre (Puerto Lempira);
- bursaries for children of dive-fishers with disabilities;
- disability and rural bonus;
- organizational reinforcement of AMHBLI;
- reforms in occupational safety and health in underwater fishing (Brus Laguna and Puerto Lempira).

#### **Participation of the Miskito people in the formulation, application and evaluation of the above-mentioned measures**

- 2017: Focus on beneficiaries for the delivery of assisted mobility equipment (wheelchairs, crutches, walking sticks, etc.), carried out with complete autonomy by AMHBLI;
- planned deliveries of food rations under family supervision and subsequent delivery with the active involvement of AMHBLI;
- 2018: Planned food deliveries under the supervision of AMHBLI and beneficiary families, and subsequently delivery with the active involvement of AMHBLI;
- March 2019: AMHBLI-CIAPEB joint project inspection;
- 2019: Implementation of Technical Assistance Project: lucp-hon/3703/c3 – Improvement of occupational safety and decent work in dive-fishing in Honduras: Introduction to the updating and reform of the Regulations on occupational safety

and health in underwater fishing, in the municipalities of Brus Laguna and Puerto Lempira.

## Discussion by the Committee

### **Government representative, Secretary of State for Labour and Social Security –**

I would like to begin my statement by congratulating the Chairperson on her appointment to direct the work of the Committee and by thanking the organizers of this important event under the direction of the ILO and our Office of External Cooperation. We celebrate the participation of all nations, peoples and organizations represented here.

With regard to the case under discussion, which was already raised in this Committee in 2016, allow me to make the following remarks.

The Government of Honduras is appearing in a responsible manner before this Committee to describe the substantive advances in recent years in response to the Committee's observations relating to us as a country. We are surprised and deeply concerned that once again we have been included in the short list of countries appearing before the Committee.

As regards appropriate consultation and participation procedures, on 23 May 2018 the executive branch, after a coordinated process, referred to the National Congress of the Republic of Honduras the Bill on free, prior and informed consultation for indigenous and Afro-Honduran peoples. This Bill was transmitted for examination and opinion to a special Evaluation Committee, which performed the following actions. In order to obtain a technical opinion, the Bill was shared with private enterprise institutions, organizations from civil society and international cooperation and human rights defenders, among others. Support was also requested from the Office of the High Commissioner for Human Rights in Honduras, the Inter-American Commission on Human Rights, and the ILO Regional Office which covers Honduras, thereby building capacity in relation to international labour standards on the subject of prior, free and informed consultation, for members, deputies and officials of the National Congress.

The ILO representative on indigenous affairs is sending a polite reminder to the Evaluation Committee of the National Congress to establish an appropriate consultation and participation mechanism in accordance with Convention No. 169 and to take the necessary steps to ensure that indigenous peoples are consulted and can participate in a suitable manner through their representative bodies in the setting up of that mechanism. So that the National Congress Evaluation Committee could provide a sound basis for its decision, it carried out a mapping process with respect to the organizations comprising representatives of indigenous and Afro-Honduran peoples with the purpose of ensuring their participation in the process.

With the arrival of the pandemic and the ensuing suspension of constitutional guarantees in the country, many actions planned by the Evaluation Committee were decimated. However, bridge-building meetings were held using digital platforms with various sectors, including representatives of the indigenous and Afro-Honduran peoples. In addition, the Evaluation Committee held meetings with the international community represented in our country within the G16 group, with the purpose of providing information on the current status of the above-mentioned Bill. The Evaluation Committee has currently drawn up a road map for consolidating a legal instrument to facilitate discussion and subsequent adoption of the Bill in the National Congress.

In light of the above, there is evidence of substantial advances suggesting that this is a case of progress. In the capacity of the Government and in the context of the powers conferred on it by law, we have duly discharged our responsibility in timely fashion; we consider, in accordance with the principles of law, that we are respectful of the separation of powers in our country. Taking the appropriate decision on the matter in question is therefore entrusted to the legislative branch, an autonomous and independent body.

With regard to the implementation of the necessary measures for investigating murders and acts of violence, various steps have been taken to promote a climate free of violence. Moreover, suitable steps have been taken to protect the physical and psychological integrity of members of indigenous peoples and their representatives, guaranteeing the full and effective exercise of their human, individual and collective rights, and also their access to justice. The Prevention and Contextual Analysis Unit has been established; 14 prevention plans have been drawn up; 43 dissemination days in relation to the Protection Act have been held; and training on protection issues has been provided for 814 individuals. All the foregoing has been possible thanks to the participation of the Lenca, Tolupán and Garífuna indigenous peoples, justice officials, journalists and media professionals.

With regard to the observation on the judicial proceedings in response to the complaints of offences of violence and threats against indigenous and Afro-Honduran peoples, the Special Prosecutor for Ethnic Matters and Cultural Heritage at the Public Prosecutor's Office has opened legal proceedings in 248 cases of complaints regarding acts of violence and threats against members of indigenous and Afro-Honduran peoples. Between 2018 and 2020, measures were taken in relation to threats, abuses of authority, usurpation, attempted killings, murders and discrimination. In addition, 25 cases are active under the mechanism for the protection of the human rights of indigenous and Afro-Honduran peoples.

With regard to the adoption of appropriate measures to ensure that the instigators in the case of Berta Isabel Cáceres Flores are punished, the Public Prosecutor's Office states that criminal proceedings against those involved, specifically the instigator, are currently under way. Investigations are continuing into whether any other persons are involved. The proceedings are at the stage of examination of evidence, and so the National Trial Court itself has carried out the criminal trial hearings.

With regard to the adoption of measures to improve the working conditions of Miskito dive-fishers, Honduras shows its willingness to make reparation for the damage to victims by adopting an amicable practical solution between the State of Honduras and any victims among Miskito dive-fishers. Reforms have been carried out to the Regulations on underwater fishing; the Regulations on occupational safety and health in dive-fishing have been issued; and obligations have been imposed on employers to ensure the safety and health of workers in underwater fishing. The Ministry of Labour has carried out inspections at sea in conjunction with the Honduran Navy, the Ministry of Health, the Directorate-General of Fisheries and the Office of the Attorney-General.

In conclusion, I would like to express my gratitude for the opportunity given to the Government of Honduras to respond to the observations made by this distinguished Committee, reiterating our zealous compliance with and respect for international labour standards, including Convention No. 169.

**Employer members** – First, we would like to thank the Government of Honduras for the oral and written information provided relating to compliance, in law and in

practice, with Convention No. 169. As usual, we would like to provide more context for a better understanding of the case.

This is the second time that the Committee is discussing this case. The first time was in 2016 and since then the Committee of Experts prepared observations on the matter in 2019 and 2020, taking note of the Government's reports and the observations made by two trade union confederations and by the Honduran National Business Council (COHEP), supported by the International Organisation of Employers (IOE).

The Committee of Experts, in its follow-up in its latest 2020 observation, addresses three specific points: first, in relation to compliance with Article 3 on the rights of indigenous peoples; second, with respect to the obligation of prior consultation under Article 6 of the Convention; and, third, with respect to the protection of the rights of the Miskito people, in relation to dive-fishing.

With regard to compliance with Article 3 of the Convention on the issue of human rights, the Committee of Experts noted at that time with deep concern the information regarding murders, threats and violence against representatives of indigenous peoples, as well as the climate of impunity. The Employer members express their concern, and reject all acts of violence and threats carried out within the context of the defence of human rights.

We are aware that Honduras has experienced a climate of widespread violence in recent years owing to different problems facing the country, in the political, social and economic spheres, which has provoked an atmosphere of violence in general.

Despite this context, we recognize and applaud the fact that the Government has taken and continues to take specific protection measures for indigenous leaders, which the Government has just referred to in its presentation. We encourage it to continue to do so for the benefit of those leaders and the rest of the population, including workers and employers who are also victims of this climate of violence.

Among the actions taken, including those referred to by the Government which have this aim, we highlight: the establishment of the Human Rights Secretariat which, it maintains, has reduced levels of violence, and the establishment of the Commission on Anti-Union Violence and the Working Group on Conflict Prevention, to which the Government representative has referred. All these bodies, as explained, cover the aforementioned cases in monitoring compliance with the Convention.

Much work remains to be done and it would be very positive if, as a result of social dialogue, a work plan with specific and measurable medium and long-term goals be drawn up, with the active and coordinated participation of the Government and the productive sector, the latter through the most representative organizations of workers and employers. It is vital to build a climate of trust that influences society with respect to the laws, courts and institutions and, in this way, there will surely be improvements in the living conditions of all Hondurans.

We are not unaware of the adverse conditions that have arisen as a result of the pandemic in Honduras, exacerbated by the natural phenomena to which this country has been exposed. However, in this instance, we encourage the Government to continue to take all possible measures to foster a climate free of violence that benefits the population and adequately protects the members of indigenous communities and their representatives, and guarantees the full exercise of their human rights. We also invite the Government to continue reporting in a timely manner to the Committee of Experts in this regard and to do so, invariably, in consultation with the most representative



employers' and workers' organizations. Strengthening of social dialogue under these conditions is essential.

The second aspect relates to Articles 6 and 7 of the Convention, regarding appropriate consultation and participation procedures. As a reminder, Honduras ratified the Convention in 1995, more than 25 years ago, and the right to consultation and participation of indigenous peoples remains unregulated. Although there is a general consensus that the Convention and corresponding consultation and participation does not grant or imply a power of veto for the indigenous populations consulted, the fact is that in countries where this prior consultation has not been regulated, as is the case in Honduras, there is a risk of a *de facto* veto of investment projects and, therefore, of progress. This is compounded by the effect of inconsistent and contradictory court decisions based on an inaccurate interpretation of the Convention, which generates legal uncertainty. These two factors affect investment and generate enormous social losses because thousands of direct and indirect jobs are either lost or not created and, therefore, the possibility of making progress in the regions that need it, and which are usually the poorest, is also lost. The reference in court decisions to the Convention or, in other words, the application of its provisions through court rulings and not through agreement of the interested parties, as it should be, is becoming a factor that distorts and complicates the institutional and regulatory development of the Convention, and generates high levels of social conflict to the detriment of all.

The Committee adopted conclusions in 2016 and urged the Government, in very clear terms, to regulate, without delay, in consultation with the social partners, in accordance with Article 6 of the Convention, the requirement to consult so that such consultations are held in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

I would like to take this opportunity to emphasize that the international instrument mentioned, namely Article 6 of the Convention, is the only legally binding instrument for Honduras, and not others, such as the declaration drawn up by the United Nations system.

While we recognize significant progress in this regard, we must note that the draft Bill that has been submitted by the executive branch to the National Congress, further to the consultations carried out, has unfortunately still not been passed.

The Committee of Experts does not place enough emphasis on something that seems important to us: from May 2016 until February 2017, the Government, with the technical and financial support of the United Nations Development Programme, promoted a consultation process for the regulation of prior consultation, through which 17 regional workshops and one national workshop were held, and seven indigenous peoples and the two Afro-Honduran peoples were consulted through organizations representing them. Despite these efforts, apparently the great division among indigenous peoples, as well as other reasons or justifications, has not allowed for the clear determination of an agreement regarding the Bill on consultation within the framework of the Convention. Honduras, as we are informed, is about to conclude this legislative process for regulation of the obligation to consult under the terms of Article 6 of the Convention and we trust that this will materialize without delay in accordance with its domestic procedures and without interference from external bodies.

With a view to achieving this and the other proposed objectives, we consider that the Government should concentrate its efforts on working closely with the ILO, which is

responsible for ensuring the proper application of the Convention. It is very important that it exhausts its domestic procedures and does not generate confusion.

That said, it is clear that there are still areas in which the Government must continue to work. It seems to us, however, that progress is being made in several areas that we must acknowledge. We encourage the Government to continue its efforts to comply with the provisions set out in the Convention.

**Worker members** – This is the second time that the Committee is called to examine the application of Convention No. 169 by the Government of Honduras. In 2016, the Committee had expressed concern at the lack of progress on the necessary regulatory framework for prior consultation, and had urged the Government to ensure the implementation of the Convention in a climate of dialogue and understanding, free from violence.

Five years have passed, and we can only deplore the inadequacy of actions taken by the Government to respond to the endemic violence against indigenous peoples and their defenders. Honduras remains one of the deadliest countries for defenders of environmental and human rights, with four indigenous leaders killed in 2018, 14 in 2019, and 12 in 2020. Countless others are regularly threatened, physically assaulted, and forcibly disappeared, like the four members of the Garífuna community who were seized from their homes on 18 July 2020 never to be seen again. On 27 December, José Adán Medina, a member of the Tolupán indigenous community, was found shot dead in a remote location in the community of El Volcán. A day earlier, Félix Vásquez, a prominent environmental activist from the Lenca indigenous group, was killed in front of his family by masked men armed with guns and machetes.

In its report to the Committee of Experts, the Government provides general information on measures taken to protect indigenous communities, including identifying and monitoring collective and individual risks, prevention plans and training, and awareness-raising activities on the importance of the work of defenders of indigenous peoples.

The Special Prosecutor for Ethnic Matters and Cultural Heritage has called for protection measures. However, the Government provides no information regarding the implementation of these measures or their effectiveness in preventing attacks. There lies the problem: in a context of extreme violence and deep-rooted impunity, the measures adopted by the Government are by no means commensurate to the pressing needs for protection of indigenous leaders and communities. Suffice it to say that Félix Vásquez had filed numerous complaints since 2017 to report the death threats he was receiving. The Government never acted, even after the Honduras National Human Rights Commission requested protective measures for him in January 2020.

Investigation and prosecution of criminal acts are equally lacking. Five years after the assassination of Berta Cáceres, the trial of the person accused of instigating the crime is still pending. In a report of 2019, the UN Special Rapporteur on the situation of human rights defenders in Honduras indicated that the vast majority of murders and attacks targeting rights defenders go unpunished. If investigations are launched at all, they are inconclusive. The Government of Honduras must be accountable for such appalling violations of the right to life, and the personal integrity of indigenous peoples. It must immediately intensify its efforts to protect defenders of indigenous peoples' rights, prevent acts of violence and persecutions against them, and investigate, prosecute and penalize perpetrators and instigators of these acts.

With regard to the development of the draft Bill on prior, free and informed consultation of indigenous and Afro-Honduran peoples, we note the efforts deployed by the Government to organize consultations and advance its adoption. We note, in particular, that the Government referred the draft Bill to the National Congress, which subsequently established a special advisory committee on the Consultation Act.

In 2020, the Government let the COVID-19 pandemic, and its subsequent restrictions on freedom of movement, significantly hamper consultation processes with indigenous people, unfortunately.

The rights to be consulted and to participate in decision-making constitute a cornerstone of the Convention. The Government must ensure adequate time for meaningful consultation with indigenous and Afro-Honduran peoples so as to ensure that the draft Bill is the result of a process of full, free and informed consent with all the indigenous and Afro-Honduran peoples. It is equally crucial to ensure that the Act which will be adopted provides for robust, inclusive and trusted consultation and participation processes, guaranteeing that indigenous peoples can fully participate in the decisions that affect them.

We are particularly adamant on the need for the Government to enhance consultation processes, as they are closely linked to a number of issues affecting indigenous and Afro-Honduran peoples, and routinely neglected by the Government, such as: (1) the identification and mapping of the lands which indigenous and Afro-Honduran peoples traditionally occupy and the effective protection of the rights of ownership and possession; (2) the preservation of the rights of indigenous and Afro-Honduran peoples to the natural resources pertaining to their lands, especially in view of programmes for their exploration or exploitation, including mining activities; and (3) their access to justice and their awareness of their rights.

We recall that, in 2015, the Inter-American Court of Human Rights handed down a decision regarding the Garífuna people of Punta Piedra, emphasizing their right to the lands, territories and resources that they have traditionally owned, occupied, used or acquired, as well as the right to possess, use, develop and control those lands.

As regards the situation of the Miskito people, we note that the Government is offering comprehensive health services and compensation programmes for dive-fishers and their families. However, we are concerned at the deplorable situation of the Miskito divers who, despite the measures taken, continue to be the victims of precarious working conditions without adequate occupational safety measures. Specific measures are still needed to ensure the effective protection of workers belonging to the Miskito people, with regard to recruitment and conditions of work, as provided for by Article 20(1) of the Convention.

Finally, regarding coordinated policies and actions aimed at improving access of indigenous and Afro-Honduran peoples to health services, education and housing, we call on the Government to pursue its efforts and to coordinate actions with the participation of the peoples concerned, with a view to eliminating the socio-economic gaps that still exist between them and other members of the national community, and to promote the full realization of the socio-economic and cultural rights of these peoples.

**Employer member, Honduras** – It has come as a surprise to us that Honduras has once again been called upon this year in relation to the observations concerning the Convention. Nevertheless, we believe that it is important for the Employers to make some clarifications on the observations of the Committee of Experts in the 2021 Addendum to its 2020 report.

As noted by this Committee and the Office, the employers in Honduras have always provided their observations on compliance with international labour standards, which are law in the Republic of Honduras. On this occasion, we wish to indicate the following.

First, as representatives of employers in Honduras, we have always rejected violence in any form against persons, groups of citizens or foreign nationals, and we regret the acts of violence committed in recent years in our country, which have been generalized and not directed against any group or individual. The employer representatives in the Economic and Social Council proposed the establishment of the Committee on Anti-Union Violence and the Sectoral Committee for the Handling of Disputes referred to the ILO (MEPCOIT), which have supplemented the Public Prosecutor's Office, the National Police and the judiciary, and which are subjects to be examined in relation to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), rather than Convention No. 169.

Second, as we explained to the Committee in 2016, the most representative employers' organization in Honduras, COHEP, has always shown special interest in regulating the right of consultation of indigenous and Afro-Honduran peoples, in accordance with the requirements of the Convention, which is a binding instrument for the State of Honduras, and we will always refer to it in this way.

Third, it is necessary to recall in this Committee that the employers have always requested ILO support for the consultation, preparation and adoption of the law on prior consultation, through its specialists, and that they proposed and submitted notes to the National Congress of Honduras, which is the legislative authority in our country, calling for advisers to assist the commission responsible for reviewing the legislation and in support of the discussions in the Plenary of the National Congress.

As an employers' organization, we have collaborated in the adoption of the law on prior consultation. We categorically affirm that this Act must be approved in line with standards that comply with the principle of good faith, which must be understood as consultation that does not imply the right of veto, with consent only required in the exceptional cases envisaged in Article 16 of the Convention in relation to the relocation of indigenous populations.

Fourth, we have explained to the Government of Honduras, to international organizations and to the ILO that the employers in Honduras require the adoption of the Act for purposes of legal security for investment and the personal safety of the inhabitants, but that it should not address matters that are not covered by the Convention. It must always be borne in mind that consultation is not a referendum or a plebiscite between peoples, but a consultation in places that may be affected directly by a decision. It must also be understood that consultation does not give rise to a veto, as we have emphasized to all state and international bodies.

Fifth, as employers, we gave our support to the draft text transmitted at the time by the Ministry of Labour and Social Security to the legislative authorities, but there have been delays due to the COVID-19 pandemic and hurricanes Eta and Iota which struck Honduran territory, and that has not permitted a full discussion by the legislative body. We hope that it will happen over the next few weeks and that it will benefit from ILO technical support, through its specialists who are familiar with the objectives and provisions of the Convention, and not other international organizations or agencies.

Lastly, we wish to reiterate the support of Honduran employers for the adoption and implementation of a legal instrument that gives legal certainty and tranquillity to the citizens and for investment. We also call on this Committee and the Committee of

Experts to examine cases of violence related to the right to organize in the context of Convention No. 87, and to avoid any confusion with the scope of application of a Convention of another nature, such as Convention No. 169. Nevertheless, the establishment of the Committee on Anti-Union Violence deriving from the Committee's conclusions should be considered as significant progress in the field of human rights.

**Government member, Barbados** – I make this intervention on behalf of a **significant majority of countries from Latin America and the Caribbean**. We welcome the distinguished Minister of Labour and Social Security and the representatives of the delegation of the Government of Honduras present in this session and who have submitted up-to-date information to the Committee. We thank the Government of Honduras for the presentation of its report on the follow-up to the observations of the Committee of Experts and the conclusions adopted by the Conference Committee during the 105th Session of the Conference in 2016, all of which relate to the application of Convention No. 169.

We appreciate the Government's efforts in establishing and further strengthening measures aimed at ensuring the integrity and protection of indigenous communities and human rights defenders. We welcome the progress achieved through the implementation of the mechanism for the protection of human rights defenders, journalists, social communicators and justice operators and the creation of specialized judicial bodies to defend the rights of indigenous peoples. These actions are indicative of the Government's commitment to improving the situation and reducing cases of violence against human rights defenders in the country. We emphasize the openness and commitment of the Government of Honduras to cooperate closely with the mechanisms of the United Nations system in labour and human rights matters for the implementation of the Convention. We welcome the technical assistance provided by the country office of the UN High Commissioner for Human Rights, established in 2015, which has facilitated the strengthening of the National Protection System and the establishment of specific protection protocols in the context of the pandemic.

We recognize the progress presented by the Government in the formulation of a draft Act on free, prior and informed consultation. We note the efforts of the special Evaluation Committee of the National Congress to integrate the different perspectives of the main actors involved in the formulation of the draft Act.

As stated in the Government's report, we believe that the early identification of these actors will give the draft Act a high degree of participation and ownership, particularly of indigenous peoples' communities. The dissemination workshops held since 2018 and the mapping of indigenous and Afro-Honduran institutions are initiatives that can pave the way for this process.

We welcome the development and implementation of multidimensional policies promoted by the Government to improve working conditions in the dive-fishing sector. In particular, we highlight the recent publication of the Regulations on occupational safety and health in dive-fishing.

As a final note, we encourage the Government to continue to cooperate in its efforts to implement the international commitments made under the Convention. We also extend our encouragement to the International Labour Office to continue providing its technical support to the Government of Honduras.

**Employer member, Costa Rica** – Employers in Costa Rica consider that Honduras has made the necessary efforts to guarantee the rights of indigenous and Afro-

Honduran peoples, including the regulation of the right to prior consultation, which is established in the Convention.

The process of social dialogue has been respected, as envisaged by the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which, as we know, is one of the governance Conventions that guarantees the participation of representatives of workers' and employers' organizations on an equal footing, and accordingly a Bill on prior consultation has been accepted in accordance with international standards. Nevertheless, it is important for the employers to indicate, in the same way as in other countries, that they consider that this type of legal framework must be established without infringing Articles 6 and 7 of Convention No. 169, which have been distorted, with the promotion under the right to consultation of other concepts and rights that are not recognized in the Convention.

Employers in Honduras, represented by COHEP, have indicated that they consider it appropriate, before the approval of the Bill on prior consultation, for the legislative authorities, the executive authorities and the organizations of indigenous and Afro-Honduran peoples in Honduras to receive ILO technical assistance so as to ensure that the law is in line with the provisions of the Convention. It is important to ensure that consultations held with representative organizations are of a non-binding nature, as there is no question of a national referendum or of a body that grants rights. COHEP has endeavoured to convey its views on this law and on the aspects that must not be left aside to safeguard the collective rights of indigenous and Afro-Honduran peoples, thereby ensuring the legal security of investment in the country and promoting a climate of trust for indigenous peoples and investors.

We urge the Government to continue taking the necessary measures to protect indigenous peoples without leaving aside social dialogue with all the actors involved in consultation processes.

**Government member, Colombia** – We wish to reiterate the commitment of the Government of Colombia to compliance with international labour standards, and particularly Convention No. 169. We welcome the information provided by the Secretary of State for Labour and Social Security on the progress made in following up the observations of the Committee of Experts on the Convention. We value the efforts made by the Government of Honduras to adopt protection measures for the members of the programme for indigenous and Afro-Honduran peoples (PIAH) and we encourage the Government to continue making all the necessary efforts for indigenous peoples. We place emphasis on the information concerning the establishment of 14 prevention and guaranteed non-repetition plans drawn up with the PIAH population covered by protection measures.

Prior consultation has great value as a participation mechanism that is particularly appropriate in recognizing the rights of ethnic peoples as it has a significant influence on the determination of the rights of indigenous peoples, with the effect that they are informed and involved in economic and social development policies. We therefore welcome and encourage the Government to maintain the progress in the process of approving the Bill on prior, free and informed consultation, which is under review by the various actors.

Finally, we encourage the Government to continue its efforts to give effect to the commitments derived from the Convention, with ILO technical assistance.

**Employer member, Mexico** – The Committee of Experts considers it to be of great importance that the law that is being adopted in Honduras is the outcome of a process



of full, free and informed consultation with indigenous and Afro-Honduran peoples, and that guarantees are provided that these peoples are consulted and are able to participate in an appropriate manner in the process through their representative bodies. We welcome the fact that, according to the information received, such consultations have already been held, including with the participation of the United Nations, and that the legislative process for the adoption of the Bill on prior consultation in Honduras is reaching its conclusion.

We are in agreement, although the final outcome of the legislative process must be in accordance with the provisions of the Convention in ensuring that indigenous and Afro-Honduran peoples are duly consulted, which must be based on the general criterion that prior informed consultation does not amount to a right of veto. The Bill must not go to the extreme of establishing that consultation is to be considered as a right of veto, which is not envisaged in the Convention.

Honduras wishes to regulate the requirement of consultation under the terms of Article 6 of the Convention. Accordingly, until the law is adopted, we agree that the Government has to focus and intensify its efforts, working closely with the ILO so that, as indicated during the presentation of the case, appropriate effect is given to the Convention. We therefore support the employers of Honduras in their interest and support for the adoption of a legal instrument in accordance with their domestic procedures which offers legal certainty and tranquillity for citizens and investments.

*Interpretation from German:* **Worker member, Switzerland** – The German Workers' delegation as well as the IndustriALL Global Union align themselves with this statement. In recent years, Honduras has become one of the deadliest countries in the world for those who defend indigenous land rights and who organize opposition against environmentally destructive mega-projects such as mines, hydroelectric dams and logging. In addition to this violence, the indigenous communities of Honduras were particularly hard hit in November 2020 by hurricanes Eta and Iota. Sixty-three individuals lost their lives. Seven million were affected. A few weeks before that, the Government had appointed a pop singer as the new head of the Permanent Contingency Commission (COPECO), someone who, by their own admission, had no previous experience of this kind of role or of dealing with any type of emergency. The storm affected particularly the coastal areas of the country where indigenous communities are established: the Afro-Honduran Garífuna communities and the indigenous Tawahka and Miskito groups. The hurricanes worsened significantly an already dire situation of indigenous and Afro-Honduran populations who lack access to basic services, such as water and sanitation. Furthermore, according to a report published in July 2020, the reaction of the State to the pandemic had further deepened the exclusion of indigenous and Afro-Honduran communities.

We urge the Government of Honduras to take all necessary measures to reduce violence against members of the indigenous communities and their representatives, to ensure full access to essential basic services and to ensure that the state response to the pandemic does not further deepen social exclusion.

**Employer member, Colombia** – I would like to refer to three aspects of the case. Firstly, while the Convention does not require national regulation on prior consultation, if Honduras decides to pass legislation on its internal matters, the Government should recall that the acquiescence of the consulted communities is not a prerequisite for the adoption of a legislative or administrative decision or for the execution of a particular project or work. In its general observation on the Convention published in 2011, the Committee of Experts stated that “such consultations do not imply a right to veto, nor is

the result of such consultations necessarily the reaching of agreement or consent". Article 6 of the Convention establishes good faith as a guiding principle in prior consultation. This means that it must be conducted on the basis of mutual trust, with ample information and with a view to reaching an understanding. It is therefore important to note that reaching an agreement is not mandatory, and that the Convention only requires consultation to be carried out in pursuit of an agreement.

Secondly, I would like to highlight the progress made in Honduras as regards the workshops and consultations held with the various organizations representing indigenous and tribal populations, in order to draft the Bill. I encourage participants to make use of consultation within the parameters established by the Convention and to avoid including matters, concepts and rights that go beyond the scope of the Convention.

Thirdly, as regards mechanisms to protect the rights of the Miskito people, the Committee should take into account that progress has been made in Honduras on promoting safety and health measures in diving work. We note that mechanisms are in place to enable these communities to be informed and consulted in the development of instruments and agreements.

To conclude, firstly, while it is obligatory for the authorities to consult the communities, it is not necessarily a requirement to reach an agreement with them; secondly, we must recognize the progress and efforts made in Honduras to seek agreements in this regard. Lastly, we urge further social dialogue, with the aim of balanced implementation of the provisions of the Convention.

**Worker member, Argentina** – As we have heard, the situation in Honduras is grave and urgent. For several years we have been warning of the climate of anti-union violence in the country, as well as the State's systematic rejection of the need for prior consultation. The Workers are extremely concerned at the fact that, despite the repeated pronouncements, recommendations and judgments of United Nations bodies, including the ILO and this Committee, the Honduran Government has been unable to demonstrate its serious commitment to working on and protecting the rights of indigenous peoples in the country.

For more than 20 years Honduras has failed to comply with its obligation to consult the peoples concerned through appropriate procedures and through their representative institutions each time that legislative or administrative measures that may affect them directly have been discussed. Death threats, murders and the systematic persecution of human and trade union rights defenders have become widespread. Indigenous peoples and trade unionists are among those most affected by the violence.

We hope that the Committee goes even further in its conclusions this year and makes specific and concrete recommendations. All mechanisms for consultation on legal and administrative matters that may affect the rights of indigenous peoples must seek their free, prior and informed consent in a way that allows them to share their views and influence the final outcome of the process. We must remember that the right to consultation is a human right with a specific scope for indigenous peoples. A mere information meeting at which indigenous peoples express their opinions without being able to influence the final decision does not comply with the provisions of the Convention.

The indigenous peoples in Honduras, and also across the Americas region, today demonstrate the worst socio-economic and labour indicators. Ensuring compliance with the Convention is a cornerstone of social justice.

**Employer member, Guatemala** – Firstly, we wish to emphasize that the main guideline for any regulation on prior consultation must be the Convention, which sets out the consultation process that must be followed in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures. It should also be recalled that the 2011 general observation of the Committee of Experts on this Convention stated that such consultations do not imply a right to veto, nor is the result of such consultations necessarily the reaching of agreement or consent. It is well known that COHEP has repeatedly stated its interest in regulating the right to prior consultation within the standards established by the Convention.

Secondly, between 2016 and 2017, with the support of the United Nations Development Programme (UNDP), a process of consultation with the different representative organizations of indigenous and Afro-Honduran peoples was promoted to draft the text of a Bill; that process was complicated by attempts to promote, through the right to consultation, other concepts and rights that go beyond the scope of the Convention. On the basis of the conclusions of the Conference Committee, the ILO has provided guidance and technical assistance to the State of Honduras, and in 2018 the Government submitted a draft Bill on prior consultation. We believe that it is important that any specific legislation on prior consultation that is adopted should be based on the parameters established by the Convention so that the Bill under development corresponds to the guidelines and limits set out therein.

Thirdly, and lastly, we consider it necessary to recognize the progress and efforts made by the Government of Honduras, the employers and the different communities to succeed in implementing the provisions of the Convention, and to continue to improve social dialogue with the aim of achieving balance in its interpretation and application.

**Worker member, Barbados** – In recent decades, palm oil plantations in Honduras have expanded at a breathtaking speed, leaving behind deep socio-environmental impacts on the rural black population and in particular the Garífuna indigenous people, claiming their legitimate rights to land, food and a decent life. The Garífuna are the largest ethnic group in Honduras. They are the descendants of African populations from the Caribbean island of St Vincent, who were exiled to the Honduran coast in the eighteenth century, but they are under threat.

Honduras today has more than 193,000 hectares of palm oil plantations. This land grab has brought the devastation of forests, wetlands and the contamination of water sources due to the use of agrochemicals. It is estimated that more than 70 per cent of all Garífuna territories are already surrounded by palm oil plantations. Many ancestral communities have already disappeared and 38 others are on the verge of being erased forever. The Garífuna communities suffer constant harassment and extreme violence from palm oil companies and landowners under the complicit watch of local and national authorities. In the last three years, more than 40 Garífuna people have been killed and hundreds have left their communities due to widespread violence, threats and criminalization against them. One shocking case took place in July last year when five Garífuna men were abducted from their homes in the town of Triunfo de la Cruz by heavily armed gunmen in police uniforms. The perpetrators went from house to house, and forced the five young men into the vehicles at gunpoint, before speeding away. The vehicles did not have number plates, a tactic used by both state security forces and

criminal gangs in Honduras. Among those abducted was 27-year-old Alberth Snider Centeno Thomas, a community leader who leads efforts to force the Government to comply with a ruling from the Inter-American Court of Human Rights ordering Garífunas to be compensated for stolen land. The Inter-American Court also issued legally binding titles to prevent further forced evictions that were not complied with by the Government. Up to this point, the five black indigenous men are still missing and there is reason to presume that the Government will let this case fall into impunity. This will confirm the generalized suspicion that many government authorities might be involved in these crimes in association with drug traffickers, palm oil employers and tourism developers.

**Employer member, Argentina** – Considering that the countries of Latin America and the Caribbean account for 15 of the 23 ratifications of the Convention, we would like to look further into two of the elements raised previously.

First, we echo the concern and rejection expressed by our colleagues of any act of violence and threats within the framework of the defence of human rights and we trust that the Government will continue adopting effective measures for the protection of indigenous and Afro-Honduran leaders. The Committee of Experts has recognized in its comments the specific measures taken by the Government, which represent progress in compliance with the obligations derived from the Convention. We hope that the conclusions of the Conference Committee will give sufficient recognition to the efforts made by the Government.

Second, with reference to the progress made in developing an appropriate consultation and participation procedure, we wish to emphasize that, in addition to the international cooperation described by the Government earlier, it is of the greatest importance to involve ILO specialists in the various processes that are being undertaken in the country. This is important both to make progress in the approval of the Bill on free and informed consultation, and most particularly for the design and holding of effective consultations involving representative organizations, based on a methodology that guarantees these processes are conducted in a balanced manner and guarantee the necessary conditions to ensure that the vision of the communities is taken into account in the analysis of the issue under consultation.

The vast experience of the ILO in the development of consultation bodies with the social partners and the quality of the Office's specialists engaged in these subjects mean that it is the best placed partner to provide technical assistance to the Government. We trust that the Office, assuming the role of the leading agency for Convention No. 169, which rests with the ILO, will focus its efforts on providing support and encouraging the Government to comply with the obligations arising out of the Convention.

The employers of Argentina once again wish to express our conviction concerning the benefits of social dialogue and its key role in guaranteeing sustainable development and economic, social, environmental and political stability.

**Observer, Single Confederation of Workers of Honduras (CUT-Honduras)** – I am speaking on behalf of the Single Confederation of Workers of Honduras, the Lenca National Indigenous Organization of Honduras and the Federation of Lenca and Maya Tribes. Trade union violence is of the greatest concern. It is not generalized, but is really directed against Honduran indigenous leaders and trade unionists, aggravated by the prevailing climate of impunity. Despite the many recommendations made by the ILO, the Government has not guaranteed the right to life of indigenous leaders. In recent years, there have been multiple acts of violence, including threats to Pedro Amaya and Víctor Martín Gómez Vásquez for defending indigenous peoples, and the murder in his

own home of Félix Vásquez, who was of Lenca indigenous origin and General Secretary of the Federation of Rural Workers.

There are political prisoners, such as Víctor Vásquez of the Lenca Indigenous Movement of La Paz (MILPAH), and José Santos Vigil. There are cases of forced relocation, such as in the indigenous community of Santo Tomás, where 152 persons were moved from their lands. Thirteen indigenous people were murdered in the community of Santo Tomás, Gualcinca, in the department of Lempira, as well as the forced disappearance of Alberth Sneider Centeno, defender of people's rights and Garífuna leader of the Council of the Community of Triunfo de la Cruz, and of three other people from the same community. We must also mention the criminalization of 13 defenders of water rights in the Guapinol and San Pedro sectors in Tocoa, department of Colón, and in Reitoca on the river Petacón, members of the Lenca National Indigenous Organization of Honduras, who have received threats for defending the rivers that run through the community, where a dam is being built without consultation.

With regard to legislation on prior informed consultation, the Government wishes to impose a Bill that is in accordance with its interests and to the benefit of national and international capital, to the detriment of indigenous and Afro-Honduran communities. The Bill has not been subject to adequate consultation and as a result is in violation of the rights of the peoples. As they have not received a response from the Government, the Lenca indigenous peoples are drawing up a Protocol for the establishment of a mechanism of free and informed prior consultation. We demand that the Bill is not adopted before consultations are held and it is discussed with the truly representative peoples.

With reference to the situation of Miskito dive-fishers, they continue to suffer from conditions of social, economic and labour abandonment. They do not have access to adequate working conditions, healthcare, social security or justice.

**Government representative** – The Government of Honduras thanks the speakers and takes note of all their contributions and observations in this meeting. In this regard, and given the importance of this subject, we make the commitment as the Government to send a report during the year, in consultation with the Employers' group and the Workers' group, with technical assistance from the ILO.

Honduras endorses the international treaties and Conventions which form part of the national legal system. This is the basis for the protection of native and indigenous groups, as referred to by the Fundamental Constitutional Charter and the supranational treaties and Conventions ratified by the Government of Honduras. The Constitution imposes on the State the obligation to issue measures to protect the rights and interests of indigenous communities in the country. The assumption of the obligation to comply with Convention No. 169, ratified by Honduras, is all the more reason to consider that the Act on prior consultation that originates from it fulfils the constitutive process for the country up to its final stage of adoption of a law and that this will be useful for overcoming the problems that its beneficiaries are facing.

Honduras has complied with the recommendations and observations that the Committee has formulated at certain times on the application of the Convention, and once again has demonstrated that it has made significant advances in line with the indications made, creating and issuing agreements and effective legal arguments and practices in light of the indications made and the needs of our society. For this reason we consider that we should not be included in the list.

We ask that these conclusions be considered by the honourable Committee.

**Worker members** – We thank the Government of Honduras for its comments. We also thank the other speakers who took the floor for their contributions to this discussion.

The grave denial of the rights of indigenous peoples and the constant threat and persecution they face in Honduras are deeply concerning. At least 30 defenders of environmental and human rights were murdered since we last examined the application of Convention No. 169 by the Government of Honduras in 2016. Since the military coup of 2009, over 153 land and environmental activists have been assassinated. We deplore the lack of commitment of the Government of Honduras in providing adequate protection to leaders and defenders of the indigenous peoples, which leaves them exposed to death threats, physical attacks, forced disappearances and murders. The situation can no longer be ignored by the Government of Honduras and immediate and firm action must be taken to stop the endemic violence against indigenous peoples and their defenders and to put an end to the deep-rooted impunity and climate of fear.

Furthermore, we strongly emphasize the need for the Government to establish appropriate consultation and participation procedures so as to ensure that the rights, cultures and livelihoods of indigenous and Afro-Honduran peoples are fully respected and safeguarded. We recall the general observation of the Committee of Experts of 2010 on the Convention, which underlines that there must be a genuine dialogue between governments and indigenous peoples characterized by communication and understanding, mutual respect, good faith and the sincere wish to reach a common accord.

In addition, special attention must be paid to the rights of indigenous peoples to land and natural resources as these are fundamental to securing the broader set of rights related to self-management and the right to determine their own priorities for developments.

Finally, coordinated programmes aimed at improving the living and working conditions of indigenous and Afro-Honduran peoples, including the Miskito community, and their access to public services, like health and education, must be strengthened and effectively implemented and their impact must be assessed.

The Government of Honduras must be accountable for the preservation of the rights, cultures and livelihoods of the indigenous and Afro-Honduran peoples. Immediate action must be taken. More specifically, the Government of Honduras must take adequate and timely preventive and protective actions to ensure the physical safety and psychological well-being of members of indigenous communities and their representatives. It must also take the necessary measures to foster a climate free from violence.

Furthermore, the Government of Honduras must conduct investigations and initiate proceedings against perpetrators and instigators of acts of violence and threats against indigenous peoples and their representatives in the context of claiming their economic, social and cultural rights. In this regard, the Government must immediately establish an independent judicial investigation into the murders of José Adán Medina and Félix Vásquez, the forced disappearances of the four young Garífuna from Triunfo de la Cruz and the murder of Berta Cáceres. The Government must report detailed information on complaints received as well as the investigations and proceedings initiated. All these actions must be buttressed by the allocation of sufficient financial and human resources.



We also call on the Government of Honduras to strengthen its efforts to engage in full, genuine and meaningful consultations and dialogue with indigenous and Afro-Honduran peoples and their representative institutions, especially in the context of the adoption of the Consultation Act.

Finally, the Government of Honduras must provide effective protection for the rights of ownership and possession of indigenous and Afro-Honduran peoples' lands. It must also preserve their rights to the natural resources pertaining to their lands and ensure their access to justice.

As has been indicated by the Committee of Experts and other colleagues who have taken the floor, the issues are grave. We urge the Government to accept a high-level tripartite mission of the ILO to support the Government in finding long-lasting solutions in the application of this Convention.

**Employer members** – We have listened to the discussion with great attention. By way of final comments, we would like to reiterate that the Convention is the only international instrument that is legally binding for the States that ratify it. In this context Honduras has the commitment to apply it and to keep the supervisory bodies regularly informed, in consultation with the most representative organizations, and hence we invite the Government to do this.

We have already said that the Convention can be an instrument for promoting social dialogue and good governance, with the institutional weight needed to promote confidence, peace and agreements with indigenous communities, only if it is applied in an appropriate and balanced manner in accordance with the actual provisions of the Convention. In this regard, we would like to invite the Government of Honduras to ensure the application of the Convention in a climate of dialogue and understanding free of violence; to ensure that the National Congress, in accordance with its internal procedures and without interference, but bearing in mind that the consultation process was already aborted, to adopt the Bill on prior consultation without delay, in consultation with the social partners and in accordance with the Convention itself; that it considers that, with or without legal regulation, prior consultation with indigenous and tribal peoples must be undertaken in good faith and in a form appropriate to the circumstances. To this end, we invite the Government to avail itself of ILO technical assistance to support this process. It seems to us a little excessive and possibly premature to send a tripartite mission for this purpose. We observe that progress has been made and, this being the case, we believe that ILO technical assistance without interference from other bodies which have no competence to apply the Convention would be sufficient. We also ask the Government to continue to implement specific measures to improve the situation of Miskito dive-fishers.

Lastly, we invite the Government to continue moving forward in the matters discussed above.

## Conclusions of the Committee

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

**The Committee took note with interest of the positive steps made on the elaboration of the draft regulatory framework for prior consultation since its last discussion of the case in 2016.**

The Committee noted with concern the reported cases of murders and forced disappearances of representatives and members of Indigenous and Afro-Honduran peoples.

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

- ensure the implementation of the Convention in law and practice in a climate of social dialogue and understanding, free from violence and intimidation;
- conduct, without delay, independent investigations and proceedings against perpetrators of criminal acts against Indigenous and Afro-Honduran peoples and their representatives;
- establish appropriate consultation and participation procedures in line with the Convention;
- implement without delay the Convention in law and practice, based on the extensive consultations held with social partners, and in accordance with Article 6 of the Convention, on the requirement to consult Indigenous peoples, so that such consultations are held in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures;
- continue to take effective measures to improve the conditions of work of Misquito dive-fishers; and
- ensure the awareness of rights and access to justice to Indigenous and Afro-Honduran peoples.

The Committee requests that the Government avail itself of ILO technical assistance in implementing these conclusions.

The Committee requests that the Government submit information to the Committee of Experts at its next session in 2021 on the progress made in the implementation of the Convention in law and practice.

The Committee calls upon the Government to accept an ILO direct contacts mission.

**Government representative** – We reaffirm the undertaking to adopt the recommendations made in order to continue the process of application of the Convention, preserving dialogue as a means of understanding free from any manifestation of violence, using the special procedures and institutions created for this purpose.

We, the Government, with the immediacy of the case, will urge the other state authority, which has knowledge of the consultations provided for in Article 6 of the Convention, to comply with the requirement to consult the social partners on the Bill relating to prior consultation in good faith, until such time as consent is achieved.

The special committee of the National Congress of the Republic will also be requested most respectfully to avail itself of ILO technical assistance.

We will report on all of the above to the Committee of Experts to give evidence of advances and legislative progress made regarding the adoption of the law and the application of the Convention through a tripartite approach involving social dialogue.

We accept and greatly look forward to the announced visit of the ILO direct contacts mission at an appropriate date and by joint agreement so that full access will be available to it.

## Cambodia (ratification: 1999)

### 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 the Law on Amendments to the Law on Trade Unions and its explanatory note.

Cambodia, through its ratification of the ILO's Convention No. 87, is committed to uphold and promote freedom of association and to protect the right to organize. In this connection, the Ministry of Labour and Vocational Training (MLVT) of the Kingdom of Cambodia would like to provide updates on the application of Convention No. 87 as follows:

#### 1. Allegation made by Education International

We regret that Mr Rong Chhun was arrested on 31 July 2020. We would like to take this opportunity to highlight that he was arrested for his activities along the border with intent to incite social disorder, chaos, and upheaval affecting national security, which were not related to exercising trade union activities.

We share the same regret concerning the other members of the Cambodia Independent Teachers' Association (CITA) and its President named in the observation of Education International in October 2020. The cases are under judicial proceedings, and we will be able to provide detailed information and updates on the cases once we receive them from the Court via the Ministry of Justice (MoJ).

As guaranteed by the Constitution, all Cambodian citizens are treated equally before the law regardless of their political affiliation, profession or social status, and so on. Detainees or prisoners are prosecuted and convicted not because of who they are, but because of offences they have committed.

Cambodia is making the utmost efforts to ensure a conducive environment for the exercise of trade union rights free from violence and intimidation; however, legitimate union rights should not be construed as a shield for law-breakers, which denigrates the rule of law and undermines law-abiding citizens.

#### 2. Allegation made by the International Trade Union Confederation

Following the receipt of the observation made by the International Trade Union Confederation dated 1 September 2019 concerning the allegedly violent repression of strikes by hired criminals and the detention of union leaders organizing strike action in the garment sector, the Ministry of Labour and Vocational Training (MLVT) has contacted both the workers and factories in question to gather detailed information. However, it takes time to get feedback from them during the pandemic. Additional information will be submitted to the Committee in our report in reply to the direct request.

#### 3. Trade union rights and civil liberties

##### Murders of trade unionists

With the latest updates concerning Case No. 2318 that we shared with the Committee on Freedom of Association in our communication dated 31 January 2020, there is no further update due to the COVID-19 pandemic.

### Incidents during the January 2014 demonstrations

As previously reported, the MLVT and the MoJ have established a working group and requested the concerned trade unions to provide information on their court cases so that the MLVT and MoJ can follow up with the court in order to expedite the settlement in accordance with the applicable legal procedures. With respect to these pending cases, the courts have encountered certain challenges, in particular the lack of collaboration by the parties, and the complex nature of the criminal cases, which necessitate further investigation. Some involve civil damages which require mutual consent from both claimants and respondents to end the civil complaints. The MLVT and the MoJ will further provide legal support to the parties to wrap up all the outstanding cases in full accordance with the prevailing legal procedures.

### Training of police forces in relation to industrial and protest action

In October 2019, the MLVT, in collaboration with the Ministry of Interior, the ILO, and the Office of the United Nations High Commissioner for Human Rights-Cambodia (OHCHR-Cambodia), organized a two-day training of trainers (ToT) on “the Rights to Strike and Peaceful Demonstration” conducted in four sessions with 128 participants and follow-up training on “the Rights to Strike and Peaceful Demonstration” with 30 participants, who were police officers from the General Commissariat of National Police, to contribute to promoting freedom of association and harmony in industrial relations. The subjects of the training included the notions of labour disputes, labour dispute settlement, the notions of strikes, demonstrations and riots, preventive measures for strikes and demonstrations, mechanisms for strike and demonstration settlement, the international and national legal framework for peaceful assembly, and the definition, objectives and scope of the Law on Peaceful Demonstration.

## 4. Legislative issues: Law on Trade Unions

The MLVT would like to report that the Law on Amendments to the Law on Trade Unions (LTU) was promulgated on 3 January 2020; a copy of the Law on Amendments to the LTU and its explanatory note are attached for your consideration.

### Right to organize and join trade unions of the civil servants, including teachers

We would like to reiterate that, in line with Convention No. 87, the Law on Association and Non-Governmental Organizations (LANGO) and the LTU were adopted to promote freedom of association and provide the same rights and benefits for both workers and employers in private and public sectors.

The amended Article 3 includes within its scope domestic workers, personnel working in air and maritime transportation and those who work in the informal sector. Therefore, domestic workers, workers in the informal economy and teachers who are not civil servants are free to form a workers’ union of their own choice to promote or protect their interests as long as the conditions stipulated under the LTU are satisfied.

On 6 July 2020, the working group in charge of amendments to the LANGO of the Ministry of the Interior held a final meeting with CSOs after six consecutive meetings. As a result of the final meeting, the CSOs requested amendments to 17 articles of the LANGO. The working group will review the legality of the proposed amendments to the 17 articles.

### Khmer literacy requirement

In the Cambodian context, in particular to promote harmonious industrial relations, Khmer literacy is a requirement for foreign nationals who want to be trade union leaders and this requirement is not incompatible with Convention No. 87. The agreement on this requirement has been reached following discussions in tripartite consultative workshops, and in practice no concerns have been raised with respect to this issue.

### Dissolution of trade unions by the courts after the complete closure of enterprises/establishments under new article 28

The amendment was made in accordance with the comments of the Committee of Experts and the suggestion of the trade unions during the tripartite consultation workshops. Under the amended provision, a local worker union will not be dissolved immediately when the enterprise is closed; it will be dissolved when the employer's obligations towards the workers have been fulfilled in accordance with the court decision. This provision is aimed at determining requirements when a workers' union no longer maintains or possesses legal personality and this concern no longer exists in practice.

### Right to request dissolution under new article 29

We would like to clarify that, according to the legal provision, a request made by a party concerned or 50 per cent of a union's members is not a ground for dissolution of a trade union by the courts. As set forth under the same article, the court may decide to dissolve an organization if it is found that the ground for dissolution is satisfied and the organization fails to rectify its shortcomings within a time frame set by judicial discretion.

## 5. Application of the Convention in practice: Independent Adjudication Mechanism

The MLVT would like to reaffirm our commitment to supporting the Arbitration Council, with both technical and financial support from stakeholders to ensure the sustainability of this institution. The Ministry's commitment is shown, among others, through the current draft amendment to the Labour Law, which is under examination, to extend the scope of the Arbitration Council to settle individual labour disputes. However, the large number of individual disputes and collective labour disputes will outweigh the capacity of this institution. Therefore, we need support from all stakeholders to sustain the effective functioning of this institution.

We would like to highlight that, to ensure the effective enforcement of binding awards, the Labour Law requires enforceable arbitral awards to be registered in the same way as a collective agreement.

The Ministerial Regulation (*Prakas*) on the Arbitration Council also enables a party, in case of non-compliance with a binding arbitral award, to file a request with the court for its recognition and enforcement.

## Discussion by the Committee

**Government representative, Secretary of State, Ministry of Labour and Vocational Training (MLVT)** – First of all, my delegation wishes to join other distinguished delegates in warmly congratulating you and the Vice-Chairperson for being selected to lead the Committee. There is no doubt that the Committee is a cornerstone of the ILO supervisory system and has played an important role in ensuring the application of international labour standards. So too does the Royal Government of



Cambodia, which is committed to ensuring that all rights and obligations enshrined in all relevant international instruments ratified by Cambodia are honoured. As a country with outstanding records of ratification of all core international labour Conventions, Cambodia is committed to cooperating closely and constructively, based on mutual respect, with all social and development partners, to ensure the protection of labour rights and harmonious industrial relations, to maintain peace and stability and to further boost the economic development of Cambodia.

Therefore, with the above spirit in mind, Cambodia has been constantly and actively engaging with the ILO supervisory mechanism. In addition to the information voluntarily submitted to the Committee last month, my delegation has the honour to further provide the Committee with updates on the application of the Convention in Cambodia.

I would like to recall that, following the Committee's adoption of the recommendations of the direct contacts mission and with the ILO's technical support, Cambodia has endorsed a road map on the implementation of the ILO recommendations concerning freedom of association, with extensive consultations with all relevant stakeholders. This road map defines time-bound actions and guidelines to implement the ILO recommendations, and to strengthen the application of the Convention.

With continued support and cooperation from the ILO, a number of achievements have been made, particularly with regard to trade union registration, protection for trade union leaders and capacity-building on the exercise of freedom of association in order to promote the exercise of freedom of association in Cambodia. Cambodia has continually reported its progress on the implementation of the road map to the ILO and relevant stakeholders.

My delegation took note of the observations made by the Committee of Experts as to the amendment to the Law on Trade Unions (LTU). We would like to reiterate that the LTU is crucial legislation to uphold the rights of professional organizations, as set forth in the Constitution of the Kingdom of Cambodia, the Labour Law, and Conventions Nos 87 and 98. Following the adoption in 2016, and in response to the actual context of the country, this Law was amended and came into effect in early 2020.

My delegation would like to take this opportunity to highlight that the purposes of the amendment to the LTU are to: further promote the freedom of association of domestic workers; facilitate the procedures and formalities of trade union registration and maintain registration; facilitate the requirements to acquire the multi-representative status; and to promote the rights and duties of minority worker unions.

In this regard, I wish to draw the Committee's attention to the fact that the number of registered trade unions has increased considerably following the adoption of the LTU in 2016 and its amendment in 2020. As of March 2021, there are 5,546 registered trade unions, of which 290 trade unions were registered after the amendment to the LTU, despite the COVID-19 pandemic. This number is an eloquent testimony to the conducive environment for the exercise of freedom of association in Cambodia.

As to the rights of workers and employers to establish and to join organizations, in response to the observation made by the Committee of Experts, the amended article 3 of the LTU includes domestic workers, personnel working in air and maritime transportation, and those who work in informal sectors. In this connection, domestic workers, workers in the informal economy and teachers who are not civil servants are free to form a worker union of their own choice to promote or protect their interests as long as the conditions stipulated under the LTU are satisfied.

The Government, through the Ministry of Education, Youth and Sport, firmly upholds the rights, freedom, dignity and profession of all teachers and education personnel who freely practise their rights and freedom within the existing framework of laws and regulations. The teachers and education personnel have the rights to form associations, unions and/or educational organizations to serve and protect their legal rights and interests. In no circumstances whatsoever can teachers' associations, unions and/or educational organizations be the extension of any political party and must follow the laws and legal regulations currently in force. They have the right to join any political activity under the relevant laws and legal regulations.

Regarding the application of Article 2 of the Convention, the Law on Associations and Non-Governmental Organizations (LANGO) is being reviewed following consultations with civil society in 2020. The amendment to this law is expected to take place in the near future.

In response to the observation of the Committee of Experts regarding the Khmer literacy requirement, my delegation would like to shed factual light that, in the Cambodian context, particularly in promoting harmonious industrial relations, this requirement is requisite and is not incompatible with the Convention. The agreement on this requirement was reached following discussion in the tripartite consultation workshops and, in practice, there have been no concerns raised with respect to this matter.

My delegation also took note of the observation of the Committee of Experts regarding the dissolution of trade unions. I would like to reassure the Committee that the Government has put in its utmost effort to ensure that the interests of trade unions and their members are well protected. The amendment to the provision of the LTU as to this matter was made in accordance with the comment from the Committee of Experts and the suggestion from social partners during the tripartite consultations. Under the amended legal provision, a local worker union will not be immediately dissolved upon the closure of the enterprise, unless the employers' obligation towards their workers has been fulfilled, in accordance with the court decision. It is aimed to determine the requirement according to which a worker union no longer maintains or possesses its legal personality.

My delegation would like to clarify that, under the amended article 29 of the LTU, the party concerned or 50 per cent of the union's members may file a request with the court for the dissolution of the union, although it is not a ground for dissolution. Under the same legal provision, the court may decide to dissolve a professional organization if it is found that the ground for dissolution is satisfied and the organization fails to rectify its shortcomings within the time frame set by judicial discretion. This process ensures that the entity concerned may exercise its right to defend itself before the court and has sufficient time to prove to the judicial authority that its legal personality could be maintained.

While the amendment to the LTU has been recently adopted, we would like to take this opportunity to request technical assistance from the ILO and call for collaboration from the relevant stakeholders to conduct awareness-raising and capacity-building to strengthen its implementation. We would also like to inform the Committee that an annual review of the implementation of the LTU is scheduled through the Labour Forum which is a tripartite mechanism to review the challenges of the implementation of the laws and regulations in force.

Taking note of the Committee of Experts' observation on independent adjudication mechanisms, we would like to reiterate our firm commitment to supporting the operation of the Arbitration Council, gathering both technical and financial support from stakeholders to ensure the sustainability of this institution. Based on the current context of the draft amendment to the Labour Law, the Arbitration Council will be able to hear individual labour disputes in accordance with specific criteria to be defined in the *Prakas* (regulations) of the MLVT. The MLVT is working closely with the Arbitration Council Foundation and the Arbitration Council to prepare the necessary implementing regulations following the adoption of the amendment to the Labour Law in this regard.

My delegation would like to reiterate that, in Cambodia, there has never been a case in which an individual was arrested or convicted for their legitimate union activities. As a democratic country adhering to the rule of law, all Cambodian citizens are equally treated before the law, regardless of their political affiliation, profession, or social status, as guaranteed by the Constitution.

As stated earlier, trade unionists are also citizens, so they shall also be responsible before the law for their wrongdoings. Individuals are prosecuted or convicted by judicial authority not because of who they are, but because of offences they have been committing. In any circumstances, legitimate union rights should not be construed as a shield for lawbreaking. In addition, the Convention does not provide any privilege to impunity to trade unionists. Having said that, this does not mean that Cambodia overlooks legitimate union rights. We are upholding and protecting union rights without denigrating the rule of law and undermining law-abiding citizens. Once again, we would like to request close and genuine collaboration with the relevant stakeholders regarding their observation and allegation, in particular with regard to trade union discrimination. The MLVT remains available in order to take immediate action concerning the above-mentioned issues. We do need to gather factual information as well as evidence before addressing those issues and we would like to thank our social partners who keep engaging with us in this regard.

Contrary to the allegation raised, as mentioned above, Cambodia has made considerable progress on the application of the Convention, notably in rendering an environment conducive to the exercise of freedom of association that is free from violence and intimidation.

We would like to request your kind attention when considering the progress made by our Government and the challenges we face, particularly during this unprecedented time. We would like to take this opportunity to request all stakeholders' collaboration in implementing the road map on ILO recommendations concerning freedom of association and Cambodia avails itself of the ILO's continued technical support. We will continue working with the relevant stakeholders and provide the parties concerned with legal assistance to conclude their pending cases.

To conclude, I would like to reassure the Committee that Cambodia remains committed to promoting, protecting, and adhering to all duties and obligations stipulated in the relevant instruments to which it is party. We will be pleased to provide further information upon request.

**Worker members** – With factories closed due to cancelled or reduced orders, hotels vacant, construction halted, and the informal economy swelling as a result of the COVID-19 pandemic, many workers in Cambodia have struggled to survive over the last year. All of this came on top of an already difficult environment for workers' rights, so bad in fact that the European Union (EU) partially suspended its Everything But Arms

trade preference programme, over labour and other human rights violations. I will refer to just a few issues in my opening remarks.

Regarding emergency laws, over the past year, the Government has passed a number of emergency laws and decrees that restrict the exercise of freedom of association. On 10 April 2020, the Law on the Management of the Nation in Emergencies was enacted, granting the Government broad powers to ban meetings and gatherings; to survey telecommunications; to mobilize the military; to ban or restrict news media that may harm “national security” and other measures that are “suitable and necessary”. Infractions are punishable by heavy imprisonment terms and fines. In March 2021, another law, the Law on Measures to Prevent the Spread of Covid-19 and other Serious, Dangerous and Contagious Diseases, also includes bans on gatherings and unspecified “administrative and other measures that are necessary to respond to and prevent the spread of Covid-19”. Such vague provisions allow for abuses by the authorities by arbitrarily targeting people and organizations protesting about government policies.

A deeply problematic draft public order law would require approval from the authorities for the use of public spaces and would permit the authorities to stop an event if authorization had not been sought.

Regarding criminalization of labour protests; in July 2020, union leader Rong Chhun was arrested and charged with “incitement to commit a felony or cause social unrest”. Dozens of police surrounded his house at night and arrested him without a warrant. There is no evidence that Chhun committed any offence. Indeed, the arrest followed his advocacy for villagers in a land dispute along the Cambodia–Vietnam border. Also arrested last year was Ms Soy Sros, President of a local union affiliated to the Collective Union of Movement of Workers (CUMW). She was detained on 3 April 2020 by police in Kompong Speu Province pursuant to a criminal complaint filed against her by the employer for having posted messages on Facebook related to a labour dispute concerning the unjust dismissal of a number of union members.

Regarding obstacles to registration; despite some amendments to the application forms, the registration of trade unions remains difficult, with applications denied for arbitrary reasons or for extremely minor technical errors. In one case, a union submitted its application to the MLVT on 25 December 2020, with all ten types of documents (in line with *Prakas* No. 249 and notification No. 039). In the first week of February 2021, local union leaders were called by the MLVT for the first time to correct spelling mistakes on the cover letter and in the profile of union leaders. On 15 February 2021, the local union leaders resubmitted the corrected documents to the Ministry. Over two months later, on 7 May 2021, the local union leaders were called a second time to correct the size of the photos of the union leaders from (3x4) to (4x6) and resubmitted once again. As of 18 May 2021, the union is still not registered, after having expended considerable time and resources to submit the application. This case is not an aberration, as others have reported similar efforts by the authorities to deny union registration over issues that have nothing to do with ascertaining whether workers have expressed their intent to be represented by a union.

Regarding legislative matters; for many years, the Committee of Experts and this Committee have raised concerns with regard to several aspects of the LTU. In December 2019, several amendments to the Law were enacted. However, they still fail to bring the LTU into compliance with the Convention. Moreover, trade unions report that the Government did not meaningfully engage with them and refused to consider the union’s proposed amendments, which would have ensured compliance with the Convention.

While not exhaustive, I note some of our concerns: domestic workers, workers in the informal economy and others not organized on an enterprise model still cannot in practice form and join unions, and teachers who are civil servants are not covered by the LTU but rather the regressive LANGO. The law still grants excessive financial control by the authorities, including unlimited audits, which infringes the right of workers to administer their organizations. The eligibility criteria for electing trade union leaders, including those related to residency and literacy, deny the right to elect trade union representatives in full freedom.

The law still provides for broad grounds to request the dissolution of a union, rather than leaving that matter to the union's statutes. The law also limits the rights of minority unions to bargain on behalf of their own members, which is not conducive to the promotion of collective bargaining and affects the right to join unions of own choosing.

Regarding unions denied the ability to represent members, one of the most concerning developments is the refusal of the MLVT to allow upper-level trade unions to represent their members in collective disputes.

In one case, in April 2020, a collective labour dispute conciliation was being carried out at the Siem Reap Labour Department and included leaders of the local union with most representative status, as well as the president of the federation and the vice-president of the confederation. During the conciliation, the Chief of the Disputes Office declared that leaders of federations and confederations were not allowed to speak during the meeting and threatened to dismiss them if they did not comply. They were told, erroneously, that they could not participate because unions with most representative status could not have anyone represent them. It is a serious violation of the right to freedom of association to deny a local union the support of upper-level unions to which it is affiliated. Again, this is no aberration, as other unions have reported that they have been prohibited from representing the interests of their members in collective disputes, which is guaranteed in the law for most representative status unions, so long as in the latter case the dispute does not arise out of the collective agreement.

In practice, finally, we note that across the country, unionized leaders and members have been targeted for dismissal during retrenchments provoked by the COVID-19 pandemic. The same story is playing out too in garment factories across the country.

I will note, before closing, that we are deeply and especially concerned with regard to violence and impunity, including state-sponsored violence. Indeed, there has still been no resolution of the murders of Chea Vichea, Ros Sovannareth and Hy Vuthy after so many years. There still remain unsolved cases concerning the arbitrary arrest and detention of trade unionists seven years after the 2014 protests.

I will come back to these matters more fully in my closing comments and the Committee will hear more from the Worker representatives from Cambodia and other countries on these and other issues before I conclude.

**Employer members** – I would like to begin by thanking the Government representative for her detailed submissions today and welcome her comments regarding the Government's commitment to the application of the Convention in Cambodia.

I would like to begin by addressing a number of legislative issues that are present in the case and included in the Committee of Experts' observations. However, I note at the outset that the Worker representative mentioned several pieces of legislation that,

in our view, are not part of the scope of this case. The Employers will only refer to the issues in legislation properly within the scope of the discussion of this case.

First, the Committee of Experts took note of the information provided by the Government on the process to prepare amendments to the LTU, in consultation with the social partners and with technical support from the ILO. We would therefore note, at the outset, that we view this to be a measure of progress in this case and welcome the developments and engagement of the Government with the ILO and the social partners in this regard.

The Government informed the Conference Committee in its submission that the Law on Amendments to the LTU was promulgated on 3 January 2020 and attached a copy with its submission. For this information we are appreciative.

The Committee of Experts, in its previous comments, urged the Government to take appropriate measures in consultation with the social partners to ensure that civil servants, including teachers, have freedom of association rights and that the legislation is amended accordingly. The Committee of Experts, in its current observations, has urged the Government to take appropriate measures and to provide information regarding the freedom of association rights of both civil servants, as well as domestic workers, and workers in the informal economy.

The Employer members request that the Government continue to identify appropriate legal measures in consultation with the social partners to ensure that civil servants not covered by the LTU have the freedom of association rights guaranteed under the Convention. The Employer members encourage the Government to discuss with the social partners the possibility of allowing the formation of unions by sector or profession, and discuss the removal of any legal difficulties for domestic workers to create or join trade unions.

In its previous comments, the Committee of Experts requested the Government to amend sections 20, 21 and 38 of the LTU to remove the requirement to read and to write Khmer from the eligibility criteria of foreigners and the Committee of Experts has requested the Government to provide information on any developments in this respect.

The Employer members note that the literacy requirements in sections 20, 21 and 38 of the LTU may interfere with the autonomy of employers' and workers' organizations as guaranteed in Article 3 of the Convention. While these organizations may or may not include such a requirement in their own statutes, it must not be imposed by law. The Employer members therefore call upon the Government to remove the literacy requirements from this legislation.

In its earlier request to the Government, the Committee of Experts recalled amendments to section 28 of the LTU, which provides that a union is automatically dissolved in the event of a complete closure of an enterprise or establishment. The Committee of Experts requested that the Government take the necessary measures to amend section 28 of the LTU by removing paragraph 2.

The Employer members note that the dissolution of employers' and workers' organizations should either be regulated in the statute of the organization or be decided by a court. An automatic dissolution by law is not in compliance with Article 4 of the Convention. The Employers therefore call upon the Government to repeal paragraph 2 of section 28 of the LTU.

The Employer members also note that, in line with Article 3 of the Convention, it is for workers' or employers' associations to determine in their statutes the rules and



procedures for their dissolution, when initiated by their members. This should not be regulated by law and therefore the Employer members call upon the Government to repeal section 29 of the LTU.

The Committee of Experts observed with satisfaction that the 2019 amendments removed paragraph (c) of section 29 of the LTU. This provision provided that a union or employers' association shall be dissolved by the labour court in cases where leaders, managers or those responsible for the administration were found guilty of committing a serious act of misconduct or offence on behalf of either the union or employer association. The Employer members note with satisfaction the effect of this legal change and appreciate the Government's engagement on this issue.

In looking at the issue of independent adjudicative mechanisms, the Committee of Experts recalled in earlier comments the importance of an effective judicial system as a safeguard against impunity, as well as an effective means to protect freedom of association rights.

The Committee of Experts requests that the Government continue to provide information in respect of the strengthening of the Arbitration Council, including any measures undertaken to ensure that the Arbitration Council awards are duly enforced. The Employer members note with satisfaction the Government's ongoing efforts to make the Arbitration Council an effective and sustainable institution in handling labour disputes. The Employer members also encourage the Government to continue its endeavours in this regard and provide information on further measures taken.

Overall, the Employer members therefore view the progress in amendments to legislation and the responsiveness of the Government to the issues raised by the Committee of Experts, the Conference Committee, and with the provision of technical support from the Office, to be very positive. We welcome these steps and we wish to continue to encourage the Government to work towards full compliance in both law and practice.

We will also very briefly address, in respect of the application of the Convention in law and in practice, allegations of arrests of trade unionists and violence. At this moment, we wish to simply say that we recall that freedom of association can only be exercised in a climate free from violence and intimidation and we encourage the Government to ensure that it is taking all measures to create that climate, foster that climate, and promote a climate free from intimidation.

**Worker member, Cambodia** – I am the President of the Cambodia Labour Confederation (CLC). As the Workers' delegate, I would like to stress the labour situations existing in Cambodia. I have spoken in the Committee in previous examinations of this case, testified to the ILO direct contacts mission to Cambodia, and taken part in government consultations to implement the recommendations. I regret to report that challenges still remain for trade unions and workers.

In 2004, Chea Vichea, Ros Sovannareth and Hy Vuthy were murdered. Up to now, the murderers have not been found. The trade union victims in the general strike to demand higher wages in 2013, including the five workers killed, 23 workers jailed and others criminalized, are yet to receive justice. We urge the Government to continue investigations to return real justice for the victims.

Trade unionists in Cambodia are faced with criminal charges and civil litigations when exercising their rights. In late 2018, the CLC forwarded 58 cases to the MLVT

among a total of 121 cases. So far, only 16 criminal cases have been dropped. Forty-one civil litigations are not yet settled.

We urge the Government to continue the coordination to drop all pending cases and liquidate the 41 collective disputes. Last year, two female union leaders were faced with fabricated criminal charges by a local pharmaceutical and a garment company after they had formed a trade union. One of them has been trialled in absentia and sentenced to two-and-a-half-years imprisonment and a fine of \$100,000 to the company. The court issued an arrest warrant against her. Mr Rong Chhun, President of CCU, was arrested on 31 July 2020. He spoke out about the farmers' land loss. He remains in prison without a trial date. We urge the Government to drop all the cases and release all the union leaders and workers.

We regret that the action points in the Government's road map have not addressed the substance of the recommendations of the direct contacts mission nor changed legal implementation and practices.

The amended LTU still excludes public servants. The self-employed and domestic workers still cannot form a trade union given the requirement to have at least ten workers in the same workplace. These worker associations were not invited to attend the consultation to amend the LANGO. Trade union leaders are constantly faced with unfair dismissals when we extend support to our members and non-members in mass dismissals, cases of discrimination and factory closures. Even the federations and their local unions, which have been certified with most representative status, are barred by the labour dispute officers from representing members in workplace conciliation meetings.

It has become a systematic pattern since the pandemic that collective labour disputes concerning industrial relations, business closures and mass lay-offs have been misclassified as individual labour disputes by the labour dispute officers, in order to avoid the legal remedies afforded to shop stewards and union members. These new obstructions undermine the meaningful role of the trade unions in pursuing our rights protected by the Convention.

The ability of trade unions to effectively serve workers and our members is greatly inhibited by the restrictions under the LTU.

**Employer member, Cambodia** – I am the Vice-President of the Employers' Association in Cambodia and I run an organization that represents all sectors relating to labour and social affairs. We were established in 2005 and have long since been working with the ILO and its bodies in addressing labour and social affairs in Cambodia.

It is with regret that we find ourselves before the Committee. It is not that we have not demonstrated progress as a country. On the contrary, I sense that the progress demonstrated in the report is significant and the Government has been very responsive to the matters on hand. I hope that the house will recognize the improvements Cambodia has made; not only can these be seen in the comments in the report, but also in the reporting that the Government has provided. We encourage the Government to continue to strengthen the reporting quality and ensure that reports are provided on time to avoid the Committee escalating matters, when good work has been done within the country to address the matters that have been raised.

I will address quickly a few matters to ensure understanding of the local market. First, I would like to comment that the Worker members' opening remarks were in the majority not related to the case in hand. We cannot accept that this Committee and this

house allow other matters to be discussed, except for those matters that are outlined in the case file. We will not accept that an outcome of our work goes beyond the scope of the case described. I would like to point out again that the labour law in Cambodia covers employment relationships in all our employment sectors, except the public sector. The public sector is governed by the Civil Codes of the Government, as well as other government administrative bodies and should not be confused in the discussions here with the LTU, as well as the general labour law in Cambodia.

The principles of freedom of association are well enshrined in the Constitution and in the laws. The methodologies we use to develop our laws are really inclusive of all the social partners and put forward our different views and opinions. Sufficient time is provided as well. Laws are crafted considering the local context and the state of development in the country.

Testimony to the freedom of association in Cambodia is clear from the number of unions that have been registered since the development of the LTU. As our Government representative mentioned, 5,546 unions have been registered. Of those, more than 3,000 unions have been registered among 650 garment, footwear and handbag factories. That is around 4.6 unions per enterprise.

The multiplicity of unions within an enterprise has not produced any great outcomes for the Cambodian garment sector, which suffered debilitating strikes prior to the development and implementation of the LTU. Rather, it has achieved weak collective bargaining agreements, multiple strikes, a disillusioned membership base and much infighting among unions.

I think it is important to point out that freedom of association does not imply that one does not have the responsibility to abide by the law and follow the law. It is essential that our laws address the challenges in the country and help the country move to more harmonious and constructive industrial relations, and all parties need to respect the law and be held accountable before the law if we break the law.

Laws that are tailored to consider the local context of our development as a country are very important. I stress this because the requirement to have an education level for unions, which now has been removed from the law, was critical to ensure that we raise the quality of the union movement in Cambodia. That said, the education requirement was removed but, in the event that a foreigner wishes to become a trade unionist, it is totally within the Government's authority to require certain levels of education for foreign workers within the country to maintain and to ensure the quality of employment for the Cambodian people.

In Cambodia, we are developing laws from the ground up. We never had a trade union law; we developed a trade union law. We never had a social security law; we developed a social security law. To do this, you need a counterpart that has the ability to read and write and comprehend what we are discussing at the table. A simple baseline of requiring reading and writing seems to be a reasonable requirement in building up strong social partners in the country who are able to contribute effectively to the development of the social and labour laws in the country.

These are the few points that I would like to raise. I would like to stress again – and hope that the Committee today recognizes – the improvements that the country has made and that we continue to encourage the Government to strengthen its reporting quality and ensure that reports are provided in a timely manner so that Cambodia can continue to be an active player.

**Government member, Portugal** – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The Candidate Countries, the **Republic of North Macedonia, Montenegro** and **Albania**, the EFTA country **Norway**, member of the European Economic Area, as well as the **Republic of Moldova**, 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 right to organize and freedom of association.

We actively promote the universal ratification and implementation of fundamental international labour standards and 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, among others, through the Everything But Arms arrangement under the EU's Generalized Schemes of Preferences regime, granting duty-free and quota-free access to the EU markets, resulting in sustained growth and job creation in the past decades. However, due to serious and systematic violations of human rights, especially the right to political participation and fundamental freedoms, as of August 2020, this preferential treatment has been partially suspended.

Concerning labour rights and, in particular, freedom of association and protection of the right to organize, and in reference to legislative reforms, we regret that the Committee finds a structural lack of progress. We take note of the amendments to the LTU, in particular the extension of its coverage to domestic workers, teachers who are not civil servants and workers in the informal economy. Despite these changes, however, the revision of the LTU still fails to ensure conformity with the Convention, since the provisions of the law (article 10) do not allow the creation of unions by sector or profession, thus preventing an effective enjoyment of freedom of association and the right to organize by domestic workers and workers in the informal economy.

Similarly, the LANGO still contravenes the rights of freedom of association and the protection of the right to organize for civil servants, including teachers, under the Convention. In particular, serious deficiencies remain in relation to recognizing civil servants' associations' right to draw up their own constitutions and rules, to elect representatives, to organize activities and formulate programmes without the interference of the public authorities.

We urge the Government to take the appropriate measures, in consultation with the social partners, and amend the legislation accordingly. It is also important that the full and effective enjoyment of these rights by domestic workers and workers in the informal economy is secured and protected. We also request the Government to amend other relevant sections of the LTU to respond to the Committee's observations regarding the dissolution of representative organizations.

Furthermore, we underline the need for an independent judicial system to guarantee the effective implementation of the social partners' right to organize and protect their freedom of association. With the Committee, we welcome the Government's commitment to strengthen the Arbitration Council and underline its important role in the handling of collective disputes, as well as possibly individual disputes in the near future.

The EU remains deeply concerned about reports of continuous harassment, attacks and arrests of trade union leaders and urges the Government to take all necessary measures and actions to ensure the exercise of trade union rights and activities and that no criminal charges are brought against trade unionists for exercising their rights under the Convention. In this regard, we encourage the Government to continue to provide information on all pending criminal cases against trade unionists.

The EU remains deeply worried about the continued lack of concrete steps or results in the murder investigations of the three trade union leaders in 2004 and 2007, and calls on the Cambodian authorities to swiftly conclude the investigations and to bring the perpetrators to justice.

We also encourage Cambodia to remain vigilant on dismissals due to the COVID-19 crisis, in particular those that seem to be selectively targeting trade union leaders.

The EU and its Member States will continue to closely monitor the situation in Cambodia.

**Government member, Thailand** – I have the honour to deliver this statement on behalf of the **Association of Southeast Asian Nations (ASEAN)**. We welcome Cambodia's progress in implementing the Convention, notably the recent amendments to the LTU and the growing number of registered trade unions.

Cambodia has demonstrated its commitment and willingness to work towards protecting and promoting freedom of association in accordance with international labour standards. In particular, the Cambodian authorities, together with the ILO and the Office of the United Nations High Commissioner for Human Rights (OHCHR), organized training for police officers on the "Rights to strike and peaceful demonstration". This is commendable.

We recognize the efforts made by the Cambodian Government to actively engage with the ILO supervisory mechanism and its social partners, including its timely submissions of regular progress reports of the road map on the implementation of the ILO recommendations concerning freedom of association. We hope that Cambodia will continue to implement the ILO recommendations.

We commend Cambodia's active arrangements as regards the social dialogue mechanism in advancing harmonious industrial relations. In a constructive spirit, we encourage Cambodia and its social partners to continue employing the social dialogue process in the promotion of the exercise of freedom of association.

In light of above-mentioned positive progresses and achievements as to the application of the Convention, ASEAN calls on the ILO and all partners to continue assisting and engaging constructively with Cambodia in this regard.

**Worker member, Australia** – The Swiss Workers' delegation and Education International align themselves with this statement. The COVID-19 pandemic has been used by the Government to continue to deny free association and assembly to Cambodian workers. The last year has seen tightened monitoring of trade union activities, harassment of union leaders, and interference with trade union protests.

On 1 July 2020, Yang Sophorn, President of the Cambodian Alliance of Trade Unions (CATU), received a letter threatening to dissolve the union if she continued with her mediation of a collective labour dispute relating to the closure of a garment factory. Due to COVID-19 restrictions, the CATU could not hold a congress before the expiry of its registration.

In July 2020, police blocked a demonstration of workers led by Rong Chhun, President of the Cambodian Confederation of Trade Unions, over the garment factory closure. On 31 July 2020, authorities arrested Rong Chhun. He was subsequently charged with “incitement to commit a felony” and he continues to be held in detention.

On 6 August 2020, the Labour Department threatened the Presidents of the Cambodia Tourism Workers’ Union Federation and Le Meridien Angkor Trade Union that both unions would be dissolved for allegedly organizing illegal strikes and blocking a public road outside a luxury hotel.

On 7 August, at least seven protesters were arrested at a solidarity protest demanding, in defiance of government warning, Rong Chhun’s release.

On 10 August, the President of the Cambodian Independent Teachers’ Association (CITA), Ms Ouk Chayavy, was attacked and pushed off her motorbike after visiting Rong Chhun in prison. The CITA President was in the process of submitting petitions to the United Nations and the United States of America, demanding Rong Chhun’s release.

In September 2020, police visited seven labour organizations’ offices to inspect their registration and staff records. The police searched the office of the CITA, claiming they were “conducting a census” and demanding information about the group’s registration and activities.

On 30 September 2020, police broke into a CLC meeting, inspected the identification papers of all the participants, and of the programme and all the papers. Venue owners now decline to rent properties to trade unions or NGOs for their meetings because of the police harassment.

On 11 May 2021, Kang Nakorn, of the Independent Democracy of Informal Economy Association (IDEA), was detained by police as he was gathering names of members facing economic difficulties during the COVID-19 outbreak. On 25 May, Kang Nakorn was released but only on the basis that the IDEA would not mention the case publicly.

We implore the Government of Cambodia to ensure freedom of association can be exercised in a climate free of threats, intimidation, and violence.

**Government member, United States of America** – The Government of Cambodia submitted information to this Committee in response to the recent observations of the Committee of Experts. Recent developments since we last discussed this case in 2017 include: amendments to the 2016 LTU in January 2020; police training in October 2019 for situations of public and industrial protest; and acquittal of six trade unionists in May 2019 for criminal charges related to January 2014 demonstrations.

Despite these efforts, significant challenges remain. The Committee of Experts notes ongoing reports of violence, arrests, as well as lack of progress in investigating the deaths of trade unionists. We urge the Government to continue building on recent efforts, prioritizing work in the following areas: first, ensure a climate free from intimidation and violence by increasing efforts to investigate, prosecute, and hold perpetrators accountable; second, ensure no criminal charges or sanctions are imposed for the peaceful exercise of trade union activities, including participation in public and industrial protests. We request more information about the alleged offences and laws used to arrest five trade unionists in August 2020; third, reform *Prakas* No. 249 on trade union registration, taking into account recent reports that some unions continue to experience challenges in registration; fourth, amend the process for determining case eligibility for the Arbitration Council by providing the Arbitration Council with the authority to determine what disputes are collective; and finally, despite recent



amendments to the 2016 LTU, further amendments are necessary to address gaps and issues of non-compliance, particularly with respect to article 55 on most representative status unions; article 28 on government authority to dissolve closed trade unions; and Chapter 15 on excessively high penalties for non-compliance with the LTU.

We urge the Government to take 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 worker rights in Cambodia.

**Worker member, Japan** – My intervention is aligned with the Singapore National Trades Union Congress (SNTUC) and IndustriALL. The garment sector in Cambodia is the most vulnerable sector, having a majority of workers in precarious employment. Garment unions, however, are systematically obstructed from representing the interests of their members in relation to wages and compensation claims and their leaders are often sacked after they have filed to register a trade union.

The Government has adopted several subdecrees and amended the LTU to clarify the role of minority unions in representing the members in collective labour disputes. However, the Government has still failed to implement it. Rather, to represent union members, national federations are facing difficulties, as follows.

In 2018, representatives of the Coalition of Cambodian Apparel Workers' Democratic Union (CCAWDU), a national garment union federation, were prohibited by the labour dispute officers from speaking and representing their members in conciliation meetings concerning cases of discriminatory dismissals of union leaders and improvement of working conditions. The CCAWDU representatives received a warning letter from the MLVT afterwards.

There have also been abundant cases of union requests to the Arbitration Council being refused. Abundant cases show that the MLVT has failed to invoke the procedures on anti-union discrimination under the Labour Law and has accepted redundancy lay-offs and terminations of elected garment union leaders as non-renewable or short-term employment contracts. More and more industrial disputes, such as mass termination of employment cases, have been forwarded to the Committee for the Settlement of Strikes and Demonstrations instead of to the Arbitration Council. A conciliation process led by that committee is public-security driven to prevent labour strikes and public protests. In all the cases forwarded to the committee, the garment unions are pushed back and workers receive much lower compensation and benefits than guaranteed in the law.

I would like to reiterate that in order for unions to exercise the right to freedom of association, which is the most essential right, fair representation of union workers in dispute settlement should be guaranteed. We urge the Government to expedite its procedure to improve the judicial system, including by strengthening the function of the Arbitration Council.

**Government member, Switzerland** – Switzerland regrets that we must once again discuss Cambodia's compliance with the Convention, which is a fundamental convention. Since 1999, Cambodia has regularly appeared on the list of cases to be examined by our Committee. Independent trade unionists and workers in various sectors are still discriminated against, harassed, threatened, arrested or imprisoned when trying to exercise their rights. In this regard, since ratification, the Committee of Experts has made more than 30 recommendations. Eleven cases of violations have been reported to the Committee on Freedom of Association, of which one is still active and two are subject to follow-up.

Today, Switzerland expresses its concern about this persistent pressure on trade union activities and regrets that the police still use violent and intimidating methods. For this reason, Switzerland firstly encourages ILO technical assistance with training of security bodies and, secondly, cooperation with the OHCHR, to improve knowledge of the fundamental principles of human rights. It is through social dialogue and negotiation that peace is established.

The need to accelerate investigation procedures, to provide information on ongoing criminal proceedings and to monitor the implementation of the Convention in practice remains a priority.

Finally, Switzerland expresses the hope that the law on the Labour Court and the LTU will be brought into line with international labour standards.

**Observer, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)** – Five years have passed since the promulgation of the Cambodian LTU in 2016. Collective bargaining remains a rare exception in regulating sound industrial relations in Cambodia. The enforcement of the Law and certification of most representative status for collective bargaining have not been accompanied by effective sanctions against employers' refusals to recognize trade unions and bargains, nor by the accountability of the labour administrative bodies.

These challenges are being reflected in the dispute at an integrated hotel and casino in Phnom Penh. In 2018, the Labour Rights Supported Union, representing 50 per cent of workers in this workplace, filed for most representative status for collective bargaining. The union was stuck in a prolonged administrative process with the competent authority. Up to now, no certificate has been granted.

Since 2019, the union has been engaging with the management to demand better wages and working conditions. Trade union leaders and their members have been subjected to threats, intimidation, harassment and interference of all forms from the employer following the union's launch of a living wage campaign at the workplace. The trade union president was interrogated by police officers in meetings held forcibly with the management. She was later suspended from work. The trade union leader was threatened with full-scale surveillance of their conduct, activities and conversations.

In September, the authority proceeded to forward the dispute to the Arbitration Council, requesting the suspension of the union leader. Despite a petition by 3,800 workers to the authority for labour arbitration for their leader's reinstatement and requesting collective bargaining, the Ministry maintained the suspension as an individual case, not affording the legal remedies pertaining to unfair labour practices.

Although the Cambodian Labour Law and the LTU contain clear provisions on the right to collective bargaining, collective labour disputes and remedies in cases of violation, the labour administrative authorities can exert control over the process with administrative obstructions and delays. Without a legal status to bargain, the union does not have the institutional and legal status to negotiate workplace safety measures in the pandemic or the redundancy plan involving 1,329 workers.

I end my speech by urging the Government to ensure the enforcement of the LTU with all industrial relations parties for the effective application of the Convention in Cambodia.

**Worker member, International Transport Workers' Federation (ITF)** – I speak on behalf of the ITF and the French Democratic Confederation of Labour (CFDT). In this Committee's discussion of Cambodia's compliance with the Convention in 2017, we

raised serious concerns about Cambodia's largest airport operator, a French multinational, which operates three major airports in the country – in Siem Reap, Phnom Penh and Sihanoukville. In 2017, we were concerned about unilateral amendments to the collective agreement and anti-union discrimination, among other things.

Sadly, today we have to report that the French airport operator has been significantly undermining the representativeness of the ITF-affiliated Cambodian Transport Workers' Federation (CTWF), avoiding bargaining in good faith, delaying a fair collective agreement, and engaging in further anti-union discrimination. In January 2019, the CTWF gained most representative status in Siem Reap and sought to commence bargaining. This was rejected by the company on the grounds of wanting to combine bargaining with Phnom Penh. In March 2019, when the CTWF achieved most representative status in Phnom Penh, the company then delayed the bargaining again until all three airports could bargain together.

More recently, during the pandemic, the company has dismissed over 100 workers and initiated restructuring without engaging the union. The dismissals disproportionately target trade union members and are in clear violation of the principles of freedom of association. The airport authority also continues to offer redundancy packages that are below the legal minimum.

While the company, as a result of repeated Arbitration Council decisions, finally commenced bargaining with the union, this has now been delayed again with very little progress made. If redundancy dismissals continue to target union members, this would threaten CTWF's most representative status and most representative status certificate.

A corporate restructuring should not threaten unionized workers and their organizations. Dismissals disproportionately targeting union members not only threaten the CTWF's ability to represent its members, it also creates a climate of fear that is not conducive to freedom of association. The delays in concluding a collective agreement also demonstrate failures by the Government to guarantee the right to meaningful collective bargaining.

Further, the French multinational has also failed in its responsibility under the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and its obligations under the French Duty of Vigilance of Law to conduct human rights due diligence in its supply chains and to address adverse impacts. Freedom of association and collective bargaining are fundamental rights covered under all business and human rights instruments and the French Duty of Vigilance Law. The airport operator must reinstate dismissed workers and recommence collective bargaining, with a view to concluding an agreement without delay. Freedom of association and collective bargaining cannot be a blind spot in human rights due diligence.

**Worker member, Burkina Faso** – Cambodia ratified the Convention in 1999. The Committee has been addressing failures in its implementation since 2016. In 2019, Cambodia was again challenged over allegations of violent repression of strikes by specially hired criminals and the detention of union leaders who organized strike action in the garment industry.

With regard to the murder of trade unionists, the Committee recommended conducting full and independent investigations into the murders of trade union leaders, including Chea Vichea and Ros Sovannareth, and Hy Vuthy in 2007.

Should we be afraid or ashamed to say that, today, the ILO is on very shaky ground? First, even when there has been no effort. I fear that it is this failure to analyse concerns

about the risks of global warming, for one, that has led to outbreaks of micro-organisms, such as COVID-19, endangering almost all of humanity.

**Government representative** – My delegation has listened to all speakers and delegates and takes note of their statements. Constructive comments and views voiced at the Committee will be brought back to Cambodia for due consideration, with a view to ensure a conducive environment for the exercise of freedom of association.

My delegation would like to offer reassurance that Cambodia is committed to honour the Convention. Cambodia has always worked closely with the social partners to promote the exercise of freedom of association and to maintain harmonious industrial relations, with technical support from the ILO. My delegation would like to provide reassurance that Cambodia will continue to work closely with the social partners as to the review of the LTU and any other related legal instrument.

Regarding the right of minority unions to represent their members in labour disputes, we would like to highlight that, under amended article 59 of the LTU, minority unions can represent their members in individual and collective labour disputes, not arising out of the implementation of the collective bargaining agreement. In this regard, minority worker unions, or representatives of workers in case of no worker union, have rights to represent members or workers in collective labour disputes in all dispute settlement procedures, including conciliation at the MLVT and Arbitration Council. In addition, the amendment was made by adding point (i): “representing in good faith its members in collective labour dispute settlement not arising out of an execution of the collective bargaining agreement” in the amended article 59 of the LTU. The amendment aims at further clarifying the misinterpretation that minority unions do not have the right to represent their members in collective labour disputes.

As to the effect of the amendment to the LTU, as of 31 March 2021, the MLVT had forwarded 432 collective labour disputes to the Arbitration Council for settlement, of which: disputes involving organizations with most representative status consist of 30 cases; disputes with minority worker unions as representatives consist of 339 cases; and disputes with workers as representatives consist of 63 cases.

Following the adoption of the Law on Amendments to the LTU in 2020, the MLVT has not received any complaints regarding this matter. The MLVT will continue working on promoting the understanding of the new legislation and strengthening its enforcement.

Although it is not within the scope of the discussion, my delegation would like to address the allegation concerning the State of Emergency Law. My delegation would like to recall that it is not exceptional for Cambodia to have a State of Emergency Law. In fact, the same kind of law has been strictly implemented in many countries, while Cambodia has still not even enforced it since its adoption. It is unfair and a double standard to state that Cambodia does not respect human rights just by having a State of Emergency Law, while the same law has long been established and strictly enforced in other countries, but has never received any complaints. Despite the fact that COVID-19 has thrown the world into uncharted waters, Cambodia has never declared a state of emergency. Despite these challenging and unprecedented times, Cambodia continues its strenuous efforts to protect and promote freedom of association as enshrined in the Convention.

My delegation would like to reiterate that individuals are prosecuted or convicted by judicial authority not because of who they are, but because of the offences they have committed. Under no circumstances should legitimate union rights be construed as a shield for lawbreaking, which denigrates the rule of law and undermines law-abiding

citizens. International labour standards do not provide any privilege to impunity to trade unionists.

My delegation would like to offer reassurance that Cambodia will continue working with the relevant stakeholders and provide the parties concerned with legal assistance to conclude their pending cases, especially criminal cases. However, it should also be highlighted that the executive, legislative, and judicial bodies are independent from each other, as guaranteed by the Constitution of the Kingdom of Cambodia, therefore the Government plays no role in the judicial proceedings.

My delegation would like to express its sincere gratitude to the Committee for its observations and to all ASEAN Member States, representatives of workers' and employers' organizations and others for their constructive intervention and support extended to Cambodia in this regard.

**Employer members** – I would like to thank the Government representative for the very detailed submissions that she presented to the Committee and I would also like to thank all of the speakers that have contributed to this discussion. I would, however, also reiterate the necessity for speakers to focus on the discussion of the elements properly before the Committee in this case. In the Employers' view, it is not useful, nor proper, to have discussions that fall outside of the scope of the proper consideration of this case.

The Employer members have taken note of both the written and oral information provided by the Government representative and, as mentioned, the rich discussion that followed. We note, at the outset, that progress has been achieved in bringing certain aspects of the law into compliance with the Convention, and we appreciate the Government's efforts and work in this regard.

We do also note that a number of important issues still remain outstanding and must be addressed. Therefore, the Employer members request the Government to continue to identify appropriate legal measures in consultation with the social partners, to ensure that civil servants not covered by the LTU do have freedom of association rights, as required by the Convention.

The Employer members also request the Government to repeal the literacy requirements in sections 20, 21 and 38 of the LTU to allow full participation. The Employer members also request the Government to repeal paragraph 2 of section 28 of the LTU on the automatic dissolution of workers' organizations in the case of closure of an enterprise or establishment; the Employer members also request the Government to repeal section 29 of the LTU on the dissolution of employers' and workers' organizations initiated by members.

We therefore believe that these are some of the areas in which additional work can be done by the Government through the continued cooperation of the Government with the social partners and with technical assistance from the ILO, as required.

We also note that in order to have compliance with the Convention in both law and practice, it is necessary to recall that freedom of association can only be exercised in an environment free from violence and intimidation and we therefore call upon the Government to continue the training of police officers in handling industrial conflict and protest action.

We also encourage the Government to continue to discuss with the social partners the possibility of allowing information of employers' and workers' organizations by sector or profession and the Employer members continue to encourage the Government

in its endeavours to make the Arbitration Council an effective and sustainable institution in handling labour disputes.

We believe that much has been achieved in respect of Cambodia's efforts to come into compliance with the Convention, both in law and in practice, and while work remains to be done, we are very much encouraged by these efforts and wish to have that noted in the record. The Employer members also request the Government to continue to provide information on the measures it is taking in respect of all of these efforts.

**Worker members** – We thank the Government for its comments and we are grateful for all the other contributions to the discussion. The employers of Cambodia have indicated that several elements that we have raised should not be discussed by the Committee. We would like to refer here to the Conference rules which set out the mandate of our Committee and which provide, in article 7.1(a) that our Committee shall examine the measures taken by Members to give effect to the provisions of Conventions to which they are party.

We must state, in particular, that everything we have said today is within the scope of the Convention, the scope of the comments of the Committee of Experts and the rules governing our discussion in the Conference Committee.

As mentioned by many of the speakers today, the Government of Cambodia continues to engage in serious violations of the right to freedom of association in law and in practice. This is despite frequent supervision by the Committee of Experts, the Committee on Freedom of Association and this Committee. Indeed, despite ILO missions, road maps and technical cooperation, we still do not seem to be making progress. Even the legal reforms which the Government promulgated in late 2019 have not made much of a difference for workers and unions, and indeed many obstacles still remain. It is abundantly clear that the LTU was meant to limit the rights of unions to effectively represent their members' interests. This is worsened by emergency laws with no expiration, and which we can expect to remain on the books long after the pandemic has receded.

But let me come back to the matter of anti-union violence, which I referenced in my opening remarks. Violence, including murder, will never be tolerated. We, in the Workers' group, will never forget about our fallen friends and will keep raising their cases until there is justice. It has been 17 years since Chea Vichea and Ros Sovannareth were murdered and 14 years since Hy Vuthy was murdered. There is no excuse for these cases to remain unsolved with the material and intellectual authors of these crimes still free. We share the Committee of Experts' deep concern with the lack of concrete results. We strongly urge the Government to end the impunity and hold all those responsible accountable.

Also intolerable is police violence towards workers and trade unionists. This is not simply an issue of training, although we welcome it so that officers at least know the rights of protestors and act in accordance with international law and best practices. However, in our view, the violence perpetrated by police reflects the low value that the Government places on the labour of workers and the role of trade unions. Until the Government makes clear that trade unions are an important part of society and their efforts to build mature industrial relations is to be valued instead of repressed, then we cannot be surprised when police continue to carry out violence against them. Until this changes, I worry handbooks will simply be ignored.

Finally, I note that after seven years, several trade unionists still have criminal or civil charges pending against them for their participation in demonstrations in early



2014. Let us not lose sight as to why workers were protesting. Workers were protesting for a liveable minimum wage, which still today remains too low. In return, military police opened fire on protesting garment workers on Veng Sreng Street on 3 January, killing and wounding several. There is no reason that any worker should have been charged in the first place in relation to the peaceful exercise of the right to assemble and associate. That some cases remain pending, keeping these workers under the cloud of potential prison or heavy fines, is simply unacceptable.

The Worker members insist that the Government of Cambodia take meaningful action with regard to freedom of association. As such, we recommend the following conclusions:

- refrain from the arbitrary arrest, detention and prosecution of trade unionists for undertaking legitimate trade union activity and drop all charges against those who have been so criminalized;
- provide information with regard to the investigations into the murders, and violence, perpetrated against trade union leaders to the Committee of Experts, and ensure that the perpetrators and instigators of the crimes are brought to justice;
- ensure that acts of anti-union discrimination are swiftly investigated and that, if verified, adequate remedies and dissuasive sanctions are applied;
- with the help of ILO technical assistance, develop guidelines, a code of practice or a handbook on the policing and handling of industrial and protest actions;
- amend the LTU, in consultation with the social partners, to ensure compliance with the Convention;
- ensure that workers are able to register trade unions through a simple, objective and transparent process;
- ensure that teachers, civil servants, domestic workers and workers in the informal economy are able to form and join trade unions in law and in practice consistent with the Convention;
- ensure that all trade unions have the right to represent their members in collective disputes in grievance proceedings at the enterprise level and the ministerial level as well as before the Arbitration Council;
- ensure that binding Arbitration Council decisions are effectively enforced.

We urge the Government to accept a direct contacts mission.

## Conclusions of the Committee

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

**The Committee expressed deep concern at the continuing acts of violence against workers, the arrests of trade unionists in connection with their activities as well as the lack of effective and timely investigations in relation to these incidents.**

**In this respect, the Committee urges the Government to:**

- **investigate all allegations of violent repression of trade union activity and detention of trade union leaders;**

- take all necessary measures to expedite the investigations into the murders of trade union leaders Chea Vichea and Ros Sovannareth (in 2004) and Hy Vuthy (in 2007) and ensure that the perpetrators of the crimes are brought to justice;
- undertake all necessary efforts to settle the legal proceedings against trade unionists in connection with the incidents during the January 2014 demonstrations, ensure that no criminal charges or sanctions are imposed in relation to the peaceful exercise of trade union activities and drop all criminal charges for those trade unionists charged in connection with the January 2014 demonstrations; and
- take all necessary measures to stop arbitrary arrest, detention and prosecution of trade unionists for undertaking legitimate trade union activity.

The Committee also noted that, while some positive steps have been achieved in bringing the law in line with the Convention, serious compliance issues remain unaddressed.

Having examined the matter and taking into account the Government's submissions and the discussion that followed, the Committee calls upon the Government of Cambodia to:

- provide the reports of the three committees charged with investigations into the murders of, and violence perpetrated against, trade union leaders to the Committee of Experts;
- ensure that acts of anti-union discrimination are swiftly investigated and that, if verified, adequate remedies and dissuasive sanctions are applied;
- with the help of ILO technical assistance, develop guidelines, a code of practice or a handbook on the policing and handling of industrial and protest actions;
- amend the Law on Trade Unions, in consultation with the social partners, to ensure compliance with the Convention;
- ensure that workers are able to register trade unions through a simple, objective and transparent process;
- continue to identify appropriate legal measures, in consultation with the social partners, to ensure that teachers, domestic workers and civil servants not covered by the Law on Trade Unions (LTU) have the freedom of association rights under the Convention;
- repeal the literacy requirement in sections 20, 21 and 38 of the LTU; repeal paragraph 2 of section 28 of the LTU on the automatic dissolution of workers' organizations in case of complete closure of an enterprise or establishment and repeal section 29 of the LTU on the dissolution of employers' and workers' organizations initiated by members of those organizations;
- discuss with the social partners the possibility of allowing the formation of employers' and workers' organizations by sector or profession; and
- increase its efforts to make the Arbitration Council an effective and sustainable institution in handling labour disputes and ensure that binding Arbitration Council decisions are effectively enforced in law and in practice.

**The Committee requests the government to provide information on the measures taken on all the above matters to the Committee of Experts before its November 2021 meeting.**

**Finally, the Committee recommends that the Government accept a direct contacts mission as soon as possible in order to give full effect to these conclusions and report progress to the Committee of Experts before its November 2021 meeting.**

**Government representative** – Cambodia takes note of the conclusions and recommendations made by the Committee. Cambodia will continue working closely with relevant stakeholders to protect and promote the freedom of association as enshrined in the Convention. My delegation would like to reassure that Cambodia remains committed to honour the rights and obligations stipulated in the relevant instruments to which it is a party.

However, my delegation notes with regret that, despite our strenuous efforts and information and clarification provided, some matters are still selectively picked and chosen to paint the exercise of the freedom of association in Cambodia with a deep-dark brush ignoring the real progress on the ground. We note that some issues are outdated and have been addressed through the implementation of the road map. Its progress has been reported regularly to the ILO. Cambodia will continue working closely with our social partners to update the road map and its progress will be communicated in due course.

Regarding the unfounded allegations, we would like to reiterate that there is no arrest of unionists in Cambodia in connection to their union activities. Individuals are prosecuted and convicted by the court for offences they have committed.

Once again, my delegation would like to express our appreciation to all delegates for their constructive interventions and to the ILO and other partners for their extended support to Cambodia. Cambodia avails itself of the ILO's continued technical support. However, my delegation would like to request an adequate time to review and implement the Committee's recommendations, especially during this unprecedented difficult time. The direct contacts mission should not be considered in this case where there is no serious violation of the Convention.

Despite this challenging time, my delegation would like to assure that Cambodia will submit a detailed report by November 2021 and request the Committee of Experts to consider later whether the direct contacts mission is still necessary.

## Mozambique (ratification: 1996)

### Employment Policy Convention, 1964 (No. 122)

#### Written information provided by the Government

The information covers sectors other than the Ministry of Labour and Social Security, as follows:

1. **The Committee of Experts asks the Government to provide comprehensive information on the results achieved and the challenges encountered to achieve the objectives set out in the NEP (National Employment Policy), particularly on the results of the programmes established to stimulate growth and economic development, raise working and living standards, respond to labour market needs and deal with unemployment and underemployment**
  - The Government approved the Employment Policy in 2016, and the respective Action Plan 2018–22, which contains eight pillars, namely: (1) human capital development; (2) creation of new jobs; (3) harmonization and prioritization of sectorial policies and strategies; (4) promotion of decent, productive and sustainable work; (5) improvement of the labour market information system; (6) occupational health, hygiene and safety at work; (7) strengthening international cooperation; and (8) transversal affairs.
  - In the 2015–19 period, 1,893,921 jobs were registered, of which 478,904 in 2019.
  - In 2020, due to the impact of the COVID-19 pandemic, there was a reduction of jobs in the order of 47.05 per cent in relation to 2019, reaching 253,542.
  - Of this total, 162,893 are new jobs; 90,649 is a person's first job; 158,468 are permanent jobs, 69,311 seasonal and 25,763 temporary jobs; 153,171 jobs for young people corresponding to 60.4 per cent, and 62,293 jobs occupied by women, corresponding to 25 per cent of the total.
  - Average inflation was 3.14 per cent, against 2.78 per cent recorded in 2019, below the average of 6.6 per cent forecast for the year 2020 and the gross domestic product of 2020 registered a decrease of -1.28 per cent, against 2.29 per cent in 2019.
  - The national electrical network (REN) was expanded, establishing 222,640 new home connections, making a total of 9,997,425 domestic consumers, corresponding to 38 per cent of access to energy in the national territory; the construction of five new water supply cisterns in rural areas and two new water supply cisterns in cities and towns, which culminated in the establishment of approximately 38,677 household connections, benefiting approximately 114,000 inhabitants.
  - Adoption of sustainable fiscal and monetary policy measures to support the private sector in addressing the economic impact of the COVID-19 pandemic. Within the scope of this measure and in order to provide greater resilience to the Mozambican financial system, in order to face the growing risks arising from the macroeconomic impact of COVID-19, the Bank of Mozambique decided to release US\$500 million to establish a credit line for commercial banks, with the aim of allowing them to have greater liquidity in foreign currency to cover imports of goods and services.
  - Introduction of new work modalities, depending on the specificities of the area of activity, ensuring, however, the preventive measures issued by the health sector and the mechanisms for controlling effectiveness.

- Creation of alternative forms of care to replace face-to-face care in public and private institutions.
- Implementation of measures, among others, (i) the granting of credit lines in foreign currency to local banks and the recommendation to restructure customer credits; (ii) constitution of a credit line in the amount of 1,600 million meticaïs to support small and medium-sized companies, operated by the National Bank of Investment; (iii) suspension of interpellations, constitutions in arrears and executions resulting from the delay in fulfilling obligations related to bank credits, provided that this delay results from the application of the measures imposed by the state of national emergency; (iv) customs and tax facilitation, including the authorization of early departures for the import of goods related to the prevention and treatment of COVID-19, the waiver of payments on account and the postponement of social payment on account, among other measures; (v) 10 per cent reduction in the electricity tariff from 1 June to 31 December 2020, to all consumers (companies and individuals); and, (vi) exemption from VAT (17 per cent) on sugar, edible oils and soaps, from 26 May for one year, aiming to mitigate the costs of these essential goods.

**2. The Committee asks the Government to provide updated information, including statistical data disaggregated by economic sector, sex and age, on the current situation and trends in relation to the active population, employment and unemployment**

- According to the results of the Household Budget Survey of 2019/20 (preliminary data), the employment rate is 74 per cent and the unemployment rate is 17.5 per cent.
- The employment rate of 15–35 years old is 66.7 per cent (67.7 per cent men and 65.8 per cent women).
- The unemployment rate for 15–35 years old is 17.5 per cent (17.4 per cent men and 17.7 per cent women).

**3. The Commission asks the Government to provide detailed information on how the implementation of the NEP, the Pre-occupational Traineeship Regulations and other programmes that provide education and vocational training for young people or supporting the entrepreneurship of young women and men have increased access of young people to full, productive and sustainable employment**

- Agreements were signed to promote pre-professional internships with the business and banking sectors and 3,008 pre-professional internships were carried out, of which 1,174 benefited women.
- The telescope was introduced in vocational training to deal with the COVID-19 pandemic.
- The management procedures for the Youth Initiatives Support Fund were reviewed and 188 projects were financed, benefiting around 1,000 young people.
- The Creative Youth Prize Programme was introduced and 145 young people were awarded in the areas of entrepreneurship, scientific innovation, artistic creation and revelation.
- Multigenerational forums for dialogue held to encourage youth participation and integration.

- The “My Kit, My job” programme was introduced and 741 self-employment kits were acquired and allocated, generating 2,101 jobs, of which 499 are occupied by women.
- The Scholarship Regulation for Girls was introduced with a view to entering courses in the industrial sector (engineering).
- The ECITB international certification for a training center has been renewed.
- The ISO9001 International Quality System Management certification of a training centre has been carried out.
- National Catalog of Professional Qualifications for Vocational Certificates and Professional Education Professionals produced for the areas of hospitality and tourism, education, health and social security, administration and management, agriculture and nature conservation, planning, physical, industrial maintenance, engineering and industrial production, ICTs, hydrocarbons, mining, civil construction, statistics, aquaculture, fisheries and navigation.

**4. The Commission asks the Government to provide detailed and updated information on the results of the specific measures adopted and implemented on the NEP to promote equal employment and income opportunities for women and men and to close the gender gap in education, especially in relation to literacy rates**

- The net enrollment rate for students who entered Grade 1 at the age of 6 registered 78.9 per cent (78.1 per cent girls) of a 94 per cent plan. The student/teacher ratio stood at 67 per cent (primary education) against the annual target of 63.6 per cent.
- 7,570 primary school teachers were hired out of a target of 7,639 teachers.
- Hired 7,266 literacy teachers benefiting more than 181,000 literacy students.
- In the scope of professional technical education, 104 teachers were hired.
- 551 classrooms were built, with a plan of 1,355, benefiting about 22,110 students.
- Acquired and distributed 25,120 school desks, out of a plan of 33,875.
- Trainers admitted to vocational training centres.

**5. The Commission asks the Government to continue to provide information, including statistical information disaggregated by age and sex, on the impact of measures taken in the area of education and vocational training and on its relationship with prospective employment opportunities**

- In 2020, the school network grew by 0.75 per cent, equivalent to 99 new schools. In secondary education, the school network grew by 8.3 per cent, from 819 schools in 2019 to 887 in 2020.
- In higher education, a total of 239,602 students were enrolled, corresponding to an achievement of 99.7 per cent of the planned target and a growth of 6 per cent, compared to the year 2019.
- In vocational technical education, a total of 93,463 students were enrolled, corresponding to an achievement of 98.9 per cent of the planned goal and a growth of 5 per cent, compared to the year 2019.
- In the area of literacy and non-formal education, 229,329 literacy students were enrolled, corresponding to 69 per cent of the annual goal.



- Trained 3,430 women in entrepreneurship and business management
- Approved by the Government, the Gender Strategy in the elaboration of sectorial instruments of the Government.
- Trained 1,140 women to access productive resources and emerging opportunities in the extractive industry.

**6. The Commission asks the Government to continue to provide detailed information on the involvement of the social partners in the promotion and implementation of the NEP. The Committee hopes that the Government will make every effort to take the necessary measures in the near future**

- The Employment Policy and the respective Action Plan were presented, discussed and approved by the social partners in the Consultative Labour Committee.
- The implementation of the “MozTrabalha” programme covers the employment area and involves the social partners.

### Discussion by the Committee

**Government representative, National Director of Planning and Cooperation –**

It is with honour and a sense of responsibility that we take the floor to provide a brief report on the responses to the questions raised by the Committee of Experts.

The Committee of Experts raised six questions for the Government of Mozambique. The answers to these questions were submitted on time to the Conference Committee. For the sake of time, I will not share the details of this response as they mostly consist of statistical data aimed at assessing the impact of the employment policy on job creation.

It should be noted that the employment policy in force in the country was approved in 2016, in a process that involved the relevant actors of the labour market, including employers’ and workers’ organizations. The Government also established an action plan for the implementation of the National Employment Policy (NEP) in a process that involved the social partners.

The lack of institutional capacity and financial resources to monitor the impact of the employment policy and other economic policies on employment is one of the great challenges. Without systematic labour force surveys, it is difficult to analyse the structure and dynamics of the labour market. Despite this difficulty, in 2015, the Government created a Labour Market Observatory and this Observatory has been setting up an information system on the labour market that has been gradually producing some indicators of the labour market based on administrative sources.

The Government is currently preparing an integrated Labour Force Survey, 15 years after the previous one, and has recently completed a household budget survey, which included the employment dimension. These are surveys that can help us understand the impact of different policies on job creation.

As I said before, we have submitted the answers requested by the Committee of Experts, highlighting the fiscal and monetary policies that have been adopted, the measures to stimulate the private sector in the current context of COVID-19, the active measures to promote employment, and some macroeconomic and labour market indicators. Unfortunately, due to the lack of production of regular surveys, it is still a challenge to see trends in labour market indicators. Faced with these challenges, the Government will continue its efforts to further improve labour market statistics with a

view to facilitating the monitoring and evaluation of the impact of the employment policy, and in this process we would appreciate the technical assistance of the ILO.

**Employer members** – The case before us concerns the application in law and in practice of Convention No. 122 by the Government of Mozambique. Convention No. 122 is an ILO priority Convention which, in essence, requires ratifying Member States to declare and pursue as a major goal an active policy designed to promote full, productive and freely chosen employment. While the Convention does not prescribe the means and strategies to achieve this goal, the key role of the private sector and the need for an enabling environment for entrepreneurship and sustainable enterprise for its achievement should be recognized. The Employer members trust that the Committee of Experts will give due consideration to an enabling environment for sustainable enterprises in its future assessments of the Convention in Mozambique, as highlighted in the ILO Centenary Declaration on the Future of Work.

Now, turning to the case of Mozambique itself, it is the first time that the Committee has discussed Mozambique's application in law and in practice of the Convention. The Convention was ratified by the Government of Mozambique in 1996. Unfortunately, due to the absence of the Government's report, the Committee of Experts repeated its 2017 observations twice, in 2019 and in 2020.

We do, however, thank the Government for the written information and its earlier presentation on this case, responding to the Committee of Experts' observation. We would like to take this opportunity to remind all Member States to fulfil their constitutional reporting obligations and, importantly, to provide up-to-date information on the application of ratified Conventions in law and in practice. This information is absolutely vital to assist the Committee of Experts in its non-binding assessment and our discussions in this Committee. We therefore encourage the Government of Mozambique to fulfil its constitutional reporting obligations.

This case is also about how, following receipt of ILO technical assistance, Mozambique adopted a National Employment Policy (NEP) in 2016, in accordance with its national reality and in consultation with the social partners, to promote full, productive and freely chosen employment. The policy aims to promote job creation, entrepreneurship and sustainable employment. It includes among its main targets: the creation of new jobs, the implementation of programmes contributing to increased productivity, competitiveness and the development of human capital, establishment of the institutional conditions necessary to improve the functioning of the labour market, and ensuring the harmonization of sectoral policies, as well as an institutional framework for employment and self-employment.

It is important to highlight that, in line with Article 3 of the Convention, the policy was also the result of tripartite social dialogue, as it was discussed by the Labour Advisory Commission prior to its adoption and continues to be monitored with the support of the social partners in this Commission and by the development observatory.

Moreover, we note that the Government has recently adopted the action plan related to the NEP for the period of 2018–22. By listening to the Government, we have also learned how the action plan has been adapted to the specific situation brought about by COVID-19 in the country, taking into account the reduction in jobs over the last year, as well as the economic difficulties faced by the private sector.

The pandemic has spotlighted the importance of the private sector, the undeniable value of small and medium-sized enterprises, and the relevance of global supply chains.

Conducive environments for business are not an aim, but rather provide the basis for employment creation, growth and sustainable development, also in Mozambique.

Businesses in Mozambique need the Government to do what only governments can do, namely, to facilitate and create an enabling environment for private sector growth and resilience, to be able to create productive employment. In the absence of governments creating such an environment, growth cannot take place, and productive jobs cannot be created. An enabling business environment is essential for creating a stable, predictable and incentivizing environment for investment, innovation and employment, all of which are vital for any sustained and job-rich recovery from the COVID-19 crisis.

We therefore invite the Government to communicate up-to-date information to the Committee of Experts on the implementation of the action plan of 2018–22, including statistical data on the current situation and trends regarding the active population, employment, unemployment and underemployment throughout the country.

We also invite the Government to provide information to the Committee of Experts on the enabling business environment in Mozambique for employment creation and on how the national employment policy's plan of action and enabling business environment go hand-in-hand and are having an impact on the ground. This information is important because we now need to see the impact on the ground of the policy and plan of action.

With respect to youth employment, we welcome efforts to promote investment to create employment for young people and note that the NEP sets out lines of action to promote youth entrepreneurship through training programmes, particularly in rural areas, as well as increasing access to credit, investing in training for youth and increasing the number of traineeships available to young people.

We note that the Government has held awareness-raising conferences on pre-occupational traineeship regulations at the national and provincial levels to encourage enterprises to engage young trainees, and that the Government has established initial programmes to support entrepreneurial initiatives developed by young people.

We invite the Government to provide detailed information on the manner in which the implementation of the NEP, its action plan and different government programmes providing education and vocational training for young people and supporting entrepreneurship by young women and men, have increased or hampered the access of young people to full, productive and freely chosen employment opportunities. We also invite the Government to inform the Committee of Experts of how the NEP, the action plan and the different government programmes take into account the needs of sustainable enterprises to ensure a balanced approach.

With regard to the employment of women, we note that the NEP calls for action to: promote women's employment, including in traditionally male occupations; prioritize education and vocational training with a view to promoting equal employment opportunities for women and men; and eliminate gender discrimination in access to employment. We invite the Government to provide detailed information on the concrete impact of the NEP on women's access to full, productive and freely chosen employment, including any challenges and obstacles that they might be facing.

Lastly, in relation to education and vocational training, we note the Government's indication that access to secondary education in the country is limited, and the completion rate remains very low at 13 per cent. The relevance of education and vocational training to the needs of the labour market is also very low. We note that the

Government refers to reforms introduced in the areas of education and vocational training to address these challenges. We therefore encourage the Government to show that education and vocational training policies and programmes are defined and implemented in close consultation with employers' organizations.

**Worker members** – We must first express our regret that the Committee of Experts has not received the report of the Government since 2016 and has had to reiterate its previous comments without the benefit of updated information. We acknowledge the written information provided by the Government to the Committee, but we regret that this information was not provided in due time to the Committee of Experts.

According to the latest available statistics dated 2016, the poverty rate in Mozambique is between 41 per cent and 45 per cent of the population, which represents over 10 million people. Based on a recent study, the unemployment rate was estimated at 17.5 per cent between 2019 and 2020. We take note of these concerning figures, which highlight the need for the Government to adopt and implement inclusive employment policies focused on creating decent and secure jobs, with strong social protection measures.

We note that Mozambique adopted a National Employment Policy in 2016 with the technical assistance of the ILO. This policy is aimed at promoting job creation, entrepreneurship and sustainable employment to contribute towards the economic and social development of the country and the well-being of the population. It was later supplemented by an Action Plan for 2018–22 and an Implementation Plan for 2021–24. Unfortunately, the Government provides no information on the results obtained or any difficulties encountered in implementing these plans, or in achieving the policy objectives.

We note, however, that in September 2016, the Government and the ILO launched the “Decent Work for Sustainable and Inclusive Economic Transformation in Mozambique” project, also known as “MozTrabalha”. This project, which runs until 2021, aims to support the implementation of the National Employment Policy by promoting investments in employment-intensive market infrastructures, stimulating green jobs through SME development and fostering women's economic empowerment. The project's main activities consist of collecting information on the labour market, policy processes and institutional capacity, disseminating information on the National Employment Policy and conducting pilot projects to introduce employment-intensive investment programmes in selected sectors and regions.

While we acknowledge the Government's efforts to implement its National Employment Policy, we are concerned that these measures fall short of the needs of workers and do not provide the requisite protections in line with the scope of the Convention.

Mozambique faces enormous challenges. Nine out of ten workers are in the informal economy, with limited or no access to social protection. Due to the concentration of Mozambique's workforce in subsistence agriculture and low-productivity informal enterprises, the country is characterized by high levels of individual and household vulnerability, particularly in rural zones in the north and central areas. In addition, the pandemic has had devastating impacts on the economy. According to the National Statistical Institute, over 80,000 enterprises employing 3,300,000 workers have been affected by the pandemic. There is a reduction of jobs in the order of 47 per cent in relation to 2019; that is, over 250,000 jobs have been lost.

In light of these realities, the Government must pursue a national policy aimed at promoting full, productive and freely chosen employment, overcoming unemployment and underemployment and raising living standards throughout the country. Specific measures must be adopted to create paths to formalization of the informal economy in line with the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), to promote investment in the creation of decent, stable and lasting employment and reduce poverty. In the context of post-pandemic recovery policies, policies must particularly address the needs of workers who were or still are hard hit by the pandemic and its consequences, due to their overexposure to infection risk, their lack of protection, or their heightened vulnerability to exclusion from the labour market.

Furthermore, we note that the National Employment Policy has set specific targets to promote the employment of youth and women. In this regard, the Committee of Experts had asked the Government to provide information on the manner in which the implementation of the policy and its accompanying measures had increased access to employment, equal treatment in employment and training opportunities. With respect to the latter, the Committee of Experts had noted important challenges in education and vocational training, including in access to secondary education, the low completion rate and the low relevance of education and vocational training to the needs of the labour market. The Government has indicated that it has launched several programmes to encourage internships and traineeships in certain sectors, such as the banking sector, and to promote self-employment. The Government also provides statistics on the recruitment of teachers in primary schools and professional technical education and on the building of schools. We welcome these developments.

However, the picture painted is incomplete and does not allow for a full assessment of the effects of these programmes. Strong and impactful measures targeted at a job-rich economy, promotion of investment in the creation of decent, stable and lasting employment and poverty alleviation need to be adopted. Their design and implementation must be based on a strong and in-depth analysis of the composition of the workforce, employment and labour market in the country. Therefore, we echo the Committee of Expert's call for more detailed and contextual statistical data, especially on the current situation and trends regarding the active population, employment, unemployment and underemployment throughout the country.

Finally, we note that the Labour Advisory Commission and the Observatory are the bodies entrusted with the responsibility of following up on the implementation of the National Employment Policy. However, despite the Committee's specific request on this point, the Government provides no information on the involvement of the social partners in these two institutions. We recall that for the National Employment Policy to be successful, it must fully include the social partners in its design, implementation and review. We emphasize the need to establish strong mechanisms for the consultation of the social partners.

*Interpretation from Portuguese:* **Worker member, Mozambique** – I am taking the floor on behalf of the Workers' Organization of Mozambique (OTM). On 23 December 1996, Mozambique ratified Convention No. 122. In the context of its domestication of this instrument, the Government adopted its first National Employment Policy (NEP) in 2016, which was designed to ensure the participation of all social partners – the Government, employers and workers. The NEP is a very valuable instrument for promoting employment in any country and in the specific case of Mozambique. As a rule, this policy is something that sets out the general framework on how the social partners are to work on promoting and implementing laws. The trade unions, as representatives

and defenders of the workers, are key players. This must always be taken into account where employment-related initiatives are concerned.

As well as an instrument for social inclusion, employment is a means of fighting poverty, reducing social inequalities, begging and crime, because those factors often cause or exacerbate instability and conflicts in developing countries such as Mozambique.

The level of unemployment reported by the NEP, which contains statistics for 2014–15, paints a worrying picture where the achievement of acceptable levels of employability in the country is concerned. Even more concerning are the types of jobs that contribute to those statistics, because they often do not fulfil the criteria for decent work.

The fact that Mozambique is having to appear at this session of the Committee following the comments made by the Committee of Experts points to the weakness of the mechanisms that have been applied under the NEP and the country's inability to transform the policy into a practical road map to benefit its people and the relevant institutions. In our opinion, the NEP should not be merely a political instrument; it should also be a practical tool for promoting employment.

The workers in Mozambique recognize the efforts that the Government has been making to ensure that more Mozambicans, and particularly young Mozambicans, can have access to employment. We also appreciate the information produced by the National Employment Observatory. We also salute a number of initiatives that the Secretary of State for Youth and Employment has developed. These merit encouragement. However, the Workers' concerns remain. For example, one of the pillars of an employment policy is decent work and it is therefore inconceivable that a country such as Mozambique should not have a Decent Work Country Programme which would be a guiding instrument for the quantity and quality of jobs to be created.

The workers understand that creation of jobs is not just the Government's responsibility. It is also something that falls to the private sector. Indeed, when we speak about the private sector, we should take into account its role in employment. However, we feel that the private sector should be doing much more to create secure and sustainable jobs, especially jobs in which certain rights are enjoyed.

It is not enough to speak of flexibility or simplicity in policymaking. Over the past few years, many initiatives have been approved by the Government and in our opinion the results have fallen short.

As everyone knows, the creation of decent jobs and the protection of workers' rights are core targets for trade unions around the world. In the specific case of the OTM and the National Confederation of Independent and Free Trade Unions of Mozambique (CONSILMO), and the trade union movement in general, we feel that there is a need for further inclusive social dialogue where employment and jobs are concerned.

Mozambique is not an island, and as a means of raising awareness of the NEP, and how to implement it, the Government should have supplied more information to the Committee of Experts on time, as part of its periodic reporting obligations. The Workers do not understand why this delay has arisen and we hope that it is not due to a mere oversight. We hope that henceforth the Government of Mozambique will comply with all its obligations to provide information to the Committee of Experts on time.

We call upon the ILO to offer technical assistance to the Government to improve its performance in implementing its policy and involving workers in that process. As Worker representatives, we reiterate our commitment to contribute to the legislative



developments in the country and the adoption of social policies at the national level that ensure workers' rights are protected, extend social protection, and develop social dialogue, as well as fighting all kinds of discrimination. We reiterate our commitment to the ILO's goal of ensuring lasting universal peace, which can only be achieved if it is rooted in social justice and decent work.

*Interpretation from Arabic:* **Government member, Egypt** – We have taken note of the measures adopted and the efforts made by Mozambique in order to ensure that it is bringing its law and practice into line with the provisions of the Convention.

An employment policy was indeed adopted in 2016 in order to train people, create jobs and develop appropriate policies and strategies to cover the various sectors of the economy, increase sustainable and productive employment and improve the labour market information system. In addition, the Government has taken measures to tackle the impact of the COVID-19 pandemic and bring about greater stability in the financial system. Furthermore, it has taken measures to contain the COVID-19 pandemic and help to strengthen the private and public health sectors. Mozambique has also reached agreements to increase vocational training opportunities.

In conclusion, we salute the Mozambican Government's efforts to make sure it is in step with the provisions of the Convention and we hope that in its conclusions the Committee will take these efforts fully and duly into account.

*Interpretation from Portuguese:* **Worker member, Portugal** – Distinguished members of the Committee, the objective of Convention No. 122 is to promote employment policies with a view to full employment, and it was ratified by Mozambique in 1996. That is an indication of the effort that has been made to improve employment policies in the country, in response to the incentives offered by the ILO through the principles endorsed by the Organization, such as combating unemployment and guaranteeing wages that offer appropriate living conditions.

The informality of precarious work and low skills are problems faced by Mozambique and in 2016 they led to the adoption of the National Employment Policy. The creation of these policies, in which emphasis has to be placed on employment generation, increasing national production, improving support for occupational health and safety issues, was supposed to have guaranteed greater participation by unions in generating work with rights and ensuring social protection, which are of vital importance if we are to be able to return to our activities following the pandemic.

Mozambique, in cooperation with other organizations, and particularly the ILO, has engaged in the work of providing support as a result of these policies.

In light of the above, the discussion of this case cannot fail to give rise to certain doubts about why it was selected. In a context in which the State of Mozambique is a victim of terrorist acts, murders, looting, the destruction of infrastructure and public services, the threat of the expulsion of the population challenges the efforts devoted to employment policies which, as has been recognized, are very important for the recovery of countries that are victims of aggression. They also contribute to responding to those who are undermining the sovereignty of Mozambique and who are seeking to introduce foreign military forces into the country, taking over the natural resources which can constitute a window of hope for the people of Mozambique. Mozambique is in need of true and disinterested solidarity and cooperation, which can help us to reinforce policies for the creation of quality employment and allow us to enjoy rights.

Based on our knowledge of the policies and praiseworthy role that the ILO has played in the implementation of these policies, we are convinced that ILO cooperation with Mozambique needs to be strengthened to achieve progress in the application of policies that promote and protect workers' rights, in the development and support of which the unions of Mozambique play a fundamental role through social dialogue.

**Government member, Zimbabwe** – The Government of Zimbabwe would like to thank the representative of the Government of Mozambique for providing this Committee with information concerning how Mozambique is giving effect to the principles enshrined in the Convention through its National Employment Policy, adopted in 2016. We also note from the submission made by Mozambique that the employment policy was adopted through a consultative process and is accompanied by a very substantive implementation plan.

My Government commends the Republic of Mozambique for domesticating the Convention and urges the ILO to provide technical assistance to Mozambique to better manage its labour market information. We have confidence that there will be continued collaboration between the Government of the Republic of Mozambique and the ILO, as demonstrated by the submission made by the representative of the Government of Mozambique. We also urge the ILO to provide technical assistance to build the capacity of the Government of Mozambique to be able to provide the Office and other supervisory bodies with the reports that are requested from time to time.

**Employer member, Colombia** – I would like to refer to two aspects of the case. First, Convention No. 122 refers to the need to promote economic growth and development through the implementation of policies for full, productive and freely chosen employment. In this sense, for the implementation of the Convention, the framework of a macroeconomic structure is needed to be able to attract investment and the expansion of production by the private sector.

It is in this respect that the creation of an enabling environment for sustainable enterprises takes on greater relevance, as well as the need to recognize the role of the private sector as the principal source of economic development and the creation of productive employment. In this light, we find that the report provided by the Government of Mozambique, although late, provides important details on the National Employment Policy and the current situation of the country. We emphasize that this policy was developed with ILO technical assistance and in consultation with the social partners.

We call on the Government, in the implementation of the National Employment Policy, to take into account the importance of promoting a conducive environment for enterprise development, and to report to the Committee of Experts on how the needs of enterprises are taken into account in the implementation and updating of the policy, particularly to address the effects of the crisis resulting from the COVID-19 pandemic.

Second, with regard to education and vocational training, we emphasize the progress made and the projects undertaken by the Government of Mozambique in relation to the implementation of pre-employment training programmes. We call for employers to be taken into account in linking the education system with vocational training, and in identifying the skills and competences required by entrepreneurs to generate more and better high-quality and lasting jobs.

**Worker member, Canada** – I am speaking on behalf of the Canadian Labour Congress. Available data places Mozambique's national poverty rates in the range of 41–45 per cent. This corresponds to between 10.5 and 11.3 million people living in extreme

poverty. Mozambique's unemployment rate is about 25 per cent, with only 20 per cent of employment being waged labour. The remaining 80 per cent of workers are precariously self-employed, employed as unpaid family workers, or in temporary or casual work.

Many elements of Mozambique's 2016 National Employment Policy outline important strategies to promote job creation and contribute towards economic development and the social well-being of the population. Its emphasis on youth and women's employment, as well as on educational and vocational training, are key to creating decent work and reducing inequality.

Meaningful social dialogue will be fundamental to the success of these programmes and policies. Currently, access to secondary education is limited and completion rates remain very low at 13 per cent. Studies have shown that putting more emphasis on social dialogue in education and employment programmes increases the ability to address the unique challenges faced by participants and leads to higher completion rates. However, to ensure meaningful social dialogue, the Government of Mozambique must improve the gathering and dissemination of accurate employment data.

Finally, during the discussion on the General Survey, the Employers indicated that in the recovery from the COVID-19 pandemic, they would like to advance issues of sustainable enterprises and flexibility. One of the most effective ways to ensure sustainable enterprises is by respecting the rights of workers and encouraging workplace democracy through the participation of workers in decisions affecting them at the enterprise level. As we all know, the Employers' call for flexibility has been consistently used as a way to increase profits at the expense of ordinary workers by lowering working conditions and creating more precarious jobs. Increasing social dialogue and the workers' voice, on the other hand, will support decent work and contribute towards our shared goals of a just and sustainable recovery.

*Interpretation from Arabic:* **Government member, Algeria** – Algeria wishes in the first place to reiterate its support for the Government of Mozambique and support the initiatives taken by the Government with a view to fulfilling its obligations under the terms of the Convention.

Algeria considers that the adoption by Mozambique of the National Employment Policy in 2016, following consultations with the social partners and the implementation of an action plan for the period 2018–22, are positive aspects. We note that the measures adopted principally target the fields of entrepreneurship promotion, the improvement of the qualitative performance of the vocational education and training system, and the modernization of the public employment service and the promotion of decent work, particularly in relation to equality of opportunities in employment. All these initiatives will undoubtedly have an important impact on the objectives to be achieved with a view to responding to the needs of the labour market in Mozambique and combating unemployment and underemployment.

The measures adopted by the Government of Mozambique in relation to sustainable budgetary and monetary policy should also be welcomed. These measures are intended to provide support for enterprises and preserve employment. They also have the effect of responding to the economic impact of the COVID-19 pandemic. We also welcome the efforts made to guide workers and enterprises towards sustainable development, so that the post-COVID-19 recovery will be better and stronger.

Finally, Algeria encourages the Republic of Mozambique to promote regional and international cooperation, as cooperation at these two levels is the appropriate means

of facilitating the exchange and transfer of knowledge and know-how with a view to promoting its National Employment Policy.

**Employer member, Mexico** – The case that we are examining is very important since, even though it would be desirable for the economic and social conditions described to be more encouraging, we cannot fail to place emphasis on certain pertinent aspects which demonstrate progress and set out a relevant route that is an example to be followed.

We welcome the adoption of the National Employment Policy in 2016 with ILO technical assistance, which also has an action plan for its implementation, containing programmes designed to increase productivity, competitiveness and the development of human capital, on the basis of the corresponding principles of sustainable employment, which will undoubtedly contribute to the economic and social development of the country.

It is clear that, without an enabling environment for enterprise development, the objective of full and freely chosen employment is an abstract aim, an aspiration that is difficult to achieve and sustain over time.

Having taken this important step, it is now necessary to articulate the employment policy and vocational education and training practices with the requirements of the labour market and of sustainable enterprises, with a view to launching investment, and therefore development.

Under these conditions, it is necessary and important for the Government to report how it understands and responds to the needs of sustainable enterprises, and whether it is already designing and implementing public policies and programmes to promote productive employment for youth and women with a view to achieving equality in employment.

*Interpretation from Portuguese:* **Worker member, Angola** – I am speaking on behalf of the trade unions of Africa. The essence and vocation of the Convention is the need to address poverty and to contribute to the achievement of social justice, productivity and prosperity through the generation of decent employment. This Convention offers the possibility of achieving all that through the promotion of policies that generate the creation of decent employment in all sectors of the economy.

Taking all of this into account, there are grounds for concern, particularly as the report of the Committee of Experts indicated that the poor, around 41 to 45 per cent of the population, are living in extreme poverty in Mozambique, and that self-employment accounts for 75 per cent of the labour force. When these figures are juxtaposed, and the Report of the Director-General indicated that over 255 million jobs have been lost as a result of COVID-19, it is necessary to give consideration to responses and a creative recovery policy. One of these responses should be the development of a pragmatic plan for the transition from the informal economy to the formal economy.

The unemployment situation in Mozambique is similar to that in all the economies of our continent. The situation is being worsened by the effects of COVID-19. In order to offer a response for effective and resilient recovery, it would be necessary to engage in a broad and collaborative process. The Government essentially has to make conscious efforts to facilitate a process of social dialogue for the application of the Decent Work Country Programme, and develop a realistic road map with a timeline for its application, based on the same process.

With regard to the report of the Committee of Experts, in a situation characterized by 75 per cent self-employment, it is necessary to demonstrate the will for people to help themselves to earn a living. This effort is necessary, and it is now fundamental to make all these policy measures available to the self-employed and workers in the informal economy.

The economic and financial crisis of 2008, in the same way as the global health, economic and social crisis of 2019, reaffirmed the fundamental role of the State in the adoption of policies as being essential to confront crises.

Unfortunately, Mozambique is a country that has been afflicted by three conflicts, has been struck by the tropical cyclones Idai and Kenneth, and where we do not have policies or the fiscal capacity for an effective response to the situation of unemployment and underemployment, as our GDP deficit is 113.70 points and the repayment of the external debt, estimated in United States dollars, amounts to US\$1,375 million by the end of 2019. We are in need of ILO technical support to be able to overcome this fragility.

**Government member, Namibia** – Namibia welcomes the detailed response and the efforts made by the Republic of Mozambique in relation to the National Employment Policy, most notably the action plan 2018–22, which highlights eight pillars namely, human capital development; creation of new jobs; harmonization; and prioritization of social policies and strategies, just to mention a few.

The Government of Mozambique is commended for involving the social partners in the formulation of the National Employment Policy and the action plan. Namibia further commends the Republic of Mozambique for the efforts made on pre-occupational traineeship regulations and other programmes which have increased access of young people to full, productive and sustainable employment.

**Employer member, New Zealand** – As we have heard from the Employer members, Mozambique, with ILO technical assistance, adopted the National Employment Policy (NEP) in 2016 and the principal objective ostensibly is to improve the economic and social development of the country and the well-being of the population through job creation, entrepreneurship and sustainable employment.

However, as we have also heard, these aims are challenged by reality: significant poverty afflicts nearly half the population, equating to over 11 million extremely poor people. Furthermore, due to the concentration of Mozambique's workforce in subsistence agriculture and low-productivity informal enterprises, the country is also characterized by high levels of individual and household vulnerability, particularly in the northern half of the country. We further note that access to secondary education in the country is limited and the completion rate remains very low at 13 per cent. Clearly then, the targets are ambitious in a country characterized by poverty.

Experience suggests that the way forward must be carefully managed, incremental and, above all, done cooperatively. Employers and workers alike are supportive of the aims of the NEP. However, it is not simply enough to like these aims. What is needed is the plan that brings them to life. This is the information we now seek. In this regard we note that, with respect to youth employment, the NEP focuses on promoting investment to create employment for young people, setting out lines of action to promote youth entrepreneurship through training programmes, particularly in rural areas, as well as increasing access to credit, investing in youth training and increasing the number of traineeships available to young people.

While education and training is laudable, without investment, it is not enough to grow both the formal and the informal economies in Mozambique. What is also needed is the jobs that will use the skills learned. An early consequence of not doing this is the departure of youth to countries in which work is available. There is little sustainability in that as an outcome.

Similar issues may arise with regard to women's employment. The NEP calls for the promotion of women's employment, including in traditionally male occupations; it calls for prioritization of education and vocational training with a view to promoting equal employment opportunities for women and men; and eliminating gender and discrimination in access to employment. However, without job growth the effect of achieving this goal is the displacement of males, young and old, from existing work.

As with youth, achieving this goal requires growth in the jobs available, and that will happen only with investment in both traditional and entrepreneurial job opportunities.

Lest there be any doubt, the Employer members are clear that education is a vital prerequisite to building a flourishing economy. Progress will not come overnight, but it will not come at all if education, training and jobs are not part of an established continuum in which education and training is relevant to the needs of the labour market.

We urge the Government to continue to work towards an approach that attracts job-rich investment.

**Government member, Eswatini** – Mozambique is one of our two closest neighbours and therefore we relate to their current and past internal, social and political circumstances. The reasons advanced by the Government of Mozambique for the difficulty to submit its report, which would have enabled the Committee of Experts to examine the progress made in implementing the Committee's comments, as made during its previous examination, are noted and we urge that they must be considered in the conclusions of this case.

When listening to the information that has been presented by the Government of Mozambique, we get the sense that there are serious intentions by the Government, dedicated towards full implementation of the Committee's comments. However, these efforts are curtailed by side disturbances, such as the outbreak of the COVID-19 pandemic and several other human and natural disasters.

The steps taken by the Government to adopt a comprehensive National Employment Policy whose objectives are to promote job creation, entrepreneurship and sustainable employment to contribute towards the economic and social development of the country and the well-being of the population, deserves on its own some comments and encouragement of the Government to continue building towards achieving what it set out to achieve through this policy.

The main targets of this policy, these being the creation of new jobs (particularly in the private sector); implementation of programmes contributing to increased productivity; competitiveness and the development of human capital; establishment of the institutional conditions necessary to improve the functioning of the labour market; and ensuring the harmonization of sectoral policies, as well as an institutional framework for employment and self-employment, resonate so very well with the aspirations of the ILO Centenary Declaration.

Instead of being burdened by further strict recommendations by the ILO supervisory bodies, continued technical assistance and support must be availed to the Government of Mozambique in order to drive maximum promotion and implementation



of the National Employment Policy, through the recently developed action plan in close consultation with social partners.

**Observer, Public Services International (PSI)** – We also regret that the Government has not provided its report on something as fundamental as employment policy, particularly in view of the economic and social situation in the country.

Despite the Government boasting about the high levels of GDP growth achieved in recent years, Mozambique is one of the poorest countries in the world and the level of development of its economy is limited. Around 50 per cent of the population is living below the poverty level, which represents 11 million extremely poor people. Moreover, the great majority of the population, around 80 per cent, continues to be dependent on subsistence agriculture.

On the other hand, the public budget depends largely on foreign aid. Mozambique is financially subject to the designs of donor countries and multinational institutions, the contributions of which represent approximately 40 per cent of the public budget. These contributions and donations condition the country's economic and labour policies. As part of the economic reforms undertaken by Mozambique over recent years, around 1,500 state enterprises have been privatized and there has been liberalization in all sectors of the economy. Moreover, privatization and personnel reductions in the public sector have resulted in increased unemployment, an increase in the informal economy and the phenomenon of disguised self-employment.

We therefore wish to emphasize that Article 3 of the Convention requires the consultation of representatives of employers and workers with a view to taking fully into account their experience and views and securing their full cooperation in formulating employment policy and enlisting the necessary support for its implementation.

We regret the fact that the Government has not registered the union for the public administration, as recommended by the ILO supervisory bodies, which undermines the capacity of public sector workers to participate actively in these consultations, and allows the Government to continue treating them as third-class social partners.

In conclusion, we wish to emphasize that the Government of Mozambique must make greater efforts to regulate the labour market effectively, collaborate adequately through social dialogue and undertake to include employment creation processes in the Decent Work Programme.

**Government representative** – I would like to invite my colleague, the National Director of the Labour Market Observatory, to deliver the final remarks.

**Another Government representative** – First, we would like to thank the Committee for this opportunity to table our report, which was thoroughly read by the delegates, and thoroughly debated in this session. We would like to acknowledge the challenges that we have as a country in terms of data collection and dissemination of data, but most importantly, I would like to highlight one very important aspect on this issue of data: statistical data.

As of late, we are talking about 20 May 2021, we held a high-level meeting on employment, and this meeting had three high-level individuals from the ILO who addressed our meeting and the progress that we have made. We also had in that meeting two experts that addressed the issue of the concept of employment that we are still struggling with, the issue of statistics that we still have as a big problem, a big headache as a country. They are helping us look at how best we can handle these issues of the concept of employment, the collection of data, and also how Mozambique should

address the issue of informality, the transition from the informal to the formal economy. The meeting was attended by some 200 people and 5,000 participants attended remotely.

So, we fully agree with the recommendations that were made here, but we would also like to reiterate our commitment to address those issues that are big problems for us.

If you look at our plan of action for the employment policy for 2021–24, it states clearly what the Government commits itself to do to meet the needs of the Mozambican people. We are talking about fiscal and monetary programmes that would speed up job creation. It is very clear in that plan of action. We are talking about the commitment and involvement of our social partners.

A very clear example of how Mozambique embraces social dialogue is our labour law review. It is getting big support, and strong involvement of our social partners. We are talking about the employers, represented by the Business Associations Confederation of Mozambique (CTA), and also our workers' representatives from the Workers' Organization of Mozambique (OTM) and CONSILMO, and the whole society at large is also involved.

We are grateful for the support given by all the delegates, and also request heartily that the ILO should extend and deepen its support and technical assistance to Mozambique.

**Employer members** – I will start off just making the last point from my original intervention before I proceed to my concluding remarks. Achieving the goal of full, productive and freely chosen employment requires productivity, growth and an enabling business environment for employment opportunities to be created. That will only happen with investment in both traditional and entrepreneurial job opportunities. While it is investment that will make the biggest difference, it is also on investment that we most lack information in this case.

We wish the Government of Mozambique to further develop an enabling business environment for employment creation. We also urge the Government to further develop its plans for investing in jobs and to make these plans clear so that the international community can understand and support them.

Now turning to my concluding remarks. The Employers' group would like to thank the Government for the useful information already available in the written submission. We are pleased to note the measures that have been undertaken by the Government of Mozambique to elaborate, review and keep updated its Employment Policy, especially in light of the COVID-19 pandemic.

We also thank all participants for their insightful submissions here today. The Employer members recall the importance of the timely submission of the report to the Committee of Experts because this is the only way that ILO supervision can work properly and provide adequate information prior to the discussions in this Committee.

In light of the debate, the Employer members invite the Government to provide updated detailed information on the results of the specific measures adopted, the challenges encountered and the measures adopted to overcome those challenges concerning employment of young women and men, stimulating professional training and labour mobility for young people, women's empowerment, vocational training and education.

Considering the specific situation arising due to the COVID-19 pandemic, the Employer members would also like to request the Government to report on the long-term policies adopted in support of a sustainable and resilient business recovery from the COVID-19 crisis.

Businesses in Mozambique and everywhere in the world need governments to do what only governments are empowered to do – to facilitate and create an enabling environment for private sector growth and resilience and to be part of solutions to SME financing partnerships. In the absence of governments creating such an environment, growth cannot take place and productive employment cannot be created. An enabling business environment is essential for creating a sustainable, predictable and incentivizing environment for investment and innovation.

**Worker members** – The Worker members would like to thank the Government of Mozambique for its comments. We also thank all the other speakers for their interventions. We welcome the efforts of the Government to adopt a National Employment Policy to address the huge economic and social challenges faced by the country.

The overwhelming majority of the working population is concentrated in subsistence agriculture. The poverty rate in Mozambique is rising. Nine in every ten workers are in the informal economy and the COVID-19 pandemic and its impact on society have cut down the rate of employment growth by almost half compared to 2019.

In view of these challenges, we call on the Government of Mozambique to review, in consultation with the social partners, the 2016 National Employment Policy in light of any recovery plans, to ensure that the post-pandemic recovery is human-centred, inclusive and that it respects labour rights. This must be done together with a review of the “Decent Work for Sustainable and Inclusive Economic Transformation in Mozambique” project, referred to as “MozTrabalha”.

The Government of Mozambique must review its policies and programmes with a view to promoting investment in the creation of decent, stable and lasting employment and to reducing poverty. In that regard, we recall the interdependence of economic, social and employment objectives and the need to coordinate the National Employment Policy with other economic and social policies so as to ensure their complementarity.

In addition, taking into account the characteristics and composition of employment in the country, it appears clear that specific measures must be adopted to create paths to formalization of the informal economy in line with Recommendation No. 204 and to address poverty in the agricultural sector.

In the context of post-pandemic recovery, policies must particularly address the needs of workers who were or still are hard hit by the pandemic and its consequences due to their overexposure to the infection risk, their lack of protection, or their heightened vulnerability to exclusion from the labour market.

The National Employment Policy must also address the great inequalities on the labour market, which specifically affect women and young workers. Further efforts are needed to achieve greater equality of opportunities in terms of access to employment, as well as equality of treatment concerning conditions of work.

All these measures must rest on a robust system of collection and analysis of statistical data, especially on the current situation and trends regarding the active population, employment, unemployment and underemployment throughout the country.

Finally, and this is a key point, the Government of Mozambique must take measures to ensure the full participation and genuine consultation of the social partners in all the steps of the National Employment Policy, from design to implementation and evaluation.

The objectives and principles of the Convention remain at the heart of any national employment policy and any national response to the pandemic.

Therefore, the Government must provide timely and updated information to the Committee of Experts to ensure that the measures adopted are in line with the Convention. We also call on the Government of Mozambique to accept ILO technical assistance.

## Conclusions of the Committee

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

**The Committee noted with regret the absence of any government report to the Committee of Experts since 2016.**

**The Committee noted the efforts made by the Government with the technical assistance of the ILO Office leading to the adoption a National Employment Policy. However, the Committee noted the persistence of a high level of poverty, unemployment and informality and the low completion rate of secondary education.**

**Taking into account the discussion, the Committee calls upon the Government of Mozambique to:**

- **review, in consultation with the social partners, the 2016 National Employment Policy, its subsequent implementation plans and the “Decent Work for Sustainable and Inclusive Economic Transformation in Mozambique” or “MozTrabalha” in line with the Convention to ensure an inclusive and human-centred post-pandemic recovery based on decent and sustainable employment;**
- **adopt measures to create paths to formalization of the informal economy in line with Recommendation 204;**
- **in consultation with social partners, take measures to improve access to higher education, increase the completion rate of higher education and ensure that vocational training is relevant to the labour market needs;**
- **establish and maintain a robust system of collection and analysis of statistical data, especially on the current situation and trends regarding the active population, employment, unemployment and underemployment throughout the country;**
- **adopt measures to address inequalities in the labour market, which specifically affect women and young workers, with a view to achieving greater equality of opportunity in employment as well as equality of treatment at work;**
- **in the context of post-pandemic recovery, report on the long-term policies adopted in support of a sustainable, resilient employment and economic recovery from the COVID-19 crisis, as well as measures to protect workers, in particular those at risk of exposure to infection;**

- **provide information on the stage and level of economic development and the mutual relationships between employment objectives and other economic and social objectives and any active policy designed to promote full, productive and freely chosen employment; and**
- **take measures to ensure the full participation and consultation of the social partners in line with the Convention.**

**The Committee requests the Government to provide a detailed report, including statistical data on the current situation and trends regarding the active population, employment, unemployment and underemployment throughout the country; and detailed information on the results of the specific measures adopted to address inequalities in the labour market, vocational training, education and women empowerment, as well as the challenges encountered, to the Committee of Experts before its next meeting in 2021.**

**Government representative** – The Government of Mozambique has taken note of the observations and recommendations of this honourable Committee. As we said in our presentation during the debate of this case, we have been facing tardiness in collecting data on labour market statistics. Our Government will continue its efforts. This year we are starting a survey on the labour force and in the middle of next year we will have a report, which will show us or which will allow us to see the impact of the employment policy and other economic policies on the labour market.

The Government will take all necessary measures to fully implement the recommendations of this honourable Committee and in this process we expect to have the technical assistance of the ILO.

## China – Hong Kong Special Administrative Region (notification: 1997)

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

#### Written information provided by the Government

##### Information provided on 20 May 2021

Hong Kong has been applying the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) with modifications in respect of Articles 3, 5 and 6 since 1963. The Hong Kong Special Administrative Region (HKSAR) Government has taken note of the observations of the Committee of Experts in 2019 and 2020 (the observations).

#### Freedom of Association and Right to Organise

As explained in the previous reports of the HKSAR on the application of Convention No. 87, the right and freedom of association, and the right and freedom to form trade unions in the HKSAR are guaranteed under the Basic Law of the HKSAR of the People's Republic of China (Basic Law). The Hong Kong Bill of Rights Ordinance (Chapter 383 of the Laws of Hong Kong) also provides for such rights.

Under the Trade Unions Ordinance (TUO) (Chapter 332 of the Laws of Hong Kong), any group of seven persons can apply to form a trade union. The number of trade unions registered under the TUO in the HKSAR increased over the years. Specifically, the number of registered employee unions increased by 56.5 per cent from 866 as at 31 December 2019 to 1,355 as at 31 December 2020. Except for dissolution by or at the request of trade unions, no trade union has been deregistered. In the HKSAR, trade union members and officers enjoy a range of rights under the TUO, including the immunity from civil suits for certain acts done in contemplation or furtherance of a trade dispute.

Sufficient safeguards against anti-union discrimination are accorded to employees under the Employment Ordinance (EO) (Chapter 57 of the Laws of Hong Kong). The EO stipulates that every employee has the right to be or to become a member or an officer of a trade union, to take part in the activities of the trade union at any appropriate time, and to associate with other persons for the purpose of forming a trade union. Employers must not prevent or deter employees from exercising these rights. Otherwise, they may incur criminal sanction.

On the International Trade Union Confederation (ITUC)'s observation in September 2016 alleging a group of coach drivers were all dismissed by the employer before a strike, the Labour Department of the HKSAR Government carried out a prompt investigation after the concerned coach drivers had lodged complaints on alleged anti-union discriminatory acts. While there was insufficient evidence to substantiate an anti-union discriminatory offence, the HKSAR Government took out prosecution against their employer on late payment of wages and conviction was secured.

The HKSAR Government is fully committed to protecting the trade union rights of employees. As always, we will not tolerate abuses of the law by employers. Subject to sufficiency of evidence, prosecution will be taken out against employers and/or persons acting on employers' behalf.



### Right of peaceful assembly of trade union leaders

Every person must observe the law in force in exercising his or her right of peaceful assembly. As pronounced by one of the judges at the Hong Kong Court of Appeal in the judgment of a sentencing case:<sup>1</sup>

The basic freedoms conferred on Hong Kong residents are comprehensive and in no way lesser than the freedoms enjoyed by people of other advanced and free societies. However, [the freedoms of assembly, speech, procession, demonstration and expression of opinions] are not absolute or unrestricted; they are subject to the supervision of the law. Hong Kong residents are obliged to observe the laws that are in force in Hong Kong, and the exercise of the rights conferred by law is by no means a reason or excuse for doing illegal acts. Any act of protest or demonstration for which the police have not issued a Notice of No Objection, or in which violence or the threat of violence is used to express one's opinions, crosses the boundary of the peaceful exercise of the rights and enters the territory of unlawful activities; it becomes an unlawful act which interferes with the rights and freedoms of others.

With regard to the alleged “repression” of protests by the Hong Kong Police Force (the police) in 2019, the accusation has completely ignored the violent and illegal nature of the acts by the rioters, as well as the unprecedented damage caused to society. The police have stringent guidelines on the use of force that are consistent with international human rights norms and standards. The use of force by the police are conscious decisions made having regard to actual circumstances and needs with due considerations.

In respect of the arrests of trade union leaders, any arrest and prosecution is directed against the criminal act and has nothing to do with the political stance, background or occupation of the person(s) concerned. It is a hypocritical argument of politics overriding justice for anyone advocating privilege for certain groups of people, such as labour representatives, to contend that their law-breaking acts could evade justice. The accused also has the right to a fair and open trial before an independent and impartial court.

With regard to Mr Lee Cheuk Yan, he was prosecuted in connection with unauthorized assemblies on 18 August 2019, 31 August 2019, 1 October 2019 and 4 June 2020. In respect of the first two cases, the court, which enjoys independent judicial power, has made a ruling and convicted the defendants. This proves that the prosecution actions were fully justified. The arrested persons were from diverse backgrounds, and the suspected unlawful acts had nothing to do with the activities of trade unions. The relevant judgments (in English only) are attached. As the judicial proceedings of the other cases are ongoing, it is inappropriate for us to comment further.

In respect of the alleged arrest of Mr Yu Chi Hang by the police in December 2015, we are unable to locate the alleged case based on the information provided. However, it should be emphasised that any arrest by the police is based on facts and evidence, and conducted in strict accordance with the law.

The HKSAR Government will continue to handle every case in a fair, just and impartial manner in accordance with the law.

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<sup>1</sup> Per Hon. Yeung VP, in *Secretary for Justice v Wong Chi Fung* [2017] 5 HKC 116, at paras 2–3.

## The Law of the People's Republic of China on Safeguarding National Security in the HKSAR

Safeguarding national security through legislation is in line with international practice. Western countries have also enacted laws to safeguard their respective national security, and established relevant legal systems and enforcement mechanisms. The HKSAR Government has a duty to enact laws for safeguarding national security under article 23 of the Basic Law, but despite a lapse of over 23 years since reunification, it has failed to legislate to prohibit acts and activities endangering national security as required under the Basic Law. Given the political situation in Hong Kong at that time, this task could not be completed in the foreseeable future.

As the HKSAR Government has detailed in the response to the observations of ITUC and the Hong Kong Confederation of Trade Unions in November 2020, this legal vacuum exposed the serious threats to national security faced by Hong Kong at the series of riots since June 2019. In view of the severe situation in Hong Kong at the time, with protestors becoming increasingly violent, there were growing signs of separatism and terrorism, seriously affecting the lawful rights and interests of Hong Kong residents. It is therefore necessary for the Central Authorities to take immediate steps to introduce measures for safeguarding national security in the HKSAR. Against this background, the Standing Committee of the National People's Congress adopted the Law of the People's Republic of China on Safeguarding National Security in the HKSAR (Hong Kong National Security Law) on 30 June 2020. The HKSAR Government promulgated the Hong Kong National Security Law for implementation on the same day.

The Hong Kong National Security Law clearly stipulates that human rights shall be respected and protected in safeguarding national security in the HKSAR; the rights and freedoms, including freedom of speech, of the press, of publication; of association, of assembly, of procession and of demonstration, which the HKSAR residents enjoy under the Basic Law and the provisions of the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall be protected in accordance with law. Any measures or enforcement actions taken under the Hong Kong National Security Law must be in line with the above principle. All persons shall observe the requirements under the law, shall not contravene the fundamental provisions of the Basic Law, and shall not endanger national security or public safety, public order or the rights and freedoms of others, etc. in exercising their rights.

The Hong Kong National Security Law further lays down many legal principles for the protection of defendants, including the presumption of innocence, the prohibition of double jeopardy, the right to defend and other rights in judicial proceedings that parties in judicial proceedings are entitled to. Any measures or enforcement actions taken under the Hong Kong National Security Law must observe these principles. The above features have put the Hong Kong National Security Law on a par with, if not superior to, similar national security laws in other jurisdictions.

As a matter of fact, the implementation of the Hong Kong National Security Law has delivered immediate results, and Hong Kong has emerged from chaos into stability, with a significant reduction in violent acts: the number of people arrested for offences in public order incidents in the first six months after the implementation of the Hong Kong National Security Law dropped by around 85 per cent year-on-year; the number of cases for arson and criminal damage also dropped by around 75 per cent and 40 per cent respectively. Activists endangering national security either fled or announced their withdrawal; advocacy of "Hong Kong independence" subsided substantially; the

community largely resumed normal, and people's lawful rights are protected. Our economy and people's livelihood could revive.

### Legislation on article 23 of the Basic Law

As aforementioned, the HKSAR has the constitutional responsibility for enacting legislation on article 23 of the Basic Law. Article 7 of the Hong Kong National Security Law also clearly stipulates that "(t)he Hong Kong Special Administrative Region shall complete, as early as possible, legislation for safeguarding national security as stipulated in the Basic Law of the Hong Kong Special Administrative Region and shall refine relevant laws".

In this regard, apart from drawing up effective and pragmatic proposals and provisions, the HKSAR Government will also conduct public consultation properly, formulate appropriate publicity and explanation strategies, as well as communicate more with members of the public, with a view to explaining clearly the legislative principles and details and avoiding misunderstanding.

### Conclusion

The HKSAR Government trusts that the above information will further clarify the concerns put forth in the Observations. The HKSAR Government has all along attached great importance to fulfilling all the obligations of International Labour Conventions applied to the HKSAR. We would like to assure the Committee of Experts that there is no infringement of or incompliance with the Convention. The HKSAR Government will continue to observe all the applied International Labour Conventions.

### Additional information provided on 8 June 2021

#### Unauthorized assembly

Under section 17A(2) of the Public Order Ordinance (POO), where any public meeting or public procession takes place in contravention of the Commissioner of Police's (the Commissioner) prohibition or objection, or where three or more persons taking part in a public gathering refuse or wilfully neglect to obey an order given by a police officer under the Ordinance, the public gathering shall be an "unauthorized assembly" in law.

Any public meeting with participants of more than 50 persons or any public procession with participants of more than 30 persons that are regulated under POO may be conducted only if a notice has been given to the Commissioner who gives no prohibition or objection. The Commissioner (or his delegated officers) has to carefully examine each case based on all the relevant facts and circumstances. By law, the Commissioner may only prohibit or object a public meeting or public procession if it is necessary in the interests of national security, public safety, public order or the protection of the rights and freedoms of others, and when those interests could not be met by the imposition of conditions.

There is also a proper appeal system in place under POO. If a person is aggrieved by the decision of the Commissioner to prohibit a public meeting, to object a public procession or to impose conditions on the holding of a public meeting or procession, he may lodge an appeal to the independent statutory Appeal Board on Public Meetings and Processions (Appeal Board). The Appeal Board is chaired by a retired judge. It may confirm, reverse or vary the prohibition, objection or condition imposed by the

Commissioner. The decision of the Appeal Board is also amenable to the challenge of judicial review.

The Hong Kong Court of Final Appeal has held that the statutory requirement for notification under POO is constitutional.<sup>2</sup> It is required to enable the police to fulfil the proactive duty resting on Government to take reasonable and appropriate measures to allow lawful demonstrations to take place peacefully. A legal requirement for notification is in fact common in jurisdictions around the world.

POO regulates matters in relation to assemblies and processions. The restrictions therein are consistent with the provisions of the International Covenant on Civil and Political Rights.

### The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region

According to article 1 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (Hong Kong National Security Law), the Law is enacted for the purpose of:

- (a) ensuring the resolute, full and faithful implementation of the policy of One Country, Two Systems under which the people of Hong Kong administer Hong Kong with a high degree of autonomy;
- (b) safeguarding national security;
- (c) preventing, suppressing and imposing punishment for the offences of secession, subversion, organization and perpetration of terrorist activities, and collusion with a foreign country or with external elements to endanger national security in relation to the Hong Kong Special Administrative Region;
- (d) maintaining prosperity and stability of the Hong Kong Special Administrative Region; and
- (e) protecting the lawful rights and interests of the residents of the Hong Kong Special Administrative Region.

It can be seen that the purpose of the enactment of the Hong Kong National Security Law has no direct relationship with labour issues.

The Hong Kong National Security Law has also clearly stipulated four categories of offences that endanger national security, namely secession, subversion of state power, terrorist activities, and collusion with a foreign country or with external elements to endanger national security. Such offences are clearly defined in the Hong Kong National Security Law and are similar to those in the national security laws of other jurisdictions. The elements, penalties, mitigation factors and other consequences of the offences are clearly prescribed in Chapter III of the Hong Kong National Security Law. The prosecution has the burden to prove beyond reasonable doubt that the defendant has the actus reus and mens rea of the offence before the defendant may be convicted by the court. Law-abiding people, including Hong Kong residents/labours and overseas tourists/investors, will not unwittingly violate the law.

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<sup>2</sup> *Leung Kwok Hung and Others v. HKSAR* [2005] 3 HKLRD 164.

## Legislation on article 23 of the Basic Law

The HKSAR has the constitutional responsibility for enacting legislation on article 23 of the Basic Law to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets; to prohibit foreign political organisations or bodies from conducting political activities in the HKSAR; and to prohibit political organizations or bodies of the HKSAR from establishing ties with foreign political organizations or bodies. The HKSAR Government has failed for the past 23 years since reunification to enact its national security laws as required by article 23 of the Basic Law to safeguard national security.

Article 7 of the Hong Kong National Security Law also clearly stipulates that "(t)he Hong Kong Special Administrative Region shall complete, as early as possible, legislation for safeguarding national security as stipulated in the Basic Law of the Hong Kong Special Administrative Region and shall refine relevant laws".

## Discussion by the Committee

*Interpretation from Chinese:* **Government representative, Director-General of the Department of International Cooperation** – I would like to congratulate you on your election as the Chair of this Committee. We have carefully noted that the Committee of Experts has made its observations on the application of Convention No. 87 in Hong Kong Special Administrative Region (SAR). I will now give the floor to the Representative of Hong Kong SAR to make detailed remarks.

*Interpretation from Chinese:* Another **Government representative, Commissioner for Labour** – The Government of Hong Kong Special Administrative Region of the People's Republic of China or the Hong Kong SAR would like to thank the Committee on the Application of Standards for the opportunity here to address the Committee of Experts' observations in 2019 and 2020 on the Hong Kong SAR's application of the Convention.

This Convention has been applied to Hong Kong with modifications in respect of Articles 3, 5 and 6 since 1963. All along, the Hong Kong SAR Government has been fully committed to taking measures to protect employees' rights to form and join trade unions, and to participate in trade union activities.

The Basic Law of the Hong Kong SAR of the People's Republic of China, or Basic Law, protects the right and freedom of association, and the right and freedom of Hong Kong residents to form and join trade unions.

The Hong Kong Bill of Rights Ordinance also provides for such rights. However, as in other jurisdictions, these rights are not absolute and are subject to restrictions provided by law for the protection of national security, public order, etc.

The Convention clearly stipulates that one shall respect the law of the land in exercising the rights provided for in this Convention. The Committee of Experts also pointed out in its observations that workers' and employers' organizations should have the right to organize their activities in full freedom, while respecting the law of the land.

The authorities should refrain from any interference which would restrict freedom of association and assembly or impede the lawful exercise thereof, provided that the exercise of these rights does not cause a serious and imminent threat to public order.

The Hong Kong SAR Government has been committed to promoting sound trade union administration and trade unionism. Trade union members and officers enjoy a

range of rights under the Hong Kong SAR's law on trade unions, including the immunity from civil suits for certain acts done in relation to trade disputes. Although the purposes of a trade union may be involved in restraint of trade, trade union members are not liable to criminal prosecution for conspiracy.

Over the past decade, the number of trade unions registered in the Hong Kong SAR increased steadily and recorded a sharp rise in 2020. Specifically, the number of registered employee unions increased more than half from 866 at end 2019 to 1,355 at end 2020. These figures demonstrate that the right and freedom of association and the right and freedom to form and join lawful trade unions are fully enjoyed by Hong Kong residents. Moreover, the visits to trade unions conducted by the Labour Department have not found any acts of interference of employee and employer organizations by each other in their establishment, functioning or administration.

No complaint from trade unions about interference was received.

Fully upholding the protection of the right of our workforce to join trade unions, we have put in place a series of safeguards to protect employees against anti-union discrimination under Hong Kong's labour law. Our law stipulates that an employer shall not prevent or deter an employee from exercising his rights to be or to become a member or an officer of a trade union, to take part in the union activities at any appropriate time, to associate with other persons to form a trade union, etc.

Furthermore, the law does not allow an employer to dismiss, penalize, or discriminate against an employee by reason of his exercising the above rights. Otherwise, offenders, including employers or persons acting on their behalf, may incur a criminal sanction.

On the alleged dismissal of a group of coach drivers by the employer before a strike raised by the International Trade Union Confederation (ITUC) in 2016, referred to in a Committee of Experts' observations, the Hong Kong SAR Government carried out a prompt investigation after receiving complaints on the alleged anti-union discriminatory acts.

While there was insufficient evidence to substantiate an anti-union discriminatory offence, the Hong Kong SAR Government took out prosecution against the employer on late payment of wages and a conviction was secured.

The Hong Kong SAR Government does not, and will never, tolerate abuses of law by employers, and will promptly take out impartial and in-depth investigation into complaints on suspected anti-union discriminatory acts. Subject to sufficiency of evidence, prosecution will be taken out against the employers and/or persons acting on employers' behalf.

Hong Kong is a society respecting and upholding the rule of law. Any arrest and prosecution is directed against the criminal acts according to the law, and has nothing to do with the political stance, social background or trade union membership of the persons concerned.

The police's arrest actions must be based on facts and evidence, and conducted in strict accordance with the law. The Department of Justice oversees criminal prosecution, free from any interference. There is an independent judiciary with the power of final adjudication in Hong Kong. Everyone will receive a fair and just trial. It is a hypocritical argument of politics openly overriding legal justice for anyone to advocate privilege for certain groups of people, such as labour representatives, and contend that they can violate the law without facing legal sanctions.



The court, which enjoys independent judicial power, has, in accordance with the law, ruled and convicted individual unionists in contravention of criminal offences after trial. The fair and transparent legal proceedings and court rulings prove that the prosecution actions were fully justified in fact and in law. In these criminal cases, prosecutions of the persons concerned were made because of their criminal offences and had completely nothing to do with their trade union membership. As the judicial proceedings of the other related cases are still ongoing, it is inappropriate for the Hong Kong SAR Government to make comment further in this occasion. In respect of the alleged arrest of a trade unionist (Mr Yu Chi Hang) by the Hong Kong Police in December 2015 which the ITUC mentioned, we are unable to locate the alleged case based on the information provided. However, we must hereby stress again that all arrests and prosecutions were made having regard to the persons' acts, which violated the law and had nothing to do with their personal background, including their trade union membership or activities.

The Hong Kong SAR will continue to handle every case in a fair, just and impartial manner in accordance with the law.

As regards the Committee of Experts' concern about the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong SAR or Hong Kong NSL, we must point out that safeguarding national security through legislation is in line with the international practice. Various countries also have their own legislation and relevant enforcement mechanisms to safeguard their own national security.

The Hong Kong SAR Government has a duty to enact laws for safeguarding national security under article 23 of the Basic Law, but 23 years after the reunification, has still not been able to legislate to prohibit acts and activities endangering national security as required by the Basic Law.

Given the political situation in Hong Kong at that time, this task could not be completed in the foreseeable future.

This legal vacuum exposed the serious threats to national security faced by Hong Kong at the series of riots since June 2019. In view of the severe situation in Hong Kong at that time, with protesters becoming increasingly violent, there were growing signs of separatism and terrorism, seriously affecting the lawful rights and interests of Hong Kong residents. It is therefore necessary for the Central Authorities to take immediate steps to introduce a legal system and enforcement mechanisms for safeguarding national security in the Hong Kong SAR. Against this background, the Standing Committee of the National People's Congress of the People's Republic of China adopted the Hong Kong National Security Law (NSL) on 30 June 2020. The Hong Kong SAR Government promulgated the Hong Kong NSL for implementation on the same day.

We hope that the Committee of Experts can appreciate that the Hong Kong NSL has not amended any provision of the Basic Law. All human rights provisions remain untouched. The Hong Kong SAR Government will continue to ensure the enjoyment by the Hong Kong residents of human rights and freedoms provided under the Basic Law.

In fact, the Hong Kong NSL clearly stipulates that the human rights shall be respected and protected in safeguarding national security in Hong Kong. The rights and freedoms, including freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration, which the Hong Kong SAR residents enjoy under the Basic Law and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall be protected in accordance with law. Any measures or

enforcement actions taken under the Hong Kong NSL must be in line with the above principles. On the other hand, when exercising these rights, one must respect the laws, refrain from contravening the fundamental provisions of the Basic Law, or endangering national security, public safety, public order, or rights or freedoms of others.

The Hong Kong NSL further lays down many legal principles for the protection of defendants, including the presumption of innocence, prohibition of double jeopardy, the right to defend and other rights in judicial proceedings that parties in judicial proceedings are entitled to. Any measures or enforcement actions taken under the Hong Kong NSL must observe these principles and stringent procedural requirements, including the conditions that must be met when seeking authorization to take investigation measures. The above features have put the Hong Kong NSL on a par with, if not superior to, similar national security laws in other jurisdictions.

Any law enforcement actions taken by the Hong Kong SAR Government are based on evidence, strictly according to the law, directed at the criminal acts committed by the persons or entities concerned. They have absolutely nothing to do with people's political stance, social background, occupation or trade union activities. In this regard, all law enforcement actions under the Hong Kong NSL taken by the law enforcement agencies target acts endangering national security, with a view to fulfilling the purposes of the enactment of the Hong Kong NSL, which include preventing, suppressing and imposing punishment for the offences endangering national security and maintaining the prosperity and stability of the Hong Kong SAR. It is definitely not related to labour issues or whether the concerned entity or person is a labour union or unionist.

The implementation of the Hong Kong NSL has delivered immediate results, and Hong Kong has emerged from chaos into stability, with a significant reduction in violent acts: the number of cases for arson and criminal damage dropped by around 75 per cent and 40 per cent respectively. Advocacy of "Hong Kong independence" subsided substantially. Public order largely resumed normal. Lawful rights of people, including workers and trade unions, are protected, free from the risk of being attacked based on their opinions. This is conducive for the trade unions and workers to voice their opinions and defend their rights and interests. On top of which, economic and the people's livelihoods could revive.

We hope that the above could address the Committee of Experts' concern on the Hong Kong NSL.

Finally, we must stress that the rights of trade unions and employees to take part in trade union activities in the Hong Kong SAR are adequately protected by our trade union and labour laws. Their rights and freedoms have remained intact and have not been affected in any way by the implementation of the Hong Kong NSL. We assure the Committee that the Hong Kong SAR will continue to comply with all the obligations of International Labour Conventions applied to the Hong Kong SAR. We thank the Committee of Experts for its observations. The Hong Kong SAR Government will continue to provide the Committee of Experts with the information requested.

**Worker members** – This is the first time that the Committee has examined China – Hong Kong SAR and its application of the Convention, but the acute decline in respect for civil liberties and freedom of association raises extremely serious concerns. Trade union rights are seriously under attack. Trade unionists are being persecuted for defending the hard-won rights of workers and for carrying out legitimate trade union activities. The authorities are violating their obligations under the Convention.

First, on the situation of civil liberties and respect for trade union rights. Brother Lee Cheuk Yan, General Secretary of the Hong Kong Confederation of Trade Unions (HKCTU) and long-time participant in the Conference Committee was prosecuted for participating in unauthorized protests on 18 August 2019, 31 August 2019, 1 October 2019 and 4 June 2020. Brother Lee has been convicted for the August and October 2019 charges. Today, the trial for the June 2020 charges has commenced.

The Government alleges that Brother Lee's participation had nothing to do with his trade union activities and therefore his arrest and detention are justified. The Government is wrong on this. The supervisory bodies of the ILO, including the Committee of Experts, have stated that the exercise of civil liberties by trade unionists relating to the Government's economic and social policies and in defence of socio-economic and occupational interests are covered by the Convention.

The Committee of Experts has further noted that where workers' and employers' organizations deem that they do not enjoy the fundamental liberties necessary to fulfil their mission, they are justified in resorting to peaceful protests to realize such fundamental liberties. Such peaceful actions are bona fide trade union activities. We note that the district court in its verdict concluded that the demonstration he participated in was peaceful.

In its examination of this case, the Committee of Experts has again indicated that peaceful strikes and demonstrations by trade unionists should not give rise to arrests and detentions. The supervisory bodies are clear that among those civil liberties essential for the normal exercise of trade union rights are freedom of expression, freedom of assembly, freedom from arbitrary arrest and detention, and the right to a fair trial by an independent and impartial tribunal. The authorities in the Hong Kong SAR must guarantee civil liberties and freedom of association in law and in practice. No one should be deprived of their freedom or be subject to penal sanctions for peacefully participating in protest strikes or demonstrations.

Second, on the Public Order Ordinance. This regulation provides for broad discretionary powers to prohibit public assemblies. The police authorities have the power to disqualify public assemblies as "unlawful" without the obligation to show any evidence of their efforts to facilitate the exercise of the right to assemble freely. Organizers and participants in unauthorized assemblies face a penalty of imprisonment for up to five years. Police authorities tend to crack down instead of guaranteeing and facilitating peaceful protests. If an assembly is qualified by the authorities as a "riot" – based on vaguely defined criteria – the penalty can be as severe as 12 years' imprisonment. It is impossible to freely exercise the right of freedom of assembly in this context.

Now, I would like to move on to the drastic crackdown on civil liberties and surveillance that came with the adoption of the National Security Law on 30 June 2020. Under the National Security Law, offences related to national security, such as "subversion", "terrorism" and "collusion with foreign forces", incur maximum penalties of life imprisonment. But these offences are so broadly defined that virtually anything could be deemed a threat to "national security".

We will reiterate the comments of the Committee of Experts with respect to Article 8 of the Convention. The law of the land shall not be such as to impair, or applied in a manner that impairs, the guarantees provided by the Convention. The authorities must ensure that trade unions have the right to organize their economic and social activities in full freedom.

Several trade union leaders were charged in February 2021 with the offence of “conspiracy to commit subversion” under the National Security Law for merely taking part, in connection with their trade union functions, in the primary polls organized in 2020. They face life imprisonment if convicted.

We recall that in its latest observations on the application of the Convention by the Hong Kong SAR, the Committee of Experts categorically confirmed that the right to engage in certain political activities, including expressing support for a political party considered more able to defend the economic, social and occupational interests of trade union members, is protected under the Convention. The Committee on Freedom of Association has also issued numerous observations supporting the rights of trade unions to express publicly their opinion regarding the Government’s economic and social policy or to express support, if so decided by their members, for a political party as a means towards the advancement of their economic and social objectives.

The Committee of Experts has also emphasized that international trade union solidarity constitutes one of the fundamental objectives of any trade union movement and expects the Government to ensure that normal trade union interactions and activities are indeed protected in law and in practice.

We must also point out that the COVID-19 measures adopted in March 2020 under the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation to prohibit all public gatherings of more than four persons under a penalty of six months’ prison and a fine is disproportionate and was adopted without any prior tripartite consultation.

The situation in Hong Kong SAR is further compounded by numerous and important gaps in the national legislation that effectively deny fundamental labour rights to workers in Hong Kong SAR, including denying civil servants the right to organize.

The turn of events in Hong Kong SAR is serious and threatens the free exercise of trade union rights. The extent of surveillance, pressure and attacks on the trade union movement in Hong Kong SAR under the National Security Law is unprecedented. Democracy and respect for civil liberties are essential for the exercise of the fundamental right of workers’ and employers’ organizations. We call on the authorities responsible for Hong Kong SAR to take action without delay to ensure full compliance with the international standards on freedom of association.

**Employer members** – This case concerns the application in law and practice of the Convention by the Hong Kong SAR of the People’s Republic of China, a fundamental Convention that was ratified in 1997. We note that this is the first time that the Committee has discussed this case. At the outset, we would like to express our gratitude to the Government representatives for the comprehensive oral and written information on this case provided to the Committee.

On the issue of the dissuasion of workers from exercising the right to peaceful assembly, we note that the Committee of Experts in 2020 observed that the Government has not provided information on the 2016 ITUC observations concerning the application of the Convention.

We also note that in its 2020 report, the Committee of Experts noted allegations made by the ITUC and the HKCTU concerning issues relating to the September 2020 public protests, and also allegations on the use of the National Security Law.

The Employer members must take due note that the Government has responded to these allegations in its comprehensive oral submission to the Committee today, and also

in its written information dated 20 May and 8 June 2021. We thank the Government for the provision of this information and the clarification it has afforded.

Given the fundamental importance of the principle of freedom of association at the core of ILO values, the Employer members invite the Government to continue to provide full information regarding the outcomes of procedures to examine police action and arrests made in connection with the protests, and to take all necessary measures to guarantee the right of employers' and workers' organizations to organize their activities, including peaceful public meetings.

I would now like to turn to the second issue highlighted by the Committee of Experts regarding the National Security Law and its relation to Articles 2, 3, 5 and 8 of the Convention.

The Employer members take note from the Committee of Experts' observations of the various allegations and concerns expressed by the ITUC and the HKCTU regarding the scope and impact of the National Security Law, which entered into force on 30 June 2020. The Employers' group notes that the Government has responded to these allegations in its written information submitted to the Committee on 20 May 2021.

The Employer members take note of and thank the Government for its submission regarding the provisions of the National Security Law. The Employers' group would like to point out that the content of Article 8 of the Convention sets out that, in exercising the rights provided for in the Convention workers and employers and their respective organizations, like other persons or organized collectives, shall respect the law of the land, and 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 the Convention.

The rights provided for in the Convention referred to in Article 8 include the rights of workers' and employers' organizations to organize their activities in full freedom and to formulate their programmes with a view to defending their occupational interests, in particular the right for workers and employers and their respective organizations to hold meetings and peaceful protests to freely express support for a political party and to have close contact and communication with international organizations of workers and employers. In that regard, it is important that public authorities avoid interference with these rights and also that the exercise of these rights does not cause a serious and imminent threat to public order. Public order must be maintained.

The Employer members trust that the Government will continue to undertake efforts so that the rights of employers and workers and their organizations under the Convention are fully protected in the implementation of the National Security Law.

The Employer members request the Government, in consultation with the social partners, to monitor the application of the National Security Law and provide information to the Committee of Experts on the impact that the law has on the application of this Convention according to the regular reporting cycle.

**Worker member, China** – As a trade union worker in the largest trade union organization in Hong Kong SAR – the Hong Kong Federation of Trade Unions (FTU), which has over 410,000 members in Hong Kong SAR – I have been elected by trade unions as an employee representative on the Labour Advisory Board for the third time. Over decades, local employees have always been able to participate or organize any trade unions in the way they want. My speech represents the voice of local Hong Kong employees to the ILO and this Committee.

The implementation of the National Security Law is strongly supported by the majority of local employees. The primary objective of the Law is to maintain social stability by protecting the safety of every single Hong Kong SAR resident. Such stability is the foundation of the livelihood of our people. Hong Kong SAR has suffered from social riots and extreme political actions in recent years. Its GDP fell by 3 per cent in 2019, even before COVID-19. Such a downturn in the economy is a direct consequence of the man-made disasters created by the rioters. Those agitators aimed to paralyse Hong Kong SAR by breaking what we call in Chinese “the rice bowl” of employees of various industries, which includes catering, tourism, hospitality, retail, aviation and transportation.

During the 2019 riot, can you imagine taxi drivers and truck drivers being dragged out of their vehicles and beaten, and being lynched, just because they were not happy with the blockage of traffic created by the rioters?

Can you imagine local eateries and shops being burnt down by rioters only because they supported the police? Can you imagine an old janitor, Mr Luo Changqing, being killed by the rioters who randomly threw bricks at him? Can you imagine that the rioters could trace the location of the Hong Kong SAR police on a real-time basis using a mobile app called “HKmap.live”? The rioters occupied universities, they paralysed the Cross-Harbour Tunnel, and they made more than 10,000 petrol bombs to attack our police force. The social riot in 2019 was a nightmare for most of us here in the Hong Kong SAR.

How despicable to say that the rioters are acting in the name of peace and democracy. The implementation of the National Security Law is tackling the root cause of the issue, restoring the safety and stability that our people deserve. We no longer have to worry about the random blockage of traffic, the petrol bombs, or being randomly attacked simply because we have a different political opinion. Unfortunately, not only do Western media turn a blind eye to the riots, they also demonize the National Security Law.

In fact, the freedom of association under the National Security Law is still being enjoyed by all of us regardless of our different political stands. For example, the HKCTU successfully organized a strike for employees from a beverage company last month, whereas our FTU has also organized over 50 activities, like petitions, press conferences, protests for the minimum wage and unemployment assistance, as usual since the implementation of the National Security Law. Furthermore, there has been an increasing number of newly formed trade unions.

It is agreed that any social actions for rights must abide by the law and must not pose any threat to society. The National Security Law helps to create a secure environment, which facilitates the development of trade unions. The Law also promises our original labour rights without harm. The Law ensures that the international cooperation and involvement of trade unions will continue as usual, as I am doing now.

Finally, I must mention what happened on 1 October 2019. On that day, it was the 70th anniversary of the Chinese National Day, but that day the rioters paralysed the Hong Kong SAR crazily and attacked the police everywhere. Very terrible! Very, very terrible! If you were a Hong Kong SAR resident like me, you would support the enactment of the National Security Law.

**Employer member, China** – It is my honour to speak on behalf of the employers in Hong Kong SAR today. The right and freedom of association and the right and freedom to form trade unions in the Hong Kong SAR are guaranteed under the Basic Law of the Hong Kong SAR of the People’s Republic of China. As employers, we fully respect and recognize employees’ right to form trade unions and organize their activities. We



maintain open and constructive dialogue with workers' organizations to discuss and resolve matters of mutual concern.

Through tripartite dialogue between workers' and employers' organizations and the Government, employee rights and benefits in the Hong Kong SAR have been improving over the years. To name a few: statutory paternity leave has been extended from 3 days to 5 days since January 2019, and statutory maternity leave has been extended from 10 weeks to 14 weeks since last December. Besides, proposals on progressively increasing the number of statutory holidays from 12 days to 17 days a year, abolishing the arrangement of using employers' mandatory contributions under the Mandatory Provident Fund System to offset severance payments and long service payments, and raising the maximum penalty for violating occupational safety and health legislation are in the pipeline.

While fully respecting employees' freedom of association, we firmly believe that no one is above the law. Every person must observe the law in force and respect others in exercising his or her rights and freedom. In respect of the arrests of certain Hong Kong SAR people mentioned in the Committee of Experts' observations, it so happened that a small number of trade unionists were involved. To my understanding, their arrests had nothing to do with their participation in trade union activities.

The rule of law, underpinned by our independent and impartial judiciary, has all along been the cornerstone of the Hong Kong SAR's continued success as a world-class city and an international financial centre. Please rest assured that all the accused will have access to impartial, fair and open trials before the courts.

As many of you know, between June 2019 and early 2020, the Hong Kong SAR was haunted by a series of violent protests and public disorder. Many shops, restaurants and businesses were targeted by extremists and vandalized, while thousands of others were forced to close. Rioters' disregard for the rule of law not only damaged Hong Kong SAR's reputation as a safe city and an international financial and business centre, but also affected many small businesses and threatened the livelihoods of innocent citizens.

It is against such a backdrop that the Hong Kong National Security Law was implemented in Hong Kong SAR. Many jurisdictions have national security laws in place. We welcome the implementation of the National Security Law, which has helped restore stability and sustain the Hong Kong SAR's future development. We trust that with a safe and stable environment, the Hong Kong SAR will continue to attract investment, businesses and tourists from around the world. The National Security Law clearly stipulates that human rights shall be respected and protected. The rights and freedoms, including the freedom of association, provided under the Basic Law have remained intact and have not been affected in any way upon the enactment of the National Security Law. We have no doubt that employees in the Hong Kong SAR will continue as before to enjoy and exercise their rights to freedom of association to the fullest extent. As for employers, we will continue to enjoy the freedom to communicate and cooperate with other international employer groups.

**Government member, Slovenia** – I have the honour to speak on behalf of the following 26 countries: **Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden**, which are also members of the European Union, as well as **Norway**.

We are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights, the right to organize and to freedom of association. We actively promote the universal ratification and implementation of fundamental international labour standards, including the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). We support the ILO in its indispensable role to develop, promote and supervise the implementation of ratified international labour standards and of fundamental Conventions in particular.

We regret that the fundamental freedoms, democratic principles and political pluralism, including fundamental principles and rights at work that are central to Hong Kong's identity and prosperity, are under increasing pressure.

In line with the observations of the Committee of Experts, we call on the authorities to ensure that trade unionists are able to engage in their activities in a climate free of violence and intimidation, without the threat of police repression or arrest, and within the framework of a system that protects and guarantees the effective respect of fundamental rights and civil liberties and refrains from any interference which would restrict these rights and liberties.

In this regard, the imprisonment of pro-democracy figures, including trade unionist Lee Cheuk Yan, for non-violent acts when exercising protected civic rights is a troubling development.

As identified by the Committee of Experts, we note the possible negative effects that the application of the National Security Law may have on the rights enshrined in the Convention, and the need to monitor and provide information on the impact that the Law has already had, and may continue to have, on the application of the Convention.

In this context, we reiterate their grave concerns following the enactment of the National Security Law, both to the substance of the new legislation and to the process by which it was adopted, without any meaningful prior consultation of Hong Kong's Legislative Council and social partners. We remain unsettled about the conformity of the new law with Hong Kong's Basic Law and with China's international commitments.

We similarly reiterate our grave concerns over the reform of the electoral system, which will have significant impact on democratic accountability and political pluralism in Hong Kong. We call upon China to uphold its international commitments also in this respect. We consider it essential that the existing rights and freedoms of Hong Kong's residents are fully protected, including freedom of association, of assembly, of procession and of demonstration.

We are committed to the social stability and prosperity of Hong Kong and we will continue to follow the developments closely.

**Government member, Cuba** – Cuba notes the information provided by the Government of China to the effect that, faced with acts of violence, any responsible Government or law enforcement agency would be obliged to intervene in a legal manner in order to protect the citizens and their right to resume a normal life. The exercise of the rights set out in the Convention by workers, employers and their respective organizations, as well as by other persons or organized communities, requires full respect of the law of the country.

The information provided by the Government affirms that there is no proof that any person has been detained, persecuted, monitored or prosecuted for the exercise of trade union activities and that those who have been charged in this case benefit from similar procedural guarantees and have access to a just and open judgement. It also

indicated that the National Security Law is in accordance with international practice and specifically provides that in safeguarding national security human rights shall be respected and protected.

As happens in all States, the promulgation of national legislation is in strict accordance with the international obligations undertaken and relevant means of action are established adapted to their situation. In the same way as in other countries, in order to respond to and control COVID-19, restrictive measures have been adopted to reduce infection in communities, including the prohibition to gather in groups, which must not be understood as a prohibition of the exercise of freedom of assembly and peaceful association.

My delegation reiterates the importance of dialogue and tripartism with a view to promoting trade union rights, and welcomes the information provided.

**Employer member, Pakistan** – It is the fundamental right of every workers' organization to protest and lodge complaints against any violation of ILO Conventions. The representatives of employers' organizations also possess the inalienable right to respond by presenting details, evidence and realities.

The case against the Hong Kong SAR is in the list of cases that is already truncated due to the work format as well as the shortened daily time frame. Without sounding condescending, are the deliberations on this case more crucial than other cases that are more vital and imperative?

It is essential that certain principal points must be taken into consideration in determining the complaint.

Firstly, it does not make practical sense that the Hong Kong SAR Government would violate the Basic Law that protects the right and freedom of association. If there is a contravention, there have to be cogent and rational reasons. This does not imply that contraventions are a matter of policy or a suppression of prescribed rights. The frequent protests, rallies and strikes seriously affected the economy, tourism, security, tradition and culture of Hong Kong. There is no ban on workers exercising their right to peaceful assembly, but this does not give carte blanche to ignore the country's dynamics. It has to be established that infiltrators and anti-social elements took advantage of the genuine activities of trade unions and engaged in unlawful and illegal acts.

Therefore, it is proposed that the case be suspended.

**Worker member, Germany** – I am speaking on behalf of the German Confederation of Trade Unions (DGB), the Center of United and Progressive Workers (SENTRO) of the Philippines, the Netherlands Trade Union Confederation (FNV), the General Labour Federation of Belgium (FGTB) and the Trade Union Confederation of Workers' Commissions (CCOO). The Committee of Experts requests the Government "to ensure that trade unionists are able to engage in their activities in a climate free of violence and intimidation and within the framework of a system that guarantees the effective respect of civil liberties".

The rights under Article 3 of the Convention include, in particular, the right to hold trade union meetings and to organize protest action. They encompass as well certain political activities, such as expressing support for a political party considered more able to defend the interests of members, and having close contact and communication with international organizations of workers. The reality in the Hong Kong SAR is a far cry from this. Some examples: on May Day 2020 and 2021, HKCTU members who publicly

distributed handouts and gave speeches were surrounded and cordoned off by dozens of police officers to cut the public off from them.

In March 2021, four members of the healthcare workers' union who spoke publicly on vaccination precautions and privacy protections on the COVID-19 digital tracker were surrounded by police, asked for their ID, photographed and videotaped.

Unions hosting film screenings exclusively for members were visited by the Office for Film, Newspaper and Article Administration. Members attending the screenings were harassed and photographed by pro-Government media, and unions were forced to cancel the screenings.

Union leaders who represented their members in political elections were arrested last year and prosecuted for allegedly conspiring to subvert state power under the National Security Law. They had been campaigning for reforms in public spending, including health and welfare, and for the monitoring of international human rights standards in the Hong Kong SAR.

The prosecutions create a climate of intimidation and discourage trade unionists from participating in elections and advocating for democratic and social reforms.

We therefore call on the Government to immediately bring its practices and laws into compliance with the Convention.

*Interpretation from Russian:* **Government member, Russian Federation** – The Russian Federation fully shares the assessment made by the representative of the People's Republic of China about compliance with the provisions of the Convention by the authorities in the Hong Kong SAR.

We believe that the authorities in that region are strictly observing the relevant provisions of the ILO Convention and are steadfastly attached to complying with requirements on submitting the necessary reports to the International Labour Office.

As to the allegations against the Hong Kong SAR authorities, we believe that they are political and unfounded. We believe that the authorities are taking legal measures to re-establish order and we do not consider that they are a threat to the freedom of association of the population of the territory. We hope that the Committee will note with satisfaction the detailed report provided on this issue, which has been provided by our Chinese partners, and bring an end to consideration of this question. We are, generally speaking, seriously concerned about the tendency in the ILO to link reports to internal events in a country. Such a practice will lead to the sharp politicization of both reports and decisions, and that will make it virtually impossible to ensure compliance with the decisions taken. In the end, this could constitute a threat to both the authority and reputation of the ILO. We urge the ILC and its committees to refrain from taking a biased and confrontational approach in favour of constructive and mutually respectful cooperation. That will make it possible to promote decent work and protect the interests of both workers and employers.

**Employer member, Bangladesh** – We take note that the Committee of Experts stated in the 2020 observations that workers' and employers' organizations in the Hong Kong SAR should have the right to organize their activities in full freedom and to formulate their programme with a view to defending the occupational interests of their members while respecting the law of the land, while at the same time the authorities should refrain from any interference which would restrict freedom of association and assembly or impede the lawful exercise thereof, provided that the exercise of these rights does not cause a serious and imminent threat to public order.

We take note of the Hong Kong SAR's serious efforts in upholding the rule of law, as underpinned by its independent and impartial tradition. Any responsible government or law enforcement agency would be duty bound to intervene in a legal manner in order to protect citizens and their right to resume normal life. Every person must observe the law enforced when exercising his or her right of peaceful assembly.

The Basic Law has protected the right and freedom of association and the right and freedom to form and join trade unions in Hong Kong SAR. There is no detrition of the right and freedom of Hong Kong SAR residents to form and join trade unions. We understand the number of registered trade unions has actually increased by 56.5 per cent from 866 at the end of 2019 to 1,355 at the end of 2020. Labour rights and benefits in Hong Kong SAR have actually been improving progressively.

Finally, based on these facts we recommend that the Committee provide constructive observations for Hong Kong SAR to restore its resilient economy and sustainable development in a world-class city.

**Worker member, United Kingdom of Great Britain and Northern Ireland** – I speak on behalf of the Trades Union Congress (TUC) and the International Transport Workers' Federation (ITF). Like freedom of association, collective bargaining is both a fundamental right in itself and an enabling right that improves access to decent work and to the protection of other ILO Conventions and is a corollary to the right to freedom of association protected under the Convention.

For years, the Committee of Experts has been requesting that the Government of Hong Kong SAR take new measures to encourage collective bargaining. The Government has declined to do so, claiming that bargaining in Hong Kong SAR takes place in a conducive atmosphere with agreements in, for example, the airline industry, but only 1 per cent of workers benefit from coverage by collective bargaining agreements.

As for airlines, the national flag carrier has now unilaterally ended the recognition and bargaining agreements that had underpinned years of constructive engagement with the Flight Attendants Union, to which 75 per cent of the company's cabin crew belong. Compounding this abrogation of the company's duties, collective bargaining, it argues, is "outdated" and "no longer relevant". It also offered the union the chance to, "represent [its] members in a more effective way than in the past". Such pronouncements seriously undermine the ability of unions to organize their activities and programmes in full freedom.

The Government claims its voluntary approach is successful, but voluntary collective bargaining rests on the respect for the independence of the parties, and here we have an employer of great significance to the Hong Kong SAR doing quite the opposite.

The real reason for ending the agreement is clear. Not only did the company abandon ten years of annual salary negotiations, it laid off 6,000 employees and pressured its workers to sign new conditions of service that cut their pay and benefits by up to 40 per cent and that contained a clause that any new agreement reached with the union would not apply to the whole workforce. The company may believe that the fundamental principles are no longer relevant, but I hope this Committee will disagree strongly, and it is the Government's failure to act on the urging of the Committee of Experts, and its complacency over collective bargaining in the Hong Kong SAR, that have given the airline the green light to behave in a way contrary to the values of this house.

**Government member, Pakistan** – Pakistan appreciates the continuing commitment of the Government of China to implementing its Convention-related

obligations and its commitment to implementing international labour standards, particularly the protection of the right to organize. It is encouraging that the HKSAR has taken a number of significant legislative and administrative steps to achieve these objectives. It has paid due attention to upholding the rule of law through its independent institutions and has ensured the enjoyment of rights, including freedom of association and collective bargaining.

We are cognizant of the responsibility of any government to maintain public order and ensure the safety of its citizens, including health security and safety in the special circumstances of a global pandemic. Measures taken in this context should not be misrepresented as unlawful curbs on freedom of association in the context of the Convention. We appreciate the good track record of Hong Kong SAR in complying with labour standards, which is evidenced by the presence of a vibrant international financial centre in the region.

All concerns and complaints should be settled amicably in the framework of tripartite cooperation. It is important to refrain from politicizing the work of the ILO supervisory mechanisms and this Committee. Our deliberations should be in line with the spirit of multilateralism, aimed at the implementation of labour standards in a non-political and objective manner.

**Employer member, Uganda** – I would like to appreciate the comments given by the Government representative. These are unprecedented times when we are confronted with a very serious health challenge, perhaps the worst of its kind in the past 100 years. Of course, as we have seen, governments in various parts of the world have had to put in place very stringent measures, including even the lockdown of business operations, but also social gatherings.

In some cases, there have also been requirements to register certain activities or organizations before they are allowed to operate. Therefore, freedom of association and all these other freedoms must be seen also in this light. For me, the politicization of government efforts anywhere for the purposes of security or health control measures is certainly not helpful at all.

Like we have seen in the case of China, Hong Kong SAR, we have seen that social dialogue has been rather productive, and that is clearly evident in the numbers that we have seen, a growth in the number of trade unions of over 50 per cent. We have also seen progress in the terms of collective bargaining agreements which are signed even during this period of lockdown, so it is important to disassociate issues of a labour nature from those of a political nature.

**Worker member, Republic of Korea** – I am speaking on behalf of the Korean Confederation of Trade Unions (KCTU). SENTRO and Kilusang Mayo Uno (KMU) of the Philippines, the Italian General Confederation of Labour (CGIL), the Canadian Labour Congress (CLC) and the Swiss Federation of Trade Unions (USS/SGB) align themselves with this statement.

Industrial action is the legitimate means of promoting and defending workers' economic and social interests. Yet, strike action is narrowly defined in the Trade Unions Ordinance and does not cover solidarity actions. Moreover, strike action is not a protected form of union activities under the Employment Ordinance. The only statutory protection is to prevent employers from summarily dismissing striking workers, but nothing in the law prohibits employers from terminating the contract by notice.



In February of 2020, facing a potential public health risk due to the Government's inaction on the pandemic, the Hospital Authority Employees Alliance called for a strike demanding assurances of a sufficient supply of personal protective equipment and the closure of all borders to contain the infection. Without meaningful social dialogue, the medical staff started a strike on 3 February and ended it on 7 February when the Government partially agreed to their demands. The workers made every effort on their own to minimize possible inconvenience to the public. The strike started with non-essential staff, and the provision of essential services was considered during the industrial action. The objective of the strike was to further their occupational interests, including safe working conditions, and the public interest, the protection of public health. This is a very legitimate collective action and a normal union activity. However, the Hospital Authority has never recognized the collective action as a strike, but treated it as "absence from duty" subject to disciplinary action. The targeted intimidation against the strikers is an act of anti-union discrimination that has a chilling effect.

I call on the Government to effectively promote and protect fundamental labour rights, including the right to organize a strike, to promote and defend workers' economic and social interests and to shape public policies, which may impact on working conditions.

**Government member, United States of America** – The ability of individuals to freely exercise the right to freedom of association is a cornerstone of healthy and functioning societies everywhere. The 2019–20 public protests, including by trade union officials, highlight the challenges individuals continue to face in exercising these labour rights, human rights and fundamental freedoms in the Hong Kong SAR.

Specifically, the recent observations of the Committee of Experts cite allegations of police repression and arrests in connection to these public protests, including the arrest of HKCTU General Secretary, Lee Cheuk Yan, in 2019.

In June 2020, the National Security Law came into effect. The Committee of Experts noted allegations that the Law has been used to crack down on peaceful and legitimate protests. Further, we are aware of recent media reports that the Hong Kong SAR authorities have used this Law to arrest individuals in the context of peaceful gatherings, including the arrests of then-HKCTU Chairperson Carol Ng and Hospital Authority Employees Alliance Chairperson Winnie Yu.

The authorities submitted information to this Committee in response to concerns of non-compliance with the Convention, noting the National Security Law helped Hong Kong SAR emerge from "chaos into stability".

While the Government credits the Law with an 85 per cent reduction in the number of people arrested for public order incidents in the first six months after the Law came into force, this reduction correlates to a decline in public gatherings due to the imposition of the threat of arrest under the new Law, a draconian enforcement of public order and public health regulations to restrict the right of peaceful assembly.

The effect of the Law has been to further suppress the exercise of the right to freedom of association, in stark opposition to obligations under the Convention. We urge the Hong Kong SAR authorities to take immediate action to meet their obligations under the Convention.

*Interpretation from Russian:* **Worker member, Belarus** – The Belarusian Federation of Trade Unions has studied the comments made by the Committee of Experts about compliance with the provisions of the Convention by the Hong Kong SAR. Let me start

by saying that we, as unions, fully support the provisions of the Convention. In our opinion, the Hong Kong SAR is making serious effort to comply with the Convention. Provisions on freedom of association are reflected in its Basic Law. The growth in the number of registered trade unions between 2019 and 2020, from 866 to 1,355, shows the success of the situation. Furthermore, in accordance with the Trade Unions Ordinance, members and officials of trade unions enjoy immunity from civil suits for certain acts.

As to the arrest of trade unionists between 2019 and 2020, the facts show that these people participated in action which threatened public order and the national security of the country as a whole. What was done was legal. There is no connection with the freedom of association or their status as trade union leaders. The authorities acted in accordance with Article 8 of the Convention which states that, in exercising the right to the freedom of association, workers, employers and their organizations – like any other individuals or organizations – need to obey the law.

Political actions in Hong Kong SAR have been widely reported in the media, but in some cases, they did not actually get very objective press coverage. However, the facts show that there was no relationship with social or economic action. We therefore express the hope that the Committee of Experts will continue to cooperate in a positive spirit with the authorities of the Hong Kong SAR.

**Government member, Islamic Republic of Iran** – My delegation would like to thank the Government of Hong Kong SAR for submitting information on how the Government has intended to secure observance of the Convention. My delegation welcomes the measures undertaken by the Government to reinforce the right and freedom of Hong Kong residents to form and join trade unions. We take note of the statistics submitted on the creation of employee unions in the country. My delegation is of the view that the measures undertaken by the Government demonstrate willingness and commitment to enhancing the situation. Thus, these measures deserve the due consideration of the esteemed Committee.

Furthermore, due consideration should be given to the range of rights that trade union members and officers and employees enjoy under the Trade Unions Ordinance and the Employment Ordinance, and the recent improvements achieved regarding statutory maternity and paternity leave. Having said that, my delegation supports the efforts of the Government of Hong Kong SAR to increase compliance with the Convention.

**Government member, Switzerland** – In the first place, Switzerland wishes to convey its deep concern at the arrests made in Hong Kong SAR since 1997. Indeed, 1997 also coincides with a complaint by trade unions accusing the Chinese Government of the violation of the Convention. Since then, we have seen an increase in pressure on trade union rights and freedom of association.

The current legislative reforms, including the introduction of the new National Security Law, are endangering trade union freedoms. This has led to the restriction of the operation of unions, the repression of freedom of association and the limitation of freedom of expression and social dialogue. Moreover, for the first time in the existence of the Hong Kong SAR, there have been prosecutions in this connection. The Committee of Experts made several recommendations on these subjects between 1989 and 2020.

Switzerland calls on China to give effect to the recommendations of the Committee of Experts. Switzerland also takes this opportunity to recall the obligations deriving from the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up,

adopted at the 86th Session of the International Labour Conference in 1998, to respect, to promote and to realize the principles concerning fundamental rights. Switzerland encourages the Chinese Government, following the example of the Hong Kong SAR, to ratify the ILO fundamental Conventions on freedom of association and the effective recognition of the right to collective bargaining, Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), as well as the Forced Labour Convention, 1930 (No. 29), and its Protocol of 2014.

Freedom of association is one of the four fundamental principles and rights at work, an essential element of social justice. In this regard, Switzerland calls on the Chinese Government to free the trade unionists who have been arrested and to take the necessary measures to ensure that effect is given to the recommendations of the Committee of Experts. Switzerland also recalls that this case is under examination by the Committee on Freedom of Association.

**Government member, Zimbabwe** – Zimbabwe has listened carefully to the statement made by the representative of the People's Republic of China and appreciates the explanations given on each of the issues that were raised by the Committee of Experts. Indeed, this is one of the many cases which this august Committee deals with that require us to exercise our minds, distinguishing between political agitations that fall outside the scope of the ILO supervisory bodies and those that are within their competencies.

Our approach in this Committee ought to be guided by the positions articulated by the Committee on Freedom of Association. To this end, Zimbabwe would like to draw the attention of this Committee to the following guiding principles articulated in the sixth edition of the *Compilation of the Decisions of the Committee on Freedom of Association*, published in 2018: supervisory bodies of the ILO, including this Committee, have no mandate to consider purely political allegations; strikes of a purely political nature do not fall within the protection of Conventions Nos 87 and 98; and the Committee on Freedom of Association would not have competence over a national civic work stoppage which is exclusively political and insurrectional. These principles resonate with the elements in this case, in the case that we are discussing, therefore we ought to respect them.

Last but not least, we should also be mindful of the fact that while freedoms are fundamental, they are not absolute. Accordingly, a State has an obligation not only to protect the rights of other citizens, but also to protect property during demonstrations that are political or that are mounted for other reasons.

*Interpretation from Russian:* **Government member, Belarus** – We would like to thank the Chinese delegation for its exhaustive report. Belarus has noted the systematic and positive approach by the Government of the People's Republic of China to strengthening social and labour relations in the Hong Kong SAR. We believe that the Chinese Government is carefully monitoring and complying with its obligations under the Convention.

Furthermore, it actively and constructively cooperates with the ILO. We agree with what the Chinese delegation has said, to the effect that every individual, when exercising his or her rights to the freedom of assembly, should respect the law in force. The enjoyment of the rights referred to in the Convention should not be accompanied by a serious and direct threat to public order; they should be exercised in full respect and observance of national law. If that is not the case, then the forces of law and order have

the right to re-establish public order in the Hong Kong SAR, as in any other city or region around the world.

We also believe that the law adopted by the Chinese Government on national security in the Hong Kong SAR is in line with international practice. It has been transparently and openly studied, taking into account the interests of those who live in the Hong Kong SAR. We therefore think that the comments of the Chinese Government on both their application of the Convention and their action are fully in line with international labour legislation.

**Government member, United Kingdom of Great Britain and Northern Ireland –**

The United Kingdom supports the role of the ILO in developing, promoting and supervising the application of international labour standards and of fundamental Conventions in particular. We are committed to the promotion, protection and respect of human rights and labour rights, as safeguarded by the fundamental ILO Conventions and other human rights instruments, and to the ratification, effective implementation and enforcement of the core labour standards.

The United Kingdom remains concerned at the situation in the Hong Kong SAR, in particular at a pattern of behaviour by Beijing and the Hong Kong SAR Government intended to stifle dissent and suppress the expression of alternative political views. The National Security Law, imposed on the Hong Kong SAR last June, is not being used for its stated original purpose, which was to target just “a tiny number of criminals who seriously endanger national security”.

Instead, it is being used to curtail the space for the expression of alternative political views and deter freedom of expression and legitimate political debate. China has broken its legal obligations by undermining the Hong Kong SAR’s high degree of autonomy, rights and freedoms, which are guaranteed under the Sino-British Joint Declaration, a legally binding international treaty. In this context, we note with concern reports that the Hong Kong SAR’s Labour Department has proposed creating an additional position of chief labour officer, whose responsibilities would include ensuring the compliance of trade unions with the National Security Law.

The United Kingdom notes that the right to form and join a trade union is guaranteed under the Hong Kong SAR’s Basic Law, as is the right of procession and demonstration.

As a co-signatory to the Joint Declaration, we will continue to stand up for the people of the Hong Kong SAR, to call out the violation of their freedoms, and to hold China to the international obligations it freely assumed under international law.

**Government member, Ethiopia –** My delegation has taken due note of the statement delivered by the representative of the Government of the People’s Republic of China with respect to the application of the Convention in law and in practice.

We took note from the information provided by the Government of China that the Hong Kong SAR’s Basic Law guarantees the right to organize and form an association of their choosing for Hong Kong SAR residents, in conformity with the Convention. In light of this, we attentively heard that the number of registered trade unions has increased, from 866 in 2019 to 1,355 in 2020.

Furthermore, we are encouraged by the report of the Government of China that, in the Hong Kong SAR, statutory maternity leave has been extended from 10 weeks to 14 weeks, and statutory paternity leave has been extended from 3 days to 5 days, with the aim of striking a balance between working time and parental/family responsibilities.

We also learned from the Chinese Government intervention that as primary duty bearer to safeguard national security and uphold the public measures taken against protests that took place in the Hong Kong SAR in 2019, there are stringent guidelines on the use of force.

In view of the above, the efforts made so far and the measures taken by the Hong Kong SAR towards enhancing the right to organize and form an association are encouraging in terms of the full application of the Convention under discussion. We encourage the ILO to step up its technical assistance to complement the Chinese Government's efforts to ensure the conformity with the Convention of national laws and practice. In conclusion, we hope that the Committee in its conclusions will take into consideration the invaluable information provided by the Government of China and all constructive comments and discussions that have transpired in this sitting.

**Government member, Bolivarian Republic of Venezuela** – The Government of the Bolivarian Republic of Venezuela thanks the Government of China for the intervention on compliance with the Convention in the Hong Kong SAR.

The Government of China referred to acts of violence and damage caused during the public protests in 2019 and 2020, which obliged it to safeguard order and public security within the framework of its legislation. The Government also provided figures emphasizing the increase in the number of unions under the Basic Law of the Hong Kong SAR, which was noted positively in the 2021 report of the Committee of Experts.

We recall that freedom of association has to be exercised in accordance with the laws of each country, and that purely political activities, such those intended to undermine or destabilize a government, do not benefit from the protection envisaged in the Convention.

We call on the ILO supervisory bodies to leave aside political considerations, otherwise they will go beyond the limits in their comments, which will affect their seriousness and credibility and damage the noble objective of our Organization. We regret that the Committee of Experts is of the view that in this case unions can participate in certain political activities, expressing support for political parties of their choosing. Moreover, in relation to other countries, we know of opinions expressed by ILO supervisory bodies and mechanisms that governments must ensure the independence of trade unions in relation to party political action. This disparity of criteria cannot be used to claim to give lessons to governments in their sovereign role of maintaining peace and public order.

Finally, the Government of the Bolivarian Republic of Venezuela hopes that the Committee's conclusions will be objective and balanced, with a view to the Government of China continuing to make progress in giving effect to the Convention in the Hong Kong SAR.

**Employer member, Democratic Republic of the Congo** – We endorse the observations made by the Committee of Experts, in the sense that there is real concern regarding the use made of article 23 of the Basic Law, which the Government uses as a basis for the adoption of laws that not only impede the right of workers and employers to establish organizations of their own choosing, but also to join those organizations, in breach of Article 2 of the Convention. Moreover, the right to organize the administration and activities of occupational organizations without interference by the public authorities is infringed through the use made of this provision as the public authority, which is not consistent with Article 3 of the Convention.

We also express concern at the practices of anti-union dismissals, threats of dismissal in the context of public demonstrations and violations of the right to collective bargaining, in breach of Convention No. 98. We endorse the observations made by the Committee of Experts to the Government calling on it to take the necessary measures, in consultation with the social partners, with a view to the strengthening of the framework of legislation, regulations and agreements relating to collective bargaining, especially in the public sector, including for public servants, teachers and employees of public enterprises.

However, the employers of the Democratic Republic of the Congo request the Government not to respond to the comments of the Committee of Experts that coincidentally make reference to the right to strike, which is a matter for national law.

**Government member, Bangladesh** – The delegation of Bangladesh has carefully gone through the observations made by the Committee of Experts and the regional information provided by the Government of the Hong Kong SAR. We have also taken due note of the statement delivered by the People’s Republic of China.

We appreciate the continued efforts made by the Government of China in the Hong Kong SAR to comply with international labour standards, including the Convention. Particularly, we welcome the measures taken by the Government to protect the right to freedom of association and the rights and freedom of Hong Kong SAR residents to form and join trade unions.

In this respect, we note with appreciation the increase in the number of trade unions of more than double from the end of 2019 to the end of 2020. We hope that the amendment of the Employment Ordinance will help further protect and promote the rights of the workers in relation to trade unions. We also appreciate the incremental progress made in the area of addressing anti-union discrimination in the Hong Kong SAR, including through the implementation of the Trade Unions Ordinance and empowering the courts and the labour tribunals. The extension of statutory maternity and paternity leave is also a positive step towards upholding labour rights in the Hong Kong SAR.

We are confident that the Government of the Hong Kong SAR will continue to maintain its close cooperation with the Office and make sustained efforts to further improve compliance with international labour standards, which has already made the Hong Kong SAR an international financial centre and a global business hub.

**Observer, Public Services International (PSI)** – The National Security Law that was passed last year seems to impose new restrictions on the exercise of freedom of association. In the case of public servants, this would be very problematic, and would add further pressure on their activities. For instance, the Civil Service Code and Regulations already subject civil servants to a disciplinary procedure if they voice opinions deemed to be of a political or administrative nature.

Also, workers directly employed by the Government in the Hong Kong SAR are explicitly excluded both from the Employment Ordinance and the application of Article 6 of Convention No. 98. Therefore, they have no access to the remedies for anti-union discrimination or collective bargaining enjoyed by workers in other sectors.

On top of this, all civil servants have been required to take an oath, sign a declaration of loyalty to the Government and abide by the laws in the Hong Kong SAR. This requirement has been extended to the National Security Law. We understand that civil servants who do not take the oath will be dismissed. The implications of all these



restrictions for civil servants are so severe that the leaders of the Union for New Civil Servants determined that it was impossible to effectively represent members and disbanded in January 2021.

According to the Government, and I quote from the Committee of Experts' report, "what the National Security Law seeks to prevent ... are distinctly different from normal interactions (including normal associations between trade unions in Hong Kong and international organizations)".

So we hope that the Government will live up to this promise and also amend all the legislation restricting freedom of association, as requested by the Committee, because when public servants lose the right to freedom of association and expression, the public loses a vital pillar in democratic governance and defence of the rule of law. Civil servants in the Hong Kong SAR will no longer be able to blow the whistle on corruption or on poor public policy, including dangerous public health decisions, without fear of dismissal, or even prison.

**Observer, International Trade Union Confederation (ITUC)** – I am speaking on behalf of the HKCTU. The application of the Convention requires a domestic legal framework that enshrines the rights fully and an enabling environment that respects and allows the exercise of civil liberties. The Government is obliged to ensure consistency and compliance among laws and policies.

As the Committee of Experts pointed out, trade unions have marginalized representation in the workplace in the Hong Kong SAR without a legal framework to recognize unions and to bargain collectively with employers. Civil remedies to address anti-union discrimination are ineffective, as compensation may be in lieu of reinstatement and civil servants are excluded. In the last two years, the Government has banned Labour Day rallies, protests against an airline's mass lay-offs, and a solidarity march by the Hong Kong Journalists Association following the arrest of one of their members and the sentencing of trade unionists under draconian laws, including the Public Order Ordinance.

Since the enforcement of the National Security Law last year, workplace conduct has been aligned with the law in some sectors, such as an oath through which civil servants commit to abiding by the law and a new police-run hotline for anonymous reports that include complaints regarding teachers' conduct. Last month, the Labour Department announced that it is expanding its size to enforce the law among the trade unions, using the threat of deregistration.

Workers in the Hong Kong SAR are reluctant to speak out and associate under the prevailing uncertainties, self-censorship, fear of surveillance and sanctions. Trade unions cannot exercise our rights, organize activities freely or defend members without fear of crossing the invisible red line. We echo the observations of the Committee of Experts that urge the Government to assess, as far as the application of the Convention is concerned, the impact of the National Security Law and its enforcement on trade unions and the workplace.

**Government representative** – I would like to thank all delegates for their contribution to the discussion of our case. The Government of the Hong Kong SAR of the People's Republic of China took note of the Committee's observations and will address them in detail in our next report on the application of the Convention. That said, I would like to take this opportunity to reiterate the Hong Kong SAR Government's views.

First and foremost, I must stress that our Government takes our obligations under the International Labour Conventions seriously. In respect of the Convention, we are fully committed to protecting workers' rights to form and join trade unions, and their participation in union activities.

As I have mentioned earlier, the rights of Hong Kong residents to form and join trade unions are guaranteed under the Basic Law of the Hong Kong SAR of the People's Republic of China. These rights have remained intact and have not been affected in any way upon the enactment of the Hong Kong National Security Law. Indeed, the continued increase in the number of registered trade unions in the Hong Kong SAR over the years bears testimony to the freedom and rights of Hong Kong residents to organize among themselves.

Under our labour laws, there is robust and adequate protection against discrimination against labour unions. We accord high priority to investigating complaints on suspected acts of anti-union discrimination. Our Government does not, and will never, tolerate any breach of the law by employers in this respect. We will not hesitate to initiate prosecution whenever there is sufficient evidence to pin down the offenders.

On labour rights and benefits, we have been reviewing our labour legislation from time to time through tripartite consultations among the Government, workers' organizations and employers' organizations, with a view to making continued improvements to labour rights and benefits, while striking a balance between the interests of employees and employers.

Just to name a few, in recent years, statutory maternity leave has been extended from 10 weeks to 14 weeks, and statutory paternity leave has been extended from 3 days to 5 days. The Labour Law has also been amended to empower the Labour Tribunal and the courts, in case of unreasonable and unlawful dismissals, which include dismissals by reason of exercising the right to trade union membership or participation in trade-union activities, to make a compulsory order for reinstatement or re-engagement of an employee without having first to secure the agreement of the employer.

In exercising the rights enshrined in the Convention, everyone shall respect the law of the land. Any society that upholds the rule of law cannot possibly accept anyone to be put above the law or having the privilege of breaking the law without facing legal consequences. If there is any illegal act, any responsible law-enforcement agency must deal with it based on evidence and in strict accordance with the law. The Hong Kong SAR Government must emphasize that such enforcement actions are directed against the criminal act itself, irrespective of the social status of the persons concerned or whether they are trade unionists. The Hong Kong authorities have been handling, and will continue to handle, all criminal offences in a fair and impartial manner.

The Hong Kong SAR Government respects citizens' freedom of speech and expression. Their rights of procession and peaceful assembly are protected by the Basic Law and the Hong Kong Bill of Rights Ordinance. The Hong Kong Police Force have always been handling applications for public meetings or processions in strict accordance with the statutory requirements under the Public Order Ordinance and having regard to all relevant facts and circumstances in each application.

Coming to the Hong Kong National Security Law, let me stress again that Hong Kong people have been enjoying, and will continue to enjoy, the rights and freedoms as provided for under the Basic Law. In this regard, any law enforcement actions taken by the law enforcement agencies for suspicion of breaches of any national security offences

must be based on evidence, in strict adherence to the law and focused on the criminal acts committed by the persons or entities concerned.

A number of speakers referred to the arrests of members of trade unions by the Hong Kong law enforcement agencies in relation to public order events. We would like to emphasize that any arrest and prosecution under any law, including the Hong Kong National Security Law, is directed against the criminal act itself and has nothing to do with the political stance, background or the status as trade union leaders. The principle of rule of law is upheld in Hong Kong, and will continue to be upheld in future. The Hong Kong court, which enjoys independent judicial powers, has made rulings on some of the prosecutions made and convicted the defendants. This proves that the prosecution actions were fully justified. The Hong Kong SAR Government will continue to handle every case in a fair, just and impartial manner in accordance with the law.

In the days ahead, the Hong Kong SAR Government will continue to strengthen publicity and education so as to enhance Hong Kong people's understanding of national security and law-abiding awareness, and also deepen the understanding of the international community on the Hong Kong National Security Law.

The Hong Kong SAR Government is fully committed and attaches high priority to safeguarding workers' rights to form and join trade unions and take part in union activities. We assure the Committee of our Government's continued compliance with all the obligations of International Labour Conventions applied to the Hong Kong SAR. We will continue to submit our article 22 reports and provide the Committee of Experts with the information requested.

*Interpretation from Chinese:* **Another Government representative, China** – The Chinese Government supports the response and the introduction of the Hong Kong SAR Government and we can see that Hong Kong Government attaches great importance to the protection of workers' rights and has done very rigorous work in the implementation of all International Labour Conventions that apply to the Hong Kong SAR, including Convention No. 87.

We support Hong Kong SAR Government's efforts in obtaining social security and stability and protecting workers' legitimate rights and interests. After the implementation of the National Security Law for Hong Kong, there is great and far-reaching significance in upholding and improving the system of one country two systems, ensuring the long-term security, stability, prosperity of Hong Kong and protecting human rights of Hong Kong residents.

This law plugs the legal loophole's ability to national security in Hong Kong SAR and positive results have been achieved. Social order has been restored and the safety of people's lives and their property and their legitimate rights and freedoms are further protected.

During the discussion, some speakers made irrelevant statements, for example, the United Kingdom Government representative. We reject his groundless accusations.

I would like to note that after the return of Hong Kong, all provisions related to the UK as stipulated in the Sino-British Joint Declaration have been implemented fully.

I would like to urge the UK Government, please stop interfering in China's internal affairs.

**Employer members** – We have listened very carefully to the discussion in the Committee today. We thank all of the speakers who have taken the floor and we have taken note of the statements made and information provided. We would like to thank

the Government representatives for positively engaging with this Committee and providing us with comprehensive and up-to-date information on the case, both in writing and in their oral submissions before the Committee.

Taking into account the full discussion, the Employer members invite the Government to provide information regarding the outcome of procedures to examine the police action and arrests made in connection with the protests that fall only under the scope of the Convention.

Also, the Employer members invite the Government to take all necessary measures to further guarantee the right of employers' and workers' organizations to organize their activities.

Furthermore, in respect of the newly adopted National Security Law of June 2020, the Employer members invite the Government to keep under review, jointly with the social partners, the application of the National Security Law so that the rights of employers, workers and their organizations under the Convention can be protected. The Employer members invite the Government to continue to provide up-to-date information on the impact that Law has on the application of the Convention both in law and in practice.

Therefore, in conclusion, we would like to once again thank the speakers in this discussion, and in particular to thank the Government representative from the Hong Kong SAR, for their constructive engagement in the work of the Committee and for all of the detailed information that is both up to date and responsive to the inquiries and for providing this information to our Committee today.

**Worker members** – We note the comments of the authorities responsible for China – Hong Kong SAR and we also appreciate all the relevant interventions during this discussion, but we must emphasize that the Government has an obligation to respect international labour standards and the guidance provided by the Committee of Experts in line with their mandate.

We are deeply concerned by the acute deterioration of the labour rights situation in Hong Kong SAR. The Government of China must ensure that trade unionists in Hong Kong SAR are able to engage in their activities in a climate free of violence and intimidation, and within the framework of a system that guarantees the effective respect of civil liberties.

Provisions of the Public Order Ordinance and of the Cap. 599G Prevention and Control of Disease (Prohibition on Group Gathering) Regulation must be immediately amended, in consultation with the social partners, in order to ensure that trade unions can freely exercise the right to freedom of assembly and demonstration in compliance with the Convention.

The National Security Law and its application in practice must be thoroughly assessed by the Committee of Experts, and to that end we call on the authorities to provide a report to the Committee of Experts before its next sitting. The authorities must provide a report on the number of people arrested and prosecuted under the various pieces of public order and national security legislation and the relevant court decisions to the Committee of Experts at their next sitting.

We must emphasize that peacefully participating in a protest for the realization of economic and social interests, including for democracy and respect for civil liberties, are legitimate trade union activities that the authorities must guarantee for all workers. We call on the authorities to report to the Committee of Experts before its next sitting on all

measures taken to ensure that the police and other security forces respect trade union rights in accordance with the Convention.

The authorities responsible for the Hong Kong SAR must also ensure that labour laws applicable to the territory fully comply with the Convention. We strongly urge the responsible authorities to accept a direct contacts mission from the ILO to address the urgent and acute situation regarding the application of the Convention in the territory.

## Conclusions of the Committee

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

**Taking into account the discussion, the Committee calls on the Government to:**

- **provide full information regarding the outcomes of procedures to examine the police action and arrests made in connection with protests which fall under the scope of the Convention;**
- **take all necessary measures to further guarantee the right for workers' and employers' organizations to organize their activities in line with the Convention and to ensure that trade union leaders and trade union members conducting lawful trade union activities are not arrested, detained or prosecuted;**
- **keep under review, in consultation with the social partners, the application of the National Security Law so that the rights of workers, employers and their organizations under the Convention are fully protected; and**
- **continue to provide up-to-date information on the impact that the National Security Law has on the application of the Convention.**

**The Committee calls upon the Government to provide up-to-date information to the Committee of Experts before its November 2021 meeting.**

**Government representative** – I would like to thank once again the social partners and Governments for their constructive discussion of our case. We take note of their comments and the conclusion of the Committee.

Hong Kong is a society respecting and upholding the rule of law. Arrests and prosecutions are directed against criminal acts based on evidence and according to the law and have nothing to do with a person's political stance, social background or trade union membership.

The rights and freedoms of employers' and workers' organizations to organize activities are also adequately protected by the laws of the Hong Kong SAR. These rights and freedoms have remained intact and have not been affected in any way upon the implementation of the Hong Kong National Security Law.

The Hong Kong National Security Law clearly stipulates that human rights shall be respected and protected in safeguarding national security in the Hong Kong SAR, and the rights and freedoms, including freedom of association which Hong Kong SAR residents enjoy under the basic law and the relevant international human rights conventions shall be protected in accordance with the law.

We would like to reaffirm the commitment of the Hong Kong SAR Government to fully implement the international labour Conventions applicable to the Hong Kong SAR.

The Hong Kong SAR Government will continue to provide updates to the issues raised by the Committee of Experts.



## Namibia (ratification: 2001)

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

#### Written information provided by the Government

In terms of the application of Article 1(1)(b) of the Convention on additional grounds, including HIV status, the Committee requested the Government to adopt specific measures to ensure that workers who are victims of discrimination on the basis of HIV status (actual or perceived) have effective access to legal remedies.

Namibia fully recognizes that the information requested is on a purely voluntary basis and should be concerned only with new developments.

The Government of Namibia is committed to eradicating HIV/AIDS as noted by the Committee of Expert in its report that Namibia is the first country in Africa to have more than three quarters of its HIV-affected population virally suppressed.

The Labour Act, Act 11 of 2007, provides for a Dispute Resolution Mechanism for all disputes concerning fundamental rights and protection, which include disputes over employment decisions based on the ground of HIV status. These legal remedies consist of either referring a dispute to the Labour Commissioner for arbitration or approaching the Labour Court for enforcement of alleged infringed rights, or protection or other appropriate relief. It is our belief that the current legal remedies are effective and accessible to victims of discrimination on the basis of HIV status (actual or perceived).

The Committee further requested information on the number of cases of discrimination based on HIV status and on their outcome.

In 2019, one complaint against the Namibian Defence Force (NDF) was received by the Office of the Ombudsman. The complainant alleges that the NDF refused to employ him on grounds of his HIV status. The complainant was contacted by the Office of the Ombudsman to provide further information. The information is yet to be submitted by the complainant. The investigation will commence once the information is submitted.

The Committee asks the Government, in the context of Articles 2 and 5 – Implementation of the national equality policy and affirmative action, to provide detailed information on the concrete measures taken to implement the action planned in the National Human Rights Action Plan 2015–19, in particular the review of the legislative and regulatory framework, and information on any research undertaken, obstacles encountered and results achieved in this regard. It further asks the Government to indicate what follow-up it gave to the recommendations in the Office of the Ombudsman's Special Report on Racism and Discrimination and the concrete steps taken to address such discrimination.

The following are the concrete measures taken to implement the National Human Rights Action Plan 2015–19:

- The Law Reform and Development Commission initiated a project on Obsolete Laws which resulted in the Repeal of Obsolete Law Act, 2018 (Act No. 21 of 2018). Some of the repealed laws were discriminatory in nature.
- The second leg of the project, which researches the existence of other obsolete and discriminatory laws, has been completed and the report was handed to the Minister of Justice for further action. The Prohibition of Unfair Discrimination, Hate Speech and Harassment Bill has been circulated for comments and submissions by stakeholders,

and a stakeholders' consultative meeting is scheduled for 28 May 2021. The Bill repeals the Racial Discrimination Prohibition Act 1991 (Act No. 26 of 1991) and its amendments.

The information on any research undertaken is provided as follows:

- The Ombudsman researched the reasons why racism, racial and other forms of discrimination still persist after 27 years of Namibian independence, and made numerous recommendations in his Report on the National Inquiry into Racism, Racial Discrimination and Other Forms of Discrimination and Tribalism. The Report was submitted to the National Assembly in October 2017.
- Completed research, stakeholder consultations and the drafting of the White Paper on Indigenous Peoples' Rights in Namibia. The White Paper is due for Cabinet approval and adoption by the National Assembly.
- The Law Reform and Development Commission, in collaboration with the Department of Disability Affairs in the Office of the Vice-President, undertook to first conduct a critical analysis of the current National Disability Legal Framework. The Law Reform and Development Commission will assist in the review of the outdated Disability Council Act of 2004 with its National Disability Policy of 1997 and the domestication of the Convention on the Rights of Persons with Disabilities.

With regard to designated groups, the Committee asks the Government to continue to: step up its efforts to promote access to training and employment opportunities for designated groups and review regularly the affirmative action measures to assess their relevance and impact and to provide information on any measures taken in this regard and the results achieved.

The Affirmative Action (Employment) Act 29 of 1998, which was amended by the Affirmative Action (Employment) Amendment Act 6 of 2007, has provisions requiring relevant employers to institute positive steps to further the employment of persons in designated groups. These measures may include training opportunities and giving preferential treatment in employment decisions to suitably qualified persons from designated groups to ensure that such persons are equitably represented in the workforce.

Section 17(3)(a) and (b) further empowers the Employment Equity Commission in this regard to determine whether a designated group is equitably represented in the various positions of employment offered by a relevant employer, to take into account, in addition to such other factors as it may determine:

- (a) the availability of suitably qualified persons in that designated group for such positions of employment; and
- (b) the availability of persons in designated groups who are able and willing, through appropriate training programmes, to acquire the necessary skills and qualifications for such positions of employment.

The above is the legislative framework on which the Commission relies on the issue of access to training and employment opportunities for designated groups.

The Government is requested to provide information on any follow-up given to the work of the Employment Equity Commission (EEC) related to the review of the Affirmative Action (Employment) Act, 1998, and on the activities of this Commission.

## Amendments to the Act

The amendments had already been finalized and forwarded to the tripartite Labour Advisory Council (LAC), which in turn provided some inputs and returned the Act for their incorporation. The EEC established a task force to attend to the amendments and the final draft amendment Act of the task force was provided to the office of the Employment Equity Commissioner on 11 May 2021. The Office is now conducting a desk study to assess, possibly incorporate and align with international legislation and best practices relating to: (a) training and development of human resources; (b) expatriates and understudy skills transfer; and (c) equal pay for work of equal value.

## Reduction of reporting threshold – Increasing relevant employers

In terms of section 20 of the Act and the regulations made thereunder, currently only those employers employing 25 and more employees are regarded as relevant employers and are covered by the Affirmative Action (Employment) Act. The current threshold was established in 2007, but since 1999 the threshold had been those employing 50 and more. The Commission is of the view that it is time to reduce the threshold further to cover more employers and corresponding employees, since the 2018 Namibia Labour Force Survey showed that the number of employers and employees covered is currently too low due to the threshold.

## Activities of the Commission

The Commission revised its current 20-year-old standard report content and structure guidelines to place emphasis, inter alia, on access to training. The new guidelines and designed forms require reporting on qualifying as well as non-qualifying training and require employers to institute training measures, coupled with the necessary budgetary allocation for in-house training, bursaries and human resource planning, such as talent management, succession planning, promotions, etc.

Coupled with the newly adopted reporting format, a new review framework called the Integrated Review Scorecard (IRSC), was also developed. This is an internal tool to guide the review of affirmative action reports and plans submitted to the Commission. The Commission has, since its inception, been trying to realize its objects without any objective criteria that could enhance its efficiency and effectiveness in carrying out the range of activities specified in section 4(a)–(f). The above led to a widespread perception that the Commission was issuing AA Compliance Certificates to undeserving relevant employers simply because they submitted AA reports – not because they were implementing affirmative action in the workplace. The above prompted the need to develop and implement an integrated review scorecard. The IRSC is intended to assist the Commission in determining the exact compliance effort each relevant employer is making in the process of implementing affirmative action in his/her/its workplace. Furthermore, the IRSC will assist the Commission in the process of categorizing relevant employers into various compliance categories which in turn can be used for various purposes, such as training; possible charges for non-compliance with the Affirmative Action (Employment) Act; the giving of awards; consideration for state contracts, etc.

The Government is asked once again to provide information on any legislative developments regarding the New Equitable Economic Empowerment Framework Bill 2015.

The Draft Bill is almost ready for Cabinet consideration before it is tabled in the National Assembly in the third or fourth quarter of the 2021–22 financial year.

The Technical Working Committee has been engaged in consultation and it is due to brief the Prime Minister on Monday, 24 May 2021 at 10 a.m. on progress, and also to obtain political direction, if necessary.

## Discussion by the Committee

**Government representative, Minister of Labour, Industrial Relations and Employment Creation** – I thank the Committee for this opportunity to present a response to the Committee of Experts' observations with respect to Namibia's implementation of Convention No. 111, which it ratified on 13 November 2001. This is the first time that Namibia has been asked to appear before the Committee.

Before addressing the observations of the Committee of Experts, I want to register my concern with regard to the manner in which the list of individual cases to be considered by the Committee was compiled. According to established criteria, the Committee, when compiling its list, is required to endeavour to achieve a balance of different categories of Conventions and a geographical balance. It is our view that in applying the set criteria, the Committee did not adequately consider geographical balance. As a result, 3 countries from 16 Member States belonging to the Southern Africa Development Community were asked to appear before the Committee in a single session. This is unprecedented.

At the outset, I must bring to the attention of the Committee the historical background of discrimination in Namibia, which forms the context in which Namibia applies the Convention. Namibia, with a present population of approximately 2.5 million people, gained independence in 1990 after a century-long struggle against racism, colonialism and apartheid.

The Namibian Constitution reflects our founding fathers' and mothers' determination to eradicate the vestiges of the colonial apartheid system. Article 10 of the Constitution contains a strong prohibition against discrimination on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status. It also includes a unique provision on apartheid and affirmative action, contained in article 23, which requires that the practice of discrimination and the practice and ideology of apartheid shall be prohibited by law.

Article 23 also authorizes the enactment of affirmative action legislation, policies and programmes aimed at redressing social, economic or educational imbalances in Namibian society, arising out of past discriminatory laws and practices. It makes special note of the historically disadvantaged position of Namibian women.

In appraising Namibia's efforts to combat discrimination, the Committee is asked to take note that white Namibians make up 6.4 per cent of Namibia's total population but that they have disproportionate control over Namibia's private sector and land. Further, Namibia has the second worst rate of income inequality in the world.

Therefore, pursuant to its constitutional mandate, Namibia has not only adopted a variety of laws designed to eliminate the vestiges of racism and discrimination against women and ethnic minorities that were inherited at independence, but it has oriented its overall national development agenda to empower and advance the economic and social position of the vast black majority of the population, including women, young people and ethnic minorities. This agenda cuts across all sectors.

It is therefore difficult to report on Namibia's efforts to combat and eliminate discrimination within the legalistic framework of the Convention because these efforts

span a wide range of government programmes. We therefore urge the Committee to take note that its observations and the answers to its specific questions regarding a few institutions or laws can only convey a partial picture of Namibia's grand national project to eliminate discrimination.

I will now address the observations of the Committee in relation to the application of Articles 1, 2 and 5 of the Convention, to which my Government has already submitted a voluntary response to the ILO on 20 May 2021.

Article 1 of the Convention (Legislation – Additional grounds of discrimination). Namibia was requested to: amend section 33 of the Labour Act to provide for a remedy for the unlawful dismissal of an employee on grounds of HIV and AIDS status (actual or perceived), the degree of physical or mental disability, and family responsibilities; adopt measures to ensure that workers who are victims of discrimination on the basis of HIV status (actual or perceived) have effective access to legal remedies; and provide information on the number of cases of discrimination based on HIV status and on their outcome.

Section 5 of the Labour Act No. 11 of 2007 prohibits discrimination in an employment decision on grounds, including: an employee's HIV and AIDS status (actual or perceived); the degree of physical or mental disability; and family responsibility. "Employment decision" includes the termination of employment.

With respect to access to effective legal remedies, section 7 of the Labour Act provides two alternative procedures to aggrieved employees to seek redress concerning employment decisions, including a decision to terminate an employee's employment based on unlawful discrimination: (1) referring a dispute to the Labour Commissioner for arbitration, and (2) lodging a complaint with the Labour Court. It is our opinion that the current legal remedies are effective and accessible to victims of discrimination on the basis of HIV and AIDS status (actual or perceived). Nevertheless, the tripartite task force on the review of the Labour Act is considering the Committee of Experts' request to include a specific reference to the above-mentioned grounds of discrimination in section 33(3).

I am pleased to inform the Committee that Namibia is considering its readiness to ratify the ILO Workers with Family Responsibilities Convention, 1981 (No. 156). I sent the matter to the Labour Advisory Council and, at its March 2021 meeting, the Council resolved to recommend ratification.

With respect to the request for information on the number of cases of discrimination based on HIV and AIDS status, I bring to the Committee's attention that it is well known in Namibia that discrimination on the ground of HIV or AIDS status is unlawful. This was settled by the High Court in 2000 in the case of *Nanditume v. the Minister of Defence*. Thereafter a prohibition against discrimination on the ground of HIV or AIDS status was included in the Labour Act, 2004. Since *Nanditume*, there has not been a court case alleging discrimination against an employee on account of HIV or AIDS status.

I note further that Namibia had adopted a National Code on HIV/AIDS and Employment for HIV Prevention and AIDS Management in 1998, which addressed the prevention of new infections, as well as the provision of optimal care and support for the workforce.

One complaint concerning HIV/AIDs was lodged with the Ombudsman in 2019, involving the defence forces, but appears to have been abandoned by the complainant.

The recent complaint may be an indication that employers and employees are aware of, and have access to, remedies for discrimination on the ground of HIV or AIDS status.

Articles 2 and 5 (Implementation of the equality national policy and affirmative action). The Committee of Experts has asked the Government to provide information on: the measures taken to implement the National Human Rights Action Plan 2015–19, in particular the review of the legislative and regulatory framework, and research undertaken, obstacles encountered and results achieved in this regard. It further asks the Government to report on its follow-up to the recommendations in the Office of the Ombudsman's Special Report on Racism and Discrimination and the concrete steps taken.

Since independence, Namibia has been pursuing the agenda of eliminating discrimination in respect of employment and occupation and has established various institutions to deliver on this agenda.

With respect to the measures taken to implement the National Human Rights Action Plan of 2015–19, I can report as follows: the Law Reform and Development Commission initiated a project on obsolete laws, which resulted in the Repeal of Obsolete Laws Act, 2018 (Act No. 21 of 2018). Some of the repealed laws were discriminatory in nature. The second phase of the project included research on the existence of other obsolete and discriminatory laws. The research was completed, and the report was referred to the Minister of Justice for further action.

I can also report that the Ombudsman has prepared the Prohibition of Unfair Discrimination, Hate Speech and Harassment Bill. If enacted by Parliament, the Bill will repeal and replace the Racial Discrimination Prohibition Act 1991 (Act No. 26 of 1991). The Ombudsman conducted a consultative meeting with stakeholders on 28 May 2021 to gain their comments and input on the Bill.

The Ombudsman conducted research into why racism, racial and other forms of discrimination still persist 20 years after Namibia's independence, and made numerous recommendations in his Report on the National Inquiry into Racism, Racial Discrimination and Other Forms of Discrimination and Tribalism, which was submitted to the National Assembly in October 2017. In addition, a white paper on indigenous peoples' rights in Namibia has been finalized with input from stakeholders and is due for Cabinet approval.

The Committee of Experts request that the Namibian Government step up its efforts to promote access to training and employment opportunities for designated groups and review regularly its affirmative action measures.

The Government takes note of the Committee of Experts' comment that it welcomed the measures introduced by the Employment Equity Commission (EEC) towards the workforce transformation and its efforts to deal with the underlying causes of discrimination.

The Affirmative Action (Employment) Act 29 of 1998, as amended, requires relevant employers to take positive measures to further the employment of persons from designated groups. At present, the threshold for "relevant employer" is set at enterprises employing more than 25 employees. Designated groups include persons from racially disadvantaged groups, women and persons with disabilities.

Affirmative action measures may include: giving preferential treatment in employment decisions to suitably qualified persons from designated groups to ensure that such persons are equitably represented in the workforce of a relevant employer;



ensuring that existing training programmes contribute to furthering the objectives of the Affirmative Action (Employment) Act; and establishing new training programmes aimed at furthering the objectives of the Act. Within the aforementioned framework, the EEC addresses the issues of access to training and employment opportunities for designated groups.

The Committee of Experts request to provide information on the review of the Affirmative Action (Employment) Act and on the activities of the EEC.

The EEC, in consultation with the Ministry, sent to the tripartite Labour Advisory Council an initial set of proposed amendments to the Affirmative Action (Employment) Act. The EEC has established a task force to prepare a final draft amendment Bill. Among the amendments, the EEC proposes to reduce the current “relevant employer” threshold of 25 employees in order to extend affirmative action to more employers and employees.

With respect to its activities, the EEC has revised its 20-year old standard report guidelines in order to assess annual affirmative reports in accordance with more objective criteria and has introduced a new Integrated Review Scorecard. The EEC is also planning to play a key role in the implementation of the Violence and Harassment Convention, 2019 (No. 190), which Namibia ratified at the end of 2020. Although the EEC is striving for seamless operation, the collection and analysis of data on affirmative action remains a challenge. A modern information management system is needed. Finally, Namibia brings to the attention of the Committee that the Government is in need of ILO technical assistance to enable the EEC to develop and implement a comprehensive information management system.

In conclusion, the Government of Namibia underscores its appreciation of the ILO's support and assistance, as well as the constructive dialogue with social partners in an effort to eradicate all vestiges of discrimination in employment. Namibia renews its assurances that it is committed to fulfilling the obligations it has undertaken under the Convention and various other Conventions of the ILO.

**Employer members** – Today we are discussing the application in law and practice of fundamental Convention No. 111 on discrimination in employment and occupation in Namibia.

This Convention has been ratified by 175 ILO Member States, which makes it one of the most ratified Conventions. Together with the Equal Remuneration Convention, 1951 (No. 100), Convention No. 111 details the broad and encompassing fundamental principle of the elimination of discrimination in respect of employment and occupation.

With the current social climate against structural racism and discrimination, many employers around the world have strengthened their policies to ensure that discrimination is eliminated from the workplace. Equality, diversity and inclusion policies help businesses improve productivity, creativity, improve cultural awareness, and increase outreach in the quest for talent and the company's reputation. Therefore, all of us – governments, employers and workers – shall aim at achieving the elimination of discrimination in respect of employment and occupation.

With respect to this case, this is the first time that this Committee is discussing Namibia's application in law and practice of the Convention, which was ratified by Namibia in 2001. The Committee of Experts prepared its observations on this Convention based on the Government's 2019 submission, as well as the negotiations between the ILO and the Government of Namibia of the Decent Work Country Programme for Namibia 2019–23. Two written submissions were also provided by the Government of

Namibia to the Conference Committee with detailed information related to the Committee of Experts' observations. We thank the Government for providing such level of detail.

The issues at stake in this case: the Committee of Experts' observations outline clear elements of inadequacy in Namibia's law and practice with respect to the Convention. The Convention articulates around four elements: (1) the definition of and grounds for discrimination; (2) ways to implement policy; (3) the elaboration of a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination; and (4) the exceptions.

This case deals with all four elements. First, on the grounds for discrimination:

The Committee of Experts requested that the legislation on HIV status, physical or mental disability and family responsibilities, be compliant with Article 1(1)(b) of the Convention. This point raised by the Committee of Experts reminds us that the Convention is not only about the specific causes of discrimination in employment and occupation mentioned in Article 1(1)(a) which are race, colour, sex, religion, political opinion, national extraction or social origin, but that it also includes additional grounds like 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, where such exist, and with other appropriate bodies.

In Namibia, section 5 of the Labour Act defines HIV and AIDS status, physical or mental disability, and family responsibilities as possible grounds of discrimination. However, the Committee of Experts highlights that section 33 does not include them in the grounds of prohibited reasons for dismissal. Despite the lack of review of section 33 of the Labour Act, the Government explains that the same Act provides for dispute resolution mechanisms either before the Labour Commissioner for Arbitration or the Labour Court for all disputes concerning fundamental rights and protection, which includes disputes over employment decisions based on the grounds of HIV status.

In this regard, however, the Employers are encouraged by the Government's statement here today that Namibia is, after all, considering amending section 33 of the Labour Act in line with the Committee of Experts' recommendations.

Related to this first issue and also to the implementation of anti-discrimination policies in practice is the access to remedies. The Committee of Experts requested the Government to provide information on the cases of discrimination in relation to HIV and AIDS status dealt with by the labour inspectors and labour courts, and ensure that workers who are victims of discrimination on the basis of HIV status, actual or perceived, have effective access to legal remedies.

The Government's reply did not provide any details on this point and the only complaint received by the Office of the Ombudsman seems to confirm the view of the Committee of Experts that few cases may be an indicator of the lack of awareness, lack of access to remedies, or fear of retaliation.

The Employers' group underlines that access to remedy is essential to developing the effectiveness of anti-discrimination policies as required under Article 2 of the Convention. It is unclear to us whether such labour disputes can be brought before the Labour Commissioner for Arbitration and the Labour Court as indicated in the Labour Act No. 11 of 2007 or before the Office of the Ombudsman, as mentioned by the Government in its submission.

We request the Government to clarify whether specific measures to ensure that workers who are victims of discrimination on the basis of HIV status, actual or perceived, have effective access to legal remedies. We invite the Government to shed light on the body or bodies in charge of dealing with cases of discrimination.

The third issue concerns the national policy, which is the core of the Convention. On the implementation of the national policy, in line with Article 2 of the Convention, the Committee of Experts requested the Government to provide more information on the two documents developed at the national level namely, the National Human Rights Action Plan of 2015–19 and the Office of the Ombudsman's Special Report on Racism and Discrimination. The former indicates legislative reforms and research on possible discrimination under the previous legislation, while the latter presents recommendations for the Government in terms of programmes and strategies and for employers' organizations with respect to their action in the workplace.

The Government explained how a series of obsolete laws have been repealed by the Repeal of Obsolete Law Act No. 21 of 2018 because they were discriminatory in nature, and that further research was conducted on other laws, including on disabilities. The outcome of this research is currently being discussed under the specific Namibian Parliamentary context. Among the activities reported by the Government, we would like to underline the research and recommendations made by the Ombudsman on reasons why racism, racial and other forms of discrimination still persist after 27 years of Namibian independence. Since the report was submitted to the National Assembly in October 2017, we would like to ask the Government how that process has been followed up and whether there is a plan of action for implementing the Ombudsman's recommendations. We would also like to know more about the establishment of the National Human Rights Action Plan for the next period starting in 2020.

The fourth and last issue concerns the specific groups protected under Articles 1(1)(b) and 5(2). The Committee of Experts referred to the three designated groups that the Government has considered as requiring additional protection under the Affirmative Action (Employment) Act 29 of 1998, and on which the EEC is tasked with the publication of a report measuring the impact of the specific protection.

The EEC report for 2016–17 indicated that there was significant room for improvement on the inclusion of all workers, not only white employees, into positions of management and for employment of persons with disabilities. To overcome these challenges, the EEC presented a number of proposals, including a legislative reform to the Affirmative Action (Employment) Act 29 of 1998, a review of guidelines for employers and a better case management system.

The Employer members understand from the Government's submission that the legislative reform took place in 2007 with the Affirmative Action (Employment) Amendment Act 6 of 2007 and that the Labour Advisory Council provided some input and returned the Act for the incorporation.

The Employer members request the Government of Namibia to provide the final legislation once adopted. However, the Employer members also note that the 2007 amendments require employers to issue positive steps to further the employment of persons from the designated groups.

**Worker members** – We are examining the Government of Namibia's application of Convention No. 111. According to Namibia's National Human Rights Action Plan, several groups are identified as being exposed to the risk of occupational discrimination. These

include women and indigenous people, while others face discrimination based on HIV status, age (both children and older persons), sexual orientation and disability.

We are concerned that race-based occupational segregation in the labour market prevails. For example, as documented by the report of the EEC for 2015–16 and for 2016–17, employees of African descent constitute 93 per cent of the workforce, but they occupy only 26 per cent of managerial positions. Meanwhile, in 2018, 56 per cent of executive director positions were held by white employees, an improvement of only 3 per cent on the figures for 2010.

Furthermore, sex-based occupational segregation in the labour market persists and the representation of women in managerial positions in the private sector remains very low. This was also raised by the United Nations Country Team in Namibia in its submission at the Universal Periodic Review of Namibia that took place in May 2021.

Workers with disabilities are almost absent from the labour market, accounting for a mere 0.4 per cent of the workforce and being under-represented at every occupational level, as documented by the 2015–16 report of the EEC.

As the Convention acknowledges in its Preamble, the Declaration of Philadelphia affirms 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”. In line with this, the scope of the Convention includes the elimination of any discrimination in respect of all aspects of employment and occupation, including in the form of sexual harassment, through the development of concrete measures that ensure that there is equality of opportunity in both law and practice.

The Labour Act of 2007 generally prohibits discrimination in employment and occupation, based on numerous grounds but, for some reason, it fails to include several groups, which are otherwise referenced and protected in different contexts, in the chapter protecting against unfair, discriminatory dismissal. Because of this, the law does not explicitly prohibit dismissal based on HIV status, physical or mental disability or family responsibilities. We recall that the Committee of Experts has been raising this issue since 2011, with no effect so far. This gap in protection must be closed as soon as possible.

Cases of discrimination in employment and occupation should be dealt with by labour inspectors and labour courts, the records of which are one valuable source of information on progress. However, the Government was not able to identify any new case law dealing with victims of occupational discrimination on the basis of actual or perceived HIV status. The last known court case dates back 20 years. Ensuring non-discrimination in employment and occupation of people with positive HIV status (either real or perceived) is of crucial importance for a fair and inclusive labour market. This is even more important in the case of Namibia, given that, although the country has made tremendous progress in the fight against HIV/AIDS, it still ranks fifth highest in the world in terms of its HIV burden, with an estimated 12.1 per cent of adults aged 15–49 living with HIV. While the Government, in its additional information regarding the observations of the Committee of Experts, presents the absence of cases as proof of success of changes to the law, the unfortunate truth is that a paucity of cases dealt with by the courts and labour inspectors often indicates significant barriers to remedy for victims, including a lack of awareness about rights and the fear of retaliation. The Government should acknowledge this and improve its actions, including data gathering, in this area.

With respect to the implementation of the national equality policy as prescribed by Article 2 of the Convention, the Government of Namibia adopted the National Human Rights Action Plan for 2015–19. The Plan contained commitments to promote equality, including with respect to groups such as women, indigenous people, people with disabilities and the LGBTI community.

The Plan also referred to research activities and a review of legislation, for example to include race as part of the affirmative action criteria in the Affirmative Action (Employment) Act 29 of 1998 and in updating the Racial Discrimination Prohibition Act (Act No. 26 of 1991). However, while the Government did initiate several legislative reviews, these initiatives are still at the preliminary stages of a legislative process. Accordingly, even though it was designed to be delivered by 2019, the National Human Rights Action Plan has not yet led to concrete results. Likewise, there appear to have been serious delays in implementing the recommendation of the Special Report on Racism and Discrimination, published by the Office of the Ombudsman in 2017. This report included a long list of substantial recommendations, for the Government as well as for the employers' organizations, which, according to the Ombudsman himself, were supposed to be acted on by ministries within six months of the publication of the report, while the employers were supposed to undertake a review of recruitment procedures, training to detect discrimination, establishment of procedures to deal with discrimination claims, and other actions. However, when it comes to implementation, the Government indicates that the only action taken so far on these important recommendations was to disseminate them to members of the Namibia Employers' Federation. While these various plans, analyses and research documents are potentially useful tools in support of efforts to eliminate discrimination in employment and occupation, they alone are not enough. To meet the aims of the Convention, concrete, proactive actions, appropriate to national conditions and practice, are required to address the underlying causes of discrimination and the cycle of inequality resulting from discrimination. Adoption of documents and their dissemination is not sufficient.

As already mentioned, occupational segregation in the labour market prevails and the representation of racially disadvantaged workers, women and workers with disabilities remains very low at higher occupational levels. The Government reported a number of planned affirmative action measures, such as a review of legislation and implementation of the provisions of the Affirmative Action (Employment) Act 29 of 1998, which require employers to institute positive steps to further the employment of people from disadvantaged groups; the adoption of the New Equitable Economic Empowerment Framework Bill 2015; and the promotion of access to training and employment opportunities for disadvantaged groups of workers.

The EEC also has planned a number of actions, including visits to workplaces, prosecution of employers not complying with the law, and maintaining a case management system. However, the Government has not shared any information about the results expected through these initiatives, such as targets on improved representativity of workforce demographics at workplaces in different sectors.

We recall that affirmative action on behalf of persons belonging to groups that have suffered disadvantage is an important component of a national equality policy. Concrete measures are needed to ensure equality of opportunity in practice, taking into account the diversity of situations of the people concerned, so as to halt discrimination, redress the effects of past discriminatory practices and restore a balance, as observed by the General Survey of 2012.

To conclude, while the Government of Namibia has developed many important initiatives with the view to eliminating discrimination, proactive, verifiable implementation of these initiatives, as well as greater enforcement through labour courts and inspections, are still needed. We call on the Government to take action to fully comply with the obligations under the Convention.

**Government member, Zimbabwe** – We would like to thank the representative of the Government of Namibia for providing this Committee with its positions on the issues raised by the Committee of Experts and on the subjects of the discussion in this Committee. My delegation appreciates the information provided by Namibia on how HIV and AIDS-related labour complaints are dealt with and the status of the complaints launched against the Namibian Defence Forces. Furthermore, my delegation appreciates the measures that Namibia has taken in implementing its National Human Rights Action Plan, as well as its affirmative action plan, in the context of the world of work and the work of the EEC.

My delegation has taken note of the information and progress on the development of the New Equitable Economic Empowerment Framework Bill 2015 that resonates with the principles enshrined in the Convention on discrimination in the labour markets. We also take note of the willingness of the Republic of Namibia to work with the ILO and urge the Office to provide the requested technical assistance.

**Government member, Bolivarian Republic of Venezuela** — The Government of the Bolivarian Republic of Venezuela expresses its appreciation for the presentation by the honourable Minister of Labour of Namibia, with respect to compliance with the Convention. We have noted that the Government of Namibia has paid careful attention to the comments of the Committee of Experts, reaffirmed its commitment to eradicate HIV/AIDS and emphasized its control of the transmission of this virus. We recognize that the Namibian Labour Act provides for effective mechanisms for victims of discrimination on grounds of HIV/AIDS status.

The 2021 report of the Committee of Experts states that the Government of Namibia has reported that the Labour Act is being revised with a view to broadening the prohibition against dismissal of a worker on grounds of HIV/AIDS status, and mental or physical disability, and that family responsibilities are protected.

We also recognize the progress made in relation to the National Human Rights Action Plan, in which the right not to be discriminated against is identified, particularly with regard to women, indigenous peoples, persons with disabilities and the LGBTI population.

In this regard, we also appreciate the tripartite Labour Advisory Council and the EEC in place in Namibia, which deal with equality in employment.

Lastly, the Government of the Bolivarian Republic of Venezuela hopes that the Committee's conclusions will be objective and balanced in order that the Government of Namibia continues to make progress in complying with the Convention.

**Worker member, Zimbabwe** – I speak on behalf of the Zimbabwean workers, in solidarity with the workers of Namibia. We note some worrying issues contained in the Committee of Experts' comments. These relate to persons disadvantaged on the grounds of race, in particular women and persons with disabilities. We note the Government's efforts to address this issue through the establishment of the EEC. We note the measures taken by that Commission to redress some of the issues. However, we remain concerned that the EEC is not fully capacitated to undertake its work.



Additionally, the EEC does not have a comprehensive information management system and reliable data, including on affirmative action. While we have acknowledged its work over the years, we noted that it has been mostly confined to issues of race between whites and blacks, while neglecting other forms of discrimination that are among the majority and minority ethnic groups. Certain black majority ethnic groups predominate employment in ethnic minorities areas, recruiting people of their own ethnicity and displacing indigenous people from employment and positions of power. The majority ethnic group is highly represented at the top in most occupations, including in the Government. Minority ethnic groups are deprived of opportunities as a strategy to keep them in lower positions.

We urge the Government of Namibia to address the above concerns before the 2022 International Labour Conference, and provide their progress report in this regard. We request the Committee to consider granting technical assistance to the Government to address these concerns.

*Interpretation from Arabic:* **Government member, Egypt** – We have taken note of the efforts of the Government of Namibia towards the application of the Convention. This confirms Namibia's intention to work in accordance with the Convention. The Convention provides for a dispute resolution mechanism with regard to all issues relating to discrimination. The Government of Namibia also commits to take the necessary measures to fight HIV/AIDS, in order to ensure that legal provisions are effective and effectively applied.

Decisions have been taken to establish a National Human Rights Action Plan. The Government is also carrying out tripartite consultations with those involved in order to develop a white paper for indigenous peoples in Namibia. It adopted the Affirmative Action (Employment) Amendment Act 6 of 2007, which sets out the obligation for employers to take positive measures without discriminating against certain groups, broadening the possibility of fighting against discrimination. We welcome the efforts taken by Namibia to bring its laws into line with the provisions of the Convention and we very much hope that its efforts will be taken into account in the conclusions.

**Worker member, France** – Issues related to all forms of discrimination are unfortunately often reinforced when the economic context is challenging. People in vulnerable situations are thereby the first to be affected in terms of access to training and employment, among other things. These difficult economic contexts also foster multiple forms of discrimination. The case of Namibia is in this sense an example of this state of affairs.

While the Committee of Experts' report refers to a number of regulatory frameworks aimed at combating different forms of discrimination in this State, it should be noted that the report does not provide statistical data and facts to enable an examination of the actual effectiveness in practice of these legislative aspects or regulatory frameworks. These data are also very difficult to find or date back to periods that are, in some cases, relatively distant. Similarly, the report fails to highlight the possible cultural and institutional factors that contribute to generating such discrimination. It would therefore be useful to have sufficient and reliable statistical data to enable the Committee of Experts to examine the ways in which Namibia intends to put an end to such discrimination in practice.

Equally, with regard to certain grounds of discrimination, particularly those related to HIV/AIDS, the Committee of Experts notes that the courts have not examined any complaints on this specific matter for 20 years. It is important to assess solutions to

enable the judicial system to more effectively take account of cases of discrimination. Courts must be able to investigate, prosecute and punish enterprises that use discriminatory practices in employment and occupation. It is essential, in this regard, that victims can lodge complaints safely and are protected. There must also be provision for granting them legal and psychological support.

Further, employers have an important role in this regard, and freely chosen collective bargaining carried out in good faith is essential to negotiate policies and programmes aimed at eliminating and preventing all forms of discrimination in the workplace, and to implement remedies for workers who are victims of such discrimination.

**Government member, India** – India welcomes the delegation of the Government of Namibia and thanks it for providing the latest update on the issue under consideration. India appreciates the commitment of the Government of Namibia to fulfil its international labour obligations, including those related to the Convention, through progressive implementation of the relevant recommendations of the ILO and the willingness to constructively work with it.

We take positive note of various concrete steps taken by the Government of Namibia to implement the National Human Rights Action Plan 2015–19. Notable among these are: (i) the Law Reform and Development Commission's project on obsolete laws which resulted in the repeal of the Obsolete Laws Act, 2018; and (ii) the ongoing deliberations among the stakeholders for repealing and replacement of the Racial Discrimination Prohibition Act, 1991. We also welcome the ongoing round of social dialogue that the Government of Namibia is organizing in order to enact the Equitable Economic Empowerment legislation.

We request the ILO and its constituents to fully support the Government of Namibia and provide all necessary technical assistance enabling the EEC to develop and implement a comprehensive information management system. We take this opportunity to wish the Government of Namibia all success in its endeavours.

**Worker member, Botswana** – The Botswana Federation of Trade Unions notes that discrimination against people living with HIV and with disabilities, though existing, can be defeated. The Namibian Government has been previously urged, as it is urged now by the Committee of Experts, to take measures that will ensure coherence between section 5 of its Labour Act, which defines discrimination, and section 33 on the prohibition of dismissal based on HIV and AIDS status, as well as the degree of physical or mental disability, and family responsibilities.

We also urge that the Government take cognizance of both the substance and essence of its National Human Rights Action Plan 2015–19, which identified critical areas of focus, among them the right not to be discriminated against. This particularly relates to certain groups including women, indigenous people, people with disabilities and LGBTI persons. We posit that, among other things, such measures require strong political will and deliberate effort to create an environment that is barrier-free for the equalization of opportunities for all.

There is also a need for the development of integrated occupational health services and a systematic endeavour at eliminating practices that promote stigma in the workplace. Ensuring increased access to technology related to assertive devices to create an environment to grant people with disabilities much-desired autonomy and guarantee dignity and respect, is equally imperative. One of the ways in which the above can be

achieved is to grow awareness through public education and to benchmark against countries that have already made progress in destigmatizing HIV and disability.

Against this background, the Botswana Federation of Trade Unions submits that, in light of initiatives already taken by the Government as epitomized by the National Human Rights Action Plan 2015–19 and the report of the Ombudsman of November 2017, there seems to be ample potential and opportunity for remedying the concerns raised by workers, subject only to collectivism, cooperation and sound political will.

**Government member, Malawi** – Malawi has taken note of the observations made by the Committee of Experts contained in its 2020 Supplementary Report in respect of Namibia's application of the Convention. At the same time, the Government of Malawi appreciates the information provided by the Government of Namibia on the implementation of the Convention.

Malawi has taken note that Namibia is appearing before this Committee for the first time. We have also taken note that the current legal remedies are effective to curb discrimination, including on the basis of a real or perceived HIV-positive status. Malawi applauds Namibia for the concrete and constructive steps taken by the Government to implement the National Human Rights Action Plan 2015–19, including the legislative reforms to ensure that the country's laws are in conformity with the provisions of the Convention, and the repeal of laws that were perceived as discriminatory in nature.

The Government of Malawi commends Namibia for the continued engagement with the social partners and private sector on the legislative reforms, including the upcoming New Equitable Economic Empowerment Framework Bill 2015. The Government of Malawi implores the ILO to provide technical assistance as requested by the Government of Namibia.

**Worker member, Democratic Republic of the Congo** – This intervention aims to provide supplementary information to the well-presented report on Namibia of the Committee of Experts. In Namibia, as is the case in Africa, women's access to, and insertion and participation in the formal labour market, while increasing, is poor. Actions that discriminate against women's participation make genuine positive actions slow to show results. Breastfeeding, for example, when not managed properly, can contribute to reducing women's chances of employment and advancement.

Just as the Namibian Government is promoting the benefits of breastfeeding, there are no corresponding measures for legal protection and assistance for nursing mothers. In fact, many nursing mothers would prefer to cut short as much as possible the period during which they breastfeed in order to return to work, as they face benefit cuts when they go on maternity leave.

In addition, the Social Security Commission has a very low ceiling for compensation for women who take a three-month maternity leave. This is barely enough for working mothers. It forces most mothers to renounce maternity leave altogether or, in some circumstances, to interrupt it for fear of loss of income.

These discriminatory realities infringe women's reproductive rights and violate their fundamental rights to remunerative and productive employment. To avoid these situations, many women, especially young women, have chosen to put off their maternity and some do not wish to have children at all. These are forced and avoidable choices. The Government must put an end to this nightmare for women of reproductive age.

**Government member, Ghana** – Ghana prioritizes human rights issues and, as such, recognizes any form of discrimination as a serious violation of human rights, as enunciated by the Universal Declaration of Human Rights. The Government of Ghana therefore commends Namibia for bringing its regulations in line with the provisions of the Convention. Section 5(2) of Namibia’s Labour Act of 2007 explicitly prohibits all forms of discrimination in relation to employment decisions either directly or indirectly and lists all the important grounds of discrimination, which include HIV/AIDS. The Act also provides alternatives to aggrieved employees to seek redress on unlawful employment decisions. It is also important to acknowledge the commitment of Namibia in the fight against HIV, making Namibia the first in Africa to have more than three-quarters of its HIV-affected population virally suppressed.

Ghana further notes the concrete measures taken by the Government of Namibia, including the development and implementation of the National Human Rights Action Plan 2015–19, to eliminate all forms of discrimination in employment and occupation. Through the implementation of the Action Plan, the Government of Namibia has repealed some of the laws that were discriminatory in nature.

The Government of Ghana supports Namibia’s request to the ILO for technical assistance to enhance the operations of the EEC to develop and implement a comprehensive information management system for case management, accurate data collection and analyses, as well as evidence-based planning and policymaking with respect to affirmative action and discrimination in employment.

**Government member, Botswana** – We thank the representative of the Government of Namibia for the detailed response to the issues raised by the Committee of Experts. It is clear that the Government, in collaboration with the social partners, has made significant progress on the issues raised by the Committee of Experts. We note with satisfaction that discrimination on the grounds of HIV or AIDS status has been declared unlawful in Namibia, as provided for in the Labour Act of 2007. It is also clear that the prohibition of dismissal of employees due to HIV and AIDS status, actual or perceived, the degree of physical or mental disability, and family responsibility is already provided for in section 5 of the Labour Act.

Furthermore, we note the commitment of the Government to formulate the Equitable Economic Empowerment legislation, the process of which is in the consultation stages between the Government and stakeholders. Accordingly, this Committee should urge the Government of Namibia to expedite this process.

We appreciate that Namibia has acknowledged its limitations to collecting crucial data relating to discrimination. We therefore commend the Government of Namibia for having taken the critical step to request ILO technical assistance to enable the EEC to develop and implement a comprehensive information management system, which we hope and trust will be provided by the ILO.

**Government member, Burkina Faso** – The Government of Burkina Faso is very pleased to take the floor on the occasion of the examination of this individual case, which involves the sister republic of Namibia, on the application in law and practice of Convention No. 111. The elimination of discrimination in respect of employment and occupation, which is the subject of this Convention, is one of the components of the fundamental principles and rights at work enshrined by the ILO. My country strongly encourages the promotion of the fundamental principles and rights at work as pillars for the achievement of decent work and of the objective of social justice, which is dear to

our common Organization, and will spare no effort to support Member States in this regard.

The Government of Namibia is called before the Committee, further to the observations made by the Committee of Experts, for non-conformity of certain of its domestic legislative provisions with certain key principles contained in the Convention, which was ratified on 13 November 2001. Following up on these observations, the Namibian Government provided a reply containing some very relevant information. Indeed, the reply illustrates the following significant actions: the protection of workers against all prohibited forms of discrimination through the existing administrative and judicial mechanisms; the implementation of the National Human Rights Action Plan 2015–19; the initiation of a drafting process for a white paper on the rights of indigenous peoples, based on the report produced by the Ombudsman and submitted to the National Assembly; the progressive implementation of the recommendations resulting from the work of the EEC; and the implementation of the drafting process for the New Equitable Economic Empowerment Framework Bill 2015.

All of these actions, which are under way, in a global context of the COVID-19 pandemic, demonstrate the consented actions of Namibia to give full effect to the Convention. For this reason, Burkina Faso calls on the Committee to give Namibia time to follow up these actions, with ILO support if necessary.

**Government member, Ethiopia** – My delegation would like to commend the Honourable Minister of Labour of Namibia for the comprehensive report on the application of the Convention. We took note of the information provided by the Government of Namibia that the country's existing legal framework prohibits discrimination on all grounds. We further noted from the Government's report the implementation of the National Human Rights Action Plan 2015–19, as requested by the Committee of Experts. We are also informed that the review of the Affirmative Action (Employment) Act 29 of 1998 has already been finalized and a task force has been established to prepare the draft Amendment Bill.

As indicated in the Government's report, a proposal for Equitable Economic Empowerment legislation has been under discussion between the Government and stakeholders. The Government is currently conducting another round of social dialogue with the private sector on a redrafted Bill and a final Bill will be submitted to the Cabinet for consideration before it is tabled before the Assembly.

Finally, the Government of Namibia openly indicated its limited capacity to collect data relating to discrimination, and requested ILO technical assistance to enable the EEC to develop and implement a comprehensive information management system to address electronic affirmative action report submission and case management.

Since the Government of Namibia is demonstrating concrete efforts at its fullest capacity to progressively ensure the conformity of the Convention with its national laws and practice, we encourage the ILO to provide technical assistance to complement the Government's efforts to ensure effective application of the Convention. In conclusion, we hope that the Committee in its conclusions will take into consideration all the concrete information provided by the Government of Namibia, as well as the constructive comments and discussions held in this august house.

*Interpretation from Arabic:* **Government member, Algeria** – At the outset, Algeria welcomes the progress made by the Republic of Namibia, in particular in the implementation of the provisions of the Convention. In this regard, the Algerian delegation applauds the measures envisaged by the Government of Namibia to ensure

alignment with international law and best practices relating to the promotion of equal rights and opportunities at work.

In its pursuit of greater public policy coherence, the Algerian delegation encourages Namibia to continue its efforts to ensure a comprehensive and integrated approach to non-discrimination, and to the consideration of particular needs, such as persons with disabilities and those living with HIV/AIDS.

Algeria also applauds the Government of Namibia for its commendable and constructive efforts to advance the process of amending labour legislation to prohibit the dismissal of workers on the grounds of HIV/AIDS status, degree of physical or mental disability, or family responsibilities; and for the adoption of the New Equitable Economic Empowerment Framework Bill 2015, as well as for the development of programmes for access to training and employment opportunities for persons with disabilities.

Algeria also believes that the Republic of Namibia could, in cooperation with the ILO, further its consideration to improve the institutional framework and thereby fulfil previous lack of action with regard to combating discrimination against vulnerable groups and behaviour leading to an indecent work environment.

**Worker member, Democratic Republic of the Congo** – With regard to HIV/AIDS, as noted by the Committee of Experts in its report, Namibia has become the first country in Africa of which over three quarters of its population is affected by HIV, which is a very worrying situation of a brother country. But it is regrettable that Article 1(1)(b) of the Convention is not sufficiently exploited in this case, particularly in terms of HIV status. Echoing the comments of the Committee of Experts, we call on the Government to adopt specific and ambitious measures to guarantee that workers who are victims of discrimination on the basis of HIV status (actual or perceived) have effective access to legal remedies.

With regard to access to vocational training, in line with Article 1(3) of the Convention, the employers of the Democratic Republic of the Congo appreciate the efforts made by the Government to promote access to training and employment opportunities for designated groups. We also call on the Government to review regularly the affirmative action measures to assess their relevance and impact and to provide information on any measures taken in this regard and the results achieved.

However, given the different forms of discrimination in employment and occupation, as experienced and reported in Namibia, we call on the Government to adopt a concerted approach with the involvement of the social partners and request ILO assistance with a view to the positive development of the world of work in respect of the Convention.

**Government member, Angola** – Angola would like to congratulate the Namibian delegation for submitting its report, as well as for its willingness to request ILO technical assistance to develop and implement a comprehensive information management system. It seems that this system will allow the collection and analysis of data, and compile evidence for cases regarding affirmative action and discrimination. In this regard, it should be noted that this is the first time that the Government of Namibia has been asked to present itself to this Committee.

We understand that discrimination on the basis of status is illegal and punishable by law in Namibia. Thus the Government of Namibia has been working with all stakeholders on improving the values of social justice, making the law accessible through constructive engagement with national and regional institutions, including the



Southern Africa Development Community. In this regard, it is noteworthy that the prohibition of unfair discrimination, hate speech and harassment was circulated in Namibia for comments from the various stakeholders and a consultative meeting was held on 28 May 2021. Ultimately, the Racial Discrimination Prohibition Act was repealed.

Taking into account the commitments made, the Angolan delegation congratulates Namibia on results achieved so far and encourages the Government to continue with the process of legislative reforms in order to improve labour legislation, conforming it with international instruments of the ILO. The country will therefore need technical assistance.

**Observer, International Trade Union Confederation (ITUC)** – The Government of Namibia has responded that discrimination on the grounds of HIV or AIDS status is unlawful, as decided in the case of *Nanditume v. the Minister of Defence* by the High Court in 2000. However, discrimination on one's HIV status continues to haunt employees in the Namibian labour market in several opaque and hidden ways.

Recruitment into the disciplined forces still comes with a pre-employment health test. The tests are justified presumably to determine the health status of the prospective employees to purportedly render them the necessary assistance once they are employed. Is it not possible and better to render them such health assistance after they have been recruited?

The next difficulty that arises from the pre-employment test is the discrimination that follows in its wake with regard to the medical insurance benefits which are literally curtailed together with any further prospects of full employment in the government sectors.

In terms of the pension fund that influences the employment of staff in government service, once an employee had been found unfit by the board for medical or health-related reasons, they cannot be re-employed in government services on a full-time basis with the retention of their pension and other benefits. Suppose an employee is found unfit at age 28 and re-employed on a part-time basis, less the medical and other benefits at the age of 30. It follows that such an employee will work for 30 years without any medical aid and any other benefit that goes with full employment status in the public services.

It is our submission that employees who have fully recovered from HIV/AIDS complications, or any other ailments for that matter, must not suffer any form of discrimination relating to their employment. What has been said concerning HIV status above is also true in relation to mental and physical disability as well.

This Conference needs to take note of the question of compatibility, because it is the very same reason being used to discriminate against persons with disabilities or mental health problems. It is our submission that there must be a compatibility requirement for people who have been declared by medical doctors as fully recovered to resume employment suited to their current state of health.

**Government member, Sudan** – On behalf on the Government of Sudan, I would like to present a statement in support of the Government of Namibia with regard to the application of the Convention. We wish to make this statement following the information provided by the Namibian Government. Namibia ratified the Convention in 2001 and this is the first time that it is called to appear before your Committee for the application of this Convention.

The Convention has been incorporated into the labour law and the country has amended the sections indicated by the Committee of Experts in order to bring them into conformity with the international labour standards. The Government of Namibia has taken effective measures to provide any victims with effective legal remedies. It has also taken effective measures with regard to equality in employment within the framework of its National Human Rights Action Plan 2015–19. We wish to support the Government of Namibia with the measures it has adopted in this regard.

**Government member, Eswatini** – Eswatini has the honour to join the discussion of the case of Namibia on Convention No. 111. My delegation would like to recall that Member States who ratify this Convention undertake to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

We would also like to draw the attention of the Committee to the provisions of Article 3 of the Convention, which provides that the promotion of acceptance and observance of the national policy eliminating any discrimination shall be pursued, by methods appropriate to national conditions and practice, with the cooperation of employers' and workers' organizations and other appropriate bodies. What we wish to underscore here is that this is a shared responsibility.

From the information that has been provided by the Government of Namibia, my delegation has taken note that both through legislative and national policy instruments and action plans, Namibia has endeavoured to implement the Convention in both law and practice. Reference in this regard is made to the following policy and legislative instruments, and action plans that have been adopted by the Government over the years: (i) the National Code on HIV/AIDS and Employment for HIV Prevention and AIDS Management, 1998; (ii) the National Human Rights Action Plan, which identified as one of its main areas of focus "the right not to be discriminated against", in particular with respect to certain groups including women, indigenous people, persons with disabilities and other persons; (iii) the Prohibition of Unfair Discrimination, Hate Speech and Harassment Bill, which will repeal the Racial Discrimination Prohibition Act No. 26 of 1991; (iv) the publication in November 2017 of the Office of the Ombudsman's Special Report on Racism and Discrimination, which included recommendations for the Government (namely formulation of programmes and strategies, awareness-raising, support to victims) and for the employers' organizations (namely the review of recruitment procedures, training to detect discrimination, establishment of procedures to deal with discrimination claims); (v) the development of a White Paper on Indigenous People's Rights which has since been submitted to Cabinet; (vi) the adoption of the Affirmative Action (Employment) Amendment Act 6 of 2007, which requires employers to take positive steps to further the employment of persons from designated groups; and (vii) the establishment of the EEC, which delivered its report in 2017.

The cumulative effect of all the forgoing activities should surely accrue in favour of the Government of Namibia as efforts that demonstrate the limitless intentions of the Government to implement this Convention in both law and practice.

**Government member, Uganda** – My delegation notes that this is the first time Namibia is appearing before this Committee and has commenced data collection for the detailed response provided. Allow me to address the issues brought to the attention of Namibia under the Convention. We welcome the efforts undertaken by Namibia and further call on the Office to extend technical support to address the challenges of data collection and analysis in the context of affirmative action. We consider that further

support from the Office to the tripartite partners facilitates the development of appropriate training programmes to promote the objective of affirmative action. Once again, my delegation takes note of consistent progress, in particular the social dialogue for inclusivity and for formulation of the Bill to be submitted to Cabinet. Finally, my delegation is persuaded that Namibia has taken the right steps and calls on the Office to provide technical support to build capacity in respect of data collection and other relevant areas.

**Government representative** – On behalf of my delegation, I thank you for your excellent leadership in steering the discussions today. I also wish to thank all the delegations that took the time to participate during Namibia's presentation to the Conference Committee. Your valuable input, comments and recommendations are instrumental to our continued efforts to ensure full implementation of human rights in the world of work for the benefit of our people. The high participation levels demonstrated through interventions and advice offered here today is highly encouraging and serves as motivation for Namibia's commitment to non-discrimination and equality in the world of work.

As stated in my statement, Namibia remains committed to the grand national project to eliminate discrimination. The protection provided by the labour law is broader in nature and scope in that it relates to prohibition discrimination in any employment decision in all areas of employment from entry to exit. The inadequacy in the protection of dismissal based on HIV/AIDS status, as it is perceived by the Committee of Experts, is under consideration by the tripartite task force. Namibia is proud of the achievements relating to the elimination of discrimination in employment since independence.

In conclusion, let me reiterate once again, that Namibia will continue to consult social partners on the application of Convention No. 111, as well as implementation of other ILO Conventions.

**Worker members** – We note the comments of the Government of Namibia. We emphasize that the Government has an obligation to respect international labour standards and the guidance provided by the Committee of Experts in line with their mandate. It also has a responsibility to respond thoroughly to the questions raised by the Committee of Experts. Looking back through the documentation for this case, we see repeated calls from the Committee of Experts for the same information. We remind the Government to treat the Committee of Experts' questions with the utmost seriousness.

The principal objective of the Convention is to eliminate all discrimination in respect of all aspects of employment and occupation – as defined in the Convention – through the concrete and progressive development of equality of opportunity and treatment in law and practice. In doing so, it also makes our societies more fair and more equal. But it is a dynamic Convention, asking Members to keep in mind the goal of eliminating any discrimination in employment and occupation. In pursuit of this, States are required to develop and implement a multifaceted national equality policy and they should keep this under review: policies and practices which have previously had some success, but which have stalled, need regular revision if progress is to be maintained towards that aim of eliminating any discrimination. Of course, the adoption of a national equality policy presupposes the adoption of specific and concrete implementation measures, including the need for a clear and comprehensive legislative framework, to ensure that the right to equality and non-discrimination is effective in practice.

We note the Government of Namibia's own concerns, relayed to journalists in 2019, that innovative ways are required to speed up progress towards employment equity. We trust that this concern will translate into the political will necessary to take the actions needed to match policy and practice with ambition.

With a view to achieving the elimination of any discrimination, including in the form of sexual harassment – and this is the challenge Convention No. 111 demands of us – we call on the Government to take proactive measures to address the underlying causes of discrimination, and de facto inequalities resulting from discrimination, in employment and occupation, to keep their effectiveness under review, and in doing so to be responsive to the guidance of the ILO and its Committee of Experts.

We call on the Government of Namibia to extend the prohibition of dismissal to HIV and AIDS status (actual or perceived), physical or mental disability and family responsibilities, and to make this explicit in law. Victims of workplace discrimination should have effective access to judicial remedy. We note the Government's assurance in its supplementary written submission, and its statement here, that these groups are protected, but would also note that if the ILO's foremost Committee of Experts is uncertain of whether a group is fully covered, it is likely that a member of that group facing potential discrimination will also be unsure. This represents a barrier to justice and remedy and should be addressed speedily.

We also call on the Government of Namibia to step up efforts to fully implement its national equality policy. The Government should provide detailed information on the concrete measures taken to implement the actions set out in the National Human Rights Action Plan 2015–19, in particular the review of the legislative and regulatory framework, and report on the results achieved. Further follow-up should be given to the recommendations in the Office of the Ombudsman's Special Report on Racism and Discrimination, now several years old, and the practical steps taken to address such discrimination.

Lastly, we recall the importance of affirmative action, provided for in the Convention, on behalf of workers belonging to groups that have suffered disadvantage, in achieving an effective national equality policy. We call on the Government of Namibia to take action to ensure that disadvantaged groups of workers can enjoy their right to non-discrimination in employment and occupation, including through affirmative action. The Government of Namibia should promote access of disadvantaged workers to employment and to particular occupations, to vocational training and to non-discriminatory terms and conditions of employment. Accordingly, we call on the Government to respond to requests of the Committee of Experts and to provide information about the results of current affirmative action initiatives, as well as details of the planned legislative reviews.

The Government must accept an ILO technical mission to provide the necessary assistance to not only develop information management systems, but to support full compliance with all the obligations under the Convention.

**Employer members** – The Employers' group would like to thank the Government of Namibia for the comprehensive and useful information, especially on the implementation, in law and practice, of the Convention, and all the legislative changes that have been adopted or are under way.

We would like to also thank the delegates that took the floor and participated in today's discussion. In light of the debate, the Employers' group invites the Government to:

- adopt specific measures to ensure that workers who are victims of discrimination on the basis of HIV status, actual or perceived, have effective access to legal remedies, and also to shed light on the body or bodies in charge of dealing with cases of discrimination in Namibia;
- report on the follow-up and action plan to the Office of the Ombudsman's Special Report on Racism and Discrimination submitted to the National Assembly in October 2017;
- report on the follow-up to the National Human Rights Action Plan 2015–19, if any;
- report on the final legislative changes to the Affirmative Action (Employment) Amendment Act 6 of 2007, following the tripartite Labour Advisory Council input and given the work of the national task force;
- clarify how, in the context of Namibia's redress programme, decisions of the EEC affect employers' ability to fill certain job positions;
- report on the reform of the New Equitable Economic Empowerment Framework Bill 2015, which is almost ready for Cabinet consideration, before it is tabled in the National Assembly in the third or fourth quarter of the 2021 to 2022 financial year; and lastly
- avail itself of any ILO technical assistance required.

## Conclusions of the Committee

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

**Taking into account the discussion, the Committee urges the Government to take all necessary measures, in consultation with the social partners, to:**

- **adopt specific measures to ensure that workers who are victims of discrimination on the basis of any of the prohibited grounds have effective access to legal remedies;**
- **provide information on the number of cases of discrimination dealt with by labour courts and on their outcome;**
- **report on the follow-up and action plan to implement the recommendations of the Office of the Ombudsman's Special Report on Racism and Discrimination submitted to the National Assembly in October 2017, including with regards to the review of recruitment procedures, training to detect discrimination, and the establishment of procedures to deal with discrimination claims;**
- **provide detailed information on the concrete measures taken to implement the National Human Rights Action Plan for the period following 2015–19, if any, and in particular the review of the legislative and regulatory framework, and report on the results achieved;**
- **report on the actions taken to promote access to employment and occupational training for groups disadvantaged because of race, gender or disability, pursuant to the Affirmative Action (Employment) Act, 1998;**
- **report on the planned legislative review, including the final legislative changes to the Affirmative Action (Employment) Amendment Act 6 of 2007;**

- **reinforce the mandate of the Employment Equity Commission (EEC) to deal with cases of discrimination, strengthen its capacity and clarify how its decisions affect the employers' filling of certain job positions; and**
- **report on the reform to the New Equitable Economic Empowerment Framework Bill 2015.**

**The Committee requests that the Government accept an ILO technical advisory mission to provide the necessary assistance to support full compliance with the obligations under the Convention.**

**The Committee requests the Government to submit a report, following consultation with the social partners, to the Committee of Experts before its next meeting in 2021.**

**Government representative** – Namibia takes this opportunity to thank you for your able leadership on steering the Committee during the 109th Session of the International Labour Conference. Since this is the first time that Namibia has appeared before the Committee, our team has learnt much from the proceedings.

Namibia is committed to implementing the provisions of the Convention and taking all necessary measures to that end in consultation with the social partners, as highlighted by the Committee's conclusions. We will consult with our social partners and other relevant stakeholders on various items, specifically the Committee's conclusions.

To conclude, Namibia welcomes the technical advisory mission to provide the necessary assistance to ensure full compliance with the obligations under the Convention. We propose that the mission be organized virtually so that it can proceed without delay. We commit to submitting the requested report to the Committee of Experts before its next meeting.



## Kazakhstan (ratification: 2000)

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

#### Written information provided by the Government

##### Concerning Mr E. Baltabay's and Ms L. Kharkova's criminal cases

The criminal cases against Mr Baltabay and Ms Kharkova are not caused by "participation in lawful trade union activities", but initiated due to common crimes.

Currently, Mr Baltabay and Ms Kharkova enjoy freedom.

**Mr Baltabay**, Local Trade Union, Decent Work of Petrochemical Industry Employees, NGO Chairman, misappropriated 10,800,000 Kazakhstani tenge entrusted to him through abuse of his official position.

On 17 July 2019, Mr Baltabay was found guilty by the verdict of the Enbekshi District Court of Shymkent, under paragraph 2, part 4, of article 189 of Kazakhstan's Criminal Code (hereinafter the CC) (misappropriation or embezzlement of entrusted property) and sentenced to seven years imprisonment and deprived of the right to hold senior positions in public associations and other non-profit organizations for seven years. The sentence shall be served in a medium security penal system institution.

The verdict has not been appealed within the established deadlines.

On 2 August 2019, Mr Baltabay admitted guilt and filed a petition for a pardon to Mr Kassym-Jomart Tokayev, the President of Kazakhstan.

Mr Baltabay was pardoned on 9 August 2019, by Presidential Decree, and the unserved part of the sentence was replaced by a fine.

According to the decision of the Al-Farabi District Court of Shymkent, adopted on the same day, the unserved 2,528 days of imprisonment were recalculated as a fine amounting to 1,595,800 tenge, which Mr Baltabay is obliged to pay within a month of the decision date.

At the same time, Mr Baltabay was released from the Shymkent IS-167/11 Department of Criminal Justice Institution of the Ministry of Internal Affairs.

On 11 September 2019, enforcement proceedings were initiated against Mr Baltabay to recover the 1,595,800 tenge fine owed to the State, which he had failed to pay.

On 1 October 2019, a submission was made to the Al-Farabi District Court of Shymkent to replace the fine imposed on Mr Baltabay by the court verdict with another punishment, due to the failure to pay the fine.

*For reference: Under paragraph 3, part 6, of article 41 of the CC, the sentence (verdict) shall be enforced subject to the failure to pay the fine within the prescribed period, the pending amount of the fine shall be replaced by a term of imprisonment, calculated as one imprisonment day equal to four MCIs to be paid by the person convicted of a grievous crime.*

The above sanction was replaced by five months and eight days of imprisonment by decision of the Al-Farabi District Court of Shymkent (court decision of 16 October 2019). The court sentenced Mr Baltabay to be taken back into custody in the courtroom.

Mr Baltabay was released from IS-167/3 on 20 March 2020, upon the expiry of the sentence and filed a petition to the court requesting the restoration of the appeal deadlines, two months after the date of the entry into legal force of the verdict (7 October 2019).

The Enbekshi District Court of Shymkent denied the request to restore the missed deadline in its decision dated 31 October 2019.

On 24 September 2020, Mr Baltabay, with Mr Abishev representing him, appealed once again to the court against the court verdict of 17 July 2019.

The Enbekshi District Court of Shymkent dismissed the appeal due to the missed deadline to appeal the verdict in a decision dated 28 September 2020.

The additional sanction depriving him of the right to hold senior positions in public associations and non-profit organizations was not appealed by Mr Baltabay.

Moreover, until today, no petition challenging the lawfulness and validity of the trial court verdict has been filed with the Supreme Court by him or his defence.

**Ms Kharkova**, former leader of the Confederation of Independent Trade Unions of Kazakhstan (CITUK).

On 25 July 2017, she was sentenced to four years of restriction of liberty, confiscation of property and five-years deprivation of the right to hold senior positions in public associations and non-profit organizations due to abuse of office (Part 1 of CC, article 250), resulting in damage exceeding 12,000,000 tenge.

According to the CITUK Chapter, the organization was non-profit, it did not pursue profit. Despite this, Ms Kharkova, abusing her powers, concluded contracts with third-party organizations in order to extract benefits.

The funds were illegally accrued to herself and her closest employees as “bonuses”, causing the union 2,500,000 tenge damage.

Moreover, she placed 5,000,000 tenge in her bank deposit at 13.2 per cent per annum, having withdrawn the amount from the union’s account.

During the accounting audit, she failed to present documents to support the 8,000,000 tenge transfer.

Investigation and forensic inquiry findings proved Ms Kharkova’s guilt (accounting examinations confirming the transfer of funds, bank documents, witness statements, constituent documents of the trade union movement limiting the convict’s authority to disburse funds).

On 29 September 2017, the South Kazakhstan Regional Court Appeal Panel found the verdict lawful and justified, and left it unchanged. The Appeal Panel concluded that the trial court’s assessment of each piece of evidence and of the case materials was correct and reliable. The court observed the general principles of sentencing and considered mitigating circumstances for guilt and punishment.

The appeal decision indicates the court’s verdict, reflecting the court’s conclusions on the alleged reports on the work done in 2009–15, as submitted by the defence to the court, which were not signed or approved, nor were the minutes of their discussions submitted to the court, so the reports could not be regarded as evidence. In addition, the court noted that, during the investigation, Ms Kharkova always rejected the repeated questions on the availability of the documents pertaining to the activities of the

organizations she led, and provided no reports or documents for audit and expert checks.

On 9 November 2017, Ms Kharkova was registered with probation service No. 1 of the Enbekshi District of the Department of Criminal Justice of Shymkent.

*For reference: Restriction of liberty consists of probation control over the convict for six months to seven years and performance by the convict of 100 hours of compulsory labour annually during the term of the sentence. The restriction on freedom shall be served at the convict's place of residence without isolation from the community.*

*Probation control shall be performed by the competent authority and, if the court so decides, include the convict's duties: avoidance of changing the place of permanent residence, work or study, without notification to the competent authority; monitoring of the convict's behaviour; avoidance of visiting certain places; treatment for mental and behavioural disorders (diseases) associated with abuse of psychoactive substances, and sexually transmitted diseases; provision of financial support to the family; other duties contributing to the convict's correction and preventing the convict from committing new criminal offences.*

The convict petitioned for a review of the judicial acts in cassation.

The cassation petition was subject to preliminary examination by a Supreme Court judge, who requested and studied the criminal case files and rejected the referral of the convict's petition for reconsideration to the court of cassation due to the lack of grounds for review of the judicial decisions.

Ms Kharkova's petition to the Supreme Court Chairman for the submission of the verdict for a cassation review was rejected due to the absence of grounds for such submission.

It has been possible to file a conditional early release petition since 9 November 2018. Subject to Ms Kharkova's application, the restriction of freedom could be replaced by a fine (approx. 800,000 tenge). To allow the above, complete compensation for the damage (approx. 5,000,000 tenge) is required, but this right has not been exercised.

The deadline to file the conditional early release petition expired on 9 February 2019, and according to the Prosecutor General's Office, no application was submitted.

The term of Ms Kharkova's restriction of freedom expires on 9 November 2021.

With regard to the criminal case of Mr Dmitry Senyavsky, who suffered injuries, criminal intelligence measures were taken to investigate the offence.

On 15 February 2019, the criminal case was suspended due to the failure to identify the person who committed the crime.

Efforts to investigate the crime continue.

### **Regarding the registration of the Congress of Free Trade Unions of the Republic of Kazakhstan (CFTU)**

As reported earlier, the judicial authorities refused to register the national association of trade unions "CFTU" on four occasions.

The first registration of CFTU was rejected due to the similarity to the already registered legal entity the "Confederation of Free Trade Unions of Kazakhstan". Moreover, the Charter provisions indicated its succession to the forcibly liquidated republican association of trade unions "CITUK".

According to article 38 of Kazakhstan's Civil Code, "The title of a legal entity may not fully or substantially duplicate the title of legal entities registered in the Republic of Kazakhstan."

The deficiencies specified in the initial rejection were not remedied in the subsequent applications for registration (on 17 August 2018, 18 September 2018 and 14 November 2019). At the same time, all the irregularities are of a remediable nature.

However, to date, the violations identified have not been eliminated and the reapplication for state registration has not been submitted to the judicial authorities.

### **On the suspension of the activities of the Sectoral trade union of fuel and energy complex employees (STUFECE)**

In accordance with the decision of the specialized inter-district economic court of Shymkent on 5 February 2021, the activities of STUFECE were suspended for six months due to the trade union's failure to confirm its status.

*For reference: According to paragraph 2 of article 13 of the Law on Trade Unions (hereinafter the Law), a sectoral trade union shall have structural units and (or) affiliated organizations in the territory covering more than one half of the total number of regions, cities of national status and the capital.*

*Under article 10, paragraph 2, of the Law, sectoral trade unions must submit their registration authority with the copies of the documents certifying their compliance with the requirements of article 13, paragraph 2, of the Law before the end of the year following registration.*

*Under article 10, paragraph 3, of the Law, failure to certify a sectoral trade union's status within one year of its registration results in the suspension of its activities by judicial procedure upon application by the local executive authorities.*

In March 2021, the Ministry of Labour and Social Protection of the Population of Kazakhstan (MLSPP) and the representatives of the Ministry of Justice, the national trade union associations, the Federation of Trade Unions, the Kazakhstan Confederation of Labour, and the Commonwealth of Trade Unions "Amanat", organized a meeting with the head of STUFECE, Mr Koshygulov, and its representatives Ms Kharkova and T. Erdenov, to provide practical assistance on trade union registration procedures in a working group on problematic issues in trade union registration.

On 25 March 2021, STUFECE filed an appeal with the Shymkent Appeal Panel.

The session of the court of appeal was scheduled for 21 April 2021, and postponed until 29 April 2021.

The court session rescheduled for 29 April 2021 was also postponed due to the request from the representatives of the STUFECE for the recusal of the judge.

For information, on 13 January 2021, Mr Koshygulov was appointed STUFECE Chairman according to the application made to the state service for the registration of the constituent documents, amendments and additions of legal entities.

Moreover, a working group on trade union registration issues comprising the MLSPP, the Ministry of Justice and representatives of national trade union associations has been active since 2019.

To date, problems relating to the registration of trade unions have not been reported or written or verbal complaints received.

Should complaints on trade union registration arrive, they will be duly addressed by the working group.

### Concerning the activities of national associations of employers

The General Agreement for 2021–23 (hereinafter the General Agreement) was signed by the Government, national associations (associations or unions) of employers and national associations of trade unions on 12 March 2021.

The National Confederation of Employers (Entrepreneurs) of the Republic of Kazakhstan (hereinafter the Confederation) was among the signatories of the General Agreement.

The Confederation is making efforts to sign sectoral and regional social partnership agreements and its representatives are also members of national, sectoral and regional tripartite social partnership and social and labour regulation commissions.

As reported earlier, the National Chamber of Entrepreneurs “Atameken” lost its right to participate in the social partnership system as an employers’ representative and did not participate in the development and adoption of the General Agreement.

### Concerning article 402 of the Criminal Code of Kazakhstan

Amendments to article 402 of the Criminal Code were adopted in May 2020 to reduce the liability for encouraging participation in strikes declared unlawful by the courts.

The current provisions comply with article 21 of the International Covenant on Civil and Political Rights, ratified by Kazakhstan in 2005, which provides that the exercise of the right of peaceful assembly shall not be subject to any restrictions other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or protection of the rights and freedoms of others.

In addition, MLSP Order No. 89 of 29 March 2021 establishes a working group for analysis of the enforcement of labour legislation (hereinafter the Working Group), which includes representatives of state bodies, trade union associations and employers’ associations, and various experts and academics in the area of labour relations.

The Working Group shall discuss the improvement of the labour legislation, the Law on Trade Unions, and the revision of article 402 of the Criminal Code.

### Concerning the inclusion of international workers’ and employers’ organizations in the list of international and state organizations providing grants

As reported earlier, the MLSP is prepared to consider the possibility of including the International Trade Union Confederation and the International Organisation of Employers on the list.

This issue will be considered subject to the relevant letters from these organizations, indicating the specific goals and areas covered by their grants.

### Discussion by the Committee

*Interpretation from Russian:* **Government representative, First Vice-Minister of Labour and Social Protection of Population** – In 2019, at the 108th Session of the Conference, we informed this Committee about the implementation of a road map which

was developed as the outcome of a visit by an ILO high-level mission to Kazakhstan. In the last two years, we have completed all activities provided for in that road map. That means that we have carried out an analysis of the way in which trade union law is applied in Kazakhstan, in consultation with trade unions at all levels (including unions at the national, sectoral and regional levels). We have also worked out recommendations to improve the procedures on the basis of which employers' and workers' organizations are able to operate and receive aid from international employers' and workers' organizations abroad.

Consultations have been held with trade unions at the national level and representatives of the Ministry of Justice regarding the issue of registration of trade unions. As a result of the work referred to above, the "Law on amendments and additions to some legislative acts of the Republic of Kazakhstan on labour issues" was adopted in May 2020. By virtue of this law and in order to implement the Convention, the Labour Code, the Criminal Code, the Law on Trade Unions, the Law on the National Chamber of Entrepreneurs (NCE) (Law on the NCE) and the Law on Public Associations were amended. Regarding the Law on Trade Unions, the compulsory affiliation by lower-level trade unions to higher-level trade unions has been repealed (sections 12, 13 and 14 of the Law); thus, trade unions can autonomously decide on their trade union affiliation and membership. Secondly, provisions regarding international cooperation with trade unions have been included in the law. As a result of that change, trade unions can affiliate to international trade union organizations and organize and conduct activities together with international trade union confederations. Thirdly, the procedure of confirmation of status of unions at the sectoral, national and regional levels has been simplified. The requirement to have half the workers in a branch or in an enterprise to actually be registered as an operating trade union has been repealed. Fourthly, the rules for registration of trade unions have been simplified. Now, in order to fulfil the requirements for the minimum number of affiliated organizations in a certain region, in addition to the affiliated organizations, structural subdivisions (branches, representative offices) of this trade union will be taken into account. At the same time, in 2020, new rules of public services concerning state registration of legal entities and registration of branches and representative offices were approved, where the period of state registration was reduced from ten to five working days. The time for unions to confirm their status has been extended from six months to a year following their registration. In the event of non-compliance with the deadline set for the confirmation of their status, the dissolution procedure has been replaced by a suspension of trade union activity from three to six months.

We have made changes to the Labour Code and the Law on the NCE so as to abolish the role of the NCE as an employer representative in social dialogue. A separate provision of the Code provides for the rights of employers' organizations. In addition, the grounds for recognizing strikes as illegal set forth by the Labour Code were revised, and strikes at hazardous production facilities are now allowed, provided that the uninterrupted operation of the main equipment and mechanisms is ensured. In organizations providing services ensuring the livelihood of the population, strikes can be carried out if the volume of relevant necessary services for the population is preserved, that is, without causing harm to the entire population of the relevant area.

Under the amended Criminal Code, calling for a strike which is declared illegal is now no longer a criminal offence. We have also lowered the amount of the fine which may be imposed for infringing the law. Sentences of deprivation of freedom and imprisonment which existed previously have now been replaced by other forms of sanction.



Currently, there are three national trade union organizations in Kazakhstan and 53 sectoral, 34 regional and 357 local trade unions, representing some 3 million workers. When these changes started to be brought into our legislation last year, new trade unions were set up: 1 sectoral trade union, 25 local and 6 affiliates of sectoral trade unions. So you can see the law is operating, the unions are operating, and we do not feel that there are any problems with Kazakhstan's law or practice with respect to the Convention.

In addition, on 12 March 2021, we and our social partners signed a new General Agreement for 2021–23 (General Agreement) between the Government of Kazakhstan, the national trade union organizations and the national employers' organizations. The Agreement contains provisions prohibiting the parties from interfering in each other's affairs and activities.

I would also like to say that Kazakhstan is the only country in Central Asia where all three national trade union organizations are signatories of the General Agreement. This underlines that there is active cooperation between the unions.

As to practical assistance regarding registration procedures, there is a working group in the Ministry of Labour which includes officials from the Ministry of Justice, as well as representatives of trade unions, including the Federation of Trade Unions of Kazakhstan, the Kazakhstan Confederation of Labour and the Commonwealth of Trade Unions "Amanat", to offer practical assistance with registration. I would like to assure you that the Government of Kazakhstan is planning to do further work in order to ensure that its labour legislation is fully in compliance with international labour standards and guarantees protection of the work of unions and employers' organizations in Kazakhstan, thus promoting social dialogue.

On 9 June this year, President Tokayev signed a decree on further measures to be taken by the Republic of Kazakhstan in the area of human rights. In accordance with that, the Government of our country will be developing a plan of human rights-related measures which will affect several key areas of the world of work.

They will touch upon, inter alia, freedom of association, freedom of expression, the right to integrity of life, the rights of victims of trafficking in persons, the human rights of citizens with disabilities, the rights of women, and the eradication of discrimination. At the same time, the aim is to improve work between the Government and NGOs, make the legal system more effective and prevent torture. The plan is to improve Kazakhstan's cooperation with various international organizations, including the United Nations Human Rights Council. As part of this plan, we will be working to improve our legislation further, including the legislation which governs the operation of trade unions in Kazakhstan, simplifying the procedures for membership, for settling labour disputes, and for operating in general. This will be part of Kazakhstan's approach to overhauling and modernizing its legal system, and the state apparatus in general.

In conclusion, I would like to request the ILO to note the measures we have taken, and to support us in our plans outlined above by providing further technical consultations.

**Worker members** – The case of Kazakhstan is a recurrent case within our Committee. Indeed, we have discussed this case four times in the past and each time we have been bound to express regret at the serious violations of the Convention in the country. As we once again address this case, we are obliged to note the same situation as in previous discussions within our Committee. Even though the legal amendments made to respond to the recommendations made in the past constitute a first step in the

right direction, there is still a long way to go for Kazakhstan's legislation to achieve full conformity with the Convention. Other aspects of Kazakhstani legislation have not been amended despite the fact that they also have an impact on the exercise of freedom of association.

Even longer than the distance to be covered by Kazakhstani legislation to achieve conformity with the Convention is the way that Kazakhstan still has to go to ensure the effective application of the Convention in practice in the country. Even though legal amendments have been introduced, their effects are not visible in practice since the problems remain the same.

As reflected by the observations of the Committee of Experts, numerous trade union organizations are still experiencing many difficulties in securing their registration. Recalling that this registration should be a mere formality, we can only regret that these registration procedures are exploited to obstruct the process of establishment or the smooth running of free and independent trade union organizations, in violation of the Convention.

After several attempts, the members of the Confederation of Independent Trade Unions of Kazakhstan (KNPRK) even tried to register their organization under the name "Congress of Free Trade Unions" (KSPRK/CFTU) but this was once again refused. The Industrial Union of Employees of the Fuel and Energy Sector is currently under a suspension order, issued on 5 February 2021 for six months, and is also subject to a dissolution process. The Government's explanation that trade unions do not have to be registered to exist is not satisfactory in that the obstacles that they face in the absence of registration prevent them in practice from being able to function effectively as trade unions.

Kazakhstan should pursue its efforts in consultation with the social partners, including independent social partners, in order to guarantee the impartiality and independence of these registration procedures, which even now are still too often being used politically to discourage the continuing existence or the establishment of independent trade unions.

Moreover, judicial harassment of trade union leaders is still going on in the country. Two enlightening examples are mentioned in the Committee of Experts' observation. These relate to Mr Baltabay and Ms Kharkova, to whose cases the Workers' group wishes to give its full support. Mr Baltabay has suffered imprisonment and Ms Kharkova has suffered restrictions on her freedom of movement.

Mr Baltabay, leader of the Industrial Union of Employees of the Fuel and Energy Sector, which is currently in the process of being dissolved, has been released in the meantime but is still prohibited from exercising any public activity, including trade union activity, for the next seven years. Further to this conviction, Mr Baltabay was forced to resign from office. We express the firm hope that Mr Baltabay's situation is not the consequence of his testimony during the discussion of the case of Kazakhstan in our Committee in 2017.

With regard to Ms Kharkova, who was President of the KNPRK, she still has restrictions on her freedom of movement for four years and is barred from office in any public or non-governmental organization for five years, as from July 2017.

We also recall that other trade unionists are still barred from exercising any office in a public or non-governmental organization in reprisal for their trade union activities.

The persons concerned are Mr Eleusinov and Mr Kushakbaev, for whom we reiterate our full support.

These are clearly blatant attempts to deny them any possibility of engaging in trade union activities in the future, and this is part of a concerted effort to undermine the existence of their trade union movement. These practices of judicial harassment constitute serious violations of the Convention and must cease immediately and the sentences imposed on these trade union members must be annulled.

Apart from the judicial harassment, trade union representatives are still all too often victims of violence in the exercise of their trade union activities. The report refers to the assault suffered on 10 November 2018 by the President of the Trade Union of Workers in the Fuel and Energy Complex of Shakhtinsk, Mr Senyavsky. The violence against trade union representatives must be condemned with the utmost severity. Kazakhstan must shed all possible light on these facts, conduct an active search for the perpetrators of the acts, bring them to justice and impose penalties that act as a deterrent.

With regard to the legislation in Kazakhstan, the Committee of Experts notes that incitement to engage in a strike that is declared illegal by the court is still liable to incur imprisonment. The Government declares its intention to reduce these sentences. It should be recalled that the mere fact of calling a strike, even if it is declared illegal by the courts, should not incur any sentence or penalty. Providing for such sentences or penalties is contrary to the Convention. These penalties should quite simply be abolished.

Lastly, independent trade unions in Kazakhstan have always been able to count on the support of the international trade union community to defend the exercise of their freedom of association. This support is nevertheless seriously obstructed by the Government of Kazakhstan, which considers the involvement of these international actors as interference in the country's internal affairs. Although we do not doubt the commendable intentions of the Government's proposal to include the International Trade Union Confederation (ITUC) on the list of international organizations authorized to support national trade unions, we consider above all that such an authorization by the authorities simply should not be required. This is yet another example of the endless obstructions to the exercise of freedom of association enshrined by the Convention.

Kazakhstan has a long history of serious violations of freedom of association and we fear that the restoration of an environment conducive to the effective exercise of this freedom will still take many years. Despite the legal amendments introduced in Kazakhstan, we are bound to express regret that we cannot see any real impact in practice so far, since judicial harassment, violence and obstacles to the establishment of trade unions through a registration procedure are still continuing today.

We will continue to monitor the situation in Kazakhstan closely and hope that the intentions declared by the Government for many years will one day actually be reflected in practice.

**Employer members** – The Government of Kazakhstan ratified Convention No. 87 in 2000 and, as the Worker members have explained, the Committee of Experts has issued 12 observations in this case and the Conference Committee has discussed this case four times, most recently in 2019.

From the outset, we, the Employer members, would like to express our gratitude to the Government representative for the comprehensive oral and written information shared with the Committee. We take note of the Committee of Experts' observations

concerning the imprisonment of trade unionists and the alleged assault on the President of the Trade Union of Workers in the Fuel and Energy Complex of Shakhtinsk. The Committee of Experts' observations requested the Government to provide information on the development of these cases.

The Employer members take note of the written information provided by the Government on 13 May regarding the criminal cases involving these trade unionists and the Employers ask the Government to continue to provide information on the status of these cases, as requested.

In respect of the conclusions of the Conference Committee adopted in 2019, the Employers' group would like to highlight five points raised by the Committee of Experts.

The first is in respect of Article 2 of the Convention. The Employer members note that the Committee of Experts requested the Government to provide information on the current status of the Confederation of Independent Trade Unions of Kazakhstan (KNPRK) and to ensure that the KNPRK and its affiliates enjoy full autonomy and independence as a free, independent workers' organization without further delay. In addition, the Committee of Experts requested the Government to continue engaging with the social partners on the issues concerning the registration process. We observe that the Government provided in its submission to the Conference Committee on 13 May information on the registration of the Congress of Free Trade Unions (KSPRK/CFTU) and the suspension of the Industrial Union of Employees of the Fuel and Energy Sector. In light of this, the Employer members must echo the Committee of Experts' request to the Government to continue to provide information on the still unresolved status of the KSPRK/CFTU and the Industrial Union of Employees of the Fuel and Energy Sector, and to engage with the social partners on issues concerning barriers to the registration of trade unions.

Second, the Employer members note that the Committee of Experts previously requested the Government to amend specific sections on the Law on Trade Unions to ensure the right of workers to freely decide whether they wish to become members or associate with a higher-level trade union organization. We are pleased to see that the Committee of Experts noted with satisfaction that sections 11–14 of the Law on Trade Unions were amended accordingly, as requested.

Turning now to the Law on the National Chamber of Entrepreneurs (NCE). The Employer members note that the Committee of Experts previously urged the Government to amend the Law on the NCE and any other relevant legislation to ensure full autonomy and independence of free and independent employer organizations. The Government indicated in its written submissions to this Committee that the General Agreement for 2021–23 was signed by the Government and national associations of employers and workers on 12 March 2021. The Employer members thank the Government for finally amending section 148(5) of the Labour Code and section 9 of the Law on the NCE, thus ensuring that no longer the NCE, of which membership is compulsory, but rather free and independent employers' organizations may represent employers in social dialogue at all levels. In this way, in line with Article 2 of the Convention, employers now have a choice to decide what organization should represent them in social dialogue efforts and related social and economic matters.

The Employer members also noted with satisfaction that the Confederation of Employers of the Republic of Kazakhstan (KRRK), which is the most important employers' organization at national level, has been the signatory of the new General Agreement, and KRRK representatives have been involved in social dialogue institutions at sectoral

and regional levels. The Employers consider these developments as steps in the right direction and trust that free and independent employers' organizations will continue to be able to represent the needs and interests of their members in all matters of relevance within their sphere of competence. The Employer members, however, still have concerns as regards the potential impact that the procedure for accreditation with the NCE may have on the independence of employers' organizations and will keep this issue under close review. Therefore, the Employer members request the Government to continue to further promote and facilitate the activities of independent employers' organizations in the country and provide information in this respect in its regular reports on the application of the Convention.

However, concerning the issue of the right to strike in the Committee of Experts' observations, the Employer members would like to reiterate that the Convention does not contain rules regarding the right to strike to be regulated at national level. Therefore, in the Employer members' view, as well as in the view of some governments, the request of the Committee of Experts to the Government to amend the law regarding strike issues has no basis or foundation or place in the Convention. Therefore, in our view, the Government is not obliged to consider this request.

Finally, in respect of the right of organizations to receive financial assistance from international organizations of workers and employers, the Employer members express appreciation at the amendment of section 6 of the Law on Trade Unions. We trust that the list in Ordinance No. 177 of 9 April 2018 will be extended to include international workers' and employers' organizations, such as the ITUC and the International Organisation of Employers (IOE). The Employer members request the Government to continue to provide information on the measures taken in respect of all of these issues.

*Interpretation from Russian: **Worker member, Kazakhstan*** – We are the biggest workers' organization in Kazakhstan, with approximately 12 million trade union members from across the country. In addition to our federation in the country, we have two national union organizations. The federation has always spoken in favour of solidarity among trade unions and has also supported solidarity campaigns among international trade union organizations.

We have appealed in favour of Larisa Kharkova, Amin Eleusinov, Nurbek Kushakbaev, Dmitry Senyavsky and Erlan Baltabay, to get their sentences lifted and to help deal with the issue of trade union registration.

In the past, we have agreed with complaints sent by the ITUC to the ILO. We support the position of international trade union organizations, particularly in terms of requiring strict compliance with international labour Conventions by the Government of Kazakhstan, and its taking of measures to bring its law and practice into line with the Conventions.

At the union's initiative in Kazakhstan, proposals have been sent to the Labour Ministry concerning comments made by the Committee of Experts in the past. On 4 May last year, the President of Kazakhstan signed off a new "Law on amendments and additions to some legislative acts of the Republic of Kazakhstan on labour issues". The law now excludes the compulsory affiliation of unions to higher-level union organizations, which means that the right of unions to operate freely is now guaranteed. Furthermore, conditions for confirming the status of unions as national, sectoral or regional have been simplified. The requirement to have half the number of workers in a given branch to be recognized as a sectoral trade union has also been removed. Turning to section 402 of the Criminal Code, which was mentioned by the Committee of Experts,

this provision has not been removed entirely, but the provision has been rendered less strict.

Our federation is preparing a package of proposals on further improvement of union and labour legislation in Kazakhstan, including on bringing in guarantees for union activity and the simplification of procedures to handle issues such as strikes and labour disputes. We have always supported constructive dialogue, with social partners, national union organizations and others, on defending the interests and rights of individual workers and unions, and in promoting social justice and the principles of decent work.

As you have heard, a new General Agreement has been signed this year between the Government and the social partners. For the first time, national unions have worked out a joint consolidated approach to ensuring the protection of the labour and economic rights of workers and guaranteeing wage levels. Our initiatives have been supported, as have the efforts of the social partners to prepare a road map based on the principles of the Decent Work Agenda, promoting social partnership and decent jobs.

We continue to work with technical assistance from the ILO and specifically from the Bureau for Workers' Activities to improve our cooperation with the Organization and promote further ratification of international labour standards, and to provide better and decent work to all people.

**Employer member, Kazakhstan** –The Confederation of Employers of the Republic of Kazakhstan (KRRK) expresses its deep recognition to the Committee for considering the application of Convention No. 87 by Kazakhstan.

As already noted in the speech of the Government representative, in May 2020, the "Law on amendments and additions to some legislative acts of the Republic of Kazakhstan on labour issues" was issued, in which independent employer organizations at various levels became a party to social partnership. In particular, this law removed the powers of the NCE to represent the interests of employers' organizations on social partnership issues, and it was excluded from the list of signatories to the tripartite General Agreement.

Kazakhstan's violation of the Convention occurred back in 2013 with the release of the Law on the NCE. Despite the objections voiced by the Confederation of Employers in the working groups of the Government and Parliament when creating the NCE, the law was adopted. The Ministry of Justice and the country's Parliament ignored the Articles of the Convention ratified by Kazakhstan in 1999.

This led to a monopolization of the management of entrepreneurial structures, practically eliminating employer organizations from working with them. Employers' organizations became elements (members) of the National Chamber, which subordinated them to themselves, by introducing a procedure for their accreditation on a legislative basis.

It took five years, starting in 2014, for the Committee of Experts to convince the Government of the need to amend the Labour Code and other related laws in accordance with the Convention. We believe that the Government has not fully implemented this work – the first steps have been taken, but the second steps have not been taken yet. Not everything has yet been brought into line with the Convention, namely employers' organizations (industry associations and unions) accredited in the National Chamber of Entrepreneurs remain part of the NCE system, therefore they cannot be independent representatives of employers' organizations and enter into the membership of the



Confederation of Employers. This also applies to financing the activities of industry associations (unions) through the conclusion of agreements with them to perform the functions of the National Chamber of Entrepreneurs of the Republic of Kazakhstan "Atameken".

Therefore, we believe that the Government needs to make appropriate additional amendments to the Law on the NCE in line with the principles of freedom of association. An administrative approach on the part of the authorities led to the development and adoption of this Law in violation of the Convention.

We think that the Committee will point out the still existing violations in the observance of the Convention and will accept the recommendations according to which the Government and the Parliament of the country should eliminate those violations.

**Government member, Portugal** – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The Candidate Countries, the **Republic of North Macedonia, Montenegro** and **Albania**, the EFTA country, **Norway**, member of the European Economic Area, as well as the **Republic of Moldova**, 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 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 application of international labour standards and of fundamental Conventions in particular.

The EU-Kazakhstan relationship is governed by the Enhanced Partnership and Cooperation Agreement, which has enabled us to strengthen our bilateral cooperation. This Agreement includes commitments to effectively implement the fundamental ILO Conventions. While we acknowledge the progress made by the Government in amending parts of its legislation, we are concerned that Kazakhstan has become a recurrent case in the Committee. Conformity with the Convention, both in law and in practice, is now being discussed for the fourth time in the last five years. We encourage the Government to address the outstanding issues to fully comply with the Convention.

Following the ILO high-level tripartite mission of May 2018 and the resulting road map, the EU and its Member States note with satisfaction the amendments, in May 2020, of several legislative acts, including the Law on Trade Unions, the Law on the National Chamber of Entrepreneurs and the Labour Code.

We urge the Government to repeal section 402 of the Criminal Code which criminalizes calling on workers to participate in a strike that has been found illegal by a court. This section is incompatible with freedom of association and a union's right to organize its activities, including the right to strike, without interference from the public authorities.

Beyond legislative amendments, we call on the Government to ensure that freedom of association, the right to establish organizations without prior authorization and the right to organize, both in law and in practice, are respected.

We note the information submitted by the Government regarding the refusal to register the Congress of Free Trade Unions and the Industrial Union of Employees of the Fuel and Energy Sector, as requested by the Committee. We regret that both trade unions remain unregistered. We also regret the suspension of the operations of the

Industrial Union of Employees of the Fuel and Energy Sector. We stress the importance of ensuring that independent trade unions are able to register and carry out their activity without interference and strongly encourage the Government to continue engaging with the social partners in addressing the issues concerning the registration and suspension processes.

We note that the Committee on Freedom of Association continues to examine the cases of Mr Baltabay and Ms Kharkova and take note of the Government's submission of written information on their cases, as well as on the case of Mr Senyavsky. The EU and its Member States deplore any violation of fundamental rights and any act of harassment, intimidation, assault or imprisonment against trade unionists.

The EU and its Member States will continue to follow and analyse the situation. We remain committed to our close cooperation and partnership with Kazakhstan.

*Interpretation from Russian:* **Government member, Russian Federation** – The Russian Federation fully supports the points made by the distinguished Minister of Labour of Kazakhstan on compliance by his country with Convention No. 87.

We believe that criticism of Kazakhstan, on the grounds that it allegedly violates the provisions of the Convention, from the ILO, international union organizations and human rights bodies is unfounded. In May 2018, an ILO high-level mission visited Kazakhstan. As a result, a road map was adopted on the implementation of recommendations made by the Conference Committee and the Committee of Experts concerning the Convention. On the basis of this document, the Kazakhstan authorities did a lot of work to amend their national legislation. In May 2020, President Tokayev signed a "Law on amendments and additions to some legislative acts of the Republic of Kazakhstan on labour issues". This was to further improve the legal governance of social and labour relations, including the activity of trade unions and the development of dialogue with trade unions at all levels of social partnership. Therefore, the national legislation has been brought fully into accordance with international labour standards and that, we hope, will be reflected in the Committee's report on this case so that consideration of the case is brought to an end. I would like to take this opportunity once again to call upon the ILO and all Members of the Organization, when looking at such cases, to stick strictly to the principles of neutrality and objectivity in not bringing issues which go beyond their purview and have nothing to do with the implementation of ILO labour Conventions.

*Interpretation from Russian:* **Worker member, Russian Federation** – The delegation of Workers of the Russian Federation has not seen any real progress in this situation with respect to the application of the Convention in Kazakhstan. The changes mentioned by the Government to their legislation do not really change the situation in any substantive way. Leaders of independent trade unions have been found guilty of criminal offences, they may be in freedom at the moment thanks to the efforts of the ILO and the international community, but they are still considered criminals and they cannot engage in trade union activity. On the basis of the Law on Trade Unions, the KNPRK, despite the fact that the reasons for refusal of registration are no longer in force, was dissolved legally and efforts to re-register the Confederation have been a failure. When the Confederation was dissolved, pressure was put on its activists and there are virtually no trade unions left now that were part of the Confederation.

Kazakhstan's Law on Trade Unions in its new wording looks at the obligatory registration of trade union organizations as legal entities and the procedure for that is very complicated. Trade unions cannot set up in ways which are not provided for by law.

They are limited in receiving financial assistance, they cannot have members from certain categories of workers, and they still have to comply with other provisions.

When an amendment was made to section 402 of the Criminal Code, it still made the calling of a strike an offence. Punishment for doing that is provided for even when, in the course of the strike, there have not been any serious violations of law and order. It seems therefore that freedom of association continues to be violated in Kazakhstan. We urge the Committee to take real measures to ensure that proper and substantive rather than cosmetic changes are made to law and practice in this respect in Kazakhstan.

**Government member, India** – India welcomes the delegation of the Government of Kazakhstan and thanks it for providing the latest update on the issue under consideration. The delegation of India has gone through the findings of the Committee of Experts and the responses thereto furnished by the Government of Kazakhstan. India appreciates the commitment of the Government of Kazakhstan to fulfil its international labour obligations including those related to the Convention through progressive implementation of the relevant recommendations of the ILO and the willingness to constructively work with it.

India takes positive note of recent legislative amendments enacted by Kazakhstan to bring the national trade union legislation into conformity with ILO standards. India also notes with appreciation the signing of the General Agreement for 2021–23 by the Government and the social partners. We believe that this Agreement pertaining to the activities of national associations will provide due protection to them in the conduct of their internal affairs. We also look forward to the continued engagement of the Government of Kazakhstan with the social partners in this regard.

We request the ILO and its constituents to fully support the Government of Kazakhstan and provide all necessary technical assistance that it may seek in fulfilling its labour-related obligations. We take this opportunity to wish the Government of Kazakhstan all success in its future endeavours.

**Worker member, Germany** – I speak on behalf of the German Confederation of Trade Unions (DGB), the Netherlands Trade Union Confederation (FNV) and the Nordic trade unions. Over the last days, some delegates said that demanding respect for civil liberties falls outside the scope of the Convention. The ILO supervisory bodies have, however, on numerous occasions emphasized that the rights under the Convention can only be exercised within a system that respects fundamental rights.

In Kazakhstan, workers, independent unions and their members face repression and systematic state obstruction in exercising their civil liberties in general and the right to organize in particular. The right to strike forms part of the right to organize as the ILO supervisory bodies have rightly pointed out over decades.

Trust, cooperation and solidarity are essential but being able to use industrial action in the last resort is a crucial prerequisite for the negotiating power of a united workforce.

The Labour Code and Criminal Code of Kazakhstan still provide broad gateways for the infringement of the right to strike and the freedom of assembly. In its written statement to the Committee, the Government indicates that the amended section 402 of the Criminal Code complies with Article 21 of the International Covenant on Civil and Political Rights and hence respects the rights protected under Convention No. 87. According to the UN Human Rights Committee, any restrictions of Article 21 must be necessary and proportionate in a society based on democracy, the rule of law, political pluralism and human rights.

In 2016, the Committee called on the Government to refrain from criminalizing public associations for their legitimate activities under criminal law provisions that are broadly defined and do not comply with the principle of legal certainty. An assessment of the amended section 402 of the Criminal Code shows that nothing has changed since, as is the case with section 174 of the Criminal Code, under which the incitement of social discord can be punished with imprisonment for two to seven years.

We therefore call on the Government to immediately bring its law not only into line with the Convention but also with the international human rights conventions which Kazakhstan has ratified and hence pledged to respect, promote and fulfil.

**Government member, Turkey** – We thank the Government of Kazakhstan for the information it has provided and welcome its willingness and commitment to constructively engage and cooperate with the ILO.

On 4 May 2020, legislative amendments were enacted to bring Kazakhstan's trade union legislation into conformity with ILO requirements and an inter-agency working group was established to ensure full and proper implementation of the new legislation and address issues raised in the report of the Committee of Experts. We encourage the Government of Kazakhstan to continue to take the necessary steps in this regard.

We commend the positive and significant steps, such as: the elimination of the principle of mandatory vertical association of trade unions; the introduction of rules on international cooperation for trade unions; the exclusion of the National Chamber of Entrepreneurs "Atameken" from the social partnership system; the mitigation of liability for calls to participate in illegal strikes; the clarification of the conditions for holding strikes at certain facilities (in sectors such as energy and heat supply, transportation, communications and healthcare); and the facilitation of the procedure for registration of trade unions undertaken by the Government. Recent amendments made by the Government with a view to the implementation of the road map, resulting from the ILO mission in May 2018, in order to bring the national legislation into line with the standards of the Convention should be acknowledged.

We welcome the fact that the Government has expressed its willingness to continue engaging in social dialogue with the social partners. The Kazakhstani Government is determined to work on issues raised by the ILO and social partners in a spirit of constructive dialogue. We believe that Kazakhstan will continue to work with the ILO and social partners in a spirit of constructive cooperation.

**Worker member, United States of America** – Unfortunately, since this body last discussed this case in 2019, the Government of Kazakhstan has continued its campaign to undermine independent trade union activity. Since the Law on Trade Unions was adopted in 2014, local advocates estimate that at least 600 union bodies at different levels have lost their status in clear violation of their right to free association. This includes the KNPRK, which has made at least three attempts to re-register since it was dissolved in March of 2017, all of which were denied.

In May 2020, the Government passed amendments to the Law that appear to address some of the concerns raised by the Committee of Experts. However, in practice, the campaign of state repression of independent trade unions continues unabated. Since those amendments, global labour allies note only one successful registration of an independent union at the local level. Meanwhile, another sectoral trade union body was suspended as recently as February 2021.

Larisa Kharkova, the former President of the KNPRK, remains under modified house arrest, and Erlan Baltabay, Nurbek Kushakbaev and Amin Eleusinov, trade union leaders who were imprisoned for their work, are now banned from trade union activities.

The Government of Kazakhstan must fully implement the recommendations made by the Committee in 2019, including ensuring that the KNPRK or its successor is registered, that registration procedures are not used to close out unions, and that charges and sentences against union leaders are dropped.

**Government member, Azerbaijan** – My delegation thanks the delegation of Kazakhstan for providing the latest update on the application of the Convention to the Committee. Azerbaijan appreciates the efforts and the progress made by the Government of Kazakhstan in fulfilling its obligations concerning this fundamental Convention, including the positive steps taken by the Government to implement the recommendations of the Committee of Experts.

We recognize that the Government of Kazakhstan has continued the important legislative and institutional reforms to ensure compliance with all its obligations under the Convention. Legislative amendments were introduced to bring Kazakhstan's trade union legislation into conformity with ILO requirements, and an inter-agency working group was established to address the issues raised in the report of the Committee of Experts. These actions by the Government of Kazakhstan demonstrate its commitment and willingness to address the concerns raised on the basis of the tripartite consultative process and with the active engagement of the ILO. We encourage the Government of Kazakhstan to continue working closely with the ILO and increase its efforts to implement ILO standards. At the same time, in fulfilling its labour-related obligations, we invite the ILO to fully support the Government of Kazakhstan and provide any technical and consultative assistance that it may seek in this regard.

**Government member, United States of America** – This Committee has discussed the Government of Kazakhstan's lack of progress to address serious issues of non-compliance with the Convention every year since 2015, except in 2018 when a high-level tripartite mission visited the country.

We welcome progress on recommendations to amend the Law on Trade Unions, the Labour Code, the Law on the NCE, the Criminal Code, the Code of Criminal Procedure, and the Law on Public Associations in May 2020. However, significant work remains. In February 2021, a court ordered the Industrial Union of Employees of the Fuel and Energy Sector to suspend operations for six months for allegedly failing to maintain the minimum number of branches as currently required under trade union law.

We are encouraged by the Government's recent commitment to work with this union to remain operational, as this suspension would effectively dissolve the last remaining independent trade union in Kazakhstan. We call on the Government to make good on its commitment to respect and promote workers' rights under this Convention. To that end, we strongly urge the Government to ensure freedom of association in both law and practice. This requires:

- respect for the full autonomy and independence of free and independent trade unions by immediately ceasing acts of violence, harassment and interference;
- vacating the suspension order against the Industrial Union of Employees of the Fuel and Energy Sector;

- immediate and full implementation of the recent amendments, as well as further amendments to restrictive provisions under the Law on Trade Unions, including the minimum branch requirement for sectoral unions under section 13(2);
- continued engagement with the social partners on issues concerning the registration process, including to re-register the KNPRK;
- eliminating practices and vacating existing orders that prohibit or impose restrictions on trade unionists and leaders from engaging in legitimate trade union activities; and
- further review of section 402 of the Criminal Code, in consultation with the social partners and the ILO, to ensure that penalties for calling strike action are not excessive.

We urge the Government to take all necessary measures to address these long-standing issues and recommendations. The United States remains committed to engaging with the Government to advance workers' rights in Kazakhstan.

**Government member, United Kingdom of Great Britain and Northern Ireland –**

I am speaking on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland and **Canada**. The United Kingdom and Canada support the role of the ILO in developing, promoting and supervising the application of international labour standards and of fundamental Conventions in particular. We are committed to the promotion, protection and respect of human rights and labour rights, as safeguarded by the ILO fundamental Conventions and other human rights instruments and to the ratification, effective implementation and enforcement of the core labour standards.

The United Kingdom and Canada support Kazakhstan in its economic and social reform ambitions. Through our close partnership, we seek to ensure that adherence to a rule-based international system, good governance, the rule of law and universal human rights are promoted and enhanced.

We are pleased to hear about the May 2020 amendments to the 2014 Law on Trade Unions, as well as the recent amendments to the Labour Code and the Law on the National Chamber of Entrepreneurs, to address many of the concerns raised by this Committee since 2015.

However, we also note the various and important concerns raised by the Committee of Experts, and note with regret its remarks on the lack of meaningful progress with regard to the obstacles to the establishment and registration of trade unions, and the continued interference with the freedom of association of employers' organizations. We also note the concerning downward trend with regard to the human rights situation in the country, including incidents of intimidation and harassment against trade unionists and restrictions on the right to peaceful assembly. We therefore urge and encourage the Government of Kazakhstan to: first, protect the right of all persons, including trade unionists, to express their opinions and engage in peaceful protest, in both law and in practice; second, effectively address the current difficulties in the trade union registration process and ensure an enabling environment for trade union registration; third, continue to work to ensure that workers' and employers' organizations can function independently and autonomously, in line with the views of the Committee of Experts; and finally, continue to engage closely, openly and transparently with the ILO in the future.

The United Kingdom and Canada will continue to support the Government of Kazakhstan in this endeavour.



*Interpretation from Russian:* **Observer, International Trade Union Confederation (ITUC)** – I represent workers who set up the Congress of Free Trade Unions of Kazakhstan. We were dissolved in 2017 for allegedly not meeting the requirements to be a trade union organization. Despite clear recommendations from the ILO, the Law on Trade Unions, which contradicts Convention No. 87, is still being used in practice and many trade unions have been unable to re-register. They have effectively been legally dissolved, and that includes us and our member organizations. Union leaders were brought to trial on fabricated charges and four of them were convicted. The Government says there is no connection between the cases against Mr Eleusinov, Mr Kushakbaev, Ms Kharkova and Mr Baltabay. In fact there is: their sentence, and the fact that they are members of our union. They may be in freedom but they cannot engage in trade union activity. We have made efforts under the new law to register a new organization, the Congress of Free Trade Unions of Kazakhstan, but the Ministry of Justice has refused registration and says it considers the reason for registration not being allowed last time remains valid: namely, the activity of unions in the petrochemical industry, which I heard was stopped at the beginning of this year. Legal proceedings are in hand to dissolve our affiliates. The whole process has been ridiculous. I was not even informed about it. Employers have pulled out of collective agreements and they no longer recognize our representatives.

We urge the Government to firstly register the union; to withdraw the legal procedure for dissolving it; to pardon the activists and leaders who have been sentenced; and to investigate and to call to account those who have abused their legal position. We only want to protect and represent the interests of our members in accordance with the Constitution and the principles of freedom of association. We are grateful to the ILO, the ITUC and other organizations for their support.

**Observer, IndustriALL Global Union** – This is a joint statement made on behalf of the global union federations IndustriALL, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), Building and Wood Workers' International (BWI) and Public Services International (PSI), representing workers in different sectors of the economy worldwide, including Kazakhstan.

Kazakhstan continues to avoid fulfilling its obligations under Conventions Nos 87 and 98. The repressive Law on Trade Unions was adopted in 2014, after which the KNPRK was dissolved. In 2017, Erlan Baltabay, head of the "Decent Work for petrochemical industry workers" local trade union, attended the International Labour Conference and spoke about the union rights violations in his country. He was later put on trial, imprisoned and fined. To date, the Kazakhstani Government continues to use stalling tactics to discourage and avoid the registration of new trade unions. With this, the Government has paralysed the activities of all unions belonging to the Independent Confederation (KNPRK), which leaves many workers totally unprotected over their free union choice.

As we speak, pressure and intimidation continues against the Industrial Union of Employees of the Fuel and Energy Sector, which is the last remaining and functioning affiliated trade union of the Independent Confederation. State authorities continue to deny registration of the said union, alleging that it twice failed to submit relevant papers for registration in 2020. In fact, some employers have already started to take advantage of this state behaviour, refusing to deliver their obligations under the collective agreement in force.

Along with this, the repressive Criminal Code is systematically used in a way to prosecute rank and file members and activists who are faced with imprisonment and/or

sizeable fines, for no other reason than performing their union tasks. At the same time, members and activists of independent unions are physically attacked. For example, a trade union leader, Mr Dmitry Senyavsky, was brutally beaten in 2018 in the Karaganda Region by unidentified people.

Taking into consideration the total absence of improvement, the further deterioration of workers' rights and the refusal to register new unions, we urge the Government to take the necessary steps to make sure that Kazakhstan respects its international obligations.

*Interpretation from Russian: Government representative* – I would like once again to express my thanks to everybody who has spoken in the course of the debate this afternoon, my government colleagues and the social partners for having made a contribution and spoken about what the Government of Kazakhstan has been doing. All the comments, all the recommendations, all the desiderata and all the good wishes expressed will of course be taken into account when we plan our future work. I described that in my previous introductory statement.

I did mention that we have signed a new General Agreement, and that this includes a commitment on the part of the Government and the social partners not to interfere in each other's activities in any way but to continue to work together in order to address any infringements or violations of the rights of either employers or workers and their organizations.

In May this year, as I mentioned, we did set up a special expert working group that is going to be tripartite. Most of the work we are going to do to overhaul and review the things that are needed to ensure we are in full compliance with our commitments towards the ILO and its Conventions will be done there.

The working group will also take into account the Government's instructions that a plan be developed to deal with wider human rights issues, as I mentioned earlier. Now, some people in the course of the debate, have referred to certain procedural issues. In accordance with national law, all unions can be set up and organized without prior authorization, which is precisely what I believe Convention No. 87 stipulates.

Receiving state registration and a registration number is something that can be done fairly straightforwardly and through the legal system. The status of a union is then recognized once those procedures have been completed. In this connection, I would like to say that, yes, the working group that we have between the Ministry of Labour and the Justice Ministry is operational. It includes unions, and its responsibilities include dealing with problematic issues.

In March this year, we already looked at the issue of the union to which several speakers have referred and recommendations have been made that the registration process be simplified. We are keeping an eye on this situation, we are monitoring this situation through the working group, and the work will continue from here onwards.

Turning to the registration of the Congress of Free Trade Unions of Kazakhstan, we have repeatedly said that we are willing to proceed with the registration of these unions, like other unions, but I think what has been said about the activity or actions of the legal system in Kazakhstan in this respect is rather beside the point and not particularly accurate either. Of course the Labour Ministry is the coordinating body for promoting social dialogue, we promoted it in the past and we shall continue to do so now and in the future and, as I said, we will also involve the expert working group to which I referred several times.

I would once again like to say that, as far as we are concerned, we will continue to work to improve our labour legislation. We will make it easier for unions to operate to promote collective bargaining and to engage in the settlement of labour disputes. This work, which will be done by the Government together with our social partners, will, we hope, allow us to reach agreements and make sure that what we do is in step with our obligations towards the ILO.

**Employer members** – We have listened carefully to this discussion today. We would like to begin by thanking the Government for the written information and the detailed oral presentation provided to the Committee. This has been very helpful for a deeper and up-to-date understanding of the situation in Kazakhstan. Based on the discussion, we invite the Government to continue to review developments in the cases of Mr Baltabay and Ms Kharkova.

The Employer members also invite the Government to take appropriate measures to resolve the registration of the KSPRK/CFTU and the Industrial Union of Employees of the Fuel and Energy Sector.

The Employer members also invite the Government to continue to engage with the social partners on issues concerning the registration of trade unions and those existing barriers.

The Employer members also invite the Government to continue to facilitate and remove obstacles regarding the operation of free and independent employers' organizations in the country, and to do so without delay.

The Employers' group also invites the Government to consider extending the list in Ordinance No. 177 of 9 April 2018 to cover international workers' and employers' organizations such as the ITUC and the IOE.

The Employer members also request the Government to provide information on developments and the measures taken in its next regular report on the Convention under article 22 of the ILO Constitution.

**Worker members** – We thank the representative of the Government of Kazakhstan for the information that he has provided during the discussion and we also thank the speakers for their contributions.

As we have already said, the legal amendments that have been made are a first step in the right direction. But these legal amendments have not solved all the problems of the conformity of Kazakhstani legislation with the Convention since other legal aspects should be brought into line with the Convention to fully ensure freedom of association.

In particular, the legislation of Kazakhstan still subjects the cooperation of trade unions with international organizations to prior authorization under Ordinance No. 177 of 9 April 2018. Such a practice appears to us to be contrary to the Convention and the Government should take all possible steps, in law and in practice, to guarantee that national organizations of workers and employers are not prevented from receiving financial or other assistance from international organizations, particularly by removing the need for prior authorization to be able to cooperate with international organizations.

It is vitally important that the Government undertake serious investigations into the acts of violence perpetrated against trade unionists, in particular Mr Senyavsky, and that it prosecute and convict the perpetrators with penalties that act as a deterrent.

The Government must take action to stop the abuses of the registration procedure which seek to disrupt the functioning of free and independent trade union organizations,

obstruct their registration and give preferential treatment to certain trade unions to the detriment of others.

The Government should also refrain from calling into question the registration of free and independent trade unions and stop the judicial proceedings under way which seek to dissolve the Industrial Union of Employees of the Fuel and Energy Sector.

The Government must also review, in consultation with the social partners, existing law and practice with respect to the registration and re-registration of trade unions in order to guarantee that the registration process is just a formality.

In particular, all necessary steps must be taken, in law and in practice, to ensure that the KNPRK and the Industrial Union of Employees of the Fuel and Energy Sector enjoy without further delay full autonomy and full independence as a free and independent workers' organization and enjoy the autonomy and independence needed to fulfil their mandate and represent their constituents.

The Government must also stop the systematic judicial harassment of certain trade unionists aimed at preventing them from engaging in or continuing trade union activities. The sentences imposed on these trade unionists must also be annulled; here we are thinking in particular of Ms Kharkova, Mr Baltabay, Mr Eleusinov and Mr Kushakbaev.

The Government must also ensure that it implements all the recommendations made by our Committee in the past, including the road map of 2018.

With a view to the implementation of all these recommendations, we invite the Government to accept the visit of a direct contacts mission before the next session of our Committee, a mission which could also make contact with the organizations and individuals that are the subject of the Committee of Experts' observations. The Government should also ensure that it provides all the information requested by the Committee of Experts for its next session.

## Conclusions of the Committee

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

**The Committee noted the long-standing and persistent nature of the issues and the prior discussion of this case in the Committee, most recently in 2019.**

**The Committee welcomed that further steps towards implementing the 2018 road map were made, in particular amendments to the law, however regretted that not all previous recommendations have been fully addressed so far.**

**In this regard, the Committee took note of the continuing restrictions in practice on the right of workers to form organizations of their own choosing, in particular the unduly difficult re-registration and deregistration processes which undermine the exercise of freedom of association.**

**The Committee also noted with concern the numerous allegations of violations of the basic civil liberties of trade unionists, including violence, intimidation and harassment.**

**Having examined the matter and taking into account the Government's submissions and the discussion that followed, the Committee requests the Government of Kazakhstan to take all necessary measures to:**

- bring all national legislation into line with the Convention to guarantee full enjoyment of freedom of association to workers' and employers' organizations;
- ensure that the allegations of violence against trade union members are completely investigated, notably in the case of Mr Senyavsky;
- stop judicial harassment practices of trade union leaders and members conducting lawful trade union activities and drop all unjustified charges, including the ban for trade unionists to hold any position in a public or non-governmental organization;
- continue to review developments in the cases of Mr Baltabay and Ms Kharkova;
- resolve the registration of the KSPRK and the Industrial Union of Employees of the Fuel and Energy Sector (STUFECE) so as to allow them to enjoy the full autonomy and independence of a free and independent workers' organization, to fulfil their mandate and to represent their constituents without further delay;
- review with the social partners the law and practice concerning the registration of trade unions with a view to overcoming existing obstacles;
- refrain from showing favouritism towards any given trade union and put an immediate stop to the interference in the establishment and functioning of trade union organizations;
- remove any existing obstacles in law and in practice to the operation of free and independent employers' organizations in the country, in particular repeal in the Law on the NCE the provisions on accreditation of employers' organizations with the NCE;
- ensure that workers' and employers' organizations are not prevented from receiving financial or other assistance by international workers' and employers' organizations; and
- fully implement the previous recommendations of the Committee and the 2018 road map.

The Committee requests the Government to accept a direct contacts mission of the International Labour Office before the next session of the International Labour Conference with full access to the organizations and individuals mentioned in the observations of the Committee of Experts.

The Committee requests that the Government provide to the Committee of Experts before its 2021 session full information on developments and measures taken in consultation with the social partners to comply with the Convention.

## Iraq (ratification: 1959)

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

#### Written information provided by the Government

The Iraqi Constitution of 2005, which is “the supreme law in Iraq”, provides strong protection against discrimination and guarantees equal treatment for all Iraqis regardless of gender, race, nationality, origin, colour, religion, sector, belief, opinion, or economic or social situation. The Constitution offers strong equal rights and lays a solid foundation for the rest of Iraqi legal texts. Most notably, article 14 of the Constitution contains an equal protection clause for all.

Iraq has ratified many major human rights treaties, including several treaties that directly affect the status of minorities. By ratifying the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Iraq has pledged to abide by international law in protecting the civil, social, economic, political, and cultural rights of Iraqi minorities.

The Coalition Provisional Authority Order No. 7 issued in April 2003 regarding the Penal Code No. 111 of 1969 included in article 4 an important clause against discrimination in order to protect the rights of minorities: “All those who serve in governmental posts or work in public sector including police workers, public prosecutors and judges are to apply the law without bias in the performance of their official duties. No discrimination will be practiced against any person because of his gender, ethnicity, colour, language, religious affiliation, political opinion, nationality, ethnicity, meeting, or hometown.” The significance of this provision is that it is non-discriminatory. It was created along with article 372 of the Penal Code (which prohibits hate crimes and criminalizes acts that harm, attack, insult, disrupt, or destroy religious practices and holy sites for religious minorities in Iraq), as part of a strong set of laws that protect the interests of Iraqi minorities.

The Iraqi Labor Law No. 37 of 2015 that is in force was defined in accordance with article 1(25) – Direct discrimination: any distinction, exclusion or preference based on race, colour, gender, religion, sect, political opinion or political belief, origin or nationality.

Indirect discrimination is defined in article 26: it is any exclusion or preference, discrimination based on nationality, age, health status, economic status, social status, affiliation and trade union activity, and its effect shall nullify or weaken the application of equal opportunities or equal treatment in employment and profession.

- This law aims, under article 2, to achieve sustainable development based on social justice and equality, and to secure decent work for all without any discrimination, to build the national economy and achieve human rights and fundamental freedoms.
- Article 4 stipulates: Work is a right for every citizen who is capable of it, and the State shall work to provide it on the basis of equal opportunities without any kind of discrimination.
- Article 6(4) of the Labor Law stipulates that: Freedom of work is protected, and the right to work may not be restricted or denied. The State pursues a policy of promoting full and productive work and respects the basic principles and rights in it, whether in



law or application, which includes (4): Elimination of discrimination in employment and profession.

- Article 8(1): This law prohibits any violation of the principle of equal opportunities and equality of treatment whatever the reason, and in particular discrimination between workers, whether direct or indirect, in everything related to vocational training or employment or terms and conditions of work.
- With the exception of article 8(3): Not considered as discrimination, any distinction, exclusion, or preference in connection with a particular job if it is based on the qualifications required by the nature of this work.
- The worker has the right to resort to the Labour Court to file a complaint when he is exposed to any form of forced labour, discrimination or harassment in employment and profession (under article 11(1)).
- Imposes a penalty of imprisonment for a period not exceeding six months and a fine not exceeding 1 million Iraqi dinars or one of these two penalties for anyone who violates the provisions of the articles contained in this chapter relating to child labour, discrimination, forced labour and sexual harassment according to each case (under article 11(2)).
- When there is no text in this law, the provisions of the relevant Arab and international labour conventions legally ratified shall be applied (under article 14(2) of the Labour Law).
- The employment contract does not end according to article 48(1)(e): Discrimination in employment and profession, whether direct or indirect.
- Jobseekers may enrol in training programmes free of charge in accordance with article 26(4).
- The worker enjoys the following rights: To benefit from vocational training programmes in accordance with article 42(1)(f).
- Equality between the wages of women and men for work of equal value under article 53(5).
- All projects and workplaces are covered by labour inspection under the direction and supervision of the Ministry, in accordance with the provisions of article 126 of the Labour Law.
- The Inspection Department of the Directorate of Labour and Vocational Training of the Ministry of Labour and Social Affairs, according to article 127(1), undertakes many tasks (in clauses a,b,c and d of this article).
- The Directorate of Labour and Vocational Training, one of the formations of the Ministry of Labour and Social Affairs, has prepared a workers complaint form, which is available to all, and an urgent response is made upon submission by the worker.
- Inspection committees are authorized under article 128 of the Law to perform several tasks, including conducting any examination or inquiry deemed necessary to ensure that there is no violation of the provisions of this Law, especially the following:
  - Investigate with the employer or the project workers separately or in the presence of witnesses any matters related to the implementation of the provisions of this Law.

- Review any books, records or other documents whose preservation is a duty according to the provisions of laws and instructions related to work to ensure their compatibility with the provisions of this Law. Copies or samples of these documents can be taken.
- Under article 129, inspection committees prepare a report after each visit that includes a summary of violations and recommendations for taking legal action against employers who violate the law.
- In the event that any case of discrimination or any violation of the Law is discovered, the recommendation is to refer the employer to the Labour Court in accordance with article 134(2). The Minister, based on the report of the inspection committee, may decide to refer the violating employer to the competent Labour Court in accordance with the provisions of this chapter, or to initiate a penal case against the violating employer based on the recommendation of the inspection committee based on the inspection visit report.
- The report of the inspection committee, together with the inspector's testimony, is evidence that the court will take when issuing its decision, unless proven otherwise (under article 134(3)).

### Discussion by the Committee

*Interpretation from Arabic:* **Government representative, Director-General, Labour and Vocational Training Directorate** – I would like to thank the ILO for its remarkable efforts and mindfulness regarding the holding of the meetings of the 109th Session of the ILC, despite the circumstances and challenges that the whole world is facing due to the COVID-19 pandemic.

Regarding equal opportunities and treatment, regardless of gender, ethnicity, colour, religion or ethnic origin, the Iraqi Constitution of 2005 is the supreme and higher law in Iraq and provides for strong protection against discrimination. The Constitution guarantees equal treatment for all Iraqis, regardless of their gender, ethnicity, origin, colour, denomination, belief, opinion, economic or social status, and establishes strong and equal rights and lays down a strong foundation for the remaining legal texts.

Article 14 stipulates that Iraqis are equal before the law, without discrimination because of gender, ethnicity, origin, colour, denomination, belief, opinion or economic or social status. Direct discrimination has been defined, in accordance with the provisions of article 25(1) of the Labour Law No. 37 of 2015, as any discrimination, exclusion or preference based on ethnicity, colour, gender, religion, denomination, opinion, political belief or origin, and is prohibited.

As for ethnic and religious exclusion from some labour markets, including employment in the Government and in private sector positions, article 16 of the Constitution stipulates that providing equal opportunities is a right that is guaranteed to all Iraqis and that the State shall ensure that it takes all the necessary measures to achieve that goal.

The Coalition Provisional Authorities Decree No. 7 of 2003, regarding the Penal Code No. 111 of 1969, includes in its section 4 an important provision to combat discrimination, in order to protect the rights of minorities. It is incumbent on all persons who carry out governmental duties or occupy public functions, including those working in the police force or as prosecutors or judges, to implement the law without discrimination when carrying out their official tasks. No discrimination shall be exercised

against anyone on account of their ethnic affiliation, colour, language, religious affiliation, political opinion, nationality, ethnic origin, social status or home origin. This provision, in addition to section 372 of the Penal Code, which prohibits hate crimes and criminalizes actions that harm, attack, insult, invalidate or destroy religious practices and holy sites of religious minorities in Iraq, has established a strong set of laws that protect the interest of the Iraqi minorities. We would also like to refer you to the provisions of section 3(1) of the Labour Law, which is in force and is applicable to all workers.

The State is striving to provide equal opportunities at work, without discrimination, in accordance with the provisions of section 4 of the Labour Law. Any violation or abuse of the principle of equal opportunities and treatment, whatever the reason, in particular with regard to discrimination between workers, whether direct or indirect discrimination and in relation to vocational training or employment or working terms and conditions, in accordance with section 8(1) of the Law, is prohibited. Indirect discrimination has been defined as any discrimination, exclusion or preference based on gender, age, health situation, social or economic status, trade union affiliation or activity, resulting in the cancellation, or weakening, of the implementation of equal opportunities and treatment in employment and occupation, and I refer you to section 1(26). The State has adopted a policy to strengthen full and productive work to observe fundamental rights and principles, whether in law or in practice. This is particularly the case in paragraph 4 of the Labour Law, regarding combating discrimination in employment, in accordance with article 6, which also aims to guarantee the rights of workers who file a complaint with a labour court when they are exposed to any form of forced labour, discrimination or harassment in employment and occupation, in accordance with section 11(1).

Sanctions of imprisonment are imposed for a period that does not exceed six months, and a fine that does not exceed 1 million Iraqi dinars, or either of these sanctions can be imposed, on anyone who violates the provisions of the articles related to child labour, discrimination, forced labour, sexual harassment, according to each particular case, in accordance with the provisions of section 11(2) of the Labour Law. No labour contract can be terminated because of discrimination in employment and occupation, whether the discrimination is direct or indirect, in accordance with the provisions of section 48(1)(e). As for the measures taken to combat the forms of discrimination faced by ethnic and religious minorities in employment and occupation, all projects, in workplaces covered by the provisions of this law, are subject to labour inspection under the supervision and guidance of the Ministry, in accordance with the provisions of section 126 of the Labour Law which is in force. The tasks of the Inspection Department, according to section 127(1)(e), include providing appropriate mechanisms to receive workers' complaints about any violations of their rights under this Law, and to broadly inform workers on how to use that mechanism.

The Inspection Department may provide a guiding list on how workers can file their complaints, and on the information to be included in the complaints, and how to direct the complaints to the Inspection Department and the Directorate. In coordination with the Iraqi Parliament and the Trade Union Committee; an electronic form was prepared to file complaints to the Media Division, which is affiliated to the Office of the Director-General of the Labour and Vocational Training Directorate. When such complaints are received, they are sent to the Inspection Department, and through its Inspection Committee, so as to carry out investigations. Parties to the dispute are summoned to the Directorate in order to reach a settlement. If such a settlement is reached, the complainant receives all their rights and this is recorded. In the event that no settlement is reached, a recommendation is made. The Inspection Committee then prepares a report alongside the testimony of the inspector and these are considered as evidence by

the court when it takes a decision. This is then recorded in a data bank that is communicated to the Trade Union Committee.

Most complaints, for which appropriate measures are taken, involve workers' rights, working hours, wages, termination of work without prior notice, or a reduction in the number of workers without prior approval from the Minister of Labour and Social Affairs.

Complaints also have to do with termination of work through coercion, by making the worker sign their resignation. Contact is made with citizens through social media websites, such as Facebook and, when receiving complaints, through private letters that are forwarded to the concerned sections so as to take the necessary measures.

Due to the COVID-19 pandemic and the lockdown that was imposed, as a consequence of the pandemic, a number of employers terminated workers' contracts unjustly. A hotline was therefore established at the Ministry using the WhatsApp application, so as to receive complaints, which were forwarded to the relevant section. These measures include Baghdad and the other regions. A hotline system with four channels for the Ministry was purchased and a full channel shall be assigned to the Inspection Department. Our Ministry has not received any complaints regarding ethnic discrimination in the workplace. However, we would like to request technical assistance to train work inspectors and specialists in this field.

As regards direct and indirect discrimination indicators, as well as forced labour, citizens' awareness shall be raised through social media, so as to inform them of their rights in the field of direct and indirect discrimination, bearing in mind the small amount of complaints that are forwarded to the Ministry in this regard. Under the supervision of and with the financing of the Central Bank, coordination in relation to those topics has begun with the University of Baghdad and the work inspectors in Baghdad and the provinces. In the field of ethnic discrimination against women, at the Ministry of Labour and Social Affairs an online symposium was held for inspectors on how to use an electronic form. Currently, data is being collected regarding inspectors' opinions on how to investigate, along with women, the occurrence of ethnic discrimination against women in the work place. The data will then be analysed and provided to you along with any updates on this front.

You will also be provided at a later stage with updates regarding the draft Law on the Protection of Diversity and Combating Discrimination, as well as regarding the draft Law on the protection of the rights of religious and ethnic minority groups. The Government has adopted a law on Yazidi women survivors, No. 8 of 2021, as compensation for what they endured in particular, and to protect them and their regions in view of the consequences of the crimes committed against them and against the other Christian, Turkmen and Shabak communities. These crimes are considered as crimes against humanity, crimes that resulted in physical, psychological, social and material harm for all the victims, in particular women and children. And efforts are being made to integrate them into society.

Regarding the absence of complaints, legal measures to address ethnic discrimination, or the absence of the authorities' will to file legal actions against the perpetrators of such actions, Iraq has ratified many of the main human rights treaties, including many treaties that have a positive impact on the situation of minorities, including the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination. Therefore, Iraq has respected

international law in protecting the civil, social, economic, political and cultural rights of the Iraqi minorities.

With regard to providing statistics on gender and the employment of ethnic minorities, and the sectors in which they work, a gender unit has been established under the auspices of the legal department of the Human Rights Division, which is a component of the Ministry of Labour and Social Affairs. It ensures, inter alia, the integration of a gender perspective in employment and occupation and the achievement of social equity between men and women, thereby strengthening the principles of equal employment and guaranteeing sectoral statistics and providing data based on gender and an analysis of gender integration.

Taking into consideration gender perspectives within strategic planning and the Government's work plans, you will also be provided with information about the number and nature of complaints, relating to discrimination based on religion, colour and origin, that have been presented to the courts and other competent authorities, such as the Supreme Iraqi Commission.

As for discriminatory stereotypes based on gender, colour or origin of workers that are still hindering men's and women's participation in education and in vocational training programmes, and their ability to obtain a wide range of work opportunities, leading to minimum wages for similar work, section 19(1) of the Labour Law provides for free legal advice and services for jobseekers, employers, employees and workers. Section 26(4) allows jobseekers to join training programmes free of charge.

Workers enjoy rights, as stipulated in section 42(1)(c) on equal opportunities and treatment in employment and occupation, without discrimination. In paragraph 42(1)(g), workers benefit from vocational training programmes. Equal wages between men and women for equal work is also stipulated in section 17. Under Law No. 38 on Rewards to the Trainers in Vocational Training Centres Affiliated to the Ministry of Labour and Social Affairs, of 2008, any trainer who joins the vocational training centres affiliated to the Ministry of Labour and Social Affairs would obtain a training award, equivalent to 10,000 Iraqi dinars for every day they spend training others.

The reason why Iraq was late in preparing the annual report on this Convention is due to the fact that the Ministry of Labour had to address several sectoral bodies to prepare an integrated response. It is also due to the conditions of the COVID-19 pandemic in Iraq, given that many of these institutions and departments are not fully functioning, which delayed the answers for the preparation of our national report. In this regard, we will make sure to deliver forthcoming annual reports on the date set by the Committee. We would be grateful to receive from the ILO awareness-raising campaigns on all aspects of discrimination.

**Employer members** – The case of Iraq concerns Convention No. 111, which is a fundamental Convention that has been ratified by 175 Member States. Together with the Equal Remuneration Convention, 1951 (No. 100), the Convention is an important instrument that protects the fundamental principle of “the elimination of discrimination in respect of employment and occupation”. By way of background, Iraq ratified Convention No. 111 in 1959. The Committee discussed this case once before in 1993 and provided three observations in the past – in 2002, 2018 and 2020 – and we are grateful for the written information provided by the Government this year and the presentation given just now by the Director-General of the Department of Labour and Vocational Training.

The main issue in this case concerns discrimination against and exclusion of minority groups from certain labour markets, including employment in the Government and the public sector. We understand that Iraq's population is a complex one, comprising 75–80 per cent Arabs, 15–20 per cent Kurd, and a number of ethnic minorities including Turkmen, Shabak, Chaldeans, Assyrians, Armenians, Iraqis of African descent and Roma. That said, the concerns raised in relation to Iraq's application of the Convention relate primarily to two groups. The Committee of Experts' observations highlighted that people of African descent are disproportionately affected by poverty and social exclusion, and racial discrimination and marginalization. Similarly, Roma citizens who do not hold national identification face discrimination, including in access to employment.

The Committee of Experts noted that the Government has developed a draft diversity protection and anti-discrimination bill and a draft law on the protection of the rights of religious and ethnic minority groups in 2017. Regretfully, however, we lack information on progress made towards implementation of these measures or of the provisions established under the Coalition Provisional Authority Decree No. 7 issued in April 2003, regarding the Penal Code No. 111 of 1969 and the Iraqi Labour Law No. 37 of 2015 concerning discrimination.

The Committee of Experts noted that the Government has not responded to its request to provide information on any measures taken to address discrimination faced by ethnic and religious minorities in employment and occupation. We note that Labour Law No. 37/2015, which entered into force in February 2016, prohibits both direct and indirect discrimination in all matters relating to vocational training, recruitment, and terms and conditions of employment. It also promotes equality of opportunity and treatment in employment and occupation as well as prohibiting sexual harassment and harassment based on sex. We further noticed that the Labour Law provides for sanctions (imprisonment for a period not exceeding six months or a fine not exceeding 1 million Iraqi dinars) in cases of discrimination and sexual harassment. The Law is couched in unequivocal terms and it is reasonable to expect that its application would be commensurate. The lack of information is therefore concerning. The Employer members echo the Committee of Experts' request for information on the application in practice of Labour Law No. 37/2015 and for details of any complaints of discrimination or sexual harassment filed with the Labour Court, or details of any other complaint mechanisms, as well as any sanctions imposed.

With respect to the obligation to promote equality of opportunity and treatment in employment and occupation, we acknowledge that the adoption of legal provisions prohibiting discrimination on the basis of a number of grounds in employment and occupation constitutes an important step in addressing the matter covered by the Convention. However, as alluded to earlier, it is important to see this Law in action. The Committee of Experts drew the Government's attention to the fact that the formulation and implementation of a national equality policy presupposes the adoption of a range of specific measures, which often consist of a combination of legislative and administrative measures, collective agreements, public policies, affirmative action measures, dispute resolution and enforcement mechanisms, specialized bodies, practical programmes and awareness-raising.

Concrete and specific measures are necessary to address discrimination effectively and promote equality and this is what we now seek. We urge the Government to take steps to promote equal opportunities and treatment in employment and occupation irrespective of race, colour, sex, religion, political opinion, social origin and national extraction, and any other prohibited grounds of discrimination.



Equal opportunities for men and women, including men and women belonging to ethnic or religious groups, in the labour market, in the public and private sectors, should feature prominently in this regard as well as evidence of specific steps taken to promote tolerance and coexistence among religious and ethnic groups and raise awareness of the existing labour legislation prohibiting discrimination.

To conclude, we are pleased to see that laws upholding the principles of the Convention have been passed. Now we desire to see results. We echo the Committee of Experts' request to the Government to:

- provide up-to-date information on the progress made in the adoption of the draft diversity protection and anti-discrimination bill and the draft law on the protection of the rights of religious and ethnic minority groups;
- strengthen its efforts and adopt proactive measures to address discrimination against ethnic and religious minority groups;
- report on the impact of these measures on increasing these groups' access to employment and occupation; and
- provide statistical information, disaggregated by sex, on the employment of ethnic minority groups and the sectors and occupations in which they are employed.

Furthermore, we would also request the Government to provide detailed information on the application of the Convention in law and in practice in the country according to the regular reporting cycle.

**Worker members** – For 30 years, Iraq has experienced a series of extremely painful events. Even though the country appears to be moving towards reconstruction, lessons must be drawn from the recent past in this context. One of the most important lessons to be learned is the way in which ethnic and religious differences have been exploited in episodes of violence and destabilization of the country. Hence there is a need to neutralize these sources of tension by implementing inclusive policies aimed at eradicating all forms of discrimination.

The report of the Committee of Experts dealing with observance of the Convention echoes elements cited by the United Nations Committee on the Elimination of Racial Discrimination (CERD). The latter has expressed a number of concerns regarding the persistence of structural racial discrimination, marginalization and stigmatization to which individuals of African descent are exposed. The CERD has also expressed concern at the situation of Roma citizens who do not have standardized national identity documents, which reportedly exposes them to discrimination, particularly in access to employment.

We are fully aware of the situation in the country. Violence and armed conflict have resulted in major population displacements. This has been compounded by political and social tensions which have certainly affected the Government's capacity to address these issues. However, it should be clear that this does not release the public authorities from the need to tackle these problems as an integral part of the reconstruction process.

In this regard, we note with concern that the bills aimed at combating discrimination and protecting minorities have remained pending in Parliament for a number of years. However, beyond the legal provisions, specific actions and measures taken to combat discrimination effectively must be taken into consideration above all.

The lack of transparency regarding the number of complaints on these matters and the way in which they have been handled makes it impossible to measure their scale

accurately. The same applies to the absence of precision relating to the measures taken by the Government to combat the forms of discrimination covered by the Convention. The Workers' group will provide illustrations by referring to specific cases which provide some insight, albeit only partial, into this sorry state of affairs.

However, allow me to highlight the situation of women who, in Iraq as in other countries in the region, remain heavily under-represented in the world of work and suffer many forms of discrimination in access to employment. These obstacles are aggravated by a set of conditions and provisions which literally place them under guardianship. This situation calls, as a matter of urgency, for relevant, coordinated responses capable of facing major challenges. I would also like to draw attention to the treatment of women migrant workers and women workers of African origin, who are even more heavily impacted by discriminatory practices.

The reconstruction of the country depends on taking serious account of these aspects, since an inclusive society is the best guarantee against instability.

**Worker member, Norway** – I am speaking on behalf of the trade unions in the Nordic countries. Iraq is discussed due to discrimination in employment and occupation. In addition to discrimination based on colour and religion, which has already been mentioned, there is also discrimination of women.

Women continue to be discriminated against in access to employment and job security. Only 16 per cent of women participate in Iraq's formal labour force. COVID-19 measures have added to the disproportionate amount of time that women already spend on unpaid domestic care work compared to men. Loss of sources of income, confinement within the household, and increased stress and anxiety are some of the key prevalent causes of the reported increase in gender-based violence.

The Labour Law limits women from working during certain hours of the day and does not allow them to work in jobs deemed hazardous or arduous. Women must obtain permission from a male relative or guardian before being granted a Civil Status Identification Card for access to employment. The law does not prohibit discrimination based on age, sexual orientation or gender identity. In addition, Iraq has still to enact a national anti-domestic violence law and amend article 398 of the Penal Code of 1969 which currently allows marital rape and gives impunity to men for sexual violence against women and girls if they marry the victim.

Women trade unionists also face greater harassment. As an example of this we can mention Taiba Saad, a member of the Social Services Syndicate, who was kidnapped from the city of Baghdad. She was subjected to torture during her detention, such as being stripped and severely beaten.

We urge the Government of Iraq to take its obligations in the ILO seriously, comply with the Convention and provide the information requested by the Committee of Experts urgently.

**Government member, Portugal** – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The Candidate Countries, **Montenegro** and **Albania**, the EFTA country **Norway**, member of the European Economic Area, as well as the **Republic of Moldova**, 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 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 international labour standards and of fundamental Conventions in particular.

The prohibition of discrimination is one of the most important principles of international human rights law. In the European Union's founding treaties, the prohibition of discrimination is a core principle. With respect to employment and occupation, Convention No. 111 is founded on the same principle.

The EU and its Member States are long-term partners of Iraq. In response to the many challenges Iraq is facing after years of conflict, in 2018, the EU has adopted a new strategy for Iraq to support the Government's efforts towards stabilization, reconstruction, reconciliation and development. The EU and Iraq have also signed a comprehensive Partnership and Cooperation Agreement.

We note the Committee's observations, the report of the United Nations Special Rapporteur on minority issues on a mission to Iraq in 2016 and the observations made by the United Nations Committee on the Elimination of Racial Discrimination in 2019. We welcome the written information provided by the Government of Iraq and the clarifications as regards provisions of the Penal Code No. 111 and the Iraqi Labour Law No. 37.

However, we call on the Government to provide information on the progress made in the adoption of the draft diversity protection and anti-discrimination bill and the draft law on the protection of the rights of religious and ethnic minority groups. We welcome Iraq's efforts, despite the difficult situation prevailing in the country, to cooperate with the ILO and to improve labour standards, notably through ratification of further ILO Conventions, and through projects also supported by the EU and its Member States.

In this regard, we welcome the signature of the Decent Work Country Programme at the end of 2019, the ratification of the Safety and Health in Agriculture Convention, 2001 (No. 184), and the ongoing Iraqi efforts for ratifying the Labour Inspection Convention, 1947 (No. 81), all supported by EU programmes.

Following the Committee's report, and bearing in mind the Committee's general observation of 2018, we underline that it is necessary to adopt a comprehensive, coordinated and proactive approach to tackling the obstacles and barriers in employment and occupation due to race, colour, sex, religion, political opinion, national extraction or social origin, and to promote equality of opportunity and treatment for all.

We call on the Government to strengthen its efforts and continue to report on the measures taken to eliminate discrimination against persons belonging to ethnic and religious minorities. We underline the importance of evidence-based policymaking and call upon the Government to provide gender and ethnic disaggregated data, substantiating the impact these measures have in terms of increased access of these groups to employment and occupation and a reduction in the number and the gravity of complaints.

In connection to discrimination, we take this opportunity to also call on the Government to take steps towards eliminating child labour.

The EU and its Member States remain committed to our close cooperation and partnership with Iraq and look forward to continuing joint efforts with the Government and the ILO, including in the elimination of discrimination in employment and occupation so as to improve labour standards for all in Iraq.

*Interpretation from Arabic:* **Worker member, Bahrain** – I would like to echo what the Worker members said and add a few points. Firstly, it is very important to strike a

balance between different types of responsibilities and protecting workers rights, be they nationals or migrants. Secondly, the *kafala* system constrains the rights of migrant workers and we need to improve the situation in this regard. Thirdly, it is very important to make social justice for all workers in Iraq, and equality between them, a reality so that decent jobs are a reality for all in spite of divisions of various types. For instance, the unemployment rate in the south of Iraq, and particularly in the area of Basra, is at 20 per cent, despite the fact that that is one of the richest areas in the country and has significant natural resources such as oil and gas.

Due to the lack of transparency, residents cannot benefit from essential services to a sufficient extent, such as education, healthcare and social protection. Iraq is also being targeted by terrorist groups, which has led to the exile of thousands of Iraqi families who have come to be a burden for the Iraqi State, and they have lost their jobs in many cases.

We would also like to stress the need to engage in social dialogue among the workers so that social protection and sustainable development can be bolstered.

In conclusion, we need to respect the standards of the ILO and apply Conventions, specifically Convention No. 111. The country should have recourse to ILO technical assistance on how to prevent discrimination.

*Interpretation from Arabic:* **Government member, Algeria** – Algeria takes note of the information provided by Iraq on the implementation of the Convention. The Iraqi Constitution provides strong protection against all forms of discrimination and guarantees equal rights for Iraqi citizens. Furthermore, Iraq is committed to respecting international law and protecting the civil, social, economic, political and cultural rights of minorities in accordance with the treaties and conventions ratified by Iraq. Algeria also notes the information that the 2015 Labour Law guarantees the rights and freedoms established in the Constitution and encourages it to continue to implement prevention, inspection and training measures to achieve the objectives of decent work.

Finally, Algeria considers that, given the difficult situation in Iraq, technical assistance provided by the ILO would be conducive to achieving the expected progress in the implementation of the Convention.

**Worker member, Spain** – In addition to what has been said by other Worker representatives, I would like to reiterate that the lack of a more extensive legal framework against domestic violence and sexual harassment in the workplace is conducive to a climate of impunity as regards physical abuse and growing harassment and discrimination against women both inside and outside work.

Efforts in Parliament to adopt a bill against domestic violence have stalled. The Iraqi Penal Code, which is applicable in both the territory controlled by Baghdad and in the Kurdistan region of Iraq, criminalizes physical assault but does not refer explicitly to domestic violence.

Women also suffer more attacks for their political opinions and trade union activism, as demonstrated by the number of cases of abuse and abduction of women and trade unionists who took part in the October Revolution. At least eight women were murdered during the Revolution for demanding social justice, employment and fairer wages. Women trade unionists face persecution in the workplace: a woman member of the executive office of the General Federation of Iraqi Trade Unions (GFITU) and chairperson of the Department of International Relations complained of harassment and persecution at work. A smear campaign was launched against her and her family. In 2005, her husband was killed on account of his trade union activities and since then she

has been obliged to abandon her home and go into hiding because of the threats against her. She remains in hiding today.

Another woman, the president of the GFITU, whose organization had been officially registered in 2019, was accused of identity fraud, after the trade union branch supported by the Government filed several complaints against her trade union. She was released provisionally on bail of 5 million dinars (about €2,823) and faces daily harassment at her place of work.

The Government of Iraq should request ILO technical assistance to put an end to systematic discrimination against women in Iraq.

**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 Iraq, regarding the implementation of the Convention. We have duly noted that the Government of Iraq has a Constitution and comprehensive legislation prohibiting discrimination and broadly providing for equal rights in all circumstances.

In particular, we appreciate that the Iraqi Labour Law enshrines the express prohibition of any labour discrimination, in order to achieve sustainable development based on social justice and equality. Decent work is guaranteed without discrimination, with a view to building the national economy and achieving full observance of human rights and fundamental freedoms. Furthermore, in an effort to prevent discrimination and ensure equal opportunities for all, the Iraqi worker is entitled to appeal to the Labour Court in the event that they are subjected to discrimination in employment. In short, we appreciate that Iraq deals with any kind of discrimination and addresses the concerns of the Committee of Experts.

Finally, the Government of the Bolivarian Republic of Venezuela hopes that the conclusions of the Committee will be objective and balanced, with the aim that the Government of Iraq will continue to make progress in its compliance with the Convention.

*Interpretation from Arabic:* **Government member, Lebanon** – We have taken note of the observations made by the Iraqi Government in its detailed response concerning the application of the provisions of the Convention. We would like to congratulate the Government for its efforts and for having taken legislative measures, as well as undertaking reforms. It has also taken a number of positive practical steps. We encourage the Iraqi Government to further implement the necessary measures to combat discrimination, particularly discrimination against women. We also urge it to pursue social dialogue and to further consult with trade unions on amendment processes to ensure that national legislation is in line with international labour conventions. We also call upon the ILO to engage in further cooperation with the Government and to provide technical assistance so that more progress can be made in this regard.

*Interpretation from Arabic:* **Observer, International Trade Union Confederation (ITUC)** – Our Confederation would like to stress how important it is to apply what is stipulated in Iraqi national legislation, particularly laws on the fight against discrimination as well as the international conventions that Iraq has ratified on human rights, including a number of agreements that have a direct impact on the situation of minorities, including the International Convention on Civil and Political Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination.

Iraq has committed to respecting civil, economic, social, political and cultural rights of minorities in Iraq. Among activists, many women fall victim to discrimination and have come under pressure to stop their activism. A number of complaints have been lodged against them with the judiciary to stop them from undertaking those activities and they have become victims of discrimination at work. A number of domestic workers, also women, have been the victim of harassment and persecution and sometimes in the form of sexual harassment and human trafficking. These reports have been lodged with the police authorities in Iraq.

There is also discrimination in relation to economic, social and cultural rights, particularly by some institutions. In the light of this, we need to ensure that the social partners can all work together to improve the labour system, take into account international labour conventions and the fight against all forms of harassment at work. This would be a positive step and would mean that trade union freedoms and affiliation could be guaranteed without interference in trade union activity. That would be a forward step in the fight against discrimination. We should also ensure freedom to join trade union organizations and the Government should make all efforts to fight discrimination while providing the necessary legal and psychological support to victims of discrimination. Statistical data about infringements should also be provided and awareness-raising campaigns should be carried out.

In conclusion, we thank the Committee for its interest in the workers in our countries and its efforts.

*Interpretation from Arabic:* **Government member, Egypt** – We have taken note of the measures and efforts made by the Iraqi Government to bring its national legislation into line with the Convention. This confirms the Government's respect for international labour standards. Indeed, the Iraqi Constitution provides significant protection against discrimination, as well as treatment on an equal footing for all Iraqi citizens. Furthermore, Iraq has ratified a number of agreements that have a direct impact on minority rights. It has committed to respecting international law.

The Iraqi State has promulgated a number of laws that protect Iraqis' interests. Among them, Labour Law No. 37 of 2015, which seeks to ensure that sustainable development can be achieved on a basis of social justice and equality, to provide decent work for all without discrimination to build a national economy, and to ensure that fundamental freedoms and human rights can be enjoyed.

Similarly, Iraq has adopted texts on promoting equality at work in law and in practice. We applaud the efforts made by the Government to ensure the application of the Convention, and we hope that, in its conclusions, the Committee will take into account the efforts made and the measures taken by the Iraqi Government.

*Interpretation from Arabic:* **Government representative** – We have taken note of the comments and observations made by the Committee of Experts and the Government, and the Employer and Worker representatives of this Committee. Iraq would like to reaffirm its commitment to all international labour standards and labour rights. We are one of the Arab States that has ratified the largest number of ILO Conventions.

We are committed and we very much respect the need to apply labour Conventions, including during the COVID-19 pandemic. We have ratified some significant Conventions, including Convention No. 184 of 2001 and Convention No. 185 of 2003, as amended. We reiterate the esteem in which we hold this Organization and would call on it to provide further technical assistance to help us to fight discrimination and sexual



harassment. We are sorry that we were unable to provide all data by the deadline due to the preventive health-related measures that are currently in place in the country.

A number of laws are in place in Iraq on domestic violence, discrimination and other matters and these are currently being promulgated in Iraq in some cases.

**Worker members** – The various contributions have highlighted the breadth of the concerns raised in this discussion.

For the Workers' group, it is essential that the bills on anti-discrimination and the protection of minorities are passed swiftly. To this end, we invite the Government to avail itself of the ILO's technical assistance. The implementation of the Convention should also be integrated into the Decent Work Agenda to be negotiated shortly.

In this respect, special attention must be paid to the situation of women, including female migrant workers. Given that some of the barriers regarding the situation of women also stem from the provisions on the civil status of persons, it is therefore crucial that these aspects are also examined and amended.

**Employer members** – We thank again the Government for its engagement in this case and also to all those delegates who contributed to this discussion.

It is actually evident that we have a situation in which the legislation that has been put in place is good, but we lack the information to be confident that it has been enacted.

In light of today's discussion, we echo the Committee of Experts' requests: to provide up-to-date information on the progress made in the adoption of the draft diversity protection and anti-discrimination bill and the draft law on the protection of the rights of religious and ethnic minority groups; to strengthen its efforts and adopt proactive measures to address discrimination against ethnic and religious minority groups; to report on the impact of these measures on increasing these groups' access to employment and occupation; to provide statistical information, disaggregated by sex, on the employment of ethnic minority groups and the sectors and occupations in which they are employed; and to provide detailed information on the application of Convention No. 111 in law and in practice in the country according to the regular reporting cycle.

All of these elements are really important, the law is important, the practice is important; at the moment we are seeing the law, we have not yet seen much evidence of the practice and we urge the Government to provide evidence of this.

## Conclusions of the Committee

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

**Bearing in mind the process of transition and reconstruction engaged in the country, the Committee urges the Government of Iraq to:**

- **take the necessary measures to ensure the adoption without delay of the draft diversity protection and anti-discrimination bill and a draft bill on the protection of the rights of religious and ethnic minorities.**

**In addition, the Committee calls upon the Government to:**

- **implement Convention No. 111, in particular in the framework of the Decent Work Programme of the ILO. In this respect, a particular attention must be paid to the situation of women, including migrant women workers; and**

- **taking into account the legal obstacles faced by women in the country, including concerning their civil status, it is of paramount importance to review and adapt the relevant provisions.**

**The Committee requests the Government to avail itself of technical assistance to effectively implement these conclusions. The Committee also requests the Government to provide a detailed report to the Committee of Experts, at its next sitting in October–November 2021.**

## Romania (ratification: 1958)

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

#### Written information provided by the Government

##### **With regard to effective protection against acts of trade union discrimination and interference – Articles 1, 2 and 3 of the Convention**

Regarding the burden of proof in cases of union discrimination against union leaders, the Ministry of Justice indicates that, by Decision No. 681/2016, the Constitutional Court, ruling on the notification of unconstitutionality regarding the provisions of the sole article, point 1, of the Law amending and supplementing the Law on Social Dialogue, held inter alia, that, “as the Court held in Decision No. 814 of 24 November 2015, the courts, within the analysis of the legality of the decision to dismiss an employee who also has an elected position in a trade union body, examine whether there is any connection between the reason indicated for dismissal (as provided in article 61 – reasons related to the employee, or article 65 – reasons that are not related to the employee, of the Labour Code) and the fulfilment of the mandate that the employee holding an elected position within the union body received from the employees of the unit, and responsibility to demonstrate the legality of the dismissal rests with the employer, according to article 272 of the Labour Code”.

Therefore, in the event that an employee holding an elected position in a trade union body challenges the legality of the dismissal, the special provisions of the Labour Code become applicable, according to which: “The burden of proof with regard to labour disputes rests with the employer, who is obliged to submit evidence in his defence prior to the first day of appearance in court.” (article 272).

If the union leader considers himself to have been discriminated against, he has the possibility to address the National Council for Combating Discrimination (CNCD – Consiliul Național pentru Combaterea Discriminării), according to the procedure regulated by Government Ordinance No. 137/2000 on preventing and sanctioning all forms of discrimination. Thus, according to article 20, paragraph 1, of this Act, “The person who considers himself or herself to have been discriminated against may notify the Council within one year from the date on which it is committed or from the date on which she could become aware of its commission.” Paragraph 6 of the same article also provides that: “The person concerned shall present facts on the basis of which it may be presumed that there has been direct or indirect discrimination, and the person against whom the complaint was made shall have the burden of proving that there has been no breach of the principle of equal treatment. Any means of proof may be invoked before the Board of Directors in compliance with the fundamental rights, including audio and video recordings or statistical data.”

At the same time, article 27, paragraph 1, of Government Ordinance No. 137/2000 also provides for the possibility for the person who considers himself or herself to have been discriminated against to make a claim before the court, including for compensation and to restore the situation prevailing prior to the discrimination or the cancellation of the situation created by the discrimination, according to common law, with such a request not being conditional upon a notification to the Council. In this case, too, the person concerned shall present facts on the basis of which it may be presumed that there has been direct or indirect discrimination, and the person against whom the complaint

was made shall have the burden of proving that there has been no breach of the principle of equal treatment (article 27, paragraph 4).

Regarding the number of cases of trade union discrimination and interference by employers brought to the attention of different jurisdictions, the average duration of proceedings and their outcome, the Ministry of Justice indicates that the data available in judicial statistical databases that are managed by the Ministry refer exclusively to the activity of courts. The data are collected by specialized staff at the level of each court on the basis of the nomenclature in the ECRIS system (the European Criminal Records System). Within this nomenclature, no elements were identified that would allow reporting of the available data according to the required criteria, respectively the number of cases pending in the courts relating to trade union discrimination and interference by employers. Also, judicial statistics cannot be disaggregated according to certain qualities of the parties/participants.

Regarding the actions and remedies applicable in cases of trade union discrimination, the Ministry of Justice indicates that, according to article 260, paragraph 1(r), of the Labour Code, "The following acts constitute a contravention and are sanctioned as follows ... (r) non-compliance with the provisions of article 5, paragraphs (2)–(9), and of article 59(a), with a fine of from 1,000 to 20,000 lei." Article 5, paragraph 2, states that "Any direct or indirect discrimination against an employee, discrimination by association, harassment or victimization, based on the criteria of race, nationality, ethnicity, colour, language, religion, social origin, genetic traits, sex, sexual orientation, age, disability, chronic non-communicable disease, HIV infection, political choice, family situation or responsibility, membership or trade union activity, members of a disadvantaged category, is prohibited."

According to the Labour Inspectorate, between 1 January and 30 April 2021, no fines were applied for violations of the law related to union membership or activity.

In the event that a person opts for a complaint to the CNCD under the conditions set out in article 20 of Government Ordinance No. 137/2000, the decisions pronounced by the Board of Directors can be appealed to the contentious administrative courts, according to the law (article 20, paragraph 9); if the decision is not contested within 15 days of its communication, it constitutes an enforceable ruling. A decision pronounced in the court of first instance can be appealed within 15 days of its communication, in accordance with the provisions of article 20, paragraph 1, of the Law regarding the administrative court procedure No. 554/2004.

If an application is formulated directly to the court, pursuant to article 27 of Government Ordinance No. 137/2000, the Ministry of Justice specifies that, interpreting this law, the High Court of Cassation and Justice, by Decision No. 10/206, in the interests of law established that "the court competent to resolve claims for compensation and to re-establish the situation that existed prior to the discrimination or cancel the effects created by the discrimination is the court or tribunal, as the case may be, as courts of civil law, in relation to proceedings by a court having jurisdiction and its value, except in cases where discrimination has occurred in the context of legal relationships governed by special laws and where the protection of subjective rights is achieved through special jurisdictions, in which case the applications will be tried by these courts, according to special legal provisions".

In the case of trade union discrimination, as the alleged act of discrimination occurred in a labour relationship, which is governed by a special law, respectively the Labour Code, the court competent to resolve the present dispute is the court in whose

district the plaintiff is domiciled, and only the judgment of the court of first instance is subject to appeal (article 214 of the Law on Social Dialogue No. 62/2011).

In consultation with the social partners and in accordance with national practice, Law No. 53/2003 – the Labour Code was amended in 2020 in order to ensure proper recognition of harassment, intimidation and victimization of employees and their representatives, including in the exercise of legitimate trade union rights and activities (article 5), with dissuasive sanctions applied effectively, including pecuniary sanctions of up to eight minimum monthly gross wages, for individual cases.

In 2020, Government Ordinance No. 137/2000 on the preventing and sanctioning of all forms of discrimination was supplemented by the adoption of Law No. 167/2020 amending and supplementing Government Ordinance No. 137/2000, as well as supplementing article 6 of Law No. 202/2002 on equality of opportunity and treatment for women and men.

Law No. 167/2020 defines moral harassment in the workplace as any behaviour displayed with respect to an employee by another employee who is their superior, by an inferior and/or by an employee with a comparable hierarchical position, regarding the work relationship, which has the purpose or effect of a deterioration of working conditions by harming the rights or dignity of the employee, by affecting their physical or mental health or by compromising their professional future, conduct manifested under any of the following forms: (i) hostile or unwanted conduct; (ii) verbal comments; (iii) actions or gestures.

It also strengthened the attributions of the National Council for Combating Discrimination, as the national authority responsible for preventing, monitoring, assisting and mediating between the parties and for investigating and sanctioning cases of discrimination and acts of anti-union discrimination.

#### **With regard to the promotion of collective bargaining and negotiation with elected workers' representatives – Article 4 of the Convention**

The regulation of social dialogue responds to the national situation and the lack of cooperation between the parties, against the conflicting background of labour and industrial relations, also reported by the European Commission in the 2018 Country Report.

Parliament is currently in the process of adopting, in the Chamber of Deputies (decision-making body), a draft law revising the Law on Social Dialogue, initiated in 2018, which includes in its current form the proposals and amendments made by trade unions and employers in the field of association, representativeness and collective bargaining in the context of the consultations held in Parliament, as well as the aspects accepted of the ILO recommendations in the 2018 Technical Memorandum.

The agreement of the social partners for the revision of the collective bargaining sectors, pursued by the Government, was conditional on the prior adoption of the revision of the Law on Social Dialogue.

As the ILO Report on Social Dialogue pointed out, sectoral collective bargaining has declined since the 2008 crisis, with priority being given to enterprise-level bargaining to adapt and make work and employment more flexible, a trend that continues today. Following the development of new economies and new forms of work and employment, interest in unionization and collective bargaining has diminished.

The revision of the legal framework will not directly eliminate the problem of the low interest of national employers in engaging in bargaining at higher levels of the company due to the difficulties of reconciling the individual interests of employers.

The Government has included in future national programmes and strategies for 2021–27 (the National Recovery and Resilience Plan, the National Reform Programme, and the National Employment Strategy) the objective of strengthening collective bargaining and supporting the structural capacity, organization and action of [the social] partners as a premise for motivating and supporting association, strengthening representativeness and identifying sectoral and national bargaining interests.

The Law on Social Dialogue promotes voluntary negotiation within the meaning of ILO Convention No. 98 and the Collective Bargaining Convention, 1981 (No. 154), at any level of interest to the parties. Article 153 of the Law on Social Dialogue guarantees all unions/trade unions the right to bargain, and to conclude agreements with the employer/employers' organizations on behalf of their members, an eloquent example being the collective agreement concluded by unions and employers in the construction sector.

In the same vein, we mention that European directives favour the general notion of workers' representatives, understood as trade unions and/or employee representatives. As such, employees' representatives are regulated nationally as representatives elected by the vote of all employees in the company (not just those who are not affiliated, within the meaning of the Workers' Representatives Convention, 1971 (No. 135)), in respect of freedom of association and the choice of representatives in collective bargaining, also decided by the Constitutional Court of Romania in ruling No. 62/2019.

The coverage rate of collective bargaining takes into account only the number of employees covered by collective agreements concluded in units with more than 21 employees as a result of the application of *erga omnes*, without taking into account all collective agreements in force, group level and sectoral contracts, voluntary agreements concluded by the parties and/or collective agreements of civil servants.

### **With regard to collective bargaining in the public sector and public servants not engaged in the administration of the State – Articles 4 and 6 of the Convention**

The Government adopted in 2021 a working memorandum for the revision of the Law on remuneration in the public system, which is the responsibility of the Ministry of Labour.

The elaboration and adoption of the initiative will follow the legal procedures for consulting the social partners, as was the case with the current Law on the remuneration of staff in the public system, approved by the European Trade Union Confederation (ETUC) and based on a system of coefficients negotiated with trade unions.

Additional details related to the comments and direct requests of the CEACR regarding the application of Convention No. 98 will be provided in the Government's report under article 22 of the ILO Constitution.

### **Discussion by the Committee**

#### **Government representative, Adviser, Ministry of Labour and Social Protection –**

The Romanian Government takes its ILO obligations very seriously. Romania has ratified all the fundamental and governance Conventions and a number of other important ones. We believe that respect and collective bargaining are the hallmarks of any modern



and organized community. Freedom of association, collective bargaining and the right to strike are guaranteed by the Romanian Constitution.

First of all, I would like to bring to your attention some important legislative changes and provisions that would help to ensure a common high level of protection from discrimination in the employment field.

In consultation with the social partners and in accordance with national practices, Law No. 53/2003 – the Labour Code, was amended in 2020, in order to ensure proper recognition of harassment, intimidation and victimization of employees and their representatives, including in the exercise of legitimate trade union rights and activities, with dissuasive sanctions applied effectively, including pecuniary sanctions. The new amendments were made to article 5, article 59 and article 260 of the Labour Code by Law No. 151 of 2020. This new enactment amends the definitions provided for the concept of “discrimination”, both direct and indirect, by means of amending, *inter alia*, the criteria established by the Labour Code for assessing which acts/deeds are considered as discrimination.

Moreover, Law No. 151/2020 introduces the concept of “harassment”, “discrimination by association” and “victimization” and does also establish that any behaviour consisting in ordering a person, in writing or orally, to use a form of discrimination based on one of the criteria provided by the Labour Code, against one or more individuals, is considered discrimination.

Article 5, paragraph 2, states that: “Any direct or indirect discrimination against an employee, discrimination by association, harassment or victimization, based on the criteria of race, nationality, ethnicity, colour, language, religion, social origin, genetic traits, sex, sexual orientation, age, disability, chronic non-communicable disease, HIV infection, political choice, family situation or responsibility, membership or trade union activity, members of a disadvantaged category, is prohibited.”

The new amendment does also include the cases that are not considered discrimination, which are aiming to cover certain professional requirements that are essential and decisive and which could justify exclusions or distinctions as regards a particular job that are linked to the specific nature of that specific activity or the conditions under which that activity is performed, to the extent that the purpose is legitimate and the requirements are proportionate.

In addition, Law No. 151 amends the prohibition to dismiss employees as established under article 59(a) of the Labour Code, by means of aligning the relevant criteria with the criteria established for the prohibition to discriminate.

Finally, the new enactment provides, according to article 260(1)(r), the related contravention for failure to observe said provisions. A fine of between 1,000 and 20,000 lei has been newly introduced, that is around €200 and €4,500. According to the labour inspectorate, between 1 January 2020 and 30 April 2021, no fines were applied for violations of the law related to union membership or activity.

Separately from the amendments to the Labour Code, the provisions of Law No. 167/2020 introduce the legal definition of moral harassment. Law No. 167, for the amendment and completion of Government Ordinance No. 137/2000, as well as for the completion of article 6 of Law No. 202/2002 on equal opportunities and treatment between women and men, also brings amendments to the specific legislation regarding discrimination and defines moral harassment at the workplace as a behaviour displayed with respect to an employee by another employee who is their superior, by an inferior

and/or by an employee with comparable hierarchical position regarding the work relationship, which has the purpose or effect of deteriorating the working conditions by harming the rights or dignity of the employee, by affecting their physical or mental health or by compromising their professional future, conduct manifested under any of the following forms: hostile or unwanted conduct; verbal comments; actions or gestures.

It also strengthens the attributions of the National Council for Combating Discrimination, as the National Authority responsible for preventing, monitoring, assisting and mediating between the parties and verification and sanctioning in cases of discrimination and acts of anti-union discrimination.

Several specific duties are provided for employers in order to prevent and fight against acts of moral harassment at the work place, such as:

- the obligation to take any measures that are required for the scope of preventing and fighting against acts of moral harassment at the workplace, including by means of establishing related disciplinary sanctions under their internal regulations;
- the prohibition to establish, in any form, internal rules or measures that oblige, determine, or encourage employees to exert acts of moral harassment at the workplace.

Law No. 167 provides several specific sanctions that are applicable both to employees exerting acts of moral harassment, which could be sanctioned with fines between 10,000 lei and 15,000 lei, and to employers failing to observe the specific obligations applicable to them in this context, the level of fines ranging between 30,000 lei and 200,000 lei. This is around €6,000 and €40,000.

Moreover, the new enactment establishes the specific measures which could be imposed by a court of law or, in certain cases, by the National Council for Combating Discrimination, to the extent that it is decided that an act of moral harassment at the workplace was committed:

- the obligation of the employer to pay to the employee an amount which is equal to the salary rights which were not granted to him or her;
- the obligation of the employer to pay to the employee damage compensation and moral damages;
- the obligation of the employer to modify the disciplinary entries regarding the employee.

With respect to the amendments brought to Law No. 202/2002, article 6 of said enactment was supplemented by means of introducing the prohibition of moral harassment based on sex, the provisions of Government Ordinance No. 137 being applicable also for such cases, accordingly.

The National Council for Combating Discrimination is the competent national authority active in the field of discrimination that guarantees compliance with, and the enforcement of, the non-discrimination principle, in accordance with the national and international legislation. The Council is an autonomous state authority, under parliamentary control, which performs its activity in the field of discrimination, combining 14 discrimination criteria, including sanctioning. It was established pursuant to the adoption of Government Ordinance No. 137 and Government Decision No. 1194 of 2001 on the organization and functioning of the Council. The Steering Board of the Council is a collective and deliberative body that takes responsibility for the tasks provided by law. The Steering Board is made up of nine members having the rank of

Secretary of State, appointed by the plenary session by the two Chambers of the Parliament.

With regard to litigation, the Council intervenes before the courts and formally decides on complaints, for example through decisions or recommendations addressed to the parties. Council decisions are legally binding on the parties involved, subject to the appeal rights.

Government Ordinance No. 137 regulates the prevention and sanctioning of all forms of discrimination and implements European Union (EU) Directive No. 43 of 2000, implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin, as well as Directive No. 78 of 2000, establishing a general framework for equal treatment in employment and occupation. Government Ordinance No. 137 protects all individuals, regardless of their status. It contains detailed provisions on discrimination, harassment and victimization, and it sets down the sanctions applicable in case legal provisions are breached.

The following paragraphs extend the definition of discrimination to instruction to discriminate, indirect discrimination, harassment and victimization. According to this Ordinance, the elimination of all forms of discrimination is achieved by: prevention through instituting special measures of protection for disadvantaged persons who do not enjoy equal opportunities; mediation for the amicable resolution of conflicts arising from committing acts/deeds of discrimination; and sanctioning discriminatory behaviour.

For example, I will present a case of discrimination against the union and union members that went through all of the steps of the legal process. At the end of 2014, shortly after an airline company received a notification regarding the existence of the cabin crew union “Aerolimit Professional”, the union leader was dismissed and, soon after, there followed the dismissal of another 19 members of the union, whose posts were abolished. On 19 March 2015, the court ruled that the President of the union had been unlawfully dismissed and ordered the company to reinstate him. The company chose not to respect the court decision and refused to put him into active duty under the pretext of a safety investigation by the competent national aviation authority. This argument was later dismissed by the authority itself.

On 12 May 2015, the court decided that the submission aiming at the dissolution of the trade union was unlawful and the “Aerolimit Professional” union was entitled to represent cabin crew members in the company. On 3 July 2015, the National Council for Combating Discrimination found the company guilty of dismissing 19 staff members due to their union affiliation and stated that the termination of the contracts of employment was discriminatory and had the intention to stop the union movement.

By Decision No. 260 of 2015, the National Council for Combating Discrimination decided the following:

- The communication expressing disagreement with regard to the establishment of the union is an act of discrimination according to article 2, paragraphs 1 and 5, in conjunction with article 7 of Government Ordinance No. 137.
- The termination of the employment contracts of the persons associated with the newly formed union represents discrimination.
- The discrimination was aimed at stopping the trade union movement, which is an extremely serious act.

- The Council decided also to apply a fine of 25,000 lei (approximately €5,500) of which 5,000 lei for expressing disagreement with regard to the establishment of the union and 20,000 lei for terminating the employment contracts of persons associated with the newly formed union.
- In addition to the sanction applied, the Steering Board of the Council ordered the defendant to communicate the summary of this decision in the national media and in its own publication which is distributed to travellers.

On 16 July 2015, the court decided the reinstatement of the cabin crew members dismissed by the company. The court considered that the termination of the employment contracts of all the dismissed workers in this case to be unlawful and ordered the company to reinstate them into their former positions. Furthermore, the company was obliged to repay the workers their salaries from the date of dismissal until reinstatement. Each plaintiff was also entitled to compensation of approximately €1,130.

On 7 March 2019, the High Court of Cassation and Justice, having as object the annulment of the administrative act of the National Council for Combating Discrimination decided to reject the appeal filed by the plaintiff company as unfounded. The decision of the High Court of Cassation and Justice was definitive.

On 9 December 2020, the court approved the forced execution based on the executory title represented by the decision pronounced by the National Council for Combating Discrimination, and confirmed by the decision of the court. It also upheld the decision pronounced by the National Council for Combating Discrimination, as confirmed by the final decision pronounced by the High Court of Cassation and Justice, forcing the company to publish the summary of this decision in the national media and in its own publication distributed to passengers according to article 26, paragraph 2, of Government Ordinance No. 137/2000.

**Worker members** – We thank the Government for the information provided, but we wish to refocus today's discussion on the heart of the matter, which is addressed in the report of the Committee of Experts. Romania has been the subject for many years of persistent comments concerning the application of the Convention. I recall that our Committee examined this case at its session in 2011. The problems raised then are similar to those that we are discussing today and the fears expressed then have become real. The situation has deteriorated so much that the unions had to lodge a complaint with the Committee on Freedom of Association in 2018.

A process of reform has indeed been initiated, but it now seems to be under serious threat. I wish to draw the Committee's attention to three aspects.

First, as noted by the Committee of Experts in its report, Romanian legislation does not provide effective protection against acts of anti-union discrimination. The Government has provided the Committee with written information on this subject. On the one hand, it is clear that the amendment made in 2020 does not cover acts of anti-union discrimination, as this ground is not specified. Moreover, the Government's comment relating to section 260 of the Labour Code does not permit verification of the extent to which this provision is effective and sufficiently dissuasive. The Government has therefore not demonstrated how its legislation is sufficiently protective against acts of anti-union discrimination, and that the protection is sufficiently dissuasive and effective.

The second issue relates to representativeness. By way of a general comment, the Government indicates in its written information that the regulation of social dialogue in

the country suffers from a lack of cooperation between the parties. It must nevertheless be recalled that the Government also bears significant responsibility for the creation of an enabling environment for social dialogue. This is covered by the objective of Article 4 of the Convention, which calls for appropriate measures to be taken to encourage and promote collective bargaining. It is useful to recall that Article 5(d) of the Collective Bargaining Convention, 1981 (No. 154), which has been ratified by Romania, specifies that the aims of the measures taken in this context shall include that “collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules”.

With more specific reference to the issue of representativeness, the Romanian legislation that is currently in force is based on the principle of exclusive bargaining. In other words, only the organization with membership covering over half of the workers in the enterprise can negotiate agreements *erga omnes* on behalf of all the workers. In the absence of such an organization, it is the elected representatives who carry out the negotiation, to the detriment of minority unions which can only bargain on behalf of their own members.

The system of exclusive bargaining is not in itself contrary to ILO standards. What raises more problems is the recourse to elected workers and its consequences. This gives rise to several comments. In the first place, we recall that the Convention guarantees the right to collective bargaining for workers’ organizations, I repeat, workers’ organizations.

Moreover, both Convention No. 154 and the Workers’ Representatives Convention, 1971 (No. 135), which has also been ratified by Romania, specify without any ambiguity that the existence of elected representatives shall not be used to undermine the position of workers’ organizations. The system of workers’ representatives was designed as a subsidiary procedure to workers’ organizations, and not to replace them. The information provided by the Government shows that, following a change made in 2016, collective bargaining through elected representatives is only possible in enterprises without a representative union.

However, in view of the required representativeness threshold, namely 50 per cent plus one, that means in practice that in most enterprises bargaining is carried out by elected representatives instead of the unions that do not attain this threshold. These representatives therefore act as exclusive negotiators. However, a coherent reading of ILO instruments only allows the application of the mechanism of exclusive negotiator between trade unions. Indeed, the extension of this role to representatives would place them in an advantageous position in relation to trade unions, and weaken the latter.

The Government explains that nothing prevents trade unions from negotiating on behalf of their members at the enterprise level, but that, in view of their lack of representativeness, the agreements concluded are not *erga omnes*. On the one hand, as indicated above, this practice is likely to weaken trade unions. And, on the other hand, questions arise as to the value of a union negotiating in an enterprise solely on behalf of its own members, with the resulting inequalities of treatment. Moreover, the procedure for the election of representatives also raises problems, as the legislation does not allow trade unions to submit lists when they are affiliated to a federation at the branch level. In addition, the process is organized by the employer, without the possibility for the unions to verify its transparency.

If, as it claims, the Government wishes to combat the lack of cooperation between organizations and strengthen their representativeness, there are certainly other ways of doing so that are more appropriate and more respectful of trade union pluralism. This

issue must also be seen in relation to the conditions determined for the establishment of a union at the enterprise level, which create the requirement for over 15 workers. In so doing, the legislation deprives a significant proportion of workers of the right to organize and to bargain collectively through their organizations. Moreover, contrary to the Government's indications, trade unions are indeed seeking dialogue at the national level. Indeed, even supposing that one of the parties is not seeking dialogue, it is still the responsibility of the Government to promote and encourage negotiation at all levels, in accordance with the Convention.

I would like to conclude by referring to one final aspect. The Government appears to consider the fact that bargaining at the enterprise level has come to prevail over other levels as a sort of destiny that can only be accepted. We would suggest another interpretation: there is no destiny in this respect. It is merely the consequence of institutional and political choices. Other choices and options would certainly lead to other more virtuous and desirable results.

**Employer members** – The Employer members wish to thank the Government for its comments and statements today. Romania ratified the Convention in 1958. Today is the second occasion since 2011 on which our Committee has examined the application of this Convention in law and in practice by Romania.

The first comment by the Committee of Experts relates to acts of anti-union discrimination, and accordingly to protection against such acts. The Committee of Experts requests the Government to take the necessary measures, on the basis of Articles 1, 2 and 3 of the Convention, so that acts of anti-union discrimination and interference are subject to effective sanctions. In its written information provided on 21 May 2021, the Government specified the following elements.

With regard to specific and dissuasive sanctions, a fine of between 1,000 and 20,000 lei is envisaged for any act of direct or indirect discrimination against an employee on the grounds of trade union membership or activities. We welcome the legislative changes made in 2020, following consultations with the social partners, which now punish those responsible for harassment or intimidation at work, including with fines of up to eight times gross monthly wages. Acts of violence and intimidation directed at trade union leaders are considered to be crimes.

With regard to the burden of proof when the legality of a decision to dismiss an employee holding elected trade union office is challenged, the complainant may turn to the National Council for Combating Discrimination. Persons who consider that they have suffered discrimination have to present facts on the basis of which it may be presumed that there has been direct or indirect discrimination, and the person against whom the complaint is made has the burden of proving that there has been no breach of the principle of equal treatment.

In 2020, the powers of the National Council for Combating Discrimination were strengthened as the national authority responsible for prevention, monitoring, assistance and mediation, and the punishment of discrimination, and particularly anti-union discrimination.

The complainant may also make a claim before a court, which will examine whether there is any connection between the reason indicated for dismissal and the fulfilment of the trade union office. Once again, it is the employer who is legally responsible for proving that the dismissal is lawful.



The Employer members note the progress made by the Government in taking effective measures to combat acts of anti-union discrimination, as there are now appropriate procedures and dissuasive sanctions. Nevertheless, the Employer members wish to emphasize that the reversal of the burden of proof is not required by the Convention. Nor does the Convention require the establishment of specific sanctions for acts of discrimination on the basis of trade union beliefs: the Convention requires adequate protection against such acts.

With reference to preventive measures, the Employer members consider that it is for the unions to raise the issue with the Government if they observe that no action is taken against anti-union practices. On the basis of specific and well-founded allegations, such cases should be subject to tripartite discussion.

The second series of issues concerning which the Committee of Experts raises questions for the Government concern obstacles to the freedom of certain workers' organizations to engage in collective bargaining for the conclusion of collective agreements at the enterprise level, including the representativeness criteria for workers' organizations at the enterprise level.

According to the Government, the national legislation is in conformity with Article 4 of the Convention. The Social Dialogue Act promotes voluntary negotiation within the meaning of ILO Conventions Nos 98 and 154, not only at the enterprise level, but also at the sectoral and national levels. All legally constituted trade unions have the right to negotiate and conclude collective agreements on behalf of their members with the employer or with employers' organizations. This is confirmed by section 153 of the Social Dialogue Act, under the terms of which, and I translate freely: "In accordance with the principle of mutual recognition, any legally constituted trade union may conclude with an employer or an employers' organization any type of agreements or accords, in writing, establishing the rules for the parties and the provisions of which are only applicable to the members of the signatory organizations."

The Employer members emphasize that the Convention covers procedures for the voluntary negotiation of collective agreements between employers and employers' organizations, on the one hand, and workers' organizations, on the other. The Convention does not therefore cover any negotiations with workers' representatives elected within the enterprise. Accordingly, if agreements are concluded with such representatives, they fall outside the scope of the Convention.

With regard to the coverage rate of collective agreements which, according to Eurofound, fell from 100 per cent in 2010 to around 15 per cent in 2017, the Government indicates that these figures only take into account the number of employees covered by collective agreements concluded in units with over 21 employees, and that this coverage rate does not take into account voluntary collective agreements, which are only applicable to the members of the signatory organizations.

The Employer members observe that sectoral social dialogue is not yet fully structured. There are currently only 29 branch dialogue structures, which does not therefore cover all economic activities. This certainly explains why the predominant level of bargaining is currently at the enterprise level. Another reason for the decrease in collective bargaining may be a result of the fact that the national labour legislation already regulates working conditions down to the smallest details, which leaves little room for negotiations between the partners. The Employer members therefore encourage the Romanian authorities to make the labour legislation more flexible,

precisely so that the social partners have the necessary space to enter into negotiations and conclude balanced collective agreements.

With reference to the current criterion for the representativeness of a trade union in the enterprise (50 per cent of workers plus one), the Employer members consider that it does not necessarily have to be changed as collective agreements are applicable erga omnes. Moreover, it appears that minority unions can form a coalition, on condition that they are defending a uniform position, and in so doing can together achieve the representativeness threshold. Finally, as indicated above, on the basis of mutual recognition, any legally constituted trade union can negotiate a collective agreement which will only be applicable to its own members.

The Employer members support the Government's efforts to further develop social dialogue, which necessarily involves improving the capacities of the social partners. For this purpose, the National Recovery and Resilience Plan, supported financially by the European Union for the years 2021 to 2027, as well as programmes for the exchange of good practices in the context of European social dialogue, will play a major role.

The third issue on which the Committee of Experts raises questions concerns the public sector. According to the Government, the legislative process has just been initiated in 2021 for the revision of the Law on the remuneration of public sector employees. Tripartite consultations have also been organized.

The Employer members welcome the fact that the situation in Romania is being brought into conformity with the Convention, as this Convention also covers public employees who are not engaged in the administration of the State. However, the holding of tripartite discussions does not challenge in any way the principle that the salaries of these public employees are determined by law.

By way of conclusion, the Employer members encourage the Government authorities to promote bipartite social dialogue and to intensify their consultations with representative organizations of employers and workers, if legislative amendments are envisaged in future in relation to social dialogue. Such consultations have already borne fruit, as ILO technical assistance and the proposals made by the social partners in relation to freedom of association, representativeness and collective bargaining have been included in the new Bill which is currently being examined by the Parliament.

**Employer member, Romania** – I would like to provide the views of Concordia, which is the most representative employers' organization in Romania, on the Committee of Experts' observation concerning the application of the Convention by Romania. Overall, we consider that Romania is compliant with the Convention, and is ensuring the right to organize and adequate conditions for voluntary negotiations between employers or employer organizations and workers' organizations.

First of all, I would like to stress that the Social Dialogue Act was adopted by the Parliament in 2011 after a large consultation with the social partners. The review of the legislation in the field of social dialogue has been debated with the social partners since 2006, and amendments to the laws on the development of the national social dialogue system were agreed upon between the Government and the social partners.

Social Dialogue Act No. 62/2011, and the Romania Labour Code, set forth trade unions' rights and freedoms and protection in the exercise of trade union prerogatives, including against dismissal due to union reasons (articles 9 and 10) and dissuasive sanctions in enforcement (articles 217 and 218), complemented by provisions of the common and labour law which provide for court rulings on disputes from the conclusion,

amendment, performance or termination of individual or collective employment agreements with the possibility to claim compensation.

Effective protection against acts of anti-union discrimination and interference is ensured not only by Act No. 62/2011, but also by other legal acts, such as article 5 of the Labour Code, which sets the non-discrimination principle in direct or indirect relation to union membership; or Government Ordinance No. 137/2000 on preventing and sanctioning all forms of discrimination, which also includes discrimination based on union membership.

The Labour Code and related legislation, in particular Act No. 62/2011, guarantees the individual and collective right to association and affiliation and to carry out trade union activities and bans employees from waiving their rights (article 38 of the Labour Code). Nobody may be constrained or forced to become a union member, and the relationship between the trade union and its members is regulated by the trade unions' own by-laws.

Also, with a view to guaranteeing employees' protection in the exercise of their rights, the Labour Code provides for the employer's obligation to justify dismissal decisions or modifications of the labour relation. Within collective agreements, trade unions may negotiate specific protection measures for union members and management, as well as clauses on labour dispute resolution.

In order to protect union members and not to deter organization, the legal and administrative actions provided by law are solely based on statements provided by the union on the number of company employees as union members.

Regarding representativeness criteria and the coverage of collective bargaining: 100 per cent coverage before 2011 was achieved through collective agreements at the national level (with erga omnes effects) which created an artificial sense of strong social dialogue. Its elimination, in line with international best practice and freedom of association and voluntary negotiation, gave more room for collective bargaining at the company level. This is also linked to the bigger picture of the social dialogue landscape in Romania, where negotiations at the sectoral level are less attractive as an addition to company-level negotiations. Only a small number of economic sectors are defined by law (meaning 29) and they do not reflect the realities of the economic landscape. Moreover, every aspect related to labour conditions and relations is regulated in detail in Romania, leaving not much space for the social partners to negotiate. For instance, the minimum salary is statutory, with 100 per cent coverage.

It should also be noted that the current provisions of article 129 of Act No. 62 of 2011, setting compulsory collective bargaining at company level, are actually in conflict with the Convention as regards the freedom of the parties to establish the level of collective negotiations.

The unions also claim that the 2018 proposed amendments to Social Dialogue Act No. 62 were not consulted with the representative trade unions. However, there were extensive consultations in the Ministry for Social Dialogue at that time, for more than eight months, with both unions and employers sitting at the table. No law has been passed so far by the Government. The debate has moved to the Parliament, where both parties participated. The changes to Social Dialogue Act No. 62 are now in the final stage of approval.

**Employer member, Germany** – The Employer members note from the Government's submission that there is a general decline of collective bargaining,

determined by the actual changes in the world of work, which corresponds to similar developments also existing in other countries. Beyond that, we would like to point out that there may also be special reasons for the decline of collective bargaining in Romania.

Consideration should be given to the changing economic context in the country. The economic landscape has changed significantly since the 1990s and 2000s, in the sense that many large state-owned enterprises dominated by the big trade unions disappeared.

At the same time, the legal framework for social dialogue was further developed so that regulated compulsory collective bargaining at the national level was abolished in 2011. This was a necessary measure as an obligation to bargain at a particular level is not in line with the principle of “voluntary negotiation” as guaranteed by Article 4 of the Convention.

Labour regulation in Romania is still very detailed and strict, which reduces the room for collective bargaining. Currently, according to article 129 of the Social Dialogue Act, collective bargaining is still compulsory at the unit level. This situation reduces interest in collective bargaining at the sectoral level and it may also explain the high percentage of agreements concluded with elected workers’ representatives given the absence of workers’ organizations in most small and medium-sized enterprises.

Therefore, it is not possible to conclude from purely statistical data that the Government is generally not sufficiently promoting collective bargaining, as required by Article 4 of the Convention. However, if there is one measure that may be taken by the Government in this regard, it would be to introduce opening clauses in the law, in order to give more room for collective agreements between the social partners in line with the needs of their sector or their company.

Regarding the criterion of trade union representativeness, the Employers’ group would like to stress that this is required because of the *erga omnes* nature of the collective bargaining agreements. Due to the applicability of the agreements to all workers of the unit, it is necessary to define representativeness thresholds or other criteria to legitimize the trade union.

In addition, we would like to stress that, according to articles 134 and 135 of the Social Dialogue Act, in the absence of a representative union, a non-representative union can also participate in joint negotiations with workers’ representatives if it is affiliated to a representative sectoral trade union. Only if no trade union is established, the workers are represented just by their elected representatives.

It cannot be concluded that the Social Dialogue Act favours collective bargaining with workers’ representatives to the detriment of trade unions.

**Employer member, Norway** – At the outset, I would like to align myself with the intervention by the Employer spokesperson in this case. Furthermore, I would like to underscore that the Convention is a framework to ensure enabling conditions for social dialogue. However, the Convention cannot secure the success of the process or the outcome. An important element of successful social dialogue is the existence of trust between the social partners and that the partners involved both have the capacity needed.

The situation in Romania is improving and, as stated also by the Government, the country has a balanced legislation in place. On a personal note, I would like to inform you that my organization, the Confederation of Norwegian Enterprise (NHO), and

Concordia, one of the main employers' organizations in Romania, at present are running a joint project precisely on social dialogue and how to improve the functioning of it.

When it comes to issue number one on protection against anti-union discrimination, it must be recalled that both the labour law and other parts of Romanian legislation deal with the issue. In other words, protection against such discrimination is ensured in the legislation.

As far as wage negotiations in the public sector are concerned, I would like to welcome the initiative referred to by the Government that it has been decided to start a process aimed at revising the law on civil servants' remuneration. This is to ensure an improvement of the system.

Even though there are many positive developments in Romania today, the Government should be encouraged to intensify its consultations with the social partners in order to further improve social dialogue in the country.

**Worker member, Germany** – I am speaking on behalf of the German Confederation of Trade Unions (DGB), the Netherlands Trade Union Confederation (FNV), the General Confederation of Labour of Belgium (FGTB) and French workers. Reading the written statement of the Government to the Committee, one feels slightly reminded of the principle “divide and conquer”. New economies and forms of work, it is stated there, diminish the interest for unionization and collective bargaining.

The effective recognition of the right to collective bargaining is not only one of the four fundamental principles that ILO Members States have an obligation to respect, to promote and to realize, it also lies at the core of social dialogue and is reflected even in the tripartite nature of this Committee. Being able to speak as a collective is often the only factor that makes an individual worker's voice heard. The picture of the flexible worker being her own entrepreneur that some like to paint is therefore essentially flawed.

The austerity measures adopted by Romania have, over the past decade, led to a severe deterioration of the collective bargaining landscape. The Social Dialogue Act adopted in 2011 has de facto eliminated collective bargaining at the sectoral and national levels. And bargaining at company level has become considerably more difficult. It is therefore no surprise that coverage has declined from almost 100 per cent in 2010 to only 15 per cent in 2017.

How can we conceive a “human-centred world of work” and strive for a “human-centred recovery” from the COVID-19 pandemic when the right to speak and negotiate collectively is so severely hampered?

Studies show that wages are lowest in Europe where collective bargaining is weakest. Romania is not only among the countries with the lowest, average and minimum wages; the current minimum wage levels also do not provide workers with an income that allows decent living. In-work poverty is among the highest in the EU, and affects one third of Romanian workers.

The situation in Romania has not only been criticized by the Committee of Experts, but also by the EU institutions. Under the European Semester, Romania has for years been receiving country-specific recommendations in relation to the very limited scope of social dialogue, the low minimum wages and the lack of objective criteria for setting the minimum wage.

We therefore call on the Government to immediately amend – in full consultation with the social partners – its legislation and bring it into line with the Convention.

**Observer, IndustriALL Global Union** – I am speaking in the name of IndustriALL Global Union and would like to give the Committee a practical example from workers from an automotive component plant in Romania who decided to form a union in 2019. This is to illustrate how the Romanian labour legislation actively hinders the application of the Convention.

After the registration of the trade union at the auto plant, the first stumbling block is the verification process related to the representation of more than 50 per cent of the workforce. According to article 52(C)(c) of the Social Dialogue Act, the union not only has to prove the number of members in the plant to the competent labour court, but also has to provide a document on the total number of employees issued exclusively by the company. By relating the two figures, the court can then determine whether the 50+1 threshold is met and, as a consequence, whether the union qualifies for collective bargaining.

However, the same article 52(C)(c) obliges the union to submit the document from the company, but does not oblige the company to issue this written declaration on the size of the workforce. So, it is very easy for the company to simply refuse without any sanctions, thus blocking the application of the Convention before any bargaining has even started.

In the concrete case, it required the intervention of IndustriALL Global Union, the mother company and our Global Framework Agreement to make the local Romanian management issue the required letter.

Also, it was noted that the company, which is not obliged to recognize and speak with the elected trade union representatives, persistently continued to treat the local trade union leader as a simple employee representative (her/his former status). When collective bargaining finally started, the company used two other particularities of the Romanian labour law to the detriment of the union: article 129(5) to avoid any shorter period of collective bargaining than 60 days; and article 141 of the Social Dialogue Act, saying that only one collective agreement can be signed between the social partners in 12 months. Here the company prolonged the negotiations into the pre-Christmas period threatening the employees not to pay the usual Christmas bonus in case the union decided to go for industrial action. The union had to give in and finally signed a collective agreement including a new pay agreement for 2020 at the end of 2020.

When the company invited the union for the wage negotiations for 2021 in March of that same year, the union could not exert any pressure on the company because according to article 161 of the Social Dialogue Act, the union could not open any industrial action and the wage agreement was simply an addendum to the existing collective agreement.

Due to time constraints, I have to stop here but I am sure it has become clearer to the Committee how the Romanian labour legislation prevents the proper application and implementation of the Convention.

**Government representative** – I welcome the numerous interventions that reflected a diversity of opinion and views on how the various parties should interact, brief one another and provide a useful basis for consideration. The Romanian Government stands ready to continue to work closely with the ILO and the social partners to find the best way forward to the benefit of all economically active persons and to ensure that their rights are well protected and represented.



**Employer members** – The Employer members have taken due note of the written and oral information provided by the Government representative and the discussion that followed. Our principal recommendation to the Government authorities is to further promote bipartite social dialogue, and to intensify its consultations with representative organizations of employers and workers, if legislative amendments are envisaged in relation to social dialogue.

With a view to improving effective protection against anti-union discrimination, and further promoting collective bargaining, several pathways to improvement are proposed.

First pathway, in relation to anti-union discrimination, it is important for the Government to provide detailed information on: the number of cases of anti-union discrimination and interference brought to the various competent authorities; the average duration of the respective procedures and their outcome; and the sanctions and remedies imposed in practice.

Second pathway, in order to promote collective bargaining and reverse the fall in the coverage rate, it appears to us to be important for the legislation to leave more room for bargaining and the conclusion of collective agreements by the social partners. They will be more motivated to enter into bargaining with a view to the conclusion of balanced agreements, taking into account the needs of their sector or enterprise.

Third pathway, the efforts made recently to allow collective bargaining by public employees not engaged in the administration of the State should be continued.

The Employer members invite the Government to provide all this information in its next regular report on the Convention. I will conclude by pointing out that the mere fact of including in a law the requirement for the parties to associate will not create solid social dialogue. It is particularly necessary to reinforce the calls for the social partners to organize freely and to engage in free and independent bargaining.

**Worker members** – I first wish to thank those who have contributed to our discussion.

The Employer members have claimed that the Convention does not provide for the reversal of the burden of proof or that sanctions are necessary to protect against trade union discrimination. In their great wisdom, the drafters of the Convention considered it useful to speak of adequate protection. This term encompasses, among other matters, the reversal of the burden of proof and sanctions. In passing, that means that the most appropriate measures can be taken without entering into an over-detailed enumeration.

Nor do we share the assessment by the Employers that the current representativeness threshold should not be reviewed. Article 4 of the Convention does not specify the representativeness threshold. However, anything that prevents bargaining by trade unions is contrary to this Article. Representativeness thresholds that are too high, as they are in the present case, are not in conformity with the Convention.

Moreover, we cannot follow the Employer members in their claim that negotiations carried out by workers' representatives are not covered by the Convention. The concept of collective bargaining within the meaning of the ILO is single and indivisible. There is not one type of bargaining for unions and another for the rest of humanity. This concept is the same, irrespective of who undertakes it on behalf of the workers. That is what is envisaged in Convention No. 98, Convention No. 135 and Convention No. 154, all of which have been ratified by Romania.

As I said in my introductory intervention, the industrial relations situation in Romania has not occurred by chance. It is the consequence of the backward steps taken in 2011 under pressure from the Troika. These changes resulted in the displacement of the centre of gravity of collective bargaining to the enterprise level.

As we have shown, the modification of the representativeness threshold at this level has had a heavy impact on trade unions. This impact can easily be measured by observing the collapse in the number of collective agreements concluded at the branch and national levels.

The right to collective bargaining guaranteed to trade unions by the Convention has also suffered from this new configuration. If proof is needed, over 92 per cent of the collective agreements concluded in the private sector have been negotiated by elected representatives. But, over and above the unions, this situation has also greatly fragilized the situation of workers as a whole, with over one third of them being paid at the rate of the minimum wage. Nor will I insist on the economic and social consequences implied by this pauperization, with a significant rise in emigration leading to shortages of workers in a series of sectors.

May I now recall the essential points for the Workers' group. It is the Government's responsibility to provide effective and dissuasive protection against acts of anti-union discrimination. The issue of the representativeness threshold deserves particular attention, and in particular urgent action. On the one hand, it is crucial to review the representativeness threshold at the enterprise level. It is also necessary to review the procedure for the election of representatives so as to allow unions to submit lists in all situations and to ensure the transparency of the procedure. Finally, we call on the Government to promote and encourage collective bargaining at all levels, including the national level.

With a view to giving effect to these elements, we call on the Government to accept a high-level mission.

**Chairperson** – I would now like to consult the Employer and Worker spokespersons. The Worker member of Romania, who was not able to connect, has just managed to connect and would like to take the floor. Are the Employer and Worker spokespersons in agreement that we can exceptionally give him the floor?

*(The two spokespersons indicate their agreement.)*

**Worker member, Romania** – The Committee of Experts emphasizes in its report that, through its provisions, the Social Dialogue Act, adopted in 2011, establishes a minimum requirement of 15 founder members in the same enterprise/unit to establish a union.

It should be noted that this is an unsurmountable obstacle in a country where most employers are small and medium-sized enterprises, as they represent 92.5 per cent of all enterprises in Romania and have fewer than 15 employees. This requirement therefore denies the right to organize to over 2.2 million workers. The unions have indicated that, in order to be in conformity with the provisions of the Romanian Constitution (the Basic Law), the requirement should be 15 employees in the same enterprise or in several enterprises in the same field, thereby offering the possibility to establish a union even at the national sectoral level.

We recall that the law prohibits dismissed and retired workers from joining unions, if they so wish, even if they have participated in trade union activities. Those who have the right to establish and/or join a union are set out in section 3 of the Social Dialogue

Act. The categories of persons referred to above are not explicitly included. The reference by the Government to section 32 of the Social Dialogue Act is not pertinent and does not respond to the question, as the statutes of trade unions are subject to control by the courts. As a consequence, section 32 does not apply *ex ante*, but only following the approval of the statutes by the court. Those who have been dismissed or who have retired can therefore only become members of unions if that is accepted by the courts.

I emphasize that, in accordance with the provisions of the Social Dialogue Act, as also noted by the Committee of Experts, daily workers, self-employed workers and workers engaged in atypical forms of employment, who account for around 25.5 per cent of the total active population in Romania, are not covered by the Act and cannot therefore exercise their trade union rights.

Most collective labour agreements, over 80 per cent of them, are now negotiated by the elected representatives of employees, because unions not considered to be representative do not have the right to negotiate on behalf of their own members. Although the amendment of the Act has been called for, in the sense that bargaining with non-unionized representatives of the employees should only be possible when there is no union at the respective bargaining level, no action has been taken.

In 2010, all collective agreements and accords were negotiated and concluded by unions, while in 2017 only 14 per cent of all the collective agreements concluded were negotiated by unions, with 86 per cent being negotiated by elected representatives of employees. Although the Convention establishes the right to collective bargaining for both workers' organizations (unions), irrespective of their level, and for employers and their organizations, collective bargaining is carried out principally by non-unionized workers' representatives, and not by unions.

The level of representativeness that allows participation in bargaining is 50 per cent plus one of the total number of employees, which has led to a drastic fall in the number of collective agreements concluded at the enterprise level. The requirement imposed for the conclusion of a sectoral collective agreement, namely only if the signatory organization represents at least 50 per cent plus one of the workers in the sector, has blocked collective bargaining at this level. These 2011 legislative provisions are not the outcome of agreement between the social partners, nor of public or parliamentary debate: they were adopted and introduced by law, by the Government.

The main consequences of these legislative changes are the following. First, the elimination of the single collective labour agreement at the national level, which was the principal source of law in the field of labour and industrial relations in Romania. Over 1.7 million workers, out of a total of around 5 million workers in the country, are paid at the level of the gross minimum wage established by the Government. More than 4 million workers have left Romania to find work abroad as a result of the precarity of labour relations.

Second, the institution of collective bargaining in Romania has been dismantled and the role of unions in this institution has been weakened, contrary to the provisions of the Constitution of Romania, the Basic Law (article 41(5)) which guarantees rights to collective bargaining.

I emphasize the gravity of the situation of industrial relations in Romania and of collective bargaining, which has been dismantled since 2011.

## Conclusions of the Committee

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

Having examined the matter and taking into account the Government's submissions and the discussion that followed, the Committee noted that there are significant compliance issues regarding the Convention in law and practice with respect to the protection against anti-union discrimination and the promotion of collective bargaining.

In this regard, the Committee requests the Government of Romania to:

- ensure adequate protection against acts of anti-union discrimination in law and practice in compliance with the Convention;
- collect detailed information on the number of cases of anti-union discrimination and employer interference brought to the various competent authorities; the average duration of the relevant proceedings and their outcome; how the burden of proof is applied in such cases affecting trade union officers as well as the sanctions and remedies applied in such cases;
- ensure, in law and practice, that collective bargaining with the representatives of non-unionized workers only takes place where there are no trade unions in place at the respective level; and
- amend the law so as to enable collective bargaining for public servants not engaged in the administration of the State in line with the Convention.

The Committee requests the Government to provide information on all of the above points to the Committee of Experts before its next session in 2021.

The Committee requests the Government to accept an ILO technical advisory mission before the next International Labour Conference.

## 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** – I wish to place emphasis on the commitment of the Government of El Salvador, under the leadership of President Bukele, to tripartite social dialogue and the deepening of democracy as an essential tool for building agreements for the development of the country. We know that only united, as employers, workers and the Government, can we move forward.

As a founding Member of the ILO, we are committed to the promotion of the constituent standards and vision of the Organization. For that purpose, at the International Labour Conference in 2019, where I made the commitment to reactivate the Higher Labour Council upon my return to the country, we took the necessary measures for its restoration without delay. This was a turning point that brought an end to six years of breakdown in tripartite social dialogue in El Salvador and constituted a starting point for building major agreements for the development of the country and the well-being of the population of El Salvador. The Council commenced its meetings and concluded important agreements, such as the development of a decent work strategy, with ILO cooperation, and the commencement of the implementation of a basic and participatory road map.

Similarly, the National Minimum Wages Council was established as a tripartite forum, for which the electoral procedure was free and transparent to the total satisfaction of workers and employers. Nevertheless, with the arrival of the COVID-19 pandemic, which affected everyone, we had to readjust. In El Salvador, we saw how other countries with higher levels of development and stronger systems of protection were encountering serious difficulties in managing the pandemic. For that reason, the Government took the decision to protect the life and health of our population, which implied focusing all efforts on the management of the pandemic. This involved, in the beginning, the establishment of an epidemiological cordon, a strict quarantine and action to educate and raise the awareness of the population. We strengthened our health system, built a specialized modern hospital designed in a programme for the outpatient treatment of COVID-19 and, more recently, we have been implementing a successful vaccination programme. For all that, our country has been recognized by the World Health Organization as one of the most successful countries in the management of the pandemic.

As Minister of Labour, we were constantly involved in processes of dialogue with branches and employers' and workers' representatives. In the same way as everyone else, the pandemic resulted in a contraction of the economy. Nevertheless, the measures and policies adopted by the Government as a whole backed up by broad processes of dialogue with the partners helped to minimize the economic and social impact of the crisis. For example, the Government, together with employers' and workers' representatives, developed the Employment Protection Act, which contains a broad and historic economic programme of support for micro, small and medium-sized enterprises and the informal sector so as to provide the financial support required at that time.

One of the major objectives was also to protect economic activities and workers who were performing their work, for which purpose we developed together with the employers and workers a general biosecurity protocol and we jointly drew up

2,636 protocols adapted to the specific conditions of the various economic and entrepreneurial fields with a view to protecting the health and life of both workers and employers.

We also inform the honourable Committee that we have initiated processes that have strengthened tripartite social dialogue, such as the participatory development of the Strategic Institutional Plan of the Ministry of Labour for the period 2020–24, which was for the first time subject to dialogue with both employers and workers, and which sets out the transversal aim of strengthening tripartite social dialogue.

Similarly, I can indicate that we designed and validated with employers and workers the system of labour market information, which will provide valuable information as a basis for decision-making and public policies on labour matters. This system benefited from ILO technical cooperation and is a tool that will strengthen informed social dialogue in El Salvador.

During the second half of 2020, with a view to economic recovery, a dialogue forum was established with employers in which a plan for orderly and sure economic recovery was drawn up that is of vital importance, to which associations, enterprises and workers made a very strong contribution in general.

Moreover, in my capacity as Minister, I spend 70 per cent of my time in social dialogue between workers and employers seeking solutions to the problems that arise. All these elements lead me to say loud and clearly that our management of social dialogue in the country has never slackened and, indeed, on the contrary, has been strengthened.

Since our arrival in Government, we have been transparent and have shown that we are a Government with clear rules, committed to providing legal certainty and creating a conducive environment for private investment with a view to generating more and better jobs. And we have also said that the only thing that is not negotiable in this Government is the genuine rights of workers.

We understand that, as humans, we may make some mistakes, but our spirit of dialogue is clear and strong. We work hand in hand with employers because, very clearly, they are important actors in the development of the country. Furthermore, we believe that the great majority of employers in our country are law-abiding, although there exist a small minority who are in violation of labour laws, including the fiscal laws of the country. We need to show strength in the enforcement of the law with these enterprises.

I have also called for further information on cases of anti-union violence in the country. As a Government, we are committed to demanding justice for acts of anti-union violence, as they cannot go unpunished. We will not return to the dark and painful times of the past for the trade union movement in our country. Since our arrival, we have been open to the claims of the trade union movement, which we regard as an important and key actor for national development.

The Government of El Salvador respects freedom of expression. During the two years of its existence, there have been 37 anti-government demonstrations for various reasons. And I can tell you with pride that our forces of order have not used a single rubber bullet nor a single canister of teargas to repress our people, as was done by previous governments.

On 1 May last, International Workers' Day was a historic day in our country. The trade union movement traditionally expresses itself through demonstrations in the streets and the forces of order traditionally erect barriers three blocks away from the



President's residence so that the demonstrators do not have access to it. On the most recent first of May, for the first time, yours truly and other government authorities, on the instructions of President Nayib Bukele, went out to receive the trade union movement and the same units of the forces of order which in the past had been used to repress the people, now opened the barricades so that the representatives of the workers could pass through and were received at the President's residence and their claims heard. This is how we are now working in El Salvador.

With reference to cases of trade union violence, I will refer first to Abel Vega, who was murdered in 2010. We have recently received the report of the former Public Prosecutor of the Republic, who shelved the case of the murder of this trade union leader as it had not been possible to identify those responsible. In this regard, I wish to inform you, Madam Chair, that in my capacity as Minister, I have requested the new Public Prosecutor to reopen the case, as we consider that under the previous administrations the Office of the Public Prosecutor did not investigate these crimes diligently. It is of essential importance for us to deliver justice and to ensure that these acts do not go unpunished.

In the case of the vile murder of the trade union leader Weder Arturo Meléndez of the trade union of the municipal authorities of San Salvador, ASTRAM (the Association of Municipal Workers), committed in August 2020, our response has been strong and we have publicly condemned this unworthy act and we have put together a full file of charges, interviews and relevant information to clarify the situation, which we have handed to the Office of the Public Prosecutor of the Republic.

Our voice has been strong and clear and we immediately called an extraordinary meeting of the Council of Ministers of Central America and the Dominican Republic to denounce this cowardly act, which was condemned by the Council. We believe that this act must lead to greater awareness by all governments in the region to seek justice and ensure that such cases do not happen again.

The file has also been sent to the Freedom of Association Branch of the ILO with the request to ensure follow-up. We will be providing information on the progress made in the application of justice in these cases.

Our mission is to overcome the stigma affecting the trade union movement, which unfortunately in our country and the region, instead of being seen as defenders of human rights, has been badly viewed and denigrated. For this reason, we have recently launched the Trade Union Training Institute to strengthen their technical capacities. Their influence on the development of public policies is necessary to proceed from protest to proposals, and we believe that this will be a historical achievement for the trade union movement in our country and in our administration.

I wish to inform you that tripartite social dialogue is not broken in our country. Quite the contrary, as we have taken action for its re-establishment and we are committed to continuing to seek consensus through dialogue.

I would also like to add that our invitation to Employer and Worker representatives has always been open, because we recognize that there is no other way to go forward than by uniting the strength of the tripartite partners. We reiterate our readiness to receive the direct contacts mission, which is now more relevant than ever, and can visit the country whenever it considers it appropriate. We also reiterate our request for ILO technical cooperation to support us in going forward with the strengthening of tripartite social dialogue in our country.

Finally, we reiterate our attachment to and respect for international standards in the field of human rights, and particularly labour rights. We are proud to promote the principles and standards espoused by this Organization for the benefit of all the social partners. We share with the international community the aspiration of the construction of a more just and inclusive society with decent employment for all, in which social dialogue, in our view, is the cornerstone guiding these processes for the well-being of our population.

**Employer members** – I would like to start by thanking the Government for its report provided to the Committee, while emphasizing our concern at its implications, as this is the fourth consecutive occasion on which it has been necessary to examine this same issue, in view of a situation that basically remains practically the same as when it was examined for the first time. We recall with concern that in 2017, 2018 and 2019, the ILO Centenary, this Committee discussed and adopted very concrete conclusions, which set out the measures that the Government would have to take, in both law and practice, for the application of the Convention, which is a very relevant ILO governance Convention, and which is still not given effect despite what the Government representative said.

In view of the short time available to me to make my presentation on such a serious and urgent case, with reiterated violations, I invite the members of the Committee to look back at the reports of the Committee in 2017, 2018 and 2019.

The previous examinations of the case include the term “deep concern”, used by both the Committee of Experts and the present Committee; direct contacts missions by the Office; as well as various requests for urgent action made to the Director-General of the ILO, Guy Ryder, by the National Business Association (ANEP), which is the most representative organization, and the International Organisation of Employers (IOE), concerning government interference in the administration and operation of this organization which, as I said, is the most representative.

These include attacks on its leaders, serious deficiencies in the operation of social dialogue and tripartite consultation, under conditions very similar to those described in the report of the Committee of Experts, and the national situation experienced by workers’ organizations. When we discussed the case in 2019, we expressed the sincere hope that the new Government of President Bukele, which had taken office a few days earlier, would take this major opportunity to reverse this serious situation with a view to the governability of the country, the promotion of good relations between the social partners and the Government, and compliance with the obligations deriving from the Convention, among other reasons.

In this regard, it is worth recalling that, when the conclusions of the case were adopted in 2019, the Government representative took the floor and expressed agreement. I could have referred to certain phrases and paragraphs that he mentioned, but it seems to me that the same Government representative recognized and accepted the conclusions, and undertook to give them effect, as well as to receive the direct contacts mission and ILO assistance, as he repeated today. It therefore seems to me to be of great importance to note this acceptance and to take the corresponding action.

The Government of President Bukele has failed to give effect to what was said in 2019. It has not only failed to improve the situation in the country, and the operation of tripartite consultation and social dialogue in all its forms, but the national situation has deteriorated in an extremely worrying manner. And this has occurred within the context of a period of increased concern in general, institutional and democratic terms, and in

relation to the rule of law, with the independence of the authorities being undermined, and counterweights and supervisory bodies being diminished, including the necessary autonomy of the most representative employers' organization, the ANEP.

For greater clarity and for the information of the Committee, I will now provide specific information to describe the situation. The Higher Labour Council, the national body created for social dialogue and tripartite consultation, has been inactive since 2013 up to now. In accordance with the report of the Committee of Experts, and contrary to what was said by the Government representative, the Council was reactivated in September 2019, and effect was given to this undertaking. Three plenary sessions were held, tripartite agreement was reached on the process for the preparation of an employment policy, ILO technical assistance was requested, work began, etc. What is certain is that since 12 May 2020, all activity by the Council has been suspended. This is the real situation, not the one described by the Government representative, under the pretext of the pandemic. The world has not been paralysed, the ILO has not stopped working, and we cannot leave tripartism to one side under the pretext that there is a health situation that might impede the work of the Council.

Do not think that this was because of the pandemic, as I have said. No, during this period, the Government of El Salvador issued invitations for information meetings to employers' organizations affiliated to the ANEP, from economic sectors with a high level of state regulation, which depend on authorizations and are subject to sanctions. This makes them especially vulnerable in terms of agreeing to participate and calling for dialogue to be carried out through the ANEP, the most representative employers' organization in El Salvador, and through the Council, as indicated above.

Perhaps these are the meetings, to which the ANEP was certainly not invited as I have said, to which the Government representative is referring. I emphasize that the ANEP was not invited to these meetings, and it is the most representative organization in the country that we are talking about.

In line with this attitude of non-compliance, the Government has refused to swear in directors selected and appointed by employers for tripartite bodies. On 12 May 2020, the President of the Republic, acting in violation of the independence and autonomy of workers' and employers' organizations, disregarded the President of the ANEP as a counterpart representing employers' organizations, even though only 13 days earlier he had been elected unanimously by 48 affiliated organizations from the various productive sectors of the country. The Government indicated that everything would return to normal when a new President was elected, which is clearly an act of interference and a flagrant violation of the independence of the ANEP.

And there have been a series of events of this type, even right in the middle of the 109th Session of the Conference, on Monday, 7 June, when the Government of El Salvador announced a supposed new employers' association established by microenterprises, which it is intending to convert into a partner for the Government. In this way, the practice is continuing of setting up false organizations to avoid social dialogue with the ANEP, as the most representative employers' body in El Salvador. The deceit is unacceptable. It is destroying and undermining the essence of the ILO.

The events described show the extreme contempt for social dialogue and the failure to comply with the obligations assumed by the Government of El Salvador when ratifying the Convention. Tripartite consultation and effective social dialogue undertaken in good faith are only possible in a climate in which the rule of law is guaranteed and which is free from any aggression, interference or abuse. As can be seen, this is one of the most

serious cases of continued failure to comply with the Conventions voluntarily ratified by El Salvador. We hope that the Government understands that the success of such participation, as it announced over its social media before coming, is based on compliance with the requirements of the Convention and in practice on specific acts and verifiable outcomes, and not only on its word, which regrettably has not been kept up to now. We will follow the development of this discussion very carefully.

**Worker members** – This is the fourth consecutive time that the Committee has been called upon to examine the application of the Convention by the Government of El Salvador. After so many appearances before our Committee, we would have hoped to see some improvements in giving full effect to the Convention. Unfortunately, this is not the case. In fact, we must deplore that the situation has severely deteriorated since our last discussion. The Worker members would like to draw the attention of the Committee to the following issues.

First, the Committee of Experts' report indicates that, following six years of inactivity, the Higher Labour Council had finally been reactivated in 2019. However, hopes for the re-establishment of tripartite dialogue in the country were quickly dashed as the Council held only three meetings. After November 2019, the Council simply never reconvened again. This clearly sends a very bad signal as to the commitment of the Government to respect and to ensure tripartite consultations.

On the basis of the comments of the Committee of Experts, we note that, during the last session that was held two years ago, the Higher Labour Council discussed the methodological proposal and road map to be followed for the development of the national strategy for the generation of decent employment. However, the Government provided no further information as to the outcome of the discussions, nor the follow-up given to any recommendations made.

We recall that, in ratifying the Convention, the Government of El Salvador undertook to operate procedures which ensure effective consultations with respect to the matters concerning the activities of the International Labour Organization pursuant to Article 5, paragraph 2, of the Convention, and that consultations shall be undertaken at least once a year.

We add that, pursuant to Article 3 of the Convention, for the purpose of tripartite consultations, the representatives of workers shall be freely chosen by their representative organizations. The Government does not respect that provision as it does not respect the free choices of workers' representatives and proceeds unilaterally to the appointment of workers' representatives.

In addition to this, we wish to emphasize that trade union registration procedures in El Salvador are long, drawn out and arbitrary as they grant full discretion to the authorities to delay trade union registration. We recall that under El Salvador law, unions must request the renewal of their legal personality with the authorities every 12 months. Without this registration, unions lose their legal personality, which prevents them from operating as unions, legally holding property and bank accounts, and conducting any trade union activities, including engaging in collective bargaining.

Against this background, the Workers' group informs the Committee that, in January 2021, the Government decided unilaterally to withdraw the credentials of all democratic unions. This kind of practice does not provide the necessary framework conditions for tripartite consultations.

Finally, we must recall that, as mentioned in Article 1 of the Convention, there is a close link between this Convention and freedom of association. In that regard, we regret the acts of intimidation and threats, targeting members and leaders of independent unions in the country. There have been concerning reports of union leaders receiving threats and being followed by unknown individuals on motorcycles while their phones and communications are being tapped. We recall that attacks, intimidation, threats and harassment are not compatible with the Convention.

**Worker member, El Salvador** – Taking into account the ILO definition of social dialogue, which is essential for compliance with the Convention, and respect for the full exercise of freedom of association, we demand that the ANEP respects the human right of freedom of association, the establishment of unions, free from any restriction or coercion, collective bargaining and strike action in all sectors. And we call on the Government to be the guarantor of compliance with these rights.

We condemn the doublespeak of the ANEP, which claims that the Government is not in compliance with the Convention, when it is the organization that maintains exclusivity of representation of employers on all joint and tripartite bodies.

We reject all types of interference by the ANEP in relation to trade union representation, in seeking to favour allies and organizations close to it, by endeavouring to delegitimize lawful and representative organizations. We demand that the ANEP respects the autonomy and independence that we guarantee for trade unions under the terms of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), for the election of our representatives.

We support the recent reforms to the various official independent institutions with the objective of democratizing participation by employer representatives with the objective of ensuring that their governance is in accordance with the terms of the Convention. Bodies that have traditionally been controlled by the ANEP should operate on the basis of social interests and should not favour the economic interests of large enterprises.

We therefore demand that, in the same way as for trade unions, the representatives of employers are also elected and appointed freely and in a context of the equality of members. It is in our interest for small and medium-sized enterprises to participate and be well represented in these bodies, and that the ANEP does not impose itself as the sole representative of this sector.

The Convention establishes procedures for tripartite consultation and the re-examination at appropriate intervals of unratified Conventions. In this regard, we wish to recognize the readiness and political will of this Government, through the Ministry of Labour, which has initiated the administrative process for the ratification of important ILO Conventions, including: the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Collective Bargaining Convention, 1981 (No. 154), and the Violence and Harassment Convention, 2019 (No. 190).

We recognize that, despite the situation experienced due to the COVID-19 pandemic, the Government has made efforts to promote conditions for tripartite social dialogue. For that purpose, meetings have been held virtually, and sometimes face-to-face, in the five tripartite bodies, which include the Higher Labour Council, in accordance with biosecurity protocols, so as to give priority to the safety and life of workers.

We reiterate, in our capacity as representatives of workers and ILO constituents, our support for the action that the Government of El Salvador has been taking, and we

do not agree with the continued inclusion of our country on the short list. What we really need is ILO technical support and a visit by a direct contacts mission to verify the situation that we have described.

Equitable terms of employment, decent working conditions, occupational safety and health, and development for the benefit of all, cannot be achieved without the active participation of workers, employers and the Government through social dialogue. We hope that the conclusions of this case will set out clear and specific elements and a precise time frame as a basis for the urgent adoption of a plan to resolve the issues identified during this discussion, thereby guaranteeing full compliance with the Convention.

**Employer member, El Salvador** – We have listened carefully to the explanations provided by the Government of El Salvador on the failure to comply with the Convention, which are far from what is happening in my country.

Two years ago, in this Committee, we expressed our optimism at the commitment made by the new Government to comply with international Conventions and submit to the ILO supervisory mechanisms. Nevertheless, what we have today in El Salvador is systematic harassment at the highest level of the State, through the person of the President of the Republic, against the President of the ANEP and against the ANEP itself.

The objective is to exert pressure until the President of the ANEP resigns from office. The seriousness of the situation has led to us, with the support of the IOE, requesting the urgent intervention of the Director-General of the ILO. Employers must continue to be free to elect their representatives.

On 1 May, the first day of the new legislature with the majority of the President of the Republic, the deputies dismissed the Constitutional Chamber of the Supreme Court of Justice and the Public Prosecutor. Now the President of the Republic has total control over the three state authorities and has eliminated any body that provides checks and balances. And the Government is going for even more. Now it wants total control of production, as it announced publicly on 1 June 2021 on the occasion of the second anniversary of it taking office.

The President announced in his speech: “The fifth step is freeing ourselves from the ideological apparatus.” Two days later, through his personal Twitter and Facebook accounts, he said: “Today, I have sent 23 legislative initiatives to the Legislative Assembly to remove the ANEP from the boards of autonomous bodies and accordingly to make them truly work in the service of the people. The fifth step in our struggle is beginning, now the real employers will be represented on autonomous bodies and will ensure the real interests of private enterprise as a whole.” The leaders have been in the minority on the governing boards of tripartite and joint bodies and have offered their professional and entrepreneurial experience to improve the performance of these bodies.

Those reforms were approved on the same day. Through them, the President of the Republic gave himself the power to nominate leaders who allegedly represent employers, and to dismiss them.

All of this is very serious, not only because it is in violation of the Convention, but also because it clearly shows the authoritarian nature of the Government. The so-called “fifth step” eliminates the independence of employers’ organizations to choose their representatives freely and independently. It therefore seems to us to be essential to urge the Government to take the necessary measures without delay to amend the 23 decrees



approved on 2 June 2021 so that they are in compliance with the guarantees set out in the Convention. Similar conclusions were adopted by the Committee in 2016.

I now need to provide a brief summary of the conclusions adopted by the Committee in 2019, to which the Government has not only failed to give effect, but which it has even gone against. The Government has continued to interfere in the establishment of employers' organizations by putting forward cooperatives and microenterprises as employers' representatives. It has not consulted the most representative organizations on the establishment of clear rules for the reactivation and functioning of the Higher Labour Council.

The Government only reactivated the Higher Labour Council temporarily for six months, and it is now once again inactive. A mere four weeks ago, and only in writing, the Government initiated the process of the submission of three ILO Conventions and six Recommendations, without any consultation of the inactive Higher Labour Council. The Government has still not sworn in the directors nominated by the ANEP in the El Salvador Social Security Institute, the Maritime Port Authority and the International Centre for Fairs and Conventions. The Government did not respect the independence of the most representative organizations of employers when amending the 23 laws referred to previously. There was no direct contacts mission before the 109th International Labour Conference.

Over the past 12 years, we employers' organizations have suffered from violence, harassment and exclusion by the Government through every possible means, which is contrary to the ILO's fundamental Conventions. For this reason, the announcement by the Government of the so-called "fifth step" gives rise to the greatest concern, as it may mean an intensification of such acts. We all need social dialogue as an instrument to seek solutions with a view to promoting development, attracting investment and generating decent employment in accordance with the Constitution of the Republic, the national legislation and international Conventions.

It is for that reason that we have had recourse to the ILO. And that is why we are requesting the Committee to adopt the conclusions proposed by the Employer spokesperson.

**Government member, Portugal** – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The Candidate Countries, **Montenegro** and **Albania**, the EFTA country **Norway**, member of the European Economic Area, as well as the **Republic of Moldova**, 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, as safeguarded by the fundamental ILO Conventions and other human rights instruments.

We firmly believe that compliance with ILO Conventions is essential for social and economic stability in any country and that an environment conducive to dialogue 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.

The EU–Central America Political Dialogue and Cooperation Agreement, which entered into force in 2014, and the provisional application of the trade pillar of the EU–Central America Association Agreement since 2013, provide a framework for developing our partnership, including cooperation on trade and sustainable

development, in particular on the effective implementation, in law and in practice, of the fundamental ILO Conventions.

We note with deep regret that no progress has been made in complying with the Convention and that social dialogue continues to be dysfunctional in the country, even though the case was already discussed in the last three sessions of the Committee, including as a serious case in 2017.

We welcome the inauguration and first session of the Higher Labour Council (Consejo Superior de Trabajo (CST)) in September 2019 and the measures taken by the Government to initiate social dialogue and reactivate the CST following the Committee's 2020 report. We welcome the finalization of the National Decent Work Policy with ILO technical assistance. We note, however, observations of the ANEP alleging acts of intimidation against its newly elected President. We ask the Government to provide further information with regard to these allegations, as well as detailed and updated information on the measures adopted to ensure the effective operation of the CST and on the content and outcome of the tripartite consultations held within the framework of the CST.

Regrettably, we note the Committee's observations that the Government has not provided information on the tripartite consultations held on the draft protocol on the submission procedure, nor on the progress made with its adoption.

The EU and its Member States join the Committee's repeated call to share updated information on this issue without further delay.

The Government has equally failed to provide information in its report on the tripartite consultations held on matters relating to international labour standards covered by the Convention. We request the Government once again to rectify these reporting obligations.

We also ask the Government to continue providing detailed and updated information on the measures adopted or envisaged to promote tripartism and social dialogue in the country within the context of ILO technical assistance and on their outcome. We urge the Government to honour constructively and genuinely its commitment to effectively implement in law and in practice all ratified ILO Conventions, including the fundamental Conventions and the Convention on tripartite consultation.

The EU and its Member States remain committed to joint constructive engagement with El Salvador, including through cooperation projects, which aim to strengthen the Government's capacity to address the issues raised in the Committee's report.

**Government member, Barbados** – I am delivering this statement on behalf of the **group of Latin American and Caribbean countries (GRULAC)**. We appreciate the information provided by the Government of the Republic of El Salvador, through the Minister of Labour and Social Welfare regarding compliance with the Convention.

GRULAC takes into account that in the 2019–20 report of the Committee of Experts, it includes, among other issues, the following quotation:

On 16 September 2019, once the Government, Worker and Employer representatives had been appointed, the CST was inaugurated and held its first session. The Government provided in its report a list of the Government, Employer and Worker representatives selected. During the session, the members of the CST unanimously approved a communication informing the national and international communities of the reactivation of the CST and requested the ILO to continue providing technical assistance.

On 14 October 2019, the second session of the CST was held, during which unanimous approval was expressed for the preparation of a National Decent Work Policy with ILO technical assistance. The third session was held on 6 November 2019, in which the discussions, among other subjects, covered the methodological proposal and road map to be followed for the development of the National Strategy for the Generation of Decent Employment.

The COVID-19 pandemic has affected us all. We have faced an unprecedented crisis and continue to face new challenges every day. As stated by the distinguished representative of El Salvador, in his country, each sector, both business and labour, had its own challenges generated by the pandemic, which is why they needed support adapted to their specific needs. Faced with this extraordinary situation, the CST stopped meeting, but this did not mean a breakdown of tripartite social dialogue in El Salvador, which continued to function resulting in the development of general and specific biosafety protocols for each sector of the economy, the discussion of economic measures to minimize the impacts of COVID-19, as well as a gradual and orderly reopening of the economy. Both groups of employers and workers participated actively in these processes.

Similarly, in 2019, after the conclusion of the Conference Committee, the Government of El Salvador was urged to accept a direct contacts mission, which was accepted by Minister Castro, on behalf of the Government of El Salvador. Due to the pandemic, it has not yet been carried out. However, during his working visit to Geneva in May 2021, Minister Castro reaffirmed to the Director of the ILO International Labour Standards Department the will of his Government to receive said mission as soon as possible.

In light of the foregoing, we encourage the commitment of the Government of El Salvador to the application of the Convention in law and practice and we also encourage the ILO to continue providing technical cooperation to the Government.

**Employer member, Guatemala** – It is an honour to address the Committee. I represent the employers of Guatemala, but on this occasion, I will comment on the complaint against the Government filed with the Committee on Freedom of Association by the employers' representatives of El Salvador.

As we are all aware, the Convention is key to furthering social dialogue, and enables governments, together with the most representative workers' and employers' organizations, to reach tripartite agreements that benefit national development. Nevertheless, the Government of El Salvador has continued to violate the Convention by keeping the Higher Labour Council, a tripartite body of crucial importance and that must be consulted, inactive since 2013, only temporarily reactivating it between September 2019 and March 2020.

The current President of the ANEP was unanimously elected by its 48 member organizations on 29 April 2020. He was also appointed employer vice-chairperson of the Higher Labour Council. Thirteen days later, without any justification whatsoever, the Government, through a tweet from the President of the Republic, decided to withdraw his recognition, instructing its officials not to meet the ANEP. Since then, the Government of El Salvador has not convened a single session of the Higher Labour Council. Since then, the President of the Republic has been waging a continuous high-profile campaign to discredit, intimidate and harass the ANEP President, pressurizing affiliated employers' organizations to remove him from office, thereby clearly interfering in the autonomy and independence of employers' organizations to elect their representatives freely. This is a clear violation of Convention No. 87.

The Employers call on the Government of El Salvador to reactivate without delay the Higher Labour Council, with the participation of the ANEP, as the most representative employers' organization in El Salvador; to immediately cease exerting pressure on the ANEP affiliate employers' organizations to seek the removal of its President; and to accept an ILO direct contacts mission before the end of this year.

**Worker member, Argentina** – The Committee of Experts has reiterated a series of comments to the Government of El Salvador, urging it “to establish without delay, in prior consultation with the social partners, clear and transparent rules for the nomination of workers' representatives to the Higher Labour Council that comply with the criterion of representativity”.

Given that these basic criteria have been disregarded for some time, the Government has been called upon once again by this Committee to establish a constructive dialogue and to collaborate in finding a solution to the problems raised, so that the right to freedom of association can be fully exercised in the country, by facilitating the participation of all representative workers' organizations in the country's tripartite bodies.

The rule of tripartism, and accordingly recognition of the genuine representation of employers' and workers' organizations in national bodies, is a basic principle of the ILO. It is also a useful means of enabling trade union organizations to express their views and to establish productive social dialogue on industrial relations matters, thus improving the quality of industrial relations and working conditions.

As an essential value for the ILO, tripartism is based on the requirement of respect for the autonomy and independence of trade union organizations, which naturally implies that they are recognized as legitimate partners representing workers, without any interference by the labour authorities. Tripartism that does not recognize all organizations that are representative of workers' interests is not in compliance with the Convention and does not ensure the “effective operation” of the Higher Labour Council, as called for by the Committee of Experts.

We take note of the Government of El Salvador's request for technical assistance.

**Employer member, Dominican Republic** – Thank you for giving us the floor to refer to the case of El Salvador, which involves the recurrent violation by the Government of El Salvador of the Convention which, as we are all aware, is a fundamental instrument for promoting social dialogue and tripartite consultation. We emphasize that the body created under the Convention, the Higher Labour Council, has not met since 2013, and was temporarily reactivated for six months, until March 2020.

It is of concern that the progress noted by the Committee of Experts in its 2020 report no longer exists, resulting in the clear deterioration of any measures seeking and fostering social dialogue. This situation has made it impossible to address matters of major national interest, such as the national employment policy, or to conduct tripartite consultations on the submission of the Conventions and Recommendations adopted by this Organization. In unstable conditions such as these, the processes of social dialogue and consultation do not produce the contributions that are expected, thereby weakening governance at a critical moment, due to a highly adverse political, health and socio-economic situation.

We also emphasize that the lack of a genuine dialogue process derives from the intention of the Government of El Salvador to invite to information meetings representatives of economic sectors that are subject to significant state regulation

through permits, authorizations and sanctions, making it particularly difficult for them to refuse to participate and to require social dialogue to be conducted through the ANEP, the most representative employers' organization in El Salvador, and through the Higher Labour Council.

In view of this misguided and ill-intentioned approach by the Government of El Salvador, we urge the Committee to act with determination to prevent the principles of social dialogue, as established in the Convention, from being continually flouted year after year. We call upon the Employer and Worker spokespersons to agree on conclusions that can resolve this situation.

**Worker member, Italy** – I am speaking on behalf of the Italian General Confederation of Labour (CGIL), the Italian Confederation of Workers' Trade Unions (CISL) and the Italian Labour Union (UIL). The Convention ratified by El Salvador on 15 June 1995, on account of which it has once again been called before this Committee, is a basic instrument for the establishment of democratic practices. It is also key to addressing matters relating to international standards, which require greater attention and constitute the fundamental instrument for the full observance of human rights in the area of labour. In accordance with Article 2(1) of the Convention, tripartite consultation bodies must be strengthened. However, certain recent events show that El Salvador, and particularly the Government of President Nayib Bukele, has shown little interest in giving effect to this requirement.

The most specific fact relating to the Higher Labour Council is the complaint lodged by workers' representatives that this body ceased operating between 2013 and 2019. This led to the opening of Case No. 3054 in 2013, which is still pending. While the Council was reactivated in October 2019, it has been inactive since March 2020, as it has not been convened by the Ministry of Labour. Without disregarding the impact of the pandemic, it is clear that social dialogue in the main institutional body for reaching national agreements is locked in stalemate.

In addition, in recent statements, President Bukele himself has stated that he ordered the removal of members of the ANEP, the most representative employers' organization, from a number of autonomous institutions, arguing that they should be placed at the service of the people, and replacing them with what he calls "representatives of real private enterprise". The ANEP reported to the Committee of Experts that the Government has been thwarting dialogue between itself and public officials, and publicly vilifying the organization and encouraging public rejection of its representatives. Such practices are clearly in violation of Article 3(1) of the Convention, which provides that the representatives of employers and workers shall be freely chosen by their existing representative organizations.

**Employer member, Mexico** – As previously stated, in June 2019, this Committee once again urged the Government of El Salvador to refrain from interfering in the establishment of workers' and employers' organizations and to facilitate, in accordance with national legislation, the proper representation of legitimate employers' organizations. It is of concern to the employers' representatives, according to the information received, that through its actions the Government of El Salvador is continuing to violate the Convention, and that it is acting outside the Higher Labour Council of El Salvador, despite having expressed its willingness to comply with this Committee's conclusions.

As mentioned by the Worker spokesperson, social dialogue is unquestionably an instrument that can serve El Salvador to strengthen enterprises and boost investment, thereby creating more and better jobs.

We align ourselves with the views expressed by the Employer spokesperson. We therefore invite the Government of El Salvador to undertake before this Committee to accept an ILO direct contacts mission before the end of this year; to promote social dialogue and to encourage, with the participation of the most representative workers' and employers' organizations, the adoption of clear, objective, predictable and legally binding rules that will allow the Higher Labour Council to be promptly reactivated; and to respect the independence of the most representative workers' and employers' organizations, and to refrain from actions that would amount to interference.

**Employer member, Argentina** – We regret that all the work and efforts of the Committee have not borne fruit, and its recommendations continue to be disregarded by the Government of El Salvador. All the more so, given that, during the 2019 session, we heard the Government's statements concerning its willingness to reactivate the Higher Labour Council, and again today to receive ILO technical assistance to promote and strengthen tripartism and social dialogue in the country – objectives that are far from being realized.

We regret that the reactivation of the Higher Labour Council was limited to the period between September 2019 and May 2020 and was not accompanied in practice by clear and transparent mechanisms for the appointment of representatives of the social partners.

The Convention clearly provides that it is the social partners who must freely elect their representatives through their most representative organizations. We recall the information provided by the employers of El Salvador, specifically concerning the Government's disregard for the President of the ANEP, elected in May 2020, as well as the intimidation of private sector representatives and government interference in the internal affairs of employers' organizations.

We are dealing with a case of the persistent violation of the requirements of this Convention. There is compelling evidence and we have heard testimonies from the social partners that the country's tripartite bodies are not functioning properly, and are not legitimately constituted in a tripartite manner. We hope that, in light of this debate, this situation will change swiftly and that the opportunity will be seized to work on creating the necessary conditions to guarantee compliance with the Convention and to ensure that the most representative workers' and employers' organizations are duly represented in social dialogue mechanisms.

**Employer member, Honduras** – We share the ANEP's serious concern regarding the repeated violation by the Government of El Salvador, not only of Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), but also of the ILO Constitution and Article I(d) of the Declaration of Philadelphia. In view of the continued violation of the Convention by the Government of El Salvador, we ask the Committee to set out the following requirements for the Government: (1) the Higher Labour Council must be upheld as a neutral and objective body, without interference in its functioning, that promotes social dialogue, ensuring the autonomy of the social partners, with a view to the conclusion of agreements that foster well-being and development for El Salvador in a tripartite manner; (2) social dialogue in the Higher Labour Council must take place in accordance with Articles 2 and 5 of the Convention, putting into practice procedures that ensure effective consultation between the social



partners and the Government; and (3) we invite this Committee to constitute an ILO direct contacts mission before the end of 2021, to advise and accompany legitimate employers' representatives, through the ANEP, workers and the Government in the development of a regulatory and operational framework that ensures the reactivation and continued operation of the Higher Labour Council.

We regret that the Government of El Salvador is unable to recognize the ANEP, which is the employers' organization that is most representative of El Salvador's productive and economic strength, bringing together 50 organizations from 55 economic sub-sectors and more than 15,000 companies. With this broad representativeness, which meets the requirements of Article 1 of the Convention, we are convinced that the ANEP, as a business organization, helps to strengthen the free enterprise and active participation in social dialogue that is necessary for the strengthening of democracy. The Government cannot and must not interfere in the decisions of private sector bodies.

**Employer member, Costa Rica** – Ever since the ILO was created, it has promoted cooperation between employers, workers and governments, thereby enabling social justice through social dialogue. The Convention makes it possible to ensure the participation of employers and workers within each country. For this reason, the Convention is one of the most important ILO labour standards in terms of governance. Article 1 of the Convention clearly establishes that the most representative organizations of employers and workers are those that enjoy the right of freedom of association, a principle that also means that States must refrain from interfering in the establishment of these organizations.

The employers of Costa Rica therefore consider that it sets a bad international precedent to allow the removal of an organization such as the ANEP, which until now has been the representative of the formal productive sector in El Salvador, from the boards of public bodies.

In addition, Article 3 of the Convention provides that the representatives of employers and workers shall be freely chosen by their representative organizations. In light of the above, it is difficult to understand how the executive can assume the power to dismiss board members who represent employers' organizations, while also establishing discretionary and arbitrary grounds for doing so. Clearly this is a violation of the Convention and of the principle of freedom of association.

We request the Government of El Salvador to reactivate the Higher Labour Council, which was created as a consultative body to the executive authorities, with the aim of the institutionalization of social dialogue and the promotion of economic and social cooperation between the public authorities and employers' and workers' organizations, together with the other social dialogue bodies. We also ask the Government to refrain from interfering in the establishment of employers' organizations and to facilitate the due representation of these organizations. This is a fundamental element in a democracy.

**Employer member, Colombia** – I would like to refer to two aspects of the case. First, Article 2 of the Convention refers to the commitment to hold effective consultations and is based on social dialogue as an essential tool for the formulation of joint proposals between workers, employers and the Government, to promote growth, peace and general well-being.

In this regard, in order to achieve true dialogue and therefore the holding of effective consultations, what is required, as the Committee on Freedom of Association has indicated, is a climate of confidence based on respect for employers' organizations and trade unions in order to promote stable and sound industrial relations. Regrettably, the main social dialogue forum in El Salvador has remained inactive and, although the Government reported the

resumption of its activities to the Committee of Experts, these only went ahead for a short period, up to March 2020. Since then, there has been no forum for tripartite consultation.

Second, it should be emphasized that the representatives of workers and employers must be freely chosen and represented on an equal footing, as provided for by Conventions Nos 87 and 144. The Committee on Freedom of Association has indicated that it is for 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.

We note with concern, on the one hand, that the Government has decided not to recognize the ANEP President as the employers' representative, the ANEP being the most representative employers' organization in the country, and, on the other, that the Government has been making attacks and accusations through the media and social networks against the ANEP leader.

In conclusion, we request the Government to reactivate tripartite social dialogue forums, take immediate action to create a climate of confidence and respect for employers' organizations and carry out effective consultations on ILO-related matters and all topics related to labour and social policies in the country.

**Observer, International Organisation of Employers (IOE)** – The facts stubbornly indicate how serious and repeated the violations are by the Government of the Convention, freedom of association and freedom of expression. The situation is worsening further, with ever-greater restrictions being placed on these freedoms.

I recently had a polite conversation with the Minister, present here today, in which he clearly indicated to us his strong commitment to making progress in this case. We were therefore surprised when, just a few days after that meeting, the Government decided to explicitly exclude the ANEP representatives from tripartite bodies, a decision that was communicated to the public in a bragging and derisive manner through the social media channels used so frequently by the President. The President's exact words were as follows: "I have sent 23 initiatives to the @AsambleaSV to remove the ANEP from the boards of the autonomous institutions and put them truly at the service of the people. ANDA, ISSS, SIGET, FOVIAL, FISDL, FONAVIPO, FSV, CORSATUR, BANDESAL, etc. No more barriers to the development of our country." Facts speak louder than words, Minister. The ANEP does not represent a small minority of employers, as you have claimed.

The failure to convene the Higher Labour Council, the convening of employers' organizations and the creation of parallel organizations are also facts that speak for themselves. Public, intimidatory accusations in volleys of tweets, the President's usual form of communication, denigrating and expressing contempt for the ANEP, is aggressive behaviour that has been brought to the attention of the ILO.

You have obligations deriving from the Conventions that you have ratified. We reserve our legitimate right to activate other mechanisms of the standards supervisory system if you do not respect them in law and in practice.

**Observer, Democratic Union Alternative for the Americas** – I am speaking on behalf of the Democratic Union Alternative for the Americas (ADS) and our affiliate organization, the National Confederation of Salvadorean Workers (CNTS), which has its own delegate on the Higher Labour Council and confirms that it has been inactive since February 2020.

One matter that remains pending is the reform of the Civil Service Act through the proposed Public Service Bill, which was deemed by the CNTS to be in violation of the ILO's fundamental Conventions and Salvadoran labour law.

There is an urgent need to conclude the investigation into the murder of our colleague, Victoriano Abel Vega, who was a member of the Federation of Municipal Workers Trade Unions (FESITRAMES). The Government, in this case, must require the Public Prosecutor's Office to ensure a rapid procedure and response to bring charges against those responsible for this vile act.

The CNTS has submitted to the Minister of Labour, who is present at this meeting, proposed reforms to the Constitution, the Labour Code and the Civil Service Act, all based on the ILO's recommendations, and has called for the rapid delivery of trade union accreditation, as indicated by colleagues speaking before me. The response has been mass dismissals, anti-union persecution and a refusal to recognize the need for dialogue and consultation with the social partners.

**Observer, Confederation of University Workers of the Americas (CONTUA)** – As in 2019, we are taking the floor in the case of El Salvador on behalf of Public Services International (PSI) and CONTUA, in support of the workers of El Salvador who are suffering the constant violation of their trade union rights.

At the 2019 session, there had been a recent change in government. As in so many other cases, we heard the incoming Government blame the outgoing administration for failures of compliance and ask the ILO to trust it to meet the demands, promising to give effect to international labour standards and to respect policies agreed through dialogue. But unfortunately, as on so many other occasions, that is not what happened.

Social dialogue must be a policy and an ongoing productive practice. There must be room at the table for employers and for all representative trade unions, without exception. It is not for the Government to select representatives of the labour movement according to its preferences. It is for the workers to establish their own organizations freely, and the Government must not interfere or favour one organization over another.

In El Salvador, there are persistent political, legal and administrative obstacles to the genuine, regular and ongoing functioning of the Higher Labour Council. We continue to lack clear rules that respect freedom of association and the right of the social partners to organize independently and in good faith, so that they can participate in dialogue bodies, establish programmes of work, undertake negotiations and reach sustainable agreements.

There also continue to be unjustifiable delays in the granting of trade union status, and we are referring here to the legal personality of trade unions, and in the certification of trade union officers by the Ministry of Labour, which in some cases takes more than six months. We must note here the discretionary action of the enforcement authority, which acts with urgency for organizations that enjoy good relations with the Government, and with punitive delays for independent trade unions.

We urge the Government to cease its preferential practices and to act in accordance with its role of respect for freedom of association, without interference. The ILO could cooperate with the new Government and the social partners by providing technical assistance to create political trust, legal solidity and the necessary climate of respect and trust.

**Government representative** – Firstly, all observations on essentially peripheral matters that are unrelated to the country itself, but rather to the international

community, reflect an El Salvador that is different to what is described here and the situation we are experiencing in El Salvador.

Tripartite social dialogue, and particularly the Convention as a cross-cutting objective of the ILO, is not only an international legal requirement that we must fulfil, but also, as I said a moment ago, the most vital and fundamental pillar of a strong and solid democracy. And we think that is it not only an option for the Government, but a crucial requirement to move our country forward.

Article 37 of the Constitution of El Salvador provides that: “work is a social function, enjoys the protection of the State and shall not be considered a commodity”. That is the problem that is arising in El Salvador today. Previously, not only did the ANEP promote employers, but the Minister who used to sit here was proposed by the ANEP, and the labour representatives there at that time were also promoted by the ANEP. During the Nationalist Republican Alliance (ARENA) Governments, as you can check in the ILO, there were never complaints by the ANEP, because tripartite social dialogue was focused on a single segment of the population, namely the ANEP. What we have done is to diversify tripartite action by democratizing institutions. The ANEP participates in 27 bipartite forums, that is those that involve only the ANEP and the Government, and the opening up of those 27 bipartite forums to tripartitism was never considered. That contradicts what is being said today, and is in even greater contradiction with the Convention.

All those who have spoken, and particularly the international community, have suggested that the Committee must travel to El Salvador. That is what I said in my opening statement, when I urged it to come, because when the Committee does come to El Salvador, it will see first-hand, and not through third parties, what is happening in our country.

The only thing that we are against is the politicization of institutions. The ANEP has been used as an institution to elect ARENA presidents. That was true for the former ANEP President, Elías Antonio Saka, the former President of El Salvador, who is now in one of the country's prisons serving a sentence for corruption involving more than US\$350 million. That is what we cannot continue to allow in El Salvador. I have here the charges and even the submissions that were sent to the ANEP. In other words, it is not us acting against the ANEP, but a separate tax and fiscal issue. Because in this country, absolutely everyone must pay tax on an equal footing.

Through the amendment made to the law, what we are seeking is for everyone to participate, because previously the ANEP alone had absolute control over everything. Today, we want elections to be democratic, totally in line with the calls made by the different actors. The Government must not say who represents the employers. Nor can the Government influence who represents the workers. Representation must not only be legal, but also legitimate, which is related to the level of representativeness. As I have just said here, in this international forum, the most dangerous thing that could happen at the national and international levels is for such a prestigious institution as the ILO to be used to defend someone who is being investigated for evading US\$5 million in tax in El Salvador. This has nothing to do with the ANEP or any employers' association. We are complying with all the procedures requested of us by the tripartite body. They even sent their pandemic specialists to meetings with us to decide on biosafety protocols. The specialists came from all the employers' associations, they came to represent their associations, and we have been working on biosafety protocols at the framework level, as I said, and we have worked on more than 2,000 protocols jointly with all the social partners and actors.

What we are doing – and I insist – is a process of democratization, of opening up. Everything that has been requested by all partners and actors at the international level, and the facilitation of tripartite social dialogue, we are also seeking, and that is why I said in my intervention today that it is more than ever necessary for the Committee to travel to El Salvador. I am not only saying it here, I have travelled myself. I have just returned from a visit to Geneva, where I met the Committee to share absolutely everything. Because there are two different countries and two different worlds here; what has been suggested in the interventions by the various speakers, and what is actually happening in El Salvador. In El Salvador, this Minister, and the decision of the President, is to adopt a totally democratic spirit. To bring normality to what was not normal before, and what they tried to tell us was normal. Now we must democratize absolutely everything, and all actors and partners in society must have access to representation. So we are totally open. I went directly to Geneva to give a report personally and in person. That was to show that someone who goes to represent their country does so because they are doing things correctly, in our view. I repeat, we may make some mistakes in our government action, as in any imperfect human endeavour, but it is certain that, today more than ever, tripartite social dialogue is being favoured.

What we are developing here in the Ministry are clear rules, and as I said in my intervention, everything is as we have discussed, analysed and worked on together. The only things that are not negotiable are the genuine rights of the working class. That has also caused us some discomfort, because there are employers that fail to comply with national or international labour regulations in certain ways, and that has led us to be quite forceful, to create a Ministry of Labour that had been missing for many decades, for a long time, in terms of regulation and harmonization between employers and workers. We continue to be open. For the fourth time in this intervention, I am saying that it is necessary to request assistance and for the Committee to come here. I am requesting this on behalf of the State of El Salvador, because we are totally convinced that, today more than ever in this country's history, El Salvador is democratizing and endeavouring to favour tripartite social dialogue, for two reasons: because we consider it to be a conviction and commitment to democracy, and also because we are founding Members of the ILO and we have ratified the Convention, we are totally cognizant of that, and for that reason we favour tripartite social dialogue.

**Employer members** – We have listened carefully to all the interventions made during the discussion and we regret that the Government has not provided a specific reply to the questions raised by this Committee and the Committee of Experts.

What is worrying is that the Government is not acting with sincerity. If you look at the Twitter account of President Bukele, the systematic exclusion directed by the latter towards the ANEP can be seen. That is compounded by the creation of unrepresentative workers' and employers' organizations that serve to try and present a situation that does not represent reality in El Salvador.

The facts described show the extreme contempt in which the Government holds social dialogue and compliance with the obligations assumed when the Government of El Salvador ratified the Convention, which promotes tripartite consultation. I wish to make it clear to the Government representative that for tripartite consultation to be effective it has to be carried out with the most representative organizations of workers and employers, and not whomsoever the Government chooses. On this, there is full clarity in the Organization and there can be no doubt.

It appears to me that during the process of consultation with the ILO this will become very clear.

This contempt is shown notwithstanding the content of the conclusions adopted by the Committee in 2017, 2018 and 2019, despite the seven observations made by the Committee of Experts, despite the numerous urgent interventions requested from the ILO Director-General, Mr Ryder, by the ANEP and the IOE, and despite the Government's claims to describe a situation that does not exist. The situation of non-compliance with the Convention is continuous, serious and urgent.

We accordingly call for the Government to be required to: refrain from attacking and disparaging the ANEP, the most representative employers' organization and its leaders, as has been attempted in this very sitting; refrain from interfering in the establishment of workers' and employers' organizations, tripartite and joint bodies, and ensure, in conformity with the national legislation, the proper representation of legitimate employers' organizations by issuing the necessary credentials and accreditation; develop, in consultation with the most representative organizations of employers and workers, clear, objective, predictable and legally binding rules for the reactivation and full operation of the Higher Labour Council with the inclusion of the most representative organizations of workers and employers, not those which they democratically wish to add, but those which are accredited with the greatest representation; reactivate without delay the work of the other tripartite and joint bodies in respect of the autonomy and participation of the organizations – and I insist – that are most representative of workers and employers through social dialogue in order to guarantee their full operation without any interference.

The Government should be required, in consultation with the social partners, to take without delay all the necessary measures for the amendment of 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. It should have recourse without delay to ILO technical assistance, which must include the Convention. It should provide a detailed report on the application of the Convention in law and in practice to the Committee of Experts before its next session in 2021. Without delay and without any further excuses, a high-level mission should be established and should visit El Salvador before the next International Labour Conference.

We request, and we ask for this to be duly noted, the inclusion of the present case in a special paragraph of the Committee's report in 2021.

**Worker members** – We would like to thank the Government of El Salvador for their comments. We also thank all the other speakers for their interventions.

The Worker members note that, since our last examination of the case in 2019, the situation regarding the application of the Convention in El Salvador has severely deteriorated. We emphasize once more the importance of guaranteeing the necessary framework conditions for tripartite consultations in line with the Convention, including respect for the principle of free choice of workers' representatives for the purpose of tripartite consultations, and a regular and genuine tripartite dialogue in the framework of the Higher Labour Council.

Therefore, we call on the Government of El Salvador to take the necessary measures to give full effect to the Convention, including in so far as they contribute to the respect and promotion of freedom of association in the country. We call on the Government to send information on the measures taken to the Committee of Experts.



## Conclusions of the Committee

The Committee took note of the oral statements provided by the Government representative and the discussion that followed.

In this regard, the Committee urges the Government of El Salvador to:

- refrain from interfering in the constitution and activities of independent workers' and employers' organizations, in particular the National Business Association (ANEP); and
- reactivate, without delay, the Higher Labour Council (CST) and other tripartite entities, respecting the autonomy of the social partners and through social dialogue in order to guarantee their full functioning without any interference.

The Committee requests that the Government continue to avail itself of ILO technical assistance.

The Committee requests that the Government submit a detailed report on the application of the Convention in law and in practice to the Committee of Experts before its next meeting in 2021, in consultation with the social partners.

The Committee requests that the Government accept a high-level tripartite mission to be carried out before the next International Labour Conference.

The Committee decides to include the case in a special paragraph of its 2021 report.

**Another Government representative** – We note all the conclusions of the honourable Committee. In this regard, in my capacity as Permanent Representative, I will immediately transmit the respective conclusions to my Government for its due attention and response.

## Maldives (ratification: 2014)

### Maritime Labour Convention, 2006, as amended (MLC, 2006)

#### Discussion by the Committee

**Government representative, Minister of State for Economic Development** – It is an honour and it is my personal privilege to make this opening statement before this esteemed Committee. I understand that this is the first time that matters relating to the Maritime Labour Convention, 2006, as amended (MLC, 2006) are being discussed in this Committee. I am also pleased to inform the Committee that the first report on the MLC, 2006 has been submitted by the Government of Maldives. While the report needs further work on completing the required information, we will be working with the relevant departments in the ILO to ensure that the report is compliant with our obligations under the Convention.

As you know, Maldives joined the MLC, 2006 with the noble intention of providing the necessary safeguards for seafarers and other stakeholders in the maritime sector. Let me also acknowledge the modest report of Maldives with respect to reporting on the Convention.

As a relatively new Member of the ILO, we have had significant challenges in aligning our domestic laws and regulations to comply with the provisions of ILO Conventions. I note that these challenges are particularly applicable to the MLC, 2006 due to the technical nature of the Convention. It is a very comprehensive instrument and countries like Maldives, with very limited technical capacity, struggle in aligning our domestic laws to meet the obligations under the Convention. We also need timely assistance in making the necessary reporting, as well as educating stakeholders on the implementation of the new legal framework necessitated by the MLC, 2006. In this regard, I am pleased to report to this Committee that Maldives has been working closely with the ILO and its regional offices in obtaining such assistance.

We hope that, under the current administration and with the technical assistance and support of the ILO and other development partners, we will be able to make good progress in developing our legal infrastructure to comply with the provisions of the Convention and ensure that we remain up to date on reporting back to the Members on progress being made in complying with the MLC, 2006.

With this, I will conclude, and look forward to the deliberations in this important Committee.

**Worker members** – This is the first time that our Committee examines the application of a Convention by the Republic of Maldives. Incidentally, this is also the first time we examine the application of the MLC, 2006.

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. Indeed, the Convention is unique in that it truly reflects the reality of the shipping industry and uses original approaches to gain widespread ratification. To date, 98 Member States, responsible for regulating conditions for seafarers on more than 90 per cent of the world's gross tonnage of ships, have ratified the Convention.

Chief among the keys to the Convention's success is the philosophy that underpins it: promoting decent work and a fair globalization. This translated into secure decent work for seafarers and a level playing field for shipowners. As a result, unscrupulous

shipowners and inept flag States can no longer continue to engage in unfair competition by effectively sanctioning substandard working conditions.

Although the MLC, 2006 is a technical Convention, the life and well-being of the world's 1.6 million seafarers depends on its proper application. Indeed, the Convention sets out seafarers' right to decent conditions of work with regard to almost every aspect of their working and living conditions, including minimum age, 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, in the port of an ILO Member State may be the subject of inspection in accordance with Article V, paragraph 4, 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.

It is within this context that we examine Maldives' application in law and in practice of the MLC, 2006, which it ratified in 2014, together with the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185). We note that Maldives has not submitted a declaration of acceptance of the amendments to the Code of the Convention approved in 2014 by the International Labour Conference and is therefore not bound by these amendments.

The MLC, 2006 and Convention No. 185 are the only two Conventions which Maldives has ratified in addition to the core Conventions. This demonstrates the desire of the Government to protect seafarers' rights and the importance it places on the MLC, 2006 as a maritime nation.

From the public data available, we understand that 81 ships fly the Maldivian flag and that there are roughly 650 seafarers in the merchant marine. With over US\$2.8 billion in merchandise imports in 2019 and Maldives acting as a significant cruise hub, seafarers from all over the world also call at its ports. So, we welcome the submission of the first report of the Government during this session of the Conference, but regret the inexcusable delay and the fact that the Committee of Experts could not have an opportunity to comment on the Government's report.

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 Members 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 level. This dialogue is based on information provided on the application of Conventions in law and in practice. Failure to submit reports, comments or replies severely undermines the supervisory system and the very functioning of the ILO.

Even in the absence of the first report, the Committee examined the application of the Convention by Maldives. Unfortunately, the Committee of Experts was only able to make an observation based on an analysis of the Employment Act of 2008. The Committee of Experts concluded that while "crew of sea going vessels" are excluded from the provisions on working time, the rest of the provisions of the Act appear to apply to seafarers. Even if this were the case, the very detailed requirements of the MLC, 2006 relating to the working and living conditions of seafarers require specific and thorough implementation at the national level.

The MLC, 2006 provides that implementation of seafarers' employment and social rights under the Convention may be achieved through national laws and regulations, through applicable collective bargaining agreements or through other measures or in practice, unless the Convention specifies otherwise by, for example, requiring countries to adopt national laws and regulations to implement certain provisions of the Convention.

Further, ships of ratifying Member States, including Maldivian-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 and are not covered by the certification system. This provision is especially important in the Maldivian context given the geographic composition of the country and its reliance on maritime transport. Also, without adequate national implementation of the Convention, it is unclear how Maldivian 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 the international labour standards at the national level is even more important when it comes to the MLC, 2006. It is therefore imperative that governments urgently put in place a process to ensure the adequate national implementation of the Convention in consultation with the social partners.

Finally, as we heard from the Chair of the Committee of Experts and the International Transport Workers' Federation (ITF) at the first session of our Committee, at the peak of the COVID-19 pandemic, there were approximately 400,000 seafarers trapped working aboard ships due to the so-called crew change crisis caused by pandemic-related government border and travel restrictions. This crisis is still going on. There is still widespread non-compliance with the MLC, 2006, a vital instrument for the world's seafarers. Our 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.

**Employer members** – As the Worker spokesperson has noted, this is the first time the Committee has discussed the application of the MLC, 2006 with respect to Maldives. Maldives has ratified all eight fundamental Conventions, as well as Convention No. 185. The MLC, 2006, which was ratified by Maldives in August 2014, was adopted at the 94th (Maritime) Session of the International Labour Conference in 2006. The Convention consolidates almost all earlier maritime instruments adopted since the inception of the ILO in 1919. It was the product of five years' work carried out as a tripartite process involving governments, seafarers' trade unions and shipowners' organizations.

The Convention entered into force in August 2013 and so far has been amended on three occasions – in 2014, 2016 and 2018 – in order to keep up with the needs of the shipping sector. This arguably makes it the most up-to-date and dynamic of any ILO instrument. As of June 2021, it has been ratified by 98 countries representing more than 91 per cent of the world gross tonnage of ships.

As Conventions go, the MLC, 2006 is unique in its structure. It comprises three different but related parts: the Articles, the Regulations and the Code. The Articles and

Regulations set out the core rights and principles and the basic obligations of Members ratifying the Convention. The Articles and Regulations can only be changed by the Conference in the framework of article 19 of the Constitution of the ILO. The Code contains the details for the implementation of the Regulations. It comprises Part A (mandatory Standards) and Part B (non-mandatory Guidelines). The Code can be amended through the simplified procedure set out in Article XV of the Convention. Since the Code relates to detailed implementation, amendments to it must remain within the general scope of the Articles and Regulations. The Regulations and the Code are organized into general areas under five Titles: Title 1: Minimum requirements for seafarers to work on a ship; Title 2: Conditions of employment; Title 3: Accommodation, recreational facilities, food and catering; Title 4: Health protection, medical care, welfare and social security protection; and Title 5: Compliance and enforcement.

There are three underlying purposes of the Convention: first, to lay down, in its Articles and Regulations, a firm set of rights and principles; second, to allow, through the Code, a considerable degree of flexibility in the way Members implement those rights and principles; and third, to ensure, through Title 5, that the rights and principles are properly complied with and enforced.

I have spent some time on this introduction in order to emphasize how important the MLC, 2006 is to global maritime activities. That so much work has gone into its creation, amendment and upkeep makes cases of non-reporting all the more significant.

We note with pleasure Maldives' announcement that it has just sent its first report, and indeed the Committee of Experts has noted it has taken four consecutive years for this to happen. The delay in submitting its first report is most concerning to the Employer members. First reports are particularly important to the reporting process as they are expected to provide detailed information on all implementation aspects and thus to enable supervisory bodies to make a first in-depth assessment of the state of application after ratification. Without a first report providing complete information, there can be no ILO supervision of a ratified Convention. Let me stress again that, under article 22 of the Constitution, governments of Member States have an obligation to send reports on the application of ratified Conventions to the ILO and to communicate copies of their reports to representatives of employers' and workers' organizations. Compliance with this obligation is of the essence to ensure proper supervision by the ILO Committee of Experts and the tripartite Committee on the Application of Standards.

Employer members take note that the Committee of Experts, as a temporary makeshift solution, examined the application of the Convention on the basis of publicly available information. The Committee of Experts noted the following:

- In its report on Convention No. 185, the Government mentions that, following Law No. 35/2015 (First Amendment to Maldives Maritime Navigation Act), the power to make regulations related to maritime labour was delegated to the Minister.
- The Government also indicates that the High Court of the Republic of Maldives in Case No. 2010/HC-A/62, emphasized the need for a specific legal regime for seafarers.
- The Maldives Maritime Navigation Act No. 69/78, as amended, is not available in English and only a few Maldivian laws are available in English.

It emerges from this that no regulations have been completed yet and the analysis of the implementation of the Convention has mainly been based on the Employment Act of 2008, which does not seem to be fully compliant with the MLC, 2006.

The Employer members also note with surprise that there has been no technical assistance from the Office regarding the application by Maldives of the MLC, 2006. The International Chamber of Shipping (ICS) has also noted that it has been very difficult to engage with Maldives. Maldives has not attended meetings and it has not responded to requests from the ILO. The Employer members wish to stress once more, that countries should only ratify ILO Conventions when they have assured themselves that they have both the ability to implement and the ability to report on the application in law and in practice of a Convention.

The ILO should clarify this expectation in implementing its ratification campaigns, such as on the MLC, 2006, and offer pre-ratification assistance if necessary. Ratifying without even having the capacity to report on implementation of a Convention, let alone to implement the Convention, in the long term undermines confidence in the validity of international commitments under ratified ILO Conventions.

Having said this, the Employer members urge the Government: to send, at its earliest convenience, all further information necessary to support its first report on the application of the MLC, 2006, providing to the Committee of Experts detailed information on the implementation of the Convention; to take all necessary measures to ensure its national legislation and practice are compliant with the Convention and to provide information on any developments in this regard; and, lastly, to request technical assistance from the Office, if need be, with a view to better meeting its commitments under the MLC, 2006.

The Employers trust that the Government will take all necessary steps and make all the necessary efforts to comply with its agreed commitments.

**Worker member, Maldives** – Maldives ratified the MLC, 2006 in 2014, a year after Maldives ratified all eight core Conventions of the International Labour Organization in 2013. Until now, no legislation or regulation has been passed to enact the Conventions into law. Maldives promulgated a new Constitution with many fundamental rights guaranteed in 2008 and became a Member State of the ILO in 2009.

The only legislation on the maritime industry is the Maldives Maritime Navigation Act No. 69 of 1978. This law was amended in 2015, as Law No. 35/2015 (First Amendment). The 2015 amendment obliges the Transport Minister to draw up 27 new regulations regarding the maritime-related areas within three months after the amendment has been passed. This includes the Regulations on Safety, Health and Welfare of Crew Members. The amendment also obliges the Minister to propose a Regulation on Implementation of International Conventions and Treaties that Maldives has ratified, under section 5(b)(25) of the law.

However, we have not seen, nor have we been consulted on, the drafting of any regulation related to the maritime industry. Neither a law nor a regulation has been promulgated to enact the MLC, 2006. Moreover, there is no established social dialogue platform of any kind in Maldives where workers can be represented and raise their concerns. Workers working in the maritime industry, the crews of seagoing vessels, are excluded from the only piece of legislation that protects individual employees' basic rights in Maldives.

The majority of our domestic transport sector workforce has undocumented migrants from Bangladesh without any form of agreements with the employers in most cases.



The Employment Act of 2008 has been amended various times. The last amendment, the sixth amendment, was made during the peak of the pandemic in September 2020. Workers' organizations requested to amend section 34 of the law and to include the transport sector workers in the law. However, the amended law still excludes the workers from basic rights such as working hours, overtime payments and working on public holidays. Sadly, the amendment is mainly about easing the redundancies of workers without justifiable or fair reasons, and postponement of a minimum wage in Maldives.

The Employment Act does not cover matters related to trade union recognition, collective agreements, grievance and dispute procedures, and other issues related to trade union and collective bargaining rights. Workers associations are still registered under the Associations Act, 2003, as of today. Moreover, the Freedom of Peaceful Assembly Act, 2013, abolishes the rights of workers to exercise fundamental rights, such as freedom of assembly as guaranteed by the Constitution.

Without the right to strike, without collective bargaining rights, there is no way that workers through their unions could challenge the employers to ensure that every redundancy is necessary, justified, and unavoidable. Instead, employers – including the Government as an employer – could unilaterally declare redundancies. Hundreds of unjustified, unnecessary redundancies went unchallenged.

In the years prior to the pandemic, the Committee of Experts made several recommendations and requests to the Government of Maldives in relation to Case No. 3076 involving the violation of 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) in Maldives. The ILO Committee on Freedom of Association has made several recommendations. Again and again, we saw concerns raised about the failure of the Government to report.

We note that the Government just submitted its first report on the MLC, 2006, during this session of the Conference. We very much regret the long delay and the fact that the Committee of Experts could not have an opportunity to comment on the Government's report.

The Committee of Experts has repeatedly expressed its concerns with the lack of progress of the Government in establishing, in both national law and practice, a sound legal framework to fulfil its obligations under international labour standards, including the fundamental Conventions, Recommendations, and Protocols.

In June 2013, the ILO provided technical assistance to the Government to establish the Industrial Relations Act, a legal framework that would help redress the tremendous imbalance of power between employers and workers, protect fundamental human rights in accordance with international labour standards, and ensure a decent, fair process with which employers and workers resolve their conflicting interests and which, if working well, establishes the mutual respect needed to work together.

More than anything, employers and workers' unions have needed to work together, especially in this pandemic, the worst global health crisis in 100 years. Instead, workers in the private sector are left exposed and unprotected, and employers are allowed to act unilaterally to shift as much of the burden of this crisis onto workers as possible. Many employers are doing that.

We urgently need laws that protect the rights of workers and trade unions. We need to have laws that rebalance the great inequality of power and wealth in our society. We

need laws and regulations that establish and protect the collective bargaining rights needed by the workers, including the seafarers, without distinction of nationality, to deliver decent work, better wages, and lift families out of poverty. We need collective bargaining for social justice, and more than ever before, we need the internationally recognized labour standards promoted by the ILO to be implemented in law and in practice to weather this storm together, and build back better.

**Worker member, Japan** – Maldives ratified the MLC, 2006 in 2014 to ensure that every seafarer has the right to a safe and secure workplace. However, until now, no legislation has been passed to make the provisions of the Convention effective nationally. Likewise, no report has been submitted by the Government on the application of the Convention for the fourth consecutive year, just until now. We understand that the Government has just submitted the report, which is too late for the Committee of Experts and us to comment on, to our deep regret.

We want to call on the Government of Maldives to adopt without further delay the necessary measures to give effect to the provisions of the Convention.

Mr Juan Somavia, in a 2006 speech as ILO Director-General when the MLC, 2006 was adopted, said that “quality shipping cannot be achieved without decent conditions for those who work and live on the ship”. It means that the human dimension of the industry must be valued in the same way as the physical and environmental dimension.

But the situation we are facing gives us a different story in Maldives. The Committee of Experts also noted that section 34(a) of the Employment Act of 2008 excludes the “crew of sea going vessels” – a category of workers in the maritime industry – from the provisions on working time.

Excluding these workers from the safeguards of the current Employment Act on working time exposes them to long working hours, which can negatively affect their mental, social and physical well-being. Long working hours is also a significant contributory factor to many accidents in the maritime industry.

Let me also note that the majority of the Maldivian domestic transport sector workforce are undocumented migrants from Bangladesh who are, in most cases, not covered by any formal employment arrangement. Hence, they are not covered by any form of labour protection related to working hours.

The ratification of the Convention is one thing, but unless it is coupled with the relevant laws to implement the Convention, the ratification loses its value. The Government is urged to ensure that the workers in the maritime industry, particularly the so-called “crew of sea going vessels”, are adequately protected under Maldives’ country legislation according to the MLC, 2006, which the Government ratified.

**Observer, International Transport Workers’ Federation (ITF)** – I speak on behalf of the ITF, the National Trade Union Congress of Singapore, the Australian Council of Trade Unions and the Commonwealth Trade Union Group.

The examination of the MLC, 2006 by our Committee for the first time is – dare I say – a special moment for the world’s 1.6 million seafarers. 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, the review of national implementation of the MLC, 2006 by the Committee of Experts, and indeed our own Committee, remains

fundamental to its proper application in law and in practice. From this perspective, today is a special day.

It is extremely concerning that there appear to be no national implementation measures in Maldives eight years after ratification. This has an adverse impact on seafarers working on board Maldivian-flagged vessels and the thousands of seafarers that call at Maldivian ports every year.

In terms of reporting, we welcome the Government's statement that it has just submitted its first report – albeit five years after the original deadline – and we also trust that the social partners were consulted in this regard.

The Committee of Experts have noted that while seafarers are excluded from the provisions on working time of the Employment Act of 2008, the rest of the Act appears to apply to them. This is not good enough for seafarers. Indeed, section 34 of the Employment Act excludes seafarers from Chapter 4, which covers hours of work, dismissal, wages and financial benefits, and entitlement to leave. Other provisions on the minimum age of work also appear not to be in line with the MLC, 2006, for example, in relation to ships' cooks where the MLC, 2006 requires that seafarers be at least 18 years of age.

Further, the detailed MLC, 2006 requirements relating to seafarers' employment agreements, accommodation, medical care, and protection against abandonment, among other things, are not covered in the Employment Act. The same applies for remedy mechanisms, including those relating to on-board and shore-based complaints procedures. Regarding flag State and port State inspections, it is unclear whether there are any national procedures that would ensure effective enforcement.

We understand that in 2015 the Minister for Economic Development was given power to make regulations in relation to maritime labour, but that no action has been taken. However, we are heartened by the Government's request for ILO technical assistance in this regard. We trust that the Government will transpose the MLC, 2006 into national legislation, in consultation with the social partners, without delay.

**Government representative** – Thank you, delegates, for your valuable contributions and recommendations. The Government of Maldives stands ready to work closely with the ILO and our partners in implementing the provisions of the MLC, 2006, and to ensure that our reporting obligations under the Convention are updated and compliant in the future.

We will make every effort to ensure that the technical and administrative set-ups necessary for implementing the Convention are established at both the Maritime Administration of Maldives and the Maldives Transport Authority, with meetings at the Ministry of Economic Development. We also take note of the recommendations made by the Committee and the constituents. We look forward to a constructive engagement with the relevant departments of the ILO in the coming weeks and months as we commence our work towards full implementation of the Convention.

**Employer members** – We have listened carefully to the discussion and thank all the speakers who have taken the floor and we thank again the Government representative for engaging with the Committee and providing us with up-to-date information on this case.

We reiterate that the MLC, 2006 provides international standards for the world's genuinely great global industry. We 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, and we reiterate that before ratifying Conventions, it is important for governments to make sure that they not only have in place the capacity to implement the respective Conventions, but also the capacity to meet their regular reporting obligations.

In that regard, the Employer members invite the Government of Maldives to take all necessary measures to ensure compliance of its legislation and practice with the MLC, 2006; to provide full information regarding the application in law and in practice of the Convention in Maldives; and to avail itself of technical assistance from the ILO as soon as possible.

**Worker members** – We thank the Government of Maldives for its comments. We also thank the speakers who took the floor for their contribution 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, all the workers of Maldives have signalled their intention to cooperate meaningfully with the Government.

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 3 of the Convention regarding fundamental principles and rights at work. The Government 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 session of the Conference. 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.

As a general point, we also note that several maritime-related instruments will either be abrogated or withdrawn at this year’s session of the Conference with the remaining ones subject to the same treatment by 2030. As per the Special Tripartite Committee’s request, we call on the Office to promote the ratification of the MLC, 2006 on a priority basis with Member States bound by these Conventions and to follow up with technical assistance as appropriate.

## Conclusions of the Committee

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

**The Committee noted the critical importance of effective national implementation of the Maritime Labour Convention, 2006, as amended (MLC, 2006), and the need for ratifying Member States to ensure they meet their regular reporting obligations.**

**Taking into account the discussion, the Committee urges the Government of Maldives to take all necessary measures, in consultation with the social partners, to:**

- ensure full compliance of its law and practice with the MLC, 2006;
- provide full information regarding the application in law and in practice of the MLC, 2006; and
- fully comply with its reporting obligations.

The Committee requests the Government to avail itself of the ILO technical assistance to effectively implement these conclusions.

## Colombia (ratification: 1976)

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

#### Written information provided by the Government

The Government of Colombia is compliant with international Conventions, both in legislation and in practice our commitment is firm in respecting the right to unionize. A proof of this is the creation of new unions from 2018 to 2020, where 611 new union organizations were created.

The impunity gap was broken: Our Government strongly rejects any act of violence whatever its origin and we reiterate the State's willingness to advance in the investigations to clarify the facts and convict those responsible, while protecting our workers, in particular activists and trade union leaders. Colombia has made significant progress in the fight against impunity; today the country has more than 960 convictions, and the number of acts of violence against trade unionists has been reduced. We wish to reiterate that we reject all acts of violence against trade union leaders and that we will continue to fight until the number is zero.

#### State strategies

The National Immediate Reaction System for the Advancement of Stabilization (SIRIE) was created and activated through the General Command of the Military Forces, which establishes a series of coordinated actions to concentrate capacities to control territories in order to respond to any situation that threatens or affects the exercise of human rights defenders, social leaders, trade unionists and union leaders.

#### Investigation and prosecution strategy for crimes committed against trade unionists

In order to provide guarantees for access to justice for unionized persons who are victims of crimes and with the objective of contributing to the materialization of the principle of freedom of association, the Attorney General's Office prioritized investigations of crimes that may affect union activity. The above, through the following actions, which will be strengthened based on the provisions of the strategic direction 2020–24, "Results in the street and in the territories":

- analysis of the crimes of greatest impact against trade unionists in the development of their work: homicides, violation of the rights of assembly and association and threats;
- definition of the universe of prioritized cases and situations;
- interinstitutional articulation with the Ministry of Labour;
- training to strengthen the investigation of prioritized crimes;
- strengthening the investigation of the crime of threats against human rights defenders;
- the issuance of precise guidelines for the investigation of the crime of homicide against human rights defenders; and
- a work plan that allows the internal articulation of the various units of the Attorney General's Office with competence in the investigation of these crimes.



## Results

- (1) The impunity gap was broken, it went from 1 conviction in 2001 to more than 960 convictions in 2021; 70 convictions were handed down in 2020 alone.
- (2) From 205 homicides of trade unionists in 2001, there was a reduction of more than 94 per cent to 14 homicides in 2020, with one being a high figure.
- (3) Those who hinder the right of association and whoever offers better guarantees in collective agreements are penalized.
- (4) The Ministry of Labour together with the ILO is conducting a study that systematizes and analyses 814 judicial decisions taken in the context of crimes committed against unionized workers and trade union organizations in the period 2002–20. This study that takes stock of progress in judicialization against anti-union violence, as a follow-up mechanism to the anti-impunity strategy agreed tripartite in 2006. This study presents the overall results of the analysis of the 814 judicial decisions, identifying their main achievements and fallacies, and making recommendations for successful judicialization.
- (5) We have negotiations in the public sector, Colombia being one of the few countries in the region that carries it out successfully with all the Unions' Centrals of the country.
- (6) Trade unionists are protected. The National Protection Unit has actively participated in the National Bureau of Human Rights with the Ministry of Labour and the Unions' Centrals, in the National Committee to follow up transfers to educators for security reasons with the Ministry of National Education and FECODE, on the other hand, participation in the Committee of Follow-up of Teachers threatened with the Secretary of Education of Bogotá. These spaces for dialogue are used to analyse different risk situations that may affect the fundamental rights of members of the target population, union leaders and/or activists and their representatives. There are currently 292 protected trade unionists.
- (7) The Budget for Trade Unionists is guaranteed by the Government which annually makes a significant increase to safeguard the protection of union leaders, from 2018 to 2020, nearly 37 million Colombian pesos has been invested in the protection of union leaders.
- (8) The Protection Unit Serves, in accordance with the Decree that regulates it, applications for protection, in case of extreme risk there is an emergency route to provide protection expeditiously.

It is important to note that although the National Protection Unit protects social leaders and union leaders, the strategies and outcomes referred to the Commission only account for measures for union leaders, to whom Convention No. 87 applies exclusively.

## Collective repair measures in favour of the trade union movement

The Government in the framework of the National Table of Guarantees held on 14 December 2020, during its fourth session of the permanent table, presented the commitments by the Government related to the hiring of the technical liaisons of the Union Movement to support the systematization of the information for the presentation of the statement, which included the timely sending of the proposal of contractual specifications agreed with the Union Movement, and its subsequent hiring by the national Government from the month of May 2020. Currently, we are waiting for the declaration of the trade union movement in order to continue the development of the

collective reparation route that will allow the formulation and implementation of its Integral Plan for Collective Reparation (PIRC), which will establish the actions and measures that will contribute to the reparation of the damages and historical affectations of the trade union movement.

### Article 200 of the Penal Code

The Attorney General's Office, between 2017 and 2020, received a total of 865 complaints for the crime of violation of the rights of reunion and association. Some, 714 cases have been completed and 151 are active, which means 17.45 per cent of the cases.

In the crime under analysis, the following actions were carried out for the termination of the criminal action of the proceedings that entered to the prosecution, from 1 January 2017 to 31 December 2020: <sup>1</sup>

- In 59 cases, an agreement was reached with conciliation. For these cases, the parties, in front of the Prosecutor, agreed to terminate the criminal proceedings under the fulfilment of conditions in the same manner agreed.
- Some 95 processes were terminated by withdrawal of the worker or the reporting trade union organization. This is important, as these are cases that had a negotiated exit between the worker and the company.
- In 68 of the cases the process was conexas, that is the Prosecutor made the decision to continue the investigation under other criminal news that shared the same facts, to analyse the situation together.
- 407 cases (57 per cent) were archived. In 57.25 per cent of these cases, it was established that criminal conduct did not exist. In 29.98 per cent of cases, the file was filed as an illegitimate complainant.
- Other causes: 85 cases culminated in the investigation by termination of criminal proceedings, by preclusion, termination of the complaint, among others.

For events that have occurred between 2017 and 2020, 151 active cases, 106 cases in the pre-process stage, likely to reach conciliation, 42 in search and 3 cases at trial were identified. Some 57 prosecutors offices are advancing in the active processes of these; 3 prosecutors have been assigned to the areas with the highest number of prosecutions. <sup>2</sup>

The above actions are discussed within the framework of the Inter-Agency Commission on Human Rights, where tripartite actors have the opportunity to interact directly with judicial authorities and express their concerns to them, as well as make recommendations for greater effectiveness of measures taken in terms of protection and investigation. This Committee introduced the Law establishing the abbreviated verbal procedure and incorporating the figure of the private accuser, whereby the victim can act as an accuser, that is, in the role of the Public Prosecutor's Office.

<sup>1</sup> Procedural management data is delivered cumulatively and not per year, which means that the results in cases have been obtained throughout the period, not in one year.

<sup>2</sup> In previous years, it had been reported that seven prosecutors had stood out for the address of article 200 crimes. Currently, as the number of active cases has decreased, three prominent prosecutors' offices are maintained, with the same criteria, i.e. areas with a higher concentration of cases.

## Articles 2 and 10 of the Convention: Union contracts

Concerning the measures taken by the Government to control the misuse of the trade union contract, the Ministry of Labour has designed and is implementing the Trade Union File Information System – SIAS, which aims to record, store and manage information to generate indicators and reports necessary for the development of trade union policies and projects; in which it is in pre-production and quality review version. This system of trade union file information of the Ministry of Labour will monitor the registration of the deposits of the trade union contracts, carry out a characterization of the contracts in force in the period covered by each annuity, disaggregated by economic activity and planning inspection actions focused on the monitoring of them.

## Right of workers' organizations to organize their activities and formulate their programme of action: Legislative questions

As the ILO has been informed, within the framework of the Subcommittee on International Affairs, we hope to jointly build a road map to enable us to move forward on concerted solutions to effectively comply with the provisions of the Conventions ratified by Colombia and the comments of the experts.

On the other hand, the Ministry of Labour and the Supreme Court of Justice signed a Memorandum of Understanding, in April 2021, on labour rights, whose object is the creation of effective mechanisms for the promotion, compilation and dissemination of the jurisprudence rules of La Sala on individual and collective labour rights, to contribute to the enjoyment and guarantee of the fundamental rights of the Colombian population.

As can be shown, the State's commitment is total. While the fight against trade union violence remains a major challenge, the above data demonstrate Colombia's strong commitment to this issue, making significant progress in the protection of trade union leaders and closing the impunity gap in recent years.

## Discussion by the Committee

**Government representative, Minister of Labour** – Our Government wishes to reiterate before the Committee, to which it conveys special greetings, that it respects compliance with the Conventions that Colombia has ratified, in both law and practice, and as always recognizes, values and acts in accordance with the guiding principles of the ILO.

In particular, the Convention forms part of the Constitutional bloc, which means that its provisions stand as a parameter for assessing the constitutionality of legal standards and a supplementary parameter of article 39 of our National Constitution.

The Government of Colombia, based on ILO principles and giving priority to consultation, social dialogue, collective bargaining, freedom of association, the defence of the human rights of workers and the right to organize and entrepreneurial freedom, has worked with all the state bodies to ensure strict compliance with the Convention.

On the first point, drawing the Committee's attention to the trade union rights and civil liberties that provide the reference framework, and particularly the progress made in investigations, we wish to thank the Committee of Experts for its recognition of the significant action taken by the public authorities. We agree with the comment by the Committee of Experts that the challenges are significant and that, despite the efforts of the State of Colombia, our country is still facing a situation of generalized violence, based

principally on illegal drug trafficking and groups outside the law, and that this violence also affects many workers.

As the Committee is well aware, the investigations are carried out by a body that is totally independent of the national Government. In order to show the State's commitment, we are accompanied today by the Deputy Prosecutor-General of the Nation, Ms Martha Mancera, to whom I give special thanks for coming with me to this meeting. And therefore, with this commitment by Colombia to the ILO, I will now give the floor to the Deputy Prosecutor-General, who will reply to the observations made by the Committee of Experts on the progress made in the investigations into the right to life and the investigations under section 200 of the Penal Code, a crime which is an obstacle to the right to organize.

**Another Government representative** – The Office of the Prosecutor-General is aware of the importance attached by the State of Colombia to trade union activities, and it is therefore its responsibility to take penal action in accordance with the parameters established by the Constitution, the law and international standards, and particularly due diligence in investigation.

Today I am happy to be able to say that our strategy of giving priority to investigating crimes against trade unionists is successful, is on the right track and has also been strengthened in accordance with the guidance set out in the Strategic Directions of the Office of the Prosecutor-General 2020–24, *Results in the street and in the territories*, which has been led by the Prosecutor-General of the Nation, Francisco Barboza.

With reference to the violation of the rights of assembly and association between 2011 and 7 June 2021, the Office of the Prosecutor-General of the Nation received 2,841 denunciations. By June 2021, we had succeeded in completing 91.92 per cent of criminal proceedings, that is 2,593 cases, with the result that only 8.72 per cent of cases, or 248 cases, are currently under investigation.

Among the most relevant factors, it should be noted that for the first time in the history of the investigation of this type of crime, based on acts committed between 2011 and 2021, four convictions have been obtained. There has been reconciliation in a total of 161 cases since 2011, in which the parties have agreed to end the criminal proceedings subject to agreed terms. Some 449 proceedings were ended following the withdrawal of the worker or the union. It should also be noted that 1,389 cases have been shelved, accounting for 63.57 per cent of such cases, based on the finding that there was no criminal offence. In accordance with due diligence and the right of access to justice, the parties could also very well request the supervising judge to reopen the investigation, which was not done by any of the parties. Finally, in the case of alleged crimes committed between 2011 and 2021, a total of 248 cases remain open. With a view to strengthening these investigations, 49 prosecutors were trained in this type of crime last May, which is important as training allows us to have better tools to take decisions more rapidly in accordance with due diligence.

With regard to murders of trade unionists between January 2011 and June 2021, the Office of the Prosecutor-General reported 262 victims. The ordinary judicial authorities are investigating 259 cases, and 3 are being handled by special indigenous courts.

The use of investigation strategies by the judiciary has led to progress in the clarification of 43.2 per cent of cases. This indicator is higher than the statistics for intentional homicide, which closed in 2020 with 29.70 per cent of cases being resolved. There is clearly a long way to go, but the progress is tangible, as reflected in the figures,

and the Office of the Prosecutor General of the Nation is committed to making progress in identifying those who kill trade unionists.

With regard to the progress made in the investigation of homicides of trade unionists that occurred between 2011 and June 2021, there are 47 cases in which sentences are being executed, 62 convictions, 41 cases are being prosecuted, 5 cases in which charges are being brought, 11 that are under investigation with arrest warrants issued and 4 cases have been closed due to the death of the person charged.

The Office of the Prosecutor-General of the Nation has registered 562 convictions for the homicide of trade unionists handed down by the courts of the Republic during the period 2011–21. Of these, 62 convictions were for the period 2011–21 and 500 for crimes committed prior to 2011. And taking into account the historical record, it can be said that the courts of the Republic have handed down 884 convictions in Colombian territory.

Threats against trade unionists are another of the most important concerns of the Office of the Prosecutor-General of the Nation and, of course, of the State of Colombia. In April 2021, the Prosecutor-General adopted a decision to strengthen the National Working Group for the Investigation of Threats. In relation to trade union members, priority was given to three situations by the Office of the Prosecutor-General. The first was threats against the leaders of the Colombian Federation of Education Workers (FECODE), the second concerned threats against trade unionists in the department of Valle del Cauca, and the third consisted of threats against trade unionists in the mining and energy sector. A very important consideration in this regard is that the threats are investigated in context, which means that threats are not investigated one by one, but the situations experienced in the various territories of Colombia are taken into account.

Members of the Committee, the Office of the Prosecutor-General of the Nation of Colombia is committed to investigating crimes against trade unionists seriously, independently and with all the means at our disposal to discover the true facts with the participation of the victims. We will pursue this commitment and we guarantee its sustainability in the Office's policies, and we will continue to seek effective and efficient outcomes in the territory of Colombia.

**Government representative, Minister of Labour** – Thank you Deputy Prosecutor-General for reporting to the Committee the efforts that the State of Colombia has been making. Allow me to continue reporting progress on other matters raised by the Committee of Experts, although not before noting that the history of the country has changed, also as a result of the efforts of trade unions.

Even a single attack against a single trade union leader is extremely serious and we reject such acts emphatically. I have to point out that the number of murders of Colombian trade unionists has fallen by 93 per cent in relation to 2001.

I want to remind the members of the Committee that the last time that Colombia was called before this Committee was in 2009, when there were a total of 266 convictions, with that figure now reaching 960 cases in which acts of violence against trade unions have been investigated and punished.

Colombia has punished violations of freedom of association. The National Unit was strengthened for 2018 and 2020 and the budget allocated exclusively for the protection of trade union leaders was nearly US\$35 million. For 2021, the general budget for protection under the programme is over US\$82 million. During the course of 2021, protection has been provided to 293 trade union leaders.

And allow me to tell the Committee the following. As a result of the protection provided by the programme since 2018 up to the present, no trade unionist covered by the programme has been attacked or murdered, as the protection has been effective.

According to the information provided by the programme, no trade unionists who were victims of the crime of murder had requested protection measures and threats were not known.

The National Protection Unit includes within its responsibilities the provision of two types of protection measures, which include soft measures such as communication and protective vests, and hard measures, such as escorts, vehicles, grants and the supply of fuel.

The maximum cost of protection measures for a trade union leader is approximately US\$13,000 a month.

In accordance with the right to organize freely, set out in Articles 2 and 11 of the Convention, we wish to recall that the right to organize is exercised freely in our country. There are no obstacles to organizing trade unions, as shown by the fact that, between 2018 and 2020, a total of 611 new trade union organizations were established. In Colombia, trade union organizations are established without any type of interference. We also have negotiations in the public sector, which I hope will now become much stronger, as Colombia is one of the few countries in the region that carries out bargaining successfully with all the trade union confederations.

With reference to the second point relating to the systemization of penalties for crimes against trade unionists, and transparency of information, I would like to say that Colombia wants to align all of this, so that people know with transparency the action taken in the country.

It is important to note that the Ministry of Labour, with the ILO, is undertaking a study to analyse and systematize all the penalties related to the protection of the rights of trade unionists. The study will undoubtedly seek to provide elements that contribute to the review, balance and strengthening of the policy of prosecuting acts of violence against trade unionists and taking action against impunity, by identifying the principal achievements and failings, and making recommendations for their successful prosecution. I wish to thank the ILO for this study, which will support us in our decision-making.

The study examines the outcomes in relation to 814 court rulings handed down by the judicial system in Colombia in relation to crimes and offences committed against trade unions and their members during the period 2002–20. This analysis is being undertaken as a means of following up the strategy to combat impunity, which was the subject of tripartite agreement in 2006, within the framework of the Convention and of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Our Government is totally committed to the adoption and implementation of public policies that have a positive impact on guaranteeing human rights, our desire for peace through the implementation of the Peace Agreements, and the Act on victims and land restitution, in accordance with everything related to the Peace Agreements. We have been working on this with great resolution and commitment.

I wish to say to the whole world that it is important to remember that we signed a Peace Agreement, as a result of which the Single Register of Victims was created, which recognizes 9 million people who have been affected individually in one way or another.



The Government, within the framework of the National Guarantee Forum, held the fourth session of the standing forum on 14 December 2020. During the session, a report was provided to technicians from the trade union movement on the Government's commitments. It is important to note that the Victims Unit has not yet received the report on acts of intimidation from the trade union movement through no fault of our own, so that it can be assessed. We are currently making efforts so that this is done during the month of May. We want to tell the trade union movement to take action and that the doors are open, but it has not been our fault.

With reference to trade union contracts, it should be noted that this concept exists in Colombian legislation. We have addressed and discussed this and carried out all the investigations that are necessary, and we have proposed to the Congress of the Republic their elimination in the health sector.

**Employer members** – We thank the Minister of Labour of Colombia for the information provided orally, as well as the Deputy Prosecutor-General, and for all the written information that is available to the Committee. We place emphasis on the commitment of the Government at the highest level to give effect in law and practice to the Conventions ratified by Colombia.

The Government has worked and is currently working with all state bodies to give effect to the Convention and over the years has given priority and continues to prioritize consultation, social dialogue, free and voluntary collective bargaining, freedom of association, the defence of the human rights of workers and employers and freedom of enterprise as state policies.

In the view of the Employer members, the information received shows a case of progress.

Despite the efforts made by the State, the country is still facing a situation of generalized violence based principally on illegal drug trafficking and the activities of armed groups outside the law. This violence also affects unionized workers. Within this framework, a distinction must be made between the human rights violations suffered by the population in general and the forms of violence that are directly related to the exercise of trade union rights by workers. In a context such as the one described in Colombia, not every act of violence of which trade union leaders are the victims bears a close and sufficient relation to their role in the trade union movement. Nor is every act of violence of which social leaders are victims (including youth, ethnic, environmental and political leaders) directly related to freedom of association and the right to organize. This does not imply that acts of violence are less repugnant, but it does show the importance of understanding the complex situation experienced by the country and of differentiating between the areas of competence of national and international judicial and quasi-judicial bodies.

Few ILO Member States have collaborated so closely and positively with the supervisory bodies and with the Office to give effect to ratified Conventions.

The last time that the Committee discussed this case was in 2009, over ten years ago. The discussion today must therefore be limited to the comments of the Committee of Experts that are within the scope of the provisions of the Convention and the information provided by the Government.

I would like to begin by emphasizing that the Convention does not contain any provision on the right to strike. Moreover, the preparatory work that preceded the adoption of the Convention makes it clear that the Convention does not regulate the

right to strike. This is also the opinion of the Government group of the Governing Body and we are pleased to hear the Government of Colombia recalling this important issue.

Accordingly, the request by the Committee of Experts to the Government to amend the legislation in relation to strikes and essential services has no basis in the Convention. The Government is not therefore required to take this request into consideration. The Employers' group will not address this subject in the discussion and the Committee's conclusions should not cover this point.

In the few minutes available to us, I would like to address the following issues raised by the Committee of Experts.

First, with regard to trade union rights and public freedoms, Colombia has resolutely implemented various initiatives to make progress in the protection of trade union leaders, and these efforts have also been recognized by other supervisory bodies. As indicated by the Committee of Experts, there has been significant progress in the investigation and punishment of crimes against trade union leaders and members. Between 2001 and 2020, there were a total of 966 convictions relating to acts of anti-union violence, of which 815 concerned homicides of members of the trade union movement.

The figures for murders in Colombia show enormous progress in the reduction of violence. While in 2002 there were 16,382 murders, in 2020 there were 455, or a reduction of 97.2 per cent. The State and the social partners are continuing to show commitment to combating anti-union violence, the rapid investigation and punishment of those responsible for homicides and to seeking a peaceful working environment.

This Committee must recognize the positive efforts made by the Government and the social partners and call for continued progress and the provision of information on this subject in the next regular report.

Second, under the terms of section 200 of the Penal Code, the Office of the Prosecutor-General of the Nation has given priority to cases denounced under section 200 of Act No. 599. The data provided by the Government on cases of potential violations of section 200 of the Penal Code show that the claims of "complete impunity" made by trade union confederations in relation to the application of this provision are not accurate.

There were 2,727 cases between 2011 and October 2020. Of these, 91.02 per cent have been completed, and only 8.98 per cent are under investigation. It is an error to consider that the criminal justice system must assume a leading role in the management of industrial relations. As a mechanism *ultima ratio*, the penal system, as in all democratic countries, takes action when there are no other ways of preventing and resolving legal disputes.

There has also been significant progress in processes for the investigation and prosecution of this crime.

The Office of the Prosecutor-General and the criminal justice system act in total independence, thereby ensuring that there is appropriate and adequate justice in carrying out investigations, irrespective of their outcome. In this respect, the Employers' group invites the Government to continue providing information on the progress made with investigations and their outcome in its next regular report.

Third, with reference to trade union contracts, they are a form of collective bargaining in Colombia, and it is therefore strange that they are referred to in the

examination of this Convention rather than, as they should be, in the examination of Convention No. 98.

If the Committee of Experts wishes to go into the origins or reasons for the creation of unions with a view to the conclusion of trade union contracts, which could be contrary to Article 2 of the Convention, in the sense that it should imply an abuse of rights, it should also raise the issue of those unions in Colombia that are established merely to give apparent legal form with a view to extending protection to more workers than those already protected as founder members, leaders or those engaged in the negotiation of collective agreements in the original union. In such a case, we would be confronted by an abuse of the freedom of association proclaimed by the Convention, with the need to develop a conceptual definition and undertake a full analysis of all the related situations.

The Constitutional Court has upheld the autonomy of trade unions to conclude trade union contracts, which seek to promote the right to free and voluntary collective bargaining, while strengthening the right to organize, with a view to generating employment for the members of the union through more dynamic union action.

The concept of trade union contracts does not contravene the provisions of the Convention. It is a legal concept that is defended by trade union confederations, such as the General Confederation of Labour (CGT) of Colombia, so that they can maintain constant dialogue with the employer, increase the number of members and obtain greater benefits for workers. The Committee of Experts must not pursue its examination of this matter.

Fourth, with regard to the allegations concerning the cancellation of trade union registration, in Colombia, a trade union can only be dissolved by means of the judicial procedure set out in the law. It cannot be dissolved by administrative means, which is compatible with Article 4 of the Convention. For a trade union at whatever level to be dissolved, it must be in one of the situations established in section 402 of the Substantive Labour Code.

The mere existence of any of the grounds is not sufficient, and there has to be a court ruling ordering dissolution. Moreover, in Colombia, the judicial authorities enjoy independence and autonomy in their decisions in relation to the other branches of the public authorities. With reference to the time limit of five days to challenge a request for the cancellation of their legal personality, due to an illegal strike, the time limit is reasonable and proportionate, taking into account the fact that such a ruling is the result of previous judicial action in which the trade union concerned has participated. Moreover, States have a discretionary margin to determine their own internal procedures.

The Committee must conclude that the strengthened regulation of freedom of association in Colombia in relation to the cancellation of trade union registration is in conformity with the Convention and in compliance with the objective of protecting trade unions.

**Worker members** – The discussion on the right to freedom of association in Colombia is long overdue. The last time this case was discussed here was 12 years ago, in 2009, despite its regular presence on the long list.

I would like to clarify that, contrary to what the Employer spokesperson said, the list does not contain any case of progress. In order for a case to be considered as a case of progress on the list, the case must be explicitly identified as such by both spokespersons, and this is clearly not the case here.

On 28 April 2021, Colombian workers, led by an alliance of trade unions and social movement organizations, began to demonstrate peacefully across Colombia. Fundamentally, the protests are a reaction to a series of measures promoted by the Government, including a tax reform bill that would deepen income inequality, as well as regressive labour law and pension reforms. The trade unions have not been consulted on these proposed reforms, and these measures stoked the resentment of workers whose lives had been devastated by the COVID-19 pandemic, and saw no meaningful relief forthcoming from the Government.

The ILO supervisory system has repeatedly found that trade unions, “should be able to have recourse to protests, strikes, in particular when aimed at criticizing a government’s economic and social policies”. That is exactly what is happening in Colombia today.

Despite the peaceful nature of the protests by the trade unions and other civil society organizations, the State has responded with extraordinary levels of violence, as it has most recently in 2019. Hundreds of videos from ordinary people demonstrate a brutal and indiscriminate use of lethal and non-lethal weapons against citizens that violate Colombian and international law.

The NGO Temblores, a credible and widely cited source of information on the protests, reports that, as of 31 May, there have been nearly 3,789 incidents of violence perpetrated by the State, including by the military and the elite anti-riot police force, ESMAD. As a result, 45 people have been killed by the security forces, 1,248 people have been wounded, 1,649 protesters have been detained arbitrarily, and 25 people have been victims of sexual violence. The number of disappeared has not yet been tabulated. This must end now.

The Worker members urge the Government to immediately withdraw the military and to guarantee that the police do not intervene in the course of peaceful demonstrations. The Government must also urgently investigate and prosecute all security force members who have committed human and trade union rights violations. Of course, to end the protests, the Colombian Government must engage in effective and good faith negotiations with Colombian trade unions and civil society whose needs have been, so far, ignored.

These facts alone justify the examination of this case, but they are just the most recent events in a decades-long attack on trade unions in Colombia. Once again, the Committee of Experts has expressed its deep concern regarding the persistence of anti-union violence. The persistence of the violence is evidence of the failure of the Government to implement the peace accords. Anti-union violence is increasing, and is especially intense in the rural sector.

I will not read aloud the horrific statistics, as many of them are already in the Committee of Experts’ report. I will only underscore that, since 2016, 119 trade unionists have been murdered in Colombia for carrying out their lawful activities as of May 2020, and nearly 700 have received death threats.

To this we must add thousands more deaths since 1986, when statistics were first kept. We need to reflect on how the international community has allowed this to happen, and if this was somehow normal or acceptable. It is shocking that, even today, the Government and some employers still deny that there was, and continues to be systematic persecution against unions. This is one of the reasons why the violence continues. While we do note that the number of investigations and prosecutions into these murders has increased over the last 20 years, the rate of impunity remains high,

and the devastation wrought on the individuals, their families and their unions will never be fully repaired.

Of particular concern, we note that despite having been raised repeatedly, the measures to protect trade unionists are still insufficient. Only a fraction of requests for protection submitted in 2019 and 2020 have been examined and, owing to budget costs, protective measures were discontinued to roughly half of the recipients.

The participation of trade unions in the process of the determination of protection measures has also been diminishing.

Violence and the threat of it are not the only danger to the trade union movements. We have noted in recent years that the Government has replaced associated worker cooperatives with the so-called “trade union contracts” to maintain illegal labour intermediation. However, the result is largely the same. Now, an employer enters into a contract with a so-called union, which acts as an employment agency and sends labour to an employer with which it has a contract. These trade union contracts are not managed by independent unions, and indeed they receive financial support from the employer. As such, workers have little say over the terms and conditions of their work and no say over the management of the so-called union. Despite repeated protests from the trade unions the Single Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC), the Government has taken no meaningful enforcement action or legislation to prohibit the proliferation of these contracts, which are concentrated heavily in the health sector.

Further, the Government has failed to give any effect to the conclusions of Case No. 3137 of the Committee on Freedom of Association on the issue of trade union contracts. Indeed, the State is also doing very little with regard to violations of the right to freedom of association generally, which carries criminal sanctions under section 200 of the Penal Code. There has still not been a single conviction under this law, despite widespread violations, including violations committed by the State. This includes the case of the major Colombian air carrier, as was recently determined by the Committee on Freedom of Association in Case No. 3316 in March 2021. The Government has not complied with that decision and the legislation in relation to strikes in essential services has not been revised.

Other measures now being employed to eliminate trade unions include the use of a special procedure in section 380 in the Labour Code for the cancellation of union registrations. It is a brief summary process and all guarantees and safeguards for the union, its leaders and workers are virtually removed. In 2020, there were several alarming cases, including that of SINTRAINAGRO, where a company filed suit to dissolve the union following an alleged illegal stoppage.

We agree with the Committee of Experts, which has reiterated that the cancellation of trade union registration constitutes an extreme form of interference that must be confined to serious violations of the law after exhausting other less drastic means of action for the organization as a whole. It is important for such measures to be accompanied by all the necessary guarantees, which can only be ensured by normal judicial procedures.

There is more to say and you will hear from the Worker representative of Colombia and from other countries before I make my concluding remarks.

**Employer member, Colombia** – The case of Colombia should not have been included on the list of individual cases and the Committee should have concluded that this is a case in progress, as I will explain.

With respect to anti-union violence, since the last examination in 2009, the ILO has been providing support to the Government and the social partners in the country to strengthen social dialogue and bring the law and practice into conformity with this and other Conventions. The 2016 Peace Agreement was a significant step for Colombian citizens in achieving a climate of social understanding. The firm support for this agreement by the ILO Director-General and the international community commits us, as employers, even more to this understanding with the workers and their organizations. Colombia, which is still in the process of implementing the agreement, continues to be affected by illegal armed groups, whose financing comes essentially from drug trafficking and money laundering, and which use violence to attempt to impose their will on all sectors of society.

Therefore, for the examination by the ILO and based on our rejection of all acts of violence, it is important to differentiate between the types of violence suffered by the general population and the specific forms of violence related to the exercise of freedom of association.

The Colombian State has taken action for the protection of union leaders and activists, which has been recognized positively by the Committee on Freedom of Association in Cases Nos 2761 and 3074.

The Committee of Experts has also highlighted the significant progress in the investigation and prosecution of crimes against trade unionists and leaders, with investigations and sentences that clarify the facts and convict the perpetrators.

We have seen the Government's effort to allocate enormous resources and provide protection and prevention plans for trade unionists and other threatened groups.

We reiterate our rejection of any acts of violence against employers or trade unionists, or any Colombian, and we support the action of the authorities to ensure protection, and to investigate and convict the perpetrators.

We call on the trade union federations to kindly focus on the development of economic and labour policies, with tripartite agreement, which, beyond ideological differences, will ensure the recovery of enterprises and increase jobs for social well-being. We must, with the support of the ILO, use social dialogue to build consensus around common goals.

With respect to crimes against freedom of assembly and association, the Office of the Prosecutor-General, an independent investigative body, has recently provided precise data on the manner in which it has resolved most of the complaints. Colombia is one of the few countries in the world that has considered that violations of freedom of association must be punished as a crime with prison sentences, which demonstrates the strong commitment to comply with the Convention. The Committee cannot maintain that justice only operates when there are convictions. Withdrawal, conciliation, estoppel, the shelving of investigations and acquittal are also forms of justice.

Regarding trade union contracts, these are a form of collective bargaining and not the establishment of a trade union, and the Committee of Experts should therefore have addressed this issue under Convention No. 98. In Colombia, trade unions enjoy full autonomy to organize and are free to conclude agreements with employers, which include, to a small extent, trade union contracts. In addition, it is only necessary to



deposit, not register, the establishment of a trade union with the Ministry of Labour, which automatically grants the trade union legal personality to act, and this can only be challenged through the courts.

As indicated by our spokesperson, if the ILO wishes to go further into the reasons for the establishment of a union, we must also explore the “trade union carousel”, which is a concept that, in our opinion, constitutes a breach of the law because, as well as weakening workers’ unity, it distorts the protective purpose of union rights and of collective bargaining itself. Trade union contracts do not contravene the Convention and are defended by the CGT. Since 2018, the Office has had a comprehensive document provided by the CGT explaining the content, use and scope of trade union contracts.

Regarding the cancellation of trade union registration, in Colombia the process of the cancellation of trade union registration requires a judicial decision ordering dissolution in order to provide constitutional protection to the right to organize, as the judicial authorities in Colombia enjoy independence and autonomy in their decisions. Colombian legislation is thereby in conformity with Article 4 of the Convention and with the Committee on Freedom of Association, which has indicated that “cancellation of a trade union’s registration should only be possible through judicial channels”.

Lastly, with respect to strikes, the Employers have always maintained that the Convention does not contain or implicitly recognize the right to strike. In the preparatory documents for the Convention, at the Conference in 1948, it is stated that “the proposed Convention relates only to freedom of association and not to the right to strike”. It is not therefore for the Committee of Experts to examine this issue, nor for the Conference Committee to discuss or adopt conclusions on it. I conclude by calling for interventions to be limited specifically to the matters referred to by the Committee of Experts in its report and not to address other issues beyond that.

**Worker member, Colombia** – The workers of Colombia welcome the fact that, after 12 years, Colombia is once again being called upon for the terrible violations of freedom of association. Not only has the Committee of Experts noted serious violations of freedom of association and the right to collective bargaining and to strike, the Committee on Freedom of Association has noted that Colombia is the country with the most cases of murders, discrimination and legal provisions that impede freedom of association.

The Inter-American Court of Human Rights has already condemned and is considering proceedings against forced disappearances, murders of trade unionists and acts involving loss of sight during protests.

Trade partners such as Canada, the United States of America, the European Union and bodies such as the Employment Committee of the Organisation for Economic Co-operation and Development (OECD) have reported anti-union violations, impunity and legislative obstacles restricting the application of the Convention.

For years, Colombia has been ranked among the ten worst countries in the world for workers, and the nine worst for murders. In the last 12 years, the country has suffered 4,888 violations of the life and integrity of trade unionists. Although the Government has said for years that these were crimes related to the armed conflict, the truth is that even after the signing of the Peace Agreement with the guerrillas of the Revolutionary Armed Forces of Colombia (FARC), violence against social leaders, including trade unionists, is continuing and is increasing. Since 2016, in the five years since the conflict, we have suffered more than 1,120 human rights violations, with 696 threats, 6 forced disappearances, 4 kidnappings and 119 murders.

The comrades who have suffered the most violations have been teachers, prison workers, rural workers and those in the mining and energy sector for defending their rights against transnational companies and trying to establish peace in their territories, as well as in the health sector, where they have been persecuted for denouncing corruption in the management of resources.

The situation was already serious before the social protests that began with this year's national strike, which the trade union confederations, among others, called in response to the serious social crisis.

But, since 28 April, as more than 800 municipalities have engaged in peaceful protests in the country's capitals and highways, and an emergency statement was presented a year ago, the most violent reactions against the population in Colombian history have been unleashed, instead of prompting the Government to call for negotiation.

The police, military forces and even armed civilians, using excessive force against protestors, in a warlike approach, have resulted in, as of 31 May, 3,789 cases of violence: 1,248 victims of physical violence, 45 murders, 1,649 arbitrary detentions, 705 violent interventions in peaceful protests, 65 victims of eye injuries, 25 victims of sexual violence and 89 or 346 disappeared persons, depending on whether the source is official or non-governmental.

In relation to the Government's intervention, we wish to make a clarification concerning the 611 new unions established. False unions have been established, particularly in the health sector, for labour mediation through trade union contracts, which have been used since 2011, replacing false cooperatives, which were banned due to such practices. The 960 convictions for anti-union crimes account for fewer than 6 per cent of the more than 14,000 acts of anti-union violence over the past 30 years. Of the 865 complaints filed over the five years to date for violations of the right to organize, 82 per cent have been shelved without any investigation, and in ten years, according to what they are now telling us, there have only been four supposed convictions. Today there are only 292 protected trade unionists. Although over 8,570 protection measures have been requested since 2016, fewer than 38 per cent of them have been evaluated and only 3.45 per cent have been granted. Of the trade unionists who have reported that their lives are endangered, 96 per cent remain unprotected.

The law restricts strikes in non-essential services in the strict sense of the term, allowing for strikers to be dismissed, unions to be dissolved and even for convictions ordering the payment of millions of dollars in alleged damages.

The Government celebrates the decrease from 205 murders of trade unionists in 2001 to 14 in 2020, as if this were an acceptable or better figure. This is an insult to the memory of the 1,352 comrades murdered over the past 20 years.

We Colombian workers call for a high-level tripartite mission to visit Colombia; a plan to be established in which the Government complies with the conclusions of this mission, thereby ending anti-union violence, stigmatization and impunity, and guaranteeing response, prevention and individual and collective protection measures; the adoption of legislative reforms to prevent false unions engaged in labour mediation; the commencement of collective compensation for the union movement; and effect given to the recommendations of the ILO supervisory bodies.

As a matter of urgency, human rights violations against peaceful social protests must cease, and there must be effective negotiation in good faith of the emergency statement presented by the National Strike Committee.

**Government member, Portugal** – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The Candidate Countries, **Montenegro** and **Albania**, the European Free Trade Association (EFTA) country **Norway**, member of the European Economic Area, as well as the **Republic of Moldova**, 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 right to organize and freedom of association. We actively promote universal ratification and implementation of fundamental international labour standards, including this Convention. 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 cooperate closely with Colombia both in the context of the cooperation agreement with the Andean community, as well as at the bilateral level. The Trade Agreement between Colombia and the EU, in force since August 2013, also includes a joint commitment to sustainable development, including respect for labour rights.

In line with the Committee of Experts' assessment and in view of the magnitude of the remaining challenges in the implementation of the Convention described in its last report, we acknowledge the significant action taken by the public authorities. We note, with contentment, the significant increase in the number of convictions for acts of anti-union violence, thus breaking the cycle of impunity.

However, we regret that, despite these achievements, anti-union violence persists in a context of the growing number of attacks against social leaders, with the agriculture, education, transport, mining and energy sectors being the most affected. We are particularly concerned about the numerous reported murders of trade union leaders, attempted murders, disappearances and death threats against trade unionists, as well as the alleged surveillance of leaders of the trade union movement.

We would welcome more information from the Government on its efforts to improve the effectiveness of the investigations and criminal proceedings undertaken to identify and punish the instigators and perpetrators. We also request the Government to provide detailed information on allegations of surveillance.

We fully support the Committee of Experts' call urging the Government to continue strengthening its efforts and increase the resources allocated to providing adequate protection for all trade unionists at risk. We also request the Government to assess the effectiveness of section 200 of the Penal Code and its enforcement, in consultation with social partners, and to provide a report of its outcome and any action taken as a result.

We take note of ruling SL 1680–2020 of the Supreme Court and would like to echo the Committee of Experts' repeated calls to amend provisions of the Substantive Labour Code. We urge the Government to take the necessary measures in the near future to amend the legislative provisions regarding essential services and section 417 of the Code, which curtails federations' and confederations' right to strike. The Convention also applies to federations and confederations, and therefore they must have full freedom in determining their programmes and organizing activities.

We also seek additional information on the reasons behind the very short procedural time limits set out in section 380(2) of the Substantive Labour Code, which led to the cancellation of several trade union registrations.

Finally, we would like to express our concerns regarding the violence during the recent social protests in Colombia, deeply regretting the loss of many lives and the thousands of injured. People in Colombia, as anywhere else, have the right to peaceful protests. This right, together with freedom of assembly, association and freedom of expression is essential to any democracy and must be respected and protected, not suppressed by force. Thorough independent investigations of human rights abuses and violations must be undertaken promptly and in a transparent and effective manner. Inclusive social dialogue and negotiations that result in concrete actions are the only viable path to overcome this profound crisis.

The EU and its Member States will continue to monitor the situation and remain committed to our close cooperation and partnership with Colombia.

**Government member, Barbados** – I am making this statement on behalf of a **significant majority of Latin American and Caribbean countries**. We welcome the delegates of the Government of Colombia, in particular the Minister of Labour and the Attorney-General, who have provided the Committee with updated information. We thank the Government of Colombia for the presentation of its progress report on the follow-up to the observations of the Committee of Experts on the Convention.

We have taken note of the efforts of the Government of Colombia to advance investigations and fight impunity. We join the Government in rejecting the acts of violence committed against trade union leaders and unionized workers.

We recognize, as does the Committee of Experts in the report of February 2021, the significant actions taken by the public authorities and that today, according to the information transmitted by the Government, more than 960 convictions for crimes against trade unionists have been made. We encourage the Government to continue its efforts to advance investigations and punish the guilty, as well as to continue to protect workers and trade unionists.

We note with satisfaction the work done with the ILO to systematize and analyse the judicial decisions issued as a result of investigations into crimes committed against trade unionists.

We acknowledge the collective bargaining process that is under way in the public sector, and encourage all actors to continue working within the framework of social dialogue to reach an agreement for the benefit of workers. In the same vein, we hope that progress will continue to be made on collective redress measures for the trade union movement.

We welcome the information that highlights the creation of new trade unions in Colombia, and we hope that union organizations will continue to grow.

The work that is being carried out in the Subcommittee on International Affairs to create a road map to advance the observations of the Committee of Experts regarding the Conventions that Colombia has ratified, in a tripartite manner and with the technical assistance of the ILO, is very important. We therefore encourage the continuation of work in this direction.

Finally, we encourage the Government to continue its efforts to implement its commitments under the Convention and hope that the ILO will continue to provide technical support to the Government of Colombia.

**Employer member, Guatemala** – First, I would like to say that four years after the Peace Agreement was signed, the cycle of violence in Colombia has not entirely stopped, and violent acts continue to be perpetrated by criminal organizations that violate the human rights of the general population.

Consequently, in Colombia, like in other Latin American countries, not every act of violence against a trade union leader is related to their work. Employers reject all acts of violence in general, including those against trade union leaders which, like all cases of violence, must be solved.

Colombia has implemented initiatives to protect trade unionists which have been acknowledged in general by the Committee of Experts and the Committee on Freedom of Association in Cases Nos 2761 and 3064. Between 2002 and 2020, murders of trade unionists fell by 97 per cent and there were 966 convictions in relation to anti-union violence.

Second, with regard to section 200 of the Penal Code on the violation of freedom of assembly and association, 91 per cent of the 2,727 cases of suspected violations of that section between 2011 and 2020 have been closed. Although it is recognized that there are complaints, there has also been significant progress in the processes of investigating and prosecuting this crime.

Third, the Employers' group has always maintained that none of the Articles of the Convention contain implicit recognition of the right to strike. This is confirmed in the preparatory documents for the Convention; as the reports of the Conference at the time state that the proposed Convention relates only to freedom of association and not the right to strike. We therefore believe that the Committee of Experts should not continue to examine this issue.

With regard to strikes and essential public services, Colombia has defined the issue in its legislation, which the country's higher courts have reviewed and deemed to be in accordance with the provisions of its political Constitution and the relevant ILO Conventions.

**Worker member, Nicaragua** – In Colombia, the destruction is continuing of democracy and the social State under the rule of law, and an authoritarian Government is being strengthened that is selling a false democracy to impose a dictatorship, in which violence and impunity reign for those who repress and violate citizens' rights. The constant violation of freedom of association, precarious labour conditions and the denial of rights are some of the pillars that are generating further social inequality, higher levels of poverty and rising unemployment among the working class in Colombia.

The Colombian Government indicates that it is in compliance with the Convention, but that is not the reality. The constant violation of human rights can be seen in the ongoing murders of trade union leaders, the use of repression against demands for a fairer society and the criminalization of protests and social demands.

Rather than settling disputes and reaching agreements with the trade union leadership to resolve labour and social problems, the Government is interfering in the internal affairs of neighbouring countries and is failing to listen to the various national and international bodies that condemn the murders of the young workers and citizens who are protesting for a more equitable society.

The most sacred right of all human beings is the right to life, which today is being systematically violated by the current Government. The right to organize and to collective bargaining is also considered a human right and thus must be respected, as

set out in the Convention, which also establishes the right to strike to demand compliance with labour laws and collective agreements.

These are our words of solidarity and certainty that the workers of Colombia love peace and tranquillity, but that today they are forced to call for and demand full freedom of association, respect for life and the restoration of the right to a better life with a more equitable distribution of wealth. May justice be done by convicting those who have stained their hands and conscience with the blood of the Colombian people. Justice and truth must prevail over slander and lies.

**Employer member, Mexico** – Before referring to the specific case, I would like to make a comment to this Committee on the procedures for the selection of cases that we seemed to have moved beyond. It seems obsessive to focus on issues from the Americas in relation to the Convention. Serious issues are raised in the report of the Committee of Experts that have unfortunately not been included, in contrast with a case such as that of Colombia, which should not be chosen as a case, because it has been duly addressed, with the continuing process of the implementation of the Peace Agreement, and the harmonization of society, which is showing progress even in the climate of violence that is currently being experienced.

This progress is reflected in the constant action to guarantee the exercise of freedom of association, which has been recognized by the ILO supervisory bodies, and particularly by the Committee on Freedom of Association in more than one case, as already mentioned by Alberto Echeverría, the Employer representative of Colombia.

What is being said in this virtual meeting demonstrates the will that exists to continue making improvements and, to that end, it is necessary to strengthen social dialogue, which undeniably depends on the Government's active participation with the representatives of the most representative workers' and employers' organizations.

In few countries is freedom of association protected to the extent that the violation of this right is considered a crime. There are always opportunities for improvement, but that cannot be achieved by discussing this case without recognizing the progress made in Colombia. Problems of violence in general are being confused and the attempts that are being made to link them to violations of the Convention are clearly unfounded.

It is necessary to disregard the opinions of the Committee of Experts and the accusations that are not supported by evidence, such as those related to strikes, which are not covered by the Convention; and to encourage the Government to continue making efforts to consolidate action for the pacification of the country.

**Worker member, United States of America** – The Committee and Labour Congress aligns itself with this statement. The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) is deeply concerned with the continued promotion of measures meant to undermine trade unions, and to divest workers of their ability to freely associate and bargain collectively. Previously, this was accomplished by the promotion of "associated labour cooperatives" which were employer-created structures for the express purpose of excluding workers forced to work under them from the protections of the Labour Code. While the false cooperatives are now largely gone, a new structure has taken its place.

The so-called *contrato sindical* ("union contract") has been predominant in the health sector, as well as the education and agricultural sectors, compounding the difficulties workers already face. Through the *contrato sindical*, the legislation allows a so-called union organization to operate as a temporary service company, and additionally



provides that the workers are not recipients of labour rights. This structure is a complete distortion of the purposes of the right to freedom of association and collective bargaining. The *contrato sindical* is still allowed under the Colombian Labour Code and in Decree No. 36 of 2016.

Despite the obvious abuse, to date there has been no effort to sanction their use when used for illegal labour intermediation through labour inspection, and no effort to advance a reform that would eliminate them from Colombian law. The Government must move legislation that effectively prevents illegal labour intermediation, including by eliminating the use of the *contrato sindical*.

**Chairperson** – I would like to inform you that the Government of Colombia has raised a point of order on the failure to abide by parliamentary language, as is customary in our Committee. I would like to invite all Committee members to use parliamentary language.

**Government member, Canada** – Canada thanks the Government of Colombia for the information presented to the Committee. Since 2018, Canada and Colombia have worked to resolve the long-standing problems affecting workers in Colombia which relate in particular to freedom of association and the right of association.

Canada welcomes the efforts made by Colombia in recent years, particularly the work undertaken by the Elite Group of the Office of the Public Prosecutor, to bring an end to impunity in cases of murders and threats against trade unionists, as well as the coordination carried out with the Ministry of Labour. These specific measures have prevented crimes against trade unionists and protected freedom of association and the right to collective bargaining, although there remains much work to be done. For that reason, Canada requests that the Government of Colombia intensify its efforts.

Firstly, it should mobilize the social partners to assess the effectiveness of section 200 of the Penal Code and its application.

Secondly, it should remove the legal instruments used to weaken workers' fundamental rights to form associations and bargain collectively, such as collective agreements, which undermine trade unions' independence and core functions.

Thirdly, it should assess periodically the effectiveness of the strategies proposed by the Office of the Public Prosecutor with regard to investigations into murders and threats against trade unionists.

Canada remains committed to working with Colombia as a partner and to supporting its efforts to resolve these issues of concern.

**Employer member, Argentina** – I will limit my comments to only certain of the aspects that have been examined by the Committee of Experts.

First, as highlighted by the Employer spokesperson, Mr Mailhos, the Convention does not contain any provisions on the right to strike. Furthermore, the preparatory work that preceded the adoption of the Convention makes it clear that the Convention does not regulate the right to strike. This is also the opinion of the Government group of the Governing Body, and we have been pleased to hear the Government of Colombia recall this important point.

Consequently, the request by the Committee of Experts for the Government to amend the law respecting strikes and essential services has no basis in the Convention. The Government is not obliged to consider this request, and the Committee's conclusions should not address this issue.

With regard to trade unions, they are not legal persons that are above the law governing all other organizations in any country, and if legal requirements exist for their establishment, they should also exist in relation to their dissolution. And, in that sense, the intervention of the courts is essential and undeniable if this is to be the case. They cannot be outside or above the law, as they have rights and obligations in the same way as any other entity.

**Government member, Honduras** – We welcome the information provided by the representatives of the Colombian authorities, through the Minister of Labour, on progress in compliance with the Convention.

We appreciate the efforts of the Government of Colombia to respond to the observations of the Committee of Experts, and particularly the progress made in combating impunity and protecting trade union leaders. These efforts have been recognized by the Committee of Experts.

We highlight the information from the Colombian Government on the reduction in the number of murders and the significant increase in convictions, which to date total 960. We believe that the examination and systematization of convictions, undertaken jointly with the ILO, is very important and we encourage the Office to continue this type of activity and joint work.

We welcome the progress in implementing the Peace Agreement, particularly the approval of the respective projects, the restitution of lands along rural roads, and the policies for persons formerly linked to armed groups who can be reintegrated into society. We highlight the establishment of the National Reintegration Register (RNR). We also draw attention to the measures adopted to ensure the collective compensation of the trade union movement.

We encourage the Government to continue working with the tripartite partners on the road map in order to make progress on the legislative matters that have yet to be addressed.

**Worker member, Uruguay** – The Workers are in complete disagreement with the idea that this is an ongoing case or a case of progress, not only because of the number of years that we have been denouncing what is happening in Colombia in terms of workers' deaths and murders, but also because of the figures that have been manipulated. In any case, in all likelihood what is ongoing or in progress is another death of a trade union leader or further repression of young people who want to demonstrate, but who instead lose eyes or end up maimed as a result of repression by state terrorism in Colombia, something that continues from one Government to another.

There are no human rights violations, there are no deaths or murders that are not related to the social struggle led by these young people and trade union leaders. Or in any case, if there are any cases that are not related, they are the exception. As a general rule, they suffer human rights violations while fighting for a better, more democratic, egalitarian and inclusive society. That is the struggle that Colombians have been pursuing for a very long time, despite the way they have been treated, namely through repression by state terrorism and by paramilitary groups with financing from who knows who.

Incidentally, speaking of funding, I want to be clear, once again, that for workers the right to strike is a fundamental pillar of freedom of association and, in contrast, trade union contracts are part of the trade union mafia. We have nothing to do with them, nor do they represent us, and there is a reason why employers defend trade union contracts.

Indeed, trade union contracts have nothing to do with the true trade union struggle, they are part of a mafia that we reject. Of everything that has been said by Governments and some employers, the only thing with which we agree is that much remains to be done. Therefore, we want the ILO to come down as hard as necessary on this hypocrisy and on this process that has been under way in Colombia for very many years.

**Government member, United States of America** – The United States Government and the Government of Colombia continue to cooperate closely to ensure the rights of workers. Since 2017, cooperation has intensified under consultations between points of contact under the US–Colombia Trade Promotion Agreement labour chapter.

We are encouraged by some of the Government’s meaningful efforts to better protect the right to freedom of association in Colombia, including increasing the number of labour inspectors in the career civil service and strengthening the legal framework for criminalizing threats against human rights defenders, such as trade unionists, by adding article 188(e) to the Penal Code in 2018.

However, significant challenges remain. The Committee of Experts noted with deep concern allegations of the persistence of anti-union violence, as well as slow progress to hold perpetrators accountable. Similarly, there are freedom of association challenges that the Ministry of Labour must address. Existing measures and mechanisms remain insufficient to prevent and investigate the violations of rights under this Convention. For example, between 2018 and 2020, there was only one instance of charges filed for the threatening of a trade unionist, and no convictions in cases under article 188(e) or 347.

We call on the Government to take immediate action to ensure freedom of association in both law and practice. To that end, this requires:

- further addressing homicides of trade unionists and ensuring a climate free from intimidation and violence by increasing efforts and resources to investigate, prosecute, and hold perpetrators accountable, including those responsible for ordering these acts;
- assessing and strengthening the effectiveness of section 200 of the Penal Code and its enforcement;
- ensuring a sufficient budget to adequately inspect for and sanction violations related to the right to freedom of association; and
- conducting directed inspections in priority sectors and ensuring fines are collected.

We value the collaborative relationship and credit the Government of Colombia for the progress to date. However, critical and urgent work remains to be done to address these long-standing issues. We remain committed to engaging with the Government in making necessary strides to advance worker rights in Colombia.

**Employer member, Honduras** – We are grateful for the information provided and we support the comments made by the National Employers Association of Colombia (ANDI) emphasizing that employers’ organizations, and in this specific case the ANDI, has not accepted and will not accept any type of threat, homicide, kidnapping or other form of violence or act of discrimination against the working class.

We endorse the call made by the ANDI to keep making efforts to strengthen social dialogue as a necessary tool for the reinforcement of democracy.

We urge the Government of Colombia to continue strengthening internal mechanisms and the expedited investigation and prosecution of those responsible for

crimes against trade union leaders and members. And particularly with a view to maintaining the efforts to seek a peaceful working environment, as noted by the Committee of Experts in its most recent observation in 2020, Honduran employers recognize the efforts made by the Government of Colombia to provide adequate protection to all trade union leaders and members who are at risk.

We request the Committee to consider this as a case of progress.

**Worker member, United Kingdom of Great Britain and Northern Ireland** – On 28 April, a mass protest coordinated by the Colombian trade unions took to the streets in many regions of the country. The protest grew and achieved its planned peak on May Day, a traditional day for trade union protest. Estimates range from many hundreds of thousands, to millions of people on the streets. The protests were targeted at proposed tax reforms, as well as growing inequality and the faithless lack of implementation of the country's peace process.

We note that, as provided for in the Convention, trade union rights include the right to organize public demonstrations, and that any intervention of the forces of order should be in due proportion to the danger to law and order.

However, human rights organizations monitoring the response to the protests have documented abuses by the authorities up to 31 May, including 3,700 cases of police violence, with at least 45 deaths of protestors, and 1,600 cases of arbitrary detention. There were also 25 victims of sexual violence, and 65 eye injuries. The latter prompted one Government-supporting senator to tell NGOs to, “stop crying over one eye”.

Police have also failed to stop private citizens opening fire on protests, in one case injuring ten indigenous protestors. There are also reports of protesters being taken to clandestine centres of detention, raising the risk of forcible disappearances.

On 28 May, the Government implemented a decree giving the armed forces a greater role in controlling protests. This draws on a section of the country's Police Code allowing “military assistance” “in the face of imminent risk or danger, or to confront an emergency or public calamity”. We note that this huge protest has been largely peaceful, and that there is no emergency other than that being caused by the Government's actions.

We note that the Government has attempted to portray legitimate protestors as terrorists and criminals to justify repression and reduce public sympathy. In a country where 65 social leaders have already been murdered in 2021, and where, since the Peace Agreement, 270 former Colombian Revolutionary Armed Forces (FARC) combatants have also been killed, this tactic not only undermines the freedom to protest, but places lives in real danger.

**Government member, Switzerland** – Colombia has been on the Committee on Freedom of Association's list since 1952. Over the past 70 years, the Committee on Freedom of Association has closed 167 cases, while 22 cases are still active and 25 cases are being followed up. Most of the complaints relate to allegations of violence against trade unionists and impunity.

Switzerland recognizes that significant efforts have been made by the Government to improve the situation over the years, but there has been a deterioration over recent months. The population of Colombia, as well as trade unions, are confronted on a daily basis by organized crime and other forms of criminality. This has the consequence of slowing down the sustainable development of a well-functioning economy and imperilling human rights and the rule of law.

Switzerland therefore calls on the Government to continue its efforts to eliminate all forms of violence against trade unionists, and particularly the murders, attempted murders, forced disappearances, death threats and homicides referred to in the reports of the Committee of Experts.

Switzerland is continuing to cooperate with Colombia in the various fields of economic development and at the same time expects Colombia to accelerate its draft reform of the Penal Code and the Labour Code, in consultation with the social partners, in order to bring them into full conformity with international labour standards.

Finally, Switzerland supports the conclusions and recommendations of the Committee of Experts and encourages Colombia to continue its efforts to promote social dialogue and ensure that it takes place in the necessary climate of confidence.

**Employer member, Norway** – Colombia has made significant progress in the process of protecting the right to organize. It is worth highlighting the progress in the prosecution of cases of deaths of trade unionists. Homicide rates directly related to the union function have decreased, considering the actions that have been implemented by the Government. Also, there has been progress in the professionalization of labour inspectors to protect the rights associated with freedom of association.

On trade union contracts and their impact on the application of the Convention, the Constitutional Court has reiterated the autonomy enjoyed by trade union organizations to enter into trade union contracts, which seek to promote the right to collective bargaining, while strengthening the right to trade union association, with the aim of generating jobs for the members of the trade union organization, in order to boost trade union activity.

Thus, the implementation of this bargaining model deepens the different types of agreement that can be reached in the framework of social dialogue to enable coordination and collaboration between employers and workers. To avoid the abuse of the trade union contracts, Colombian legislation has inspection, surveillance and control mechanisms that allow sanctions to be imposed in the event that illegal labour intermediation or the violation of workers' rights is proven.

The concept of trade union contracts does not go against the provisions of the Convention. In fact, this is a legal figure defended by trade union organizations because it allows them to maintain a constant dialogue with the employer; to have a greater number of members; and to generate greater benefits for the workers.

**Worker member, Spain** – On behalf of the workers of Italy, Switzerland, Netherlands, the Nordic unions, Germany and Spain, I am taking the floor in this Committee to place emphasis on the harsh situation of the working class in Colombia due to the continued anti-trade union policy which, even though it reflects that of various countries on the American continent, is at a more constant and violent level.

We observe with concern that the Government of Colombia resists compliance with the requirements of international standards and the ILO supervisory bodies, thereby impeding action to bring an end to discrimination against trade unions, despite the international support that has been provided to Colombia by this Organization.

The low rate of unionization in Colombia is a result of anti-union violence, as well as the precarious forms of contracts and the use of nefarious concepts which, although legal, are in violation of the principles of freedom of association.

On the one hand, we have collective bargaining with non-unionized workers known as "collective accords". Colombia registered no fewer than 222 collective accords in 2019,

despite the Committee of Experts warning that where there is a trade union in the enterprise, collective accords must not be concluded with non-unionized workers. On the other hand, we have the so-called “trade union contracts”, which also distort the nature of trade unions.

Faced with these violations of the Convention, we call for specific measures to be taken to guarantee the exercise of freedom of association, for the Government to make good on its commitment to strengthen trade unions, that it accepts the recommendations of this Organization and of other international human rights bodies and stops its acceptance of anti-trade union policies, which have only further aggravated the situation that is today criticized in Colombia.

We recall that peace only begins where work is born, with the right to defend it.

**Government member, Democratic Republic of the Congo** – The Democratic Republic of the Congo (DRC) has followed with great attention the cases of the violation of the Convention. The cases reported are in strategic sectors for the life of this country, that is in the fields of education, transport, mines, agriculture and energy.

With regard to anti-union violence, the Government of the DRC endorses the sad observation made by the Committee of Experts concerning the various cases of attempted murder, and indeed murders of trade union leaders, and surveillance and tailing by members of the Colombian army. However, the Government of the DRC observes that all of this violence is not a result of the management of trade union movements by the public authorities, but rather the general situation of insecurity.

It should be noted that the Government of Colombia has adopted measures for the collective compensation of the trade union movement and indemnities for trade unionists following the disproportionate response by the public authorities.

With reference to the issue of the time limits established for the most diligent party to appeal under section 380 of the Substantive Labour Code, in view of the divergence of views, the Government of the DRC invites the public authorities to make use of the virtues of social dialogue with all the social partners to find an appropriate solution. The Government of Colombia should also seek ILO technical assistance.

**Worker member, Bolivarian Republic of Venezuela** – The workers of the Bolivarian Republic of Venezuela observe with great concern the escalation of violence affecting companions in trade unions and other social organizations in the Republic of Colombia which, instead of decreasing, has increased constantly since September 2019, resulting in the International Trade Union Confederation (ITUC) and the Trade Union Confederation of the Americas (TUCA) making complaints against the Government for manifest negligence in the prevention of violence by criminal groups against leaders.

The Government of Colombia has resorted to a militarized response to social protest, in violation of the universal right to freedom to peaceful demonstration. Uniformed police forces, police officers in civilian dress and para-police forces stop demonstrations using violence and firearms and selectively detain citizens, who are then disappeared.

In this warlike situation, the Government has adopted Decree No. 575 imposing military assistance on 8 governors and 13 municipal mayors, under a de facto partial state of internal upheaval, which is a virtual coup d'état in the Republic of Colombia.

In this regard, the Inter-American Commission on Human Rights has recalled the international obligations of the State of Colombia in relation to internal security and inter-American standards, which provide that the participation of armed forces in



security operations must be extraordinary, subordinate, complementary, regulated and inspected, and that States shall respect, protect, facilitate and promote the right to social protest and any legitimate use of force shall abide by the principles of legality, absolute necessity and proportionality.

Venezuelan workers call on the Government of Colombia to respect the right to life, the right to organize in trade unions and the Convention, and from our country we send a big hug of solidarity to our Colombian companions.

**Employer member, Brazil** – The notable progress made in the country is clear since the last examination by this Committee in 2009, but what is strange is the inclusion of this case on the short list. In its report, the Committee of Experts recognizes and welcomes the Government's active commitment, the effectiveness of state action through inter-institutional coordination, the measures and budget allocated to the protection of trade unionists, the many criminal convictions when violent crimes are investigated and the constant consultation with the social partners. I welcome the detailed reports provided by the Government, with very good results, in resolving the concerns of the Committee of Experts. Colombia has benefited from constant ILO support and has made a tripartite commitment through initiatives and projects that it has led. Accordingly, when examining the case of Colombia, the Committee is assessing the effectiveness of the ILO itself on the ground.

With regard to the cancellation of trade union registration, I emphasize that the grounds and the judicial procedure are set out in the law, and their application is therefore rational and proportional. The cancellation of registration occurs through due process, by decision of a judicial authority through two instances. It is therefore in conformity with the Convention and is in line with the recommendation made by the ILO supervisory bodies.

Finally, the Committee of Experts refers to strikes, in relation to which I reiterate the position of the Employer spokesperson that the Convention does not contain or explicitly recognize the right to strike and that it is not therefore for this Committee to examine and reach conclusions on this subject, as the right to strike is regulated at the national level in Colombia by specific laws.

**Government member, Chile** – The Government of Chile endorses the intervention made on behalf of the significant majority of Latin American and Caribbean countries. We thank the Government of Colombia for the report on the progress made in giving effect to the observations of the Committee of Experts on the Convention. We join with the Government in rejecting any type of violence against anyone exercising important trade union activities.

We also wish to emphasize that the Governments of Chile and Colombia are important strategic allies in labour matters. We have worked jointly on subjects covered by our bilateral trade agreement, engaging in cooperation activities and the provision of technical assistance, as well as undertaking important activities to promote employability in the Pacific Alliance.

We encourage all the actors to continue working within the framework of social dialogue to achieve an agreement that benefits workers and to continue promoting bodies such as the Special Committee for the Handling of Conflicts referred to the ILO with a view to resolving differences between the tripartite partners through agreement. This Committee seems to us to be very important, and we therefore encourage the parties to continue working in that context.

Finally, we call on the Government of Colombia to continue its efforts to promote freedom of association and the protection of the right to organize in its territory, and to protect the exercise of trade union rights by the workers of Colombia.

**Employer member, Germany** – Let me make a couple of comments on behalf of the German employers. The Committee of Experts has recognized the significant progress and efforts of the Colombian authorities, both in terms of the protection of trade union members at risk, and in relation to the clarification and punishment of acts of anti-union violence.

Likewise, the Committee of Experts has recognized and welcomed in its report the active commitment of the State, the initiatives taken to strengthen the effectiveness of the State's action through inter-institutional coordination, as well as consultation with the social partners.

According to the information provided by the Government, significant progress has been made; proof of this is that, between 2002 and 2020, homicides against trade unionists have been reduced by 97 per cent and significant advances in the investigation and prosecution of crimes against union leaders and trade unionists have taken place.

The progress made and recognized by the ILO supervisory system is the result of the continuous work of social dialogue and of the activities and projects carried out with the support of the ILO.

Finally, I join my colleagues from the Employers who have spoken before me, and who will speak after me, in inviting the Colombian Government, workers and employers to continue advancing along the path of social dialogue and negotiation, which is ultimately the only one that really leads to true reconciliation.

**Worker member, Mexico** – We are concerned at and robustly reject the violations of the Convention and of ILO standards by the State of Colombia. According to the denunciations of the National Strike Committee and human rights organizations, during the period between 2020 and June 2021, hundreds of people, including trade union and social leaders, have been murdered, persecuted, disappeared and threatened for exercising their lawful right to peaceful social protest in support of labour and social rights in the country.

We consider it to be of the greatest importance for this Committee to urge the Government of Colombia to take all the necessary security and protection measures to guarantee the life and physical safety of our companion, Percy Oyola Palomá, President of the CGT, all the leaders of the National Strike Committee and, in particular, Colombian citizens.

This Committee must approve a high-level tripartite mission and request the State of Colombia to respect freedom of association and the right to collective bargaining, require the Government to ensure the effective implementation of social dialogue and tripartism, and establish on an urgent basis a dialogue and negotiation body on the six points of the emergency claims made by the National Strike Committee, including guarantees for peaceful protest and mobilization.

**Employer member, New Zealand** – I would just like to make two brief remarks in relation to this case. First, to highlight that, as we have been informed, Colombia has implemented a number of positive initiatives to advance the protection of union leaders and trade unionists, efforts that have been recognized by the Committee on Freedom of Association in the cases recently analysed.

The Committee of Experts and other ILO supervisory bodies have also noted with satisfaction the efforts made by Colombia and all of the institutions of that country to advance in the protection of trade union leaders and in the fight against impunity. For this reason alone, the case should not have been included on the Committee's list this year.

Secondly, in relation to the observations of the Committee of Experts regarding the procedures followed in Colombia for the cancellation of a union's registration, I would like to emphasize that, according to the information sent by the Government, this cancellation process is expressly carried out by judicial decision. In this sense, Colombian legislation is in line with what is recommended by the ILO supervisory bodies, which have indicated that "Cancellation of the registration of a union should only be possible through the courts." According to the foregoing, the current legislation and the established procedures do not violate the provisions of the Convention, and again, the Employers believe that there is no case to answer.

**Observer, International Trade Union Confederation (ITUC)** – The appalling situation in Colombia causes great concern. The workers of Hong Kong can share the pain of Colombian workers who are living through repression and violation of human rights. On 28 April, the National Strike Committee of Colombia, led by the most representative trade unions, called for demonstrations in response to the Government's regressive measures, including a tax reform that would increase inequality, as well as changes to the labour, pension and health systems. States are prohibited to employ lethal force and firearms against protestors. Law enforcement must also be framed by legality, absolute necessity and proportionality, but for 48 days of general strike, we have witnessed the following as of 31 May: 3,789 cases of violence caused by the security forces; 45 homicides committed by the police and military; 1,700 arbitrary arrests; 65 people suffering eye injuries from teargas rounds and rubber bullets and 25 victims of sexual violence committed by police officers.

The Colombian trade unions have repeatedly urged the Government to provide guarantees for peaceful protest, but President Duque's response was Decree No. 575 ordering the militarization of seven cities in the country, escalating the violence.

The very least we can ask of this Committee is to scrutinize the serious violations of human and trade union rights carried out in the context of the national strike. The ILO must have a chance to assess the criminal treatment given to social and labour disputes by this Government and recommend an urgent change to the protocols on the reaction to protests, so that they are modified in accordance with international standards.

Finally, this Committee can help trade unions in demanding guarantees for the right to peaceful protest. We should note that a proposal has been on the negotiating table between the Government and the National Strike Committee since 24 May, but the Government has refused to sign it.

**Observer, International Organisation of Employers (IOE)** – I am taking the floor as the Secretary-General of the IOE. During the period of over ten years when we have not examined this case in the Committee, we have been observing substantial progress in a country that was experiencing a very difficult situation of armed conflict, drug trafficking and ideological radicalism.

This progress has been a collective effort in defence of liberties, for the eradication of violence, to combat corruption and drug trafficking, and to protect trade union leaders and freedom of association. We have seen progress in these areas and a peace process

that was not simple, but was very inclusive, and we have also seen important developments in social dialogue.

The country has also seen economic and social progress, the arrival of investment and tourism, although it is clear that, in the same way as many other countries within and outside the region, the pandemic has resulted in a situation involving enterprise closures, job losses and social instability, which the Government is facing with difficulty in a complex context, that is not without episodes of violence of various types, which we do not deny.

But it cannot be doubted that the Government has taken and is continuing to send signals, take action and achieve results. It has accepted the recommendations of the ILO, in contrast with other countries, has financed the presence of the ILO in the country for years and has provided detailed information to the Committee of Experts and also to the Committee on Freedom of Association.

Colombia is a democracy and has demonstrated much progress for many years. It needs great support, not being singled out. This is our approach to the case.

**Observer, IndustriALL Global Union** – I am speaking on behalf of IndustriALL Global Union, the International Transport Workers' Federation, Education International and Public Services International to express serious concerns about the extreme violence in Colombia, with homicides of union leaders and members from all sectors.

Death threats targeting union and social leaders are not isolated incidents. They are rather part of an escalation of violence against civil society under the current Administration. In La Guajira, 226 permanent workers at a powerful multinational mining company were fired without any negotiated just transition measures for the affected workers, as the company alleged "sustainable measures".

The dismissal came as brutal retaliation for the successful 90-day strike carried out last year to refuse the dangerous work shifts introduced. Unions are not consulted as social partners, and we see COVID cases rapidly increasing in all workplaces. In the oil sector, in the largest state-owned company, leaders from the Union Sindical Obrera are blocked and refused entry to their workplaces in flagrant violation of the current collective agreement, using the excuse of the COVID pandemic. The company only allows the entry of scheduled workers, as if union leaders – who, by the way, are also employees of the company – have any impact on the contagion.

The Ministry of Labour alleges the lack of labour inspectors, but with no union leaders on the spot, workers' rights are trampled in impunity.

In line with the observations of the Committee of Experts and with the recent recommendations of the CFA in Case No. 3316 relating to the right to strike of airline pilots, the Government must bring legislative provisions about strikes in non-essential services, in the strict sense of the term, into conformity with the Convention.

In the light of the current escalation of state violence and brutal repression of legitimate civil protests against structural reforms, the Global Union aligns itself with the Committee of Experts' recommendations, namely, the Government of Colombia must take "all the necessary measures to ensure that all acts of anti-union violence, including homicides and other acts, ... are investigated and that the instigators and perpetrators are convicted".

**Government representative, Minister of Labour** – I have taken careful note of the various interventions by all those who have taken the floor, including those interventions

that have shown a political colouring. However, I thank them. I thank Governments, as well as Workers and Employers, for the comments that they have made.

Action to combat impunity and violence against trade unions has been a concern for the President of the Republic, Dr Iván Duque, who has given precise instructions to ensure the safety of trade union leaders. For this Government, the reduction by 96 per cent in the number of homicides is important, but we must continue protecting trade union leaders, as even one case, a single murder, hurts us and we reject it. That is why we are continuing with these efforts.

The Office of the Prosecutor-General of the Republic has developed a strategy for the investigation and prosecution of the crimes committed, including in relation to protests, based on 12 action lines.

The national Government respects the right to protest, as well as the right to strike, which have constitutional status. For us, peaceful mobilization is to be respected and protected. What we refute are acts of violence, which have violated rights, not only by demonstrators, but also by those who are not demonstrating. In many cases, the so-called blockades have been in violation of the fundamental rights of citizens, such as access to health, to food, to work and to freedom of movement throughout the national territory. As demonstrated by the commitment of this Government to respect human rights and the right of mobilization, the President of the Republic will present a reform of the national police to the Congress of the Republic.

More specifically, today we have referred to:

- Trade union contracts, which are a concept that is recognized in our labour laws, which have been considered in the National Council for Economic and Social Policy (CONPES) and which have helped to preserve many jobs. However, in the health sector, the Government has proposed a law for their elimination, which has been approved. The trade union confederations themselves asked for the draft legislation to be set aside. We have the political will to abolish trade union contracts in the health sector.
- Cancellation of trade union registration. It is important to emphasize that in Colombia, in contrast with many countries, trade unions have been very protected in this respect. According to our database on the trade union register since 1920 until now, that is a period of 101 years, there has only been one cancellation, through the courts. It is important to note that this concept is set out in the Labour Code and that the authority that has the competence to declare an organization unlawful, at the suggestion of the ILO itself, is the judicial authority.

We conclude as follows: we will continue to move forward in providing assistance, care and compensation to all the victims of the conflict and, for that purpose, within the next ten days, the Government will invest US\$39 million to compensate the victims of this armed conflict. I therefore reiterate my call to the ILO to continue providing support for the deepening of social dialogue, with all the partners in our country. As a Government, we believe in the power of this tool to seek alternatives that can improve the social and economic fabric.

We are emphatic in reaffirming that social dialogue is one of the fundamental pillars of our Government, and for this reason all our actions are characterized by the search for consensus and respect for the right to organize and freedom of association, and are supported by trade unions.

And in this specific endeavour, our institutions take immediate action. As soon as we became aware of the threats against our trade union delegate, who spoke today, we

immediately and publically refuted the threats. I personally took the necessary measures to reinforce his security plan. We take action when faced with any threat, and for this reason it is very important for us to be clear about our attitudes in relation to trade union leaders.

It has been said here that during the social protests over recent days, there have been murders of trade union leaders. We refute this allegation, which is unfounded. And for this reason we are surprised when it is claimed that difficulties exist in Colombia in exercising the right to organize.

The Government of Colombia has always worked hand-in-hand with the ILO. For this reason, now more than ever, and more than they tell us, we need the support of the international community to be able to move forward in the face of these situations. This is shown by the ILO report that indicates that Colombia, with 26 per cent, is the second country in the world (the first is Brazil) in terms of providing its own resources for cooperation and assistance projects.

This year, Colombia has allocated over US\$4 million to these projects.

I do not wish to leave without saying that I have heard that this is a serious Committee, that it has clearly established procedures. However, sometimes when certain interventions are heard, there appears to be a political dimension present. I do not believe that this Committee should allow itself to be influenced by these political opinions, and I believe that here we should express technical opinions in law, as it should be. We will therefore continue working with this commitment endorsed by the national Government in relation to the Convention that is under examination by the Committee. I therefore request the secretariat to remove all those comments that have nothing to do with the Convention that were made during today's sitting.

This is why we are still surprised that, even though we work hand in hand with the ILO, Colombia has been told that it is not in strict compliance with the provisions of the Convention.

We have presented progress, particularly on the issue of impunity and penal sentences, and we will continue working in this direction. There is much evidence that the history of the country has changed, which is also as a result of the cooperation provided by the ILO.

Accordingly, I would like to say one final thing. Colombia is experiencing acts of violence perpetrated by persons such as drug traffickers, violent individuals, mafias and others, who have infiltrated the protests. We therefore once again robustly refute violence. We condemn and will punish acts of violence against any Colombian citizen, whatever its origin, and we ask this Committee to listen carefully to the information provided in our interventions and the report of over 200, or 300 pages, that we have provided, and we will continue to inform the world, the ILO and governments and all those who seek any necessary information on what is happening in Colombia.

For this reason we are surprised by many statements, which seem to be ignorant about what is happening in the country. For example, it has been said that we are going to propose labour and pension reforms without prior discussion with the trade unions and employers. We have not proposed any draft legislation of this type. When these claims are made they therefore greatly surprise us.

We will continue to listen to all the voices of the international community, and we will listen not only to workers, but also employers, to move forward out of our social crisis.



At this time of protests, we are establishing a dialogue forum and we are commencing negotiation processes with the Strike Committee, in which many efforts are being made to change the social situation in the country, such as a basic income, formalizing many workers in the health sector, strengthening education and reinforcing everything related to the social aspects of informal workers in Colombia, which is our objective, for which I have requested ILO assistance, for example for the employment mission to help us create new opportunities.

As Colombians, we are currently seeking many avenues to work on and to improve conditions. A demonstration of the commitment of this Government to transparency is that over the past two weeks I was at the Inter-American Commission on Human Rights, from which we are hoping for results and support.

Colombia is keeping its doors open to the international community. We are not hiding anything at all and, quite the contrary, we reject these forms of violence on social media against the Government of Colombia.

**Worker members** – We must draw the attention of all participants of this Committee to the 1970 resolution of the International Labour Conference concerning trade union rights and their relation to civil liberties with regard to the relationship between human rights and trade union rights. We recall that, according to the Conference rules, it is the mandate of our Committee to examine the measures taken by Members to give effect to the provisions of Conventions to which they are parties. Therefore, our comments are within the scope of the Convention.

Regarding the suggestion by the Employers that we can rebuild the economy without full respect for fundamental rights, this is unimaginable and incompatible with the Constitution and mandate of this Organization, which is dedicated to social justice.

The report of the Committee of Experts clearly shows that, in the widespread nature of violence, trade unions are particularly targeted for their activities. Trade unions must be particularly protected. As the speeches we have heard today demonstrate, the Government has failed to comply with the observations and conclusions of various bodies of the ILO supervisory system with regard to the right to freedom of association and to organize. Sadly, it is not for lack of technical assistance or of resources, as the ILO and numerous governments have financed or carried out projects to improve industrial relations in the country, and to assist in the reduction of violence and impunity.

The brutal assaults on trade unionists and other members of civil society by the military and the police since late April further call into question the will of the Government to respect its obligations to this Organization.

I would underscore that what we are seeing now is only the current manifestation of a decades-long attack on trade unions. Workers, trade unionists and trade unions have suffered significant harm over many years, and the Employers must not minimize this situation.

Collective reparation is necessary. Necessary to overcome the severe damage of anti-unionism in Colombia. As part of the peace accords, Decree No. 624 of 18 April 2016 ordered the creation and regulation of the commission for the integral reparation of the trade union movement. However, the commission was not created until 23 October 2019, because of the pressure from the union confederations. It met on 30 October to adopt the protocols for the functioning of the commission, but it has not met again, nor has it advanced any of the tasks assigned to it.

Technical staff have not been hired to facilitate the work of the commission. There is no reason why much of the work could not have been carried out virtually during the pandemic. There appears to be insufficient will for the Government to make the progress that we all expect of it, so that workers can finally realize the promise of the fragile peace in Colombia.

Thus, to conclude, we would urge the Government to:

- First, confront anti-union violence by ending anti-union stigmatization and by publicly denouncing the murders of social movement and union leaders. With regard to impunity, the investigative units and specialized courts for the investigation and prosecution of crimes against trade unionists must intensify their efforts.
- Second, with the consultation of trade unions, adopt the necessary preventative and reactive measures to ensure the effectiveness and efficiency of the protection programme, including both individual and collective protective measures.
- Third, with the consultation of trade unions, adopt legislation that would prevent the use of sham union contracts that undermine the effective exercise of the right to freedom of association by legitimate trade unions.
- Fourth, ensure that the cancellation of union registrations is confined to serious violations of the law, after exhausting other less drastic means of action, and ensure that such measures are accompanied by all the necessary guarantees of normal judicial procedures.
- Fifth, enact the legislative measures which have been the subject of repeated comments of the Committee of Experts.
- Sixth, ensure that the commission for the integral reparation of the trade union movement is convened immediately and works diligently to fully carry out its mandate.
- Seventh, we will request that this Committee include its conclusions on this case in a special paragraph of its report.

**Employer members** – We have listened carefully to and taken note of the interventions of all those who took the floor. I give special thanks to the Minister and the Deputy Prosecutor-General for their interventions and the information provided, as well as Workers and Employers for their interventions.

I want to react emphatically to and reject the references made by the Worker spokesperson with regard to certain Employers present in the sitting of this Committee. The claim was made that we support the conclusion of economic agreements or seek economic development without respecting human rights. This was not said in the room and I do not know how the Worker spokesperson justifies it, but we reject it and we call for it to be withdrawn from the minutes of this Committee on the grounds that it is absolutely untrue.

I also wish to refer to the indication by the Worker spokesperson that he refutes that this is a case of progress. We are not seeking the endorsement by the Worker members of our opinion on this case and we will continue to argue that in our view there are sufficient elements for us to consider that it is a case of progress and we will need to see this reflected in the conclusions of the case.

Finally, I also wish to react to the comments concerning the protests in Colombia made by several of those who spoke on the case. It appears to us that this is outside the

scope of the comments by the Committee of Experts and we are therefore going to request and support the call made by the Government of Colombia for them to be removed from the minutes of this meeting..

In our view, the Government of Colombia has respected the supervisory bodies of this Organization and has reinforced the cooperation projects with the Office, financed totally by funding from the State of Colombia since 2006 when the Tripartite Agreement on Freedom of Association and Democracy was signed. The signing of the 2006 Agreement was a landmark for the ILO and particularly for the Government of Colombia and the workers and employers of the country.

As the Minister said, the history of Colombia has changed. Cooperation with the ILO, tripartism, social dialogue and total commitment, decided upon and articulated by all state bodies at the highest level, are key elements of this change.

Of course it is necessary to keep working and to do much more to achieve this possible recovery. The sustainability and confidence of civil society in institutions, a culture of collaboration rather than confrontation, the resolution of all types of disputes through dialogue, the balanced adaptation of labour laws developed collectively, respect for and the protection of the human rights of workers and employers, sustainable enterprises which create genuine, decent and productive employment and decent work are fundamental aspects.

We have before us a State that has worked, is working and wishes to continue working with the ILO and through dialogue as a central tool in the quest for concrete and measurable results with a positive impact.

We have before us a State that is committed to the ILO's international labour standards and their effective application in law and practice, with the ILO supervisory system, to which it contributes year after year.

We have before us a State that is seeking to consolidate sustainable enterprises and provide workers with the full guarantee of their rights to contribute to the development of a vibrant society, with productive, sustainable and resilient jobs, and decent work.

This Committee must recognize the positive efforts made by the Government with the social partners and request it to continue making progress and providing information on the subject in its next regular report. The ILO must continue supporting Colombia in the efforts that have been made for so many years so that progress continues to be made in compliance with the freedom of association set out in the Convention.

This Committee must also invite the Government to continue providing information on the progress made in investigations and their findings in its next regular report.

The Committee must also conclude that the reinforced regulation of the right of trade unions to organize in Colombia in relation to the cancellation of their registration by judicial means is in conformity with the Convention and in compliance with the objective of protecting trade unions.

## Conclusions of the Committee

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

**The Committee welcomed the efforts made by the Government in the application in law and practice of the Convention. The Committee welcomed the**

**positive steps the Government has undertaken to address the situation of violence in the country and encouraged the Government to continue to engage in measures to ensure a climate free from violence.**

**Taking into account the discussion and recognizing the challenges that remain, the Committee requests the Government of Colombia to ensure that the Standing Dialogue Forum for Collective Compensation for the Trade Union Movement is convened and works to fully carry out its mandate.**

**The Committee requests the Government to continue to report on all measures taken, in consultation with the social partners, in its next report.**

**Another Government representative** – We welcome the conclusions drawn up by the Committee. We wish to reiterate the commitment of the Government of Colombia to compliance with the obligations that we have assumed as a Member of this Organization.

We consider that the Committee is the cornerstone of the supervisory bodies, and its broad debates reflect its importance in the International Labour Conference. The objective of the Committee is to provide delegates with the opportunity to examine, through constructive dialogue, the compliance of States with the obligations that they have assumed under the Conventions that they have ratified. In our specific case, Convention No. 87.

We hope that the methods of work of the Committee will continue to be improved, and particularly the application of the rules indicated in document D.1, paragraphs 21, 29, 44 and 45.

The conclusions that the Committee adopts are very valuable tools for States which enable us to continue making progress in the application of international labour standards. We thank the Committee for recognizing the efforts made by the Government and we reaffirm our absolute will to continue working in defence of workers. We will not spare our efforts to continue making progress in the protection of fundamental rights. We hope to be able to continue counting on ILO support for the reinforcement of social dialogue in Colombia. Social dialogue is an effective and essential tool for the strengthening of democracy and social participation. We will continue working to guarantee freedom of association and the right to organize and to make effective progress in the collective compensation of the trade union movement.

**Kiribati (ratification: 2009)****Worst Forms of Child Labour Convention, 1999 (No. 182)****Written information provided by the Government****Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution**

The Government of Kiribati ratified the Convention for Worst Forms of Child Labour in 2009 indicating its strong stance to eradicate all worst forms of child labour in the country.

In 2015, the Employment and Industrial Relations Bill was adopted by Parliament and recently gazetted in 2019.

The Ministry of Employment and Human Resource responsible for implementation of this act has employed four inspectors. These inspectors have carried out a total of 526 inspections from 2017 to 2020. Out of these inspections, 303 of these businesses show continuous non-conformity to conditions of employment such as hours of work, unpaid wages and unfair terminations. In conducting labour inspections, inspectors have developed a schedule to conduct inspections of all businesses in Kiribati. The lists of registered businesses are provided by the Ministry of Commerce and Industry and Cooperatives. Labour inspectors are working with the Police Department for prosecutions of the more serious ongoing non-compliance. Till date the police indicate along with records of cases in judiciary that there are still no cases regarding prosecution on child labour.

Moreover, social partners along with relevant stakeholders in conjunction with the Government realize the crucial need of better coordination in combating worst forms of child labour.

**Clause (c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs**

The Government notes the lack of enforcement mechanisms in place in combating worst forms of child labour. Adoption of regulations on lists of light work and hazardous work will assist in combating activities relating to worst forms of child labour. Also future trainings and capacity-building for labour inspectors will ensure competency of officers in conducting awareness on activities prohibited in the EIRC and also in effective implementation/enforcement of the code.

**Clause (d) and Article 4. Hazardous work and determination of types of hazardous work**

While the Government acknowledges the findings from the studies conducted and reports submitted indicating that there are worst forms of child labour in Kiribati; the Government is still finalizing the amendment of the minimum age and preparing the reading of the Bill to enact the amendment in the upcoming Parliament session in August 2021, which will be followed by the finalization of the Regulation to List of Hazardous Works and Light Works for Children. The findings will be the baseline for these legislative reform initiatives as the Government shares the concern from stakeholders about the predicament of children working in these harsh conditions, environment and the impacts it will have on them, if they are not protected accordingly.

Labour inspections have not been extended to the private and informal sectors and in sectors indicated in the studies and reports to be the place where there is high risk of illegal child labour, such as in fishing vessels, kava bars, street vending, domestic works and night clubs. Recent discussions with the social partners in the 2019–20 Decent Work Advisory Board meetings, indicates a need for proper technical assistance in the development of tools and regulations for combating worst forms of child labour for these sectors. Labour inspectors also require proper capacity-building on this type of inspection to ensure these activities are clearly identified to ensure successful prosecution.

Domestic work such as toddy cutting and processing of seafood, working with uncontrolled animals are some of the normal occurrences in a traditional domestic setting of Kiribati societies and families. Regulating these works for children at a young age will be detrimental to the skill set required by the youth in order to survive on an atoll, especially for those living in the outer islands in rural settings as well as a breakaway from the norms of Kiribati culture. This is why the lists of hazardous work and light work regulations that the Government has stated earlier has been noted by the tripartite partners in the DWAB meetings to require further consultation to ensure that it is applicable to the context of Kiribati.

The Government however further reiterates the need for capacity-building for labour inspectors and the technical assistance required for development of an effective and contextual inspection system and procedure specifically for combating worst forms of child labour.

## **Article 5. Monitoring mechanisms**

The Ministry of Employment and Human Resource has already initiated discussion with the Kiribati Police Force and MWYSSA on a joint inspection programme to places considered of high risk. This includes places such as kava bars, night clubs and prostitution on foreign fishing vessels. Inspection in these high-risk areas however has not started. The Government notes the importance of the adoption of relevant regulations and the required training/capacity-building as crucial initially before commencing in these inspections.

## **Article 7(1). Penalties**

The Government notes the recommendation of the Committee in regard to the penalties imposed by the EIRC for cases of worst forms of child labour and ensure sufficient effective and dissuasive sanctions of imprisonment are applied for these cases. The Government will conduct consultations on this recommendation with the DWAB and provide updates in its next reporting cycle.

## **Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from these worst forms of child labour and ensuring their rehabilitation and social integration.** **Commercial sexual exploitation**

MWYSSA is currently developing a child protection referral pathway that will be coordinated by the Child Protection Working Group, that comprises key related ministries, the Kiribati Police Service, non-governmental organizations and communities. This pathway will be crucial to the protection of children in Kiribati. The bodies involved play a key role in providing protection and immediate assistance. The CPWG is still to be adopted by the Government.



Currently there no known cases of children who have been removed from commercial sexual exploitation and provided with rehabilitation and social integration.

**Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education**

The Kiribati Education Act stipulates for children of compulsory age to free enrolment and free education in primary and junior secondary schools. The Act also obligates parents to enroll children into schools each year during compulsory education periods. Children are also not to be refused enrolment on discriminatory bases such as gender, religion, race or disability. There are some key programmes conducted by the Government to ensure this is implemented, through capacity-building of teachers on inclusion and gender in education; measures also include the national curriculum based on inclusive education.

In addition, the AUSAID project Kiribati Education Improvement Program was initiated in 2010 and started its programme in 2011. The project was done in three phases, which involved the rehabilitation of primary schools in the outers islands, in the Line Islands and in South Tarawa. Some of the programmes also included providing technical assistance and funding in curriculum reformation, capacity-building for teachers at Kiribati Teachers Institutes and also in line with the inclusive education policy. The KIEP also played a key role in the construction of model schools around South Tarawa. These schools are constructed to cater for children with disability in providing them opportunities to attend school, with teachers and staff who are specially trained to cater for their needs.

**Discussion by the Committee**

**Government representative, Secretary for Employment and Human Ressources** – It is an honour to stand before this Committee but I regret that it is to present my Government's case on the Worst Forms of Child Labour Convention, 1999 (No. 182). It is unfortunate that Kiribati is considered to have some cases of the worst forms of child labour domestically. Recent national reports or surveys show findings of child labour in our country. However, it is important to note that some of the cases identified, such as toddy cutting, are intrinsic cultural practices critical to building resilient citizens and livelihood sustainability in our country, which is considered to be one of the least developed in the region. Prohibiting this practice for children at a young age may have serious implications among Kiribati communities.

Moreover, the Government strongly condemns all other forms of child labour and is currently working on improving monitoring systems for these types of activities. This can be noted in the report provided by the Kiribati Government that illustrates some of these developments, from policy and legislation reforms, better response systems in the form of referral pathways and better coordination with stakeholders.

The Government notes issues with information gathering and a centralized database, the need for capacity-building of labour inspectorates and associated implementing bodies, and for technical assistance for strengthening of legislation to ensure better implementation of the Convention.

The Government wishes to acknowledge the strong support of the ILO Regional Office in Suva. The technical advisers have made notable efforts that can be seen in, inter alia, the drafting and adoption of our Country Work Programme 2019–22, the technical

assistance provided to some of our legislative reforms that are still to be adopted by Parliament, and provision of training and capacity-building for officers involved in the implementation of ratified Conventions.

**Employer members** – This case deals with the application of a fundamental Convention: Convention No. 182. It is the first ILO Convention to achieve universal ratification by its 187 Member States. This is undoubtedly a historic achievement that we in the Employers' group welcome and have always supported. We also recognize that this debate is timely, given that this year marks the International Year for the Elimination of Child Labour.

However, regrettably, universal ratification does not mean automatic universal application in law and practice. This is the first time that the Committee is discussing the application of this Convention, which was ratified by Kiribati in 2009.

The Committee of Experts has made an observation and direct request pointing out the gaps in compliance in Kiribati in 2020.

We thank the Government for submitting supplementary information to the Committee, clarifying some issues regarding the application of the Convention. We regret, however, that this information was transmitted two days before the discussion of this case.

The observations of the Committee of Experts outline very serious issues of inadequate application of the Convention in Kiribati. Allow me to summarize them, focusing on two points.

First, in relation to Article 3(b) of the Convention prohibiting the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances, the Committee noted that section 118(f) of the Employment and Industrial Relations Code 2015, prohibited the use, procuring or offering of a child for prostitution, and established a penalty of a fine of US\$5,000, imprisonment of ten years, or both, for any person contravening this provision.

We note that the Government has provided information on the inspections of the Ministry of Employment and Human Resources conducted by four inspectors, amounting to a total of 526 inspections between 2017 and 2020. However, we are surprised that the Government has reported that there are no cases or convictions related to the aforementioned section 118(f) of the Employment and Industrial Relations Code.

In its observations, the Committee of Experts identified various reliable sources in which there is evidence of children aged 10–17 years engaged in prostitution. These sources include the ILO TACKLE programme in Fiji, the government report to the Committee on the Rights of the Child of March 2020 and the report of the Committee on the Elimination of Discrimination against Women.

The Employer members support the requests of the Committee of Experts for the Government to take the necessary measures to ensure that persons contravening section 118(f) of the Employment and Industrial Relations Code are investigated and prosecuted, and to supply information on the number of violations identified under this provision.

Second, the Committee of Experts' observations address the provisions of Article 7(2)(a) and (b) on preventing, removing, and rehabilitating and ensuring social integration of children involved in the worst forms of child labour. We note that the Committee of Experts had previously requested the Government to strengthen its efforts

to prevent the commercial sexual exploitation of children in the country and to provide information on the measures taken to remove children from this worst form of child labour.

Two days ago, the Government presented some relevant information on the measures taken in this regard. We welcome these efforts and the commitment to tackle these extremely serious issues. We encourage the Government to continue working with the social actors and international development cooperation organizations to prevent the exploitation of children even in unfavorable socio-economic circumstances.

The Employer members also encourage the Government to, as a matter of priority, continue raising awareness in the community of child labour, and building capacities of labour inspectors, social workers and the private sector. Further, taking into account the role of education in preventing the worst forms of child labour, the Employer members suggest that the Government intensify its efforts to facilitate access to free basic education for all children, especially girls, by increasing enrolment rates and decreasing school dropout rates.

The Employer members once again thank the Government for the written and oral information submitted to the Conference Committee. We note that the Office has a number of programmes for countries where child labour exists. We encourage the Government to request this technical assistance of the ILO to strengthen the capacities of the tripartite constituents, with a view to applying effective strategies and eliminating the worst forms of child labour, following timely and effective consultation with the social actors.

To conclude, we wish to highlight that, to achieve Goal 8.7 of the Sustainable Development Goals to eliminate the worst forms of child labour by 2025, all governments, employers' and workers' organizations, and the ILO must continue working together.

**Worker members** – This is the first time that our Committee is examining the application of Convention No. 182 by the Government of Kiribati. We note that Kiribati ratified the Convention in 2009 and that, since it first reported on the application of the Convention in 2013, the Committee of Experts has been raising the same serious concerns regarding the persistent issue of the use, procuring and offering of a child for prostitution. The situation in Kiribati is deeply worrying as sexual exploitation of girls persists.

Crew members of foreign fishing vessels account for much of the demand for children in the commercial sex sector. These girls generally receive financial support – food, alcohol, or goods – in exchange for sexual services with local collaborators. Detailed information on child prostitution is unfortunately scarce, as the Government does not provide sufficient data to assess the situation. The Rapid Assessment on Child Labour in Tarawa conducted by the ILO International Programme on the Elimination of Child Labour (IPEC) in 2012 found that, out of the 61 children identified as being involved in child labour, 33 were involved in commercial sexual exploitation.

We note with concern that section 118(2) of the Employment and Industrial Relations Code 2015, which provides penalties for the worst forms of child labour, establishes a penalty of a fine of US\$5,000, or a term of imprisonment of ten years, or both, for any person engaging in the use, procuring or offering of a child for prostitution or for pornographic or pornographic performances. We echo the Committee of Experts' comments that given the seriousness of these worst forms of child labour and the

dissuasive effect that the penalties should have, legislation providing for the possibility of a fine alone cannot be considered effective.

Based on information made available by the Government in 2020, cases of child prostitution tend to go unreported because girls are considered not to be forced and the community at large does not have a clear understanding that this is illegal and dangerous. The absence of any reported cases or convictions relating to the use, procuring or offering of a child for prostitution or for pornography or pornographic performances is all the more concerning and clearly points to serious gaps in measures implemented by the Government to prevent the engagement of children in the worst forms of child labour and to punish perpetrators.

With regard to child protection measures, we note the Government's indication that the Kiribati community police patrolled during the night to keep children off the streets in order to prevent and remove child victims from commercial sexual exploitation.

We also note the awareness-raising activities conducted among owners and members of kava bars who employ underage girls to work at night, and the provision of advice and counselling to these children which empowers them to integrate into the community, including through education and awareness-raising on the risks of alcohol.

We further note the Child Protection Referral Pathway currently under development by the Ministry of Women, Youth, Sports and Social Affairs. We welcome the efforts made to improve education, and the teaching system and infrastructure, so as to facilitate access to education for children. These measures are of paramount importance to prevent the engagement of children in the worst forms of child labour and to remove them from such forms and ensure their rehabilitation and social integration.

However, to achieve results, such measures must be supplemented with strong monitoring and inspection mechanisms. In this regard, we note the Government's written information that there are only four inspectors charged with enforcing the Employment and Industrial Relations Code and they lack training and capacity to monitor and eliminate child labour issues.

We also take note of the ongoing discussions between the Ministry of Employment and the Kiribati police force to conduct joint inspections in areas where there is a high risk of worst forms of child labour, such as foreign vessels, kava bars and nightclubs. While we welcome these positive initiatives, we would like to underline that stronger enforcement measures are long overdue and that the Government of Kiribati must take immediate measures to ensure the enforcement of the pertaining legislative, including through sufficiently resourced and trained labour inspection services.

Concerning hazardous work, we are deeply concerned that, according to the Kiribati National Statistics Office, around 15 per cent of children aged between 5 and 17 years are working under hazardous conditions. We refer to the ILO IPEC Rapid Assessment of 2012, which revealed that children were occupied in activities such as stevedoring, loading and unloading of cargo ships, and some hazardous fishery work, selling goods on the streets, working in mechanical garages or boat sheds, and mixing cement.

We note that the list of hazardous types of work prohibited for children under 18 years of age was developed by the Ministry of Employment with the assistance of the ILO and is currently pending the upcoming Parliament session in August 2021. We call on the Government to expedite the adoption of the list of hazardous types of work, in line with the Convention, and to conduct regular labour inspections to detect violations and impose dissuasive sanctions.

**Worker member, Kiribati** – I stand here for the protection of the rights of workers, which depends not only on a strong legislative structure but also an effective enforcement mechanism.

Kiribati ratified the Convention in 2009. The Employment and Industrial Relations Code 2015, section 118(f), prohibits the use, procuring or offering of a child for prostitution. A penalty of \$5,000 or a prison term of ten years, or both, is stipulated for its contravention.

We note that several reports from international institutions such as ILO, IPEC and the UN Fiji Country Team, which covers Kiribati, have drawn attention to the engagement of children in prostitution, including on foreign boats, which is the most common place for children in prostitution. Unfortunately, no case or conviction relating to section 118(f) of the Employment and Industrial Relations Code 2015 has been reported by the Government to the Committee of Experts. It is very clear that the Government's failure to provide information to the ILO supervisory bodies is a serious neglect of responsibility. We also concur with the view that an ineffective inspection system does not benefit anyone.

In addition, gaps also exist in Kiribati's legal framework to adequately protect children from the worst forms of child labour, working in hazardous occupations, activities prohibited for children, as well as child trafficking. Kiribati has not identified in national law or regulations the types of hazardous work prohibited for children. Under section 116 of the Employment and Industrial Relations Code, the activities and hours of work per week that are acceptable for children engaged in light work are not specified. The law is also silent on the conditions under which light work can be undertaken. Kiribati's laws prohibiting child trafficking are insufficient because they do not specifically prohibit trafficking of children domestically.

Please allow me to give some examples from the ground to illustrate how serious the existence of the worst forms of child labour is in Kiribati. Currently, it is not unusual to go shopping at night and you will see one or two children selling handmade jewellery or local products. The children are being abused by their guardians or parents. In the kava bar, you will often see children either roaming around or sitting in the bar with customers. Concerning commercial sexual exploitation, young girls from the age of 14 will board foreign fishing boats in the port and offer themselves to the crew for gifts or money in return.

It is therefore necessary for this Committee to intervene urgently to prevent children from being engaged in these activities. Commercial sexual exploitation of children in Kiribati must end. Above all, the Government of Kiribati has to strengthen its efforts to prevent the worst forms of child labour. The Government must take the necessary steps to remove children from the worst forms of child labour, including the use of a child for prostitution. These measures include:

- strengthening the labour inspectorate and initiating targeted inspections based on an analysis of data related to high-risk sectors and patterns of serious incidents;
- establishing a mechanism to coordinate the Government's efforts to combat the worst forms of child labour;
- enhancing efforts to eliminate barriers to education and ensuring access to education for all children;
- implementing social programmes to address the worst forms of child labour, including in construction and street vending;

- ensuring that persons contravening section 118(f) of the Employment and Industrial Relations Code 2015 are investigated and prosecuted; and
- consulting with trade unions and social partners to prepare a plan to implement these actions.

I call upon the Government of Kiribati to act in compliance with the Convention.

The workers in Kiribati expect our Government to live up to the international commitments it has made pertaining to the ratification of this and other international labour Conventions.

**Government member, Portugal** – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The Candidate Countries **Montenegro** and **Albania**, the EFTA country **Norway**, member of the European Economic Area, as well as the **Republic of Moldova** 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, together with freedom of association and the abolition of forced, compulsory and/or child labour.

We actively promote the universal ratification and enforcement of fundamental international labour standards, including Convention No. 182 on the abolition of the worst forms of child labour. 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.

We thank the Office and give our full support for its constant engagement in promoting labour rights in Kiribati, equal treatment and elimination of discrimination and forced and child labour.

We note with deep regret the reported persistence of child labour, also in its worst forms, particularly the prostitution of underage children and the commercial sexual exploitation of children. The Government must step up its efforts to eradicate these worst forms of child labour.

We support the Committee of Experts' observations, and we urge the Government to take the necessary measures to ensure that persons contravening the Employment and Industrial Relations Code that prohibits the use, procuring or offering of a child for prostitution are investigated and prosecuted.

We also call on the Government to supply information on the number of violations identified, prosecutions and convictions, and the penalties imposed.

The EU and its Member States welcome the provision of expanded counselling and guidance in resolving problems related to commercial sexual exploitation of children, as well as awareness-raising activities by the Ministry of Women, Youth, Sports and Social Affairs. We welcome the reported decrease in the number of girls working in kava bars.

We urge the Government to continue to take all the necessary measures to prevent the engagement of children in commercial sexual exploitation, and to take the necessary steps to remove children from this worst form of child labour, to rehabilitate and integrate them socially and economically, and to provide compulsory and free education at the primary and secondary levels for all children.

We request the Government to provide information on the aforementioned, as well as on the number of children under 18 years of age who have actually been removed from commercial sexual exploitation and provided with appropriate care and assistance.



With reference to the child labour-related ILO Minimum Age Convention No. 138, we welcome that Kiribati is one of the 173 ILO countries, which have already ratified this crucial Convention, despite the specific challenges of small island States. We hope that this positive example of Kiribati's ratification encourages the remaining 14 ILO Member States to also proceed towards ratifying this important Convention in order to achieve universal ratification.

We call on the Government to develop its legislation and ensure its effective enforcement with the view to eliminating child labour, including in the informal economy. The EU and its Member States will continue to support the Government of Kiribati in this endeavour.

**Worker member, Australia** – The Convention places a spotlight on forms of child exploitation so egregious and damaging in their effects that they deprive young people of their childhood. One of the worst forms of child labour is child prostitution. Culturally, the children of Kiribati are at the heart of its society. Despite their cultural importance, many children remain vulnerable and risk losing their rights because of child prostitution, particularly in the poorer islands and regions. The 2012 Rapid Assessment on Child Labour in Tarawa found that, out of the 61 children identified as being involved in child labour, 33 were involved in commercial sexual exploitation.

The current criminal law prohibits the procurement of any girl younger than 18 for the purpose of prostitution and prohibits using a child of either gender younger than 15 years for prostitution. In both cases, the maximum penalty is two years imprisonment. The sexual exploitation of girls continues to be a problem, with girls as young as 15 reportedly exploited in prostitution in local kava bars and hotels.

Crew members of foreign fishing vessels account for much of the demand for children in the commercial sex sector. Hotel and bar workers in the wharf area facilitate the exploitation of girls in sex trafficking by providing a venue for prostitution. Often the venue for prostitution is on the foreign fishing vessels themselves.

In 2010, it was made a licensing condition for fishing in the waters off Kiribati that “unauthorized personnel are prohibited from boarding fishing vessels”. The wharf was patrolled by police but the law has not been rigorously enforced by identifying and combating child prostitution on board the vessels.

Of course, poverty is a driver for the sexual exploitation of girls in Kiribati. The girls generally receive financial support, food, alcohol or goods in exchange for sexual services. Some family members of potential victims, older women, and hotel and bar workers facilitate the exploitation of girls in sex trafficking.

We join the Committee of Experts to request the Government to ensure rigorous enforcement of the law with respect to child trafficking and prostitution. The Government should also take steps to remove children from commercial sexual exploitation and to rehabilitate any child who has been the victim of commercial sexual exploitation.

**Employer member, Colombia** – At the outset, I consider it important to highlight the fundamental character that, as employers, we attribute to the Convention, which aims to protect children, the most vulnerable members of society. With the adoption of this Convention, the ILO recognized this issue as fundamental at both the national and international levels. And, with this standard, a solution was sought to a particularly aberrant situation. Hence its quick and unanimous adoption by the ILO.

The Convention addresses the worst forms of child labour and is a clear and unquestionable wake-up call to all Member States to take urgent and comprehensive measures. In accordance with Article 7 of the Convention, the Government must take the necessary measures to ensure its effective implementation and enforcement, in particular, through the application of penal sanctions.

The Committee of Experts indicated in its report that section 118(f) of the Employment and Industrial Relations Code 2015 prohibited the use, procuring or offering of a child for prostitution, and established a penalty of a fine of \$5,000 or a term of imprisonment of ten years.

To date, however, there have been no reported cases or convictions arising from the violation of this provision. This is despite the fact that the Government stated in its report to the Committee on the Rights of the Child of March 2020 that there are indeed cases of girls who are victims of sexual and commercial exploitation in the country. While the provision setting out a punishment of imprisonment indicates good progress in the application of the Convention, there is no evidence that this measure is effective or any type of punishment has been imposed. We therefore request the Government to commit to effectively implementing and enforcing criminal legislation and to supply information demonstrating the practical application thereof.

Lastly, we request the Government to, with ILO technical assistance and by means of various existing international cooperation mechanisms, continue making progress to align law and practice with the provisions of the Convention and, as a matter of urgency, ensure the elimination of the worst forms of child labour in the country.

**Worker member, Malta** – The complaint before us is brought under the only ILO Convention ever to achieve universal ratification, and it is vitally important that, having been so widely ratified, implementation follows because if a Convention that has been universally ratified does not get properly and fully implemented, it undermines the campaign in which we all participated to achieve that level of ratification.

In addition, child labour is one of the worst forms of exploitation, stealing what should be a learning and growing experience from the next generation. In this case, where sexual exploitation is involved, we have also to be conscious that such sexual abuse of minors is also an act of violence, producing potential physical, as well as mental harm that can last a lifetime.

I do not have to make the case to this Committee that sexual abuse of young women is abhorrent and unacceptable. But what the Committee does have to be conscious of, in its conclusions, is that merely identifying a problem without tackling it is also unacceptable, and that tackling this problem requires not only information, enforcement and the provision of rehabilitation and integration, especially through education, but also the provision of alternative sources of income as a vital element towards the elimination of the worst forms of child labour.

I am pleased to see that the Government of Kiribati has at least identified the problem, and has taken some steps in both the commercial fishing industry and the hospitality sector to educate employers. Ignorance of the law is no excuse and the Government of Kiribati seems to have taken steps to ensure that people are no longer ignorant. Knowledge of the law does not, however, necessarily imply compliance with it and young women will still suffer exploitation, abuse and violence until the laws are enforced. They will still be prey to this sort of behaviour until viable alternatives exist which ensure that these youngsters are learning and growing, not suffering.

My colleagues in the trade union movement in Kiribati are as keen as we are to see the end of these practices, the employers who are enabling and allowing this to happen held to account, and the perpetrators prevented and punished. They have a role, as educators, children's advocates and parents and guardians, in stamping out this worst form of child exploitation.

We look to the Government to take the steps outlined by the Committee of Experts, and we look to the Conference Committee to recommend that the Government of Kiribati do what the Committee of Experts advises.

**Employer member, Argentina** – We note that the Government acknowledges the findings from the studies and several reports indicating that worst forms of child labour exist in Kiribati.

We welcome the information submitted by the Government regarding the inspections carried out from 2017 to 2020. However, we regret that no information was reported regarding the cases or convictions related to the use, procuring or offering of a child for prostitution, penalized in section 118(f) of the Employment and Industrial Relations Code 2015.

Consequently, we echo the call for the Government to:

- take the necessary measures to ensure that, in practice, timely and thorough investigations and prosecutions are carried out; and
- provide timely information on the number of violations under this provision, the persons prosecuted and convicted, and the penalties imposed.

Regarding the prevention of the worst forms of child labour and rehabilitation measures, we underline the importance of awareness-raising actions within the community, as well as capacity-building policies for social actors, labour inspectors and social workers.

We also echo our Employer spokesperson and encourage the Government to continue working as a matter of urgency with the international development partners and social actors to prevent the exploitation of children, particularly in the context of adverse socio-economic circumstances. We especially encourage the Government to seek ILO assistance, as the Office has developed extensive knowledge, experience and accumulated capacity among its experts on the topic.

Finally, we hope to see the Government's commitment result in action as it provides further information on the measures taken to change the lives of the children who remain vulnerable to these worst forms of child labour.

**Observer, Education International (EI)** – Education International represents almost 400 education unions, including the Kiribati Union of Teachers. Where social partners, including teacher unions, are comprehensively involved and supported in initiatives to eradicate child labour, the results are impressive and sustainable.

In the Committee of Experts' report, the Ministry of Women, Youth, Sports and Social Affairs of Kiribati stressed the need to ensure integration of working children, including through education. We support the Government's willingness to create a conducive climate to protect children and adolescents. The Committee of Experts requests the Government to continue to take measures to prevent the engagement of children in commercial sexual exploitation. It also requests the Government to take steps to remove children from the worst forms of child labour, as well as to rehabilitate and socially integrate them.

Ensuring that all children fully enjoy their right to education until the minimum age of compulsory schooling is key to eradicate child labour. Together with the Kiribati Union of Teachers, Education International requests that the Government increases funding towards public education, and that the Government includes awareness of child labour in the teacher training curriculum, so that teachers are professionally trained, empowered and supported to welcome children removed from child labour back into school and provide them the necessary attention and encouragement.

We request that specific gender programmes are developed by the Government to proactively protect girls and disadvantaged communities from being trapped in prostitution networks. The preventive provision of education and vocational training opportunities must be offered to girls and young women.

Finally, we recommend that the ILO provide technical assistance, including through a continuation of the ILO-IPEC initiatives through the TACKLE programme.

**Government representative** – In closing, the Government of Kiribati takes into consideration the recommendations of the Workers' and Employers' groups and the Committee. It will also take into consideration further administrative support for labour inspections on child labour so that these types of activities are eliminated prior to 2025.

The Government will also ensure better coordination with related government bodies, social partners and non-governmental organizations in monitoring and eliminating child labour in Kiribati and, in order to attain this, it wishes to underscore the support that is required from the ILO in capacity-building and technical assistance with regard to effective and best measures and tools in combating the worst forms of child labour in Kiribati.

**Worker members** – We thank the Government of Kiribati for its oral and written comments. We also thank the speakers who took the floor for their contributions to the discussion.

The Worker members deplore and condemn the persistence of the worst forms of child labour in Kiribati, including the commercial sexual exploitation of children and the use, procuring and/or offering of a child for illicit activities and for the production or trafficking of illegal drugs. We also regret the absence of any concrete information on the incidence of the worst forms of child labour in the country and on the impact of the measures adopted to address them.

We recall that the Committee of Experts has been expressing the same concerns for the past eight years and, so far, little progress has been made to prevent children from falling into the worst forms of child labour, to protect them and remove them from these worst forms, and to prosecute and sentence any person engaging in these worst forms.

While we welcome the efforts of the Government to adopt a legal framework criminalizing the worst forms of child labour in 2015, we note that in over six years, no cases related to the worst forms of child labour have been reported. This points to severe gaps in enforcement which should be addressed by the Government of Kiribati as a matter of urgency.

We recall that without strong and comprehensive implementing measures, the legal provisions adopted will remain ineffective. Therefore, we call upon the Government of Kiribati to strengthen its monitoring and enforcement mechanisms, including through regular inspections in areas where there is a high risk of worst forms of child labour, such as kava bars and nightclubs. In this regard, labour inspection services should be adequately staffed and trained, and sufficient resources should be put at their disposal.

We also call on the Government to investigate and prosecute perpetrators of the worst forms of child labour, including child prostitution or child pornography, through the establishment of formal procedures to proactively identify trafficking victims among vulnerable populations and refer them to protective services.

We invite the Government to review section 118(2) of the Employment and Industrial Relations Code 2015 to ensure that penalties for any person engaging in the worst forms of child labour are sufficiently dissuasive.

We encourage the Government to pursue and strengthen its efforts to facilitate access to basic free education, as well as its education and awareness campaigns on the issue of child prostitution in Kiribati, particularly in well-known meeting places of foreign crew members and, finally, we call on the Government to adopt a list of hazardous work activities prohibited for children in line with the Convention.

We call on the Government of Kiribati to avail itself of the assistance of the ILO.

**Employer members** – In closing, we, the Employer members, wish to recall that last Saturday was the World Day Against Child Labour. Recent global figures indicate that child labour currently affects 160 million children, including 63 million girls and 97 million boys, which is the equivalent of almost one in ten children worldwide. It is estimated that an additional 9 million children will be working by the end of 2022 as a result of increasing poverty, driven by the current pandemic.

We have heard some extremely serious allegations relating to this case and we cannot turn a blind eye to child labour practices, let alone the persistence of cases of the worst forms of child labour.

The Employer members would again like to thank the Government and the workers for the useful information provided on the application of the Convention. We would also like to thank the delegates for their participation in this case and their ideas. We are pleased to learn of all the measures undertaken by the Government of Kiribati to confront this persistent and serious problem.

The Employer members hope that the Government's commitment will continue resulting in concrete and effective measures that can ensure the protection of the high number of children who remain vulnerable to trafficking and commercial sexual exploitation and that we may soon witness significant progress.

In the light of the debate, the Employer members invite the Government to step up its efforts and explore new ways of combating child labour and its worst forms and to tackle the root causes of the problem. We recommend that the Government intensify its efforts to ensure that any form of child labour and its worst forms ceases to be a reality in the country, adopt effective measures to ensure that persons contravening section 118(f) of the Employment and Industrial Relations Code 2015 are investigated and prosecuted in a timely and proper manner, prevent the engagement of children in commercial sexual exploitation, and rehabilitate and socially integrate the victims.

We invite the Government to provide the Committee with up-to-date information on the number of investigations, prosecutions, convictions and sentences imposed during the regular reporting period and to avail itself of any ILO technical assistance that it may need, 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 representative and the discussion that followed.**

The Committee deeply deplored the persistence of the worst forms of child labour in the country, including the commercial sexual exploitation of children and the use, procuring or offering of a child for illicit activities, in particular for the production or trafficking of illegal drugs.

Taking into account the discussion, the Committee urges the Government of Kiribati to take effective and time-bound measures to:

- intensify its efforts to ensure that any practice of child labour and the worst forms of child labour are no longer a reality in the country, notably by strengthening its monitoring and enforcement mechanisms, including through regular and sufficient inspections in areas where there is a high risk of the worst forms of child labour;
- effectively investigate and prosecute perpetrators of child prostitution or child pornography, including through the establishment of formal procedures to proactively identify victims and refer them to protective services;
- review section 118 of the 2015 Employment and Industrial Relations Code (EIRC) to ensure that penalties for any person engaging in the worst forms of child labour are sufficiently dissuasive;
- take all measures to prevent the engagement of children in commercial sexual exploitation as well as to rehabilitate and socially integrate victims of this practice, including by pursuing and strengthening its efforts to facilitate access to basic education; and
- pursue and strengthen its education and awareness campaigns on the issue of child prostitution in Kiribati.

The Committee invites the Government to avail itself of technical assistance to realize full compliance with the Convention. The Committee calls on the Government to provide up-to-date information in this regard, including the number of investigations, prosecutions, convictions and penalties imposed, to the Committee of Experts before its next session in 2021.

**The Government of Kiribati** transmitted a message that read as follows:

Unfortunately, our Government representatives will not be able to attend the sitting of the adoption of conclusions due to unforeseen circumstances. However, the Government of Kiribati thanks the ILO for its ongoing support and the Conference Committee for its critical role in assisting our country in identifying ways towards the effective implementation of ratified Conventions. These Conventions are crucial to ensuring decent work in Kiribati. We also kindly reiterate that our country would welcome assistance, technical support and capacity-building.



## Plurinational State of Bolivia (ratification: 1977)

### Minimum Wage Fixing Convention, 1970 (No. 131)

#### Discussion by the Committee

**Government representative, Minister of Labour, Employment and Social Welfare** – The Plurinational State of Bolivia has been a Member of the ILO since 1919 and is the signatory of various Conventions adopted by successive sessions of the International Labour Conference, including the eight fundamental labour Conventions.

The Government of the Plurinational State of Bolivia, respectful as it is of its commitments and also of international standards in the field of human rights, has adopted, as a recurrent practice since 2006, the application of an ambitious labour policy for the dignity and recovery of the social and labour rights of workers, the effects of which can be seen in the reduction of unemployment rates and an increase in the minimum wage of approximately 380 per cent.

The Plurinational State of Bolivia confirms that it has adopted machinery aimed at the direct participation of both employers and workers in minimum wage fixing and the formulation of development policies, enabling participation on an equal basis for both sectors.

Despite these measures, the Confederation of Private Employers of Bolivia (CEPB) makes a complaint in public every year that it is not taken into consideration in consultations, citing supposed non-observance of the Convention, but at the same time it also makes its irreconcilable position public in dismissing the Government's proposals on minimum wage fixing, including rejecting well in advance the clear possibility of establishing a consultation round table that would ensure uniform criteria, bring positions closer and substantiate the Government's position that it is only with work and a decent wage that better conditions can be achieved, in terms of both productivity and living standards, not only for those of us from the working class but for society as a whole.

A clear example of the fact that our State is characterized by the promotion of constant and unconditional dialogue with absolutely all the social partners, with a view to appropriate and balanced decision-making to address the needs and interests of the community as a whole, dates back to 2019, before the democratic period was abruptly interrupted. On this occasion, working round tables were established with both the employers and the workers.

It should be noted that on 25 March 2019 a meeting was held between the CEPB and ex-President Morales, accompanied by several Ministers of State, in which the discussion specifically focused on topics of national economic development, fully in line with Article 3(b) of the Convention, which provides that the elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include:

...

- (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

After this meeting, the CEPB president, Mr Luis Barbero, said, and I quote: “It was a positive meeting where the private business sector was able to express concerns and also our willingness to work for the Plurinational State of Bolivia.”

Another meeting was then held on 30 April 2019 with the private employers of the Plurinational State of Bolivia, at which aspects of taxation were discussed with the aim of assisting productivity levels in the sector. Under these circumstances, the complaint of the employers, who, as has been shown, are party to the Government’s consultations on minimum wage fixing, actually appears to be a complaint against social justice, which is a fundamental pillar of the Plurinational State of Bolivia and is precisely the key point of Article 3 of the Convention. However, the Government has always taken measured and responsible action in this respect, constantly taking into consideration national realities and the economic conditions of the workers’ and employers’ sectors.

In the Plurinational State of Bolivia, minimum wage fixing is not an arbitrary or discretionary measure. On the contrary, it is done strictly in accordance with the legislative provisions in force, namely:

- Article 49(II) of the Political Constitution of the State, which provides that the law shall regulate employment relations, including collective contracts and agreements, general and sectoral minimum wages and wage increases, reinstatement, paid hours of rest and public holidays, calculations of seniority, hours of work, overtime, extra pay for night and Sunday work, various types of bonus or other company profit-sharing systems, compensation and dismissal, maternity leave, vocational training and other social rights.
- Moreover, article 298(II)(31) of the Political Constitution provides that labour policies and systems are the exclusive competence of the central level of the State.
- Furthermore, section 52 of the General Labour Act provides that: remuneration or wages is what is received by employees or workers as payment for their work; wages may not be set at a level lower than the minimum wage, which, according to branches of work and areas of the country, shall be fixed by the Ministry of Labour; and wages shall be proportional to the work, without distinction as to sex or nationality.

As the Committee can see, the position adopted by the Government is not at odds with the legislation. On the contrary, it is supported by the principle of intervention which the Government must undertake in order to guarantee a fair wage to all persons. It is also backed up by the doctrine of Mr Guillermo Cabanellas, who states that the interventionism of the State preferably finds expression in the setting of maximum hours of work and minimum periods of rest, the fixing of minimum wages, and compensation for unjustified dismissal.

In addition to all these arguments, it should be noted that our social, productive and community economic model has a common factor in its four pillars (the private, state, community and cooperative social economies). What is this common factor? It is the strength of the work done by the workers, which is therefore the main driving force in growth and economic stability.

The World Bank has recognized that the Plurinational State of Bolivia is among the region’s leaders in reducing pay inequalities. According to the Gini Coefficient of Labour Income, over the last ten years the wage gap has improved from 0.53 per cent to 0.44 per cent as a result of the economic model. Extreme poverty was also reduced from 38.2 per cent to 15.2 per cent during the 2005–18 period.

Another equally significant element is that the wage increase strengthens the domestic economy, increasing working capital in the country, and this is reflected in the annual growth of legally established enterprises that observe the requirements of formality. This shows that the measures taken are appropriate.

Data from the Virtual Formalities Office, the mandatory register of employers, forming part of the portfolio of the Ministry of Labour, report that in 2018 the total number of enterprises was 143,038 and in 2021 was 151,768, representing 14 per cent growth in three years.

Economic stability is reflected in the growth and increase in the domestic consumption of products and services. Up to October 2019, restaurants achieved a turnover of US\$571 million and supermarket sales amounted to US\$632 million. Between October 2018 and October 2019, restaurants recorded a 2 per cent growth in sales, while supermarkets announced 10 per cent growth for the same period.

However, even more important is to point out the drop in late banking payments, which reflects the solvency of the financial system. Until 2019, the rate was one of the lowest in the South American region, standing at 1.9 per cent in 2019. In other words, 98.1 per cent of credit payment obligations were honoured on a regular basis.

The Committee of Experts, whose work constitutes the cornerstone of the ILO supervisory system with respect to international labour standards, cites a vitally important item of data in its 2020 report, referring to various socio-economic factors taken into account in the fixing of the minimum wage, namely that, "Bolivia is the country that has increased the minimum wage the most over the present decade in Latin America, without affecting the most relevant macroeconomic variables and without inflationary consequences."

The Government considers that this appraisal, from those who have the role of monitoring compliance with the ILO Conventions, is the clearest proof that the wage fixing system used by the Government does what is necessary to ensure economic stability, in addition to upholding one of the basic principles promoted by the ILO, namely social justice.

The establishment of a national minimum wage by the executive branch of the Plurinational State of Bolivia, in accordance with the economic and social situation in the country, does not undermine, let alone refuse, the participation of the employers, as shown by all the actions described above.

Further proof that this reiteration by the Committee is unnecessary is the position adopted by the Government in the current year (2021), having stipulated only a 2 per cent rise in the national minimum wage without affecting the "basic wage" paid to the country's whole labour force, with the aim of preserving labour stability and reviving the country's economy. The Government has made an effort to provide this increase in line with our policy to give support to the working class without endangering the economic revival of production.

In the current year, the parties involved stated their positions. The Bolivian Workers' Confederation (COB) was calling for a 5 per cent increase in both the national minimum wage and the "basic wage". The Government proposed a 0.67 per cent rise in the national minimum wage and the employers insisted on not increasing wages, on the grounds that any increase, however small, would result in lack of liquidity, possible bankruptcy and dismissals.

Under previous governments of the neoliberal period, the national minimum wage was frozen at 440 Bolivian bolivianos for three consecutive years, from 2003 to 2005. Since 2006, there has been a sustained growth in workers' wages.

However, in 2020 this increase was paralysed owing to the COVID-19 pandemic and the improvised policies of a de facto Government. In the context of the income redistribution policy, the minimum wage rose by about 380 per cent, from 440 to 2,122 bolivianos in 2019.

The data presented indicate the in-depth analysis conducted by the Government through its various departments with a view to ultimately fixing wage levels, making use of its exclusive jurisdiction established in the Constitution, which was the result of a revolutionary constituent process with the participation of the people and approved by over 64 per cent of the votes in the 2009 referendum.

These are important elements, we believe, because they indicate that we are on the right path. This is a scenario of gradual, progressive recovery, which is important for the Bolivian economy and all its sectors, since these indicators are not concentrated in one specific sector and it has been shown that the Government is conducting an exhaustive analysis through different decision-making mechanisms, especially in the area of fixing the minimum wage, which above all provides men and women workers with a living and the capacity to obtain the minimum elements of subsistence.

**Worker members** – It is for the third time in succession that the Committee is examining the Plurinational State of Bolivia's observance of the Convention. We cannot ignore the fact that since our last discussion many political and social events have occurred in the country. We welcome the fact that the country appears to be rediscovering a degree of serenity, and recall that political stability is an essential prerequisite for economic and social development.

More specifically with regard to the application of the Convention, two aspects should be distinguished.

First, as can be seen from the Committee of Experts' report and has been discussed previously in the Committee, there would appear to be a divergence of views between the Government and the employers of the Plurinational State of Bolivia. The latter claim that they are not fully consulted regarding the determination of methods for fixing and adjusting the minimum wage.

I recall that the Committee had invited the Government to accept a direct contacts mission to rectify the situation. We note that this has been unable to take place. The Workers' group is particularly interested to know the reasons that prevented the Government from accepting this mission.

However, we would like to reiterate that the consultation referred to in Article 4 of the Convention does not mean co-determination. It consists of enabling representative organizations to have an in-depth discussion with the Government on the minimum wage fixing machinery.

The second aspect which must be carefully emphasized relates to the purpose of the Convention. Its objective is to establish a system of minimum wages. With regard to this dimension, we are obliged to conclude that the Government of the Plurinational State of Bolivia has given full effect to the Convention. It should be emphasized that Article 4 of the Convention provides that in determining minimum wage levels, account must be taken of the needs of workers and their families and, in second place, of economic factors.

In the present case, it is not disputed that the Plurinational State of Bolivia has given effect to its commitment via an ongoing increase in the minimum wage. This has resulted in a major improvement in living standards for the workers concerned. The Government of the Plurinational State of Bolivia should therefore be congratulated on the results achieved. This is all the more justified in that these increases have not had any negative repercussions on the economy or in particular on inflation.

Even though these consultations are just one means for setting and adjusting minimum wages, it is also important that they can take place. While recalling its commitment to social dialogue during the discussion of this case, the Workers' group wishes to emphasize that this attachment is not dictated by opportunistic considerations or short-term interests. Above all, it is a question of conviction and credibility.

**Employer members** – First, we would like to thank the Minister of the Plurinational State of Bolivia for appearing before the Committee today and for the information provided. Regrettably, it is clear from this information that the issue regarding the application of the Convention persists. This is a case of application of the Convention ratified by the Plurinational State of Bolivia in 1977, it is the third consecutive time that this Committee is discussing the application of the Convention by the Plurinational State of Bolivia, since it was also examined in 2018 and 2019, although the Committee has made observations noting concern since 2006. This is due to continued and systematic non-compliance by the Government of the Plurinational State of Bolivia.

We are faced with a recurrent serious situation. The Government is failing to comply with Articles 3 and 4(1) and (2) of the Convention, concerning factors for determining minimum wage levels and full consultation with the social partners. For a number of years the Committee of Experts has been asking the Government to take urgent steps to ensure full consultation with the most representative employers' and workers' organizations and their direct participation in the machinery for fixing wages, especially the minimum wage. The Committee of Experts has also observed that while the Government affirmed that consultations were being held with the social partners, in the way that they are occurring today, the CEPB employers' organization and the International Organisation of Employers (IOE) claim the opposite.

Furthermore, in 2018, given the divergences expressed in the Committee between the Government and the aforementioned employers' organizations, the Committee already expressed the need for a direct contacts mission to take place without delay with a view to finding a solution to the difficulties faced in the application of the Convention. However, the Government did not respond to this request and therefore in 2019 the Committee again asked the Government to, first, carry out full consultations in good faith with the most representative employers' and workers' organizations – it emphasized with both, not just with the workers' organization – with regard to minimum wage setting in the country; second, take into account when determining the level of the minimum wage the needs of workers and their families, as well as economic factors as set out in Article 3 of the Convention, namely including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment; and, lastly, avail itself without delay of ILO technical assistance. However, once again none of this has happened. What is more, the Government has indicated in its recent report that there is no need for a direct contacts mission given that no difficulties are faced in the application of the Convention, and it does not appear to us that it is receiving ILO technical assistance in this regard.

It would appear that this rejection of the direct contacts mission disregards the conclusions of this Committee and ultimately strips the ILO supervisory system of validity and efficacy.

First, the Employer members kindly but firmly request the Government to reconsider this rejection.

Second, we point out that the COB annually presents a list of demands including a proposal for an increase in the national minimum wage. The Government therefore insists that consultations are held with this federation on account of its annual proposal and that the employers' sector is excluded.

Third, the same does not happen with the CEPB and the Government argues that this is because section 10 of the union's constitution provides that the CEPB shall not undertake the legal representation of its affiliated organizations for the negotiation or settlement of individual labour disputes between workers and employers.

In other words, the Government bases its argument on this element while stating in its report that the annual minimum wage increase takes into consideration the positions of workers and employers, with whom, it claims, it promotes dialogue and consultations on the basis of good faith and respect, as demonstrated by the round-table meetings established with the representatives of the CEPB and the COB. It should be clarified here that the statutory prohibition on the CEPB clearly refers to intervention in individual labour disputes of its members; that is to say, it cannot undertake the defence of those individual disputes and not in the case with which we are concerned, since it must also be borne in mind that this criterion was also analysed previously in the Committee and article 52(1) of the Political Constitution of the Plurinational State of Bolivia also recognizes and guarantees employers' freedom of association, which is reflected precisely in the representative role exercised by the CEPB.

I would also like to reiterate that this Committee has stated that the Convention is very clear in Article 4 regarding the need for the Government to carry out full consultations in good faith with the representative organizations on the establishment, operation and modification of minimum wage fixing machinery. The Committee of Experts has noted that this is what it describes as full consultations and in 2009 it stated on this matter, and I quote: "While recalling that consultation should be kept distinct from co-determination or mere information, the Committee considers that the Government is under the obligation to create and maintain conditions permitting the full consultation and direct participation of the most representative employers' and workers' organizations in all circumstances. It therefore urges the Government to take appropriate action to ensure that the requirement for meaningful consultations set forth in this Article of the Convention is effectively applied, preferably in a well-defined, commonly agreed and institutionalized form." The mere indication of the wage that it is intended to adopt, which we understand was the closest that the Government of the Plurinational State of Bolivia came to a communication to employers, cannot in any manner, in light of the above, be considered consultation, and still less full consultation. It is clear to us that for this to be the case, consultations have to be held in good faith with a view to identifying the concerns and aspirations of each of the parties and with the objective of achieving consensus, or as a minimum of incorporating the concerns and sensibilities of the partners into the decision that is finally adopted by the Government.

Moreover, the Government has in turn stated that minimum wage fixing is based on social and economic factors, taking into account inflation, productivity and other



economic indicators. What is clear is that the Government has been fixing wage increases to be applied not only in relation to the international minimum wage but at times also with respect to the “basic wage” without holding any consultations. We repeat: without any consultation of the employers’ sector and, especially, without the full consultation referred to in Article 4 of the Convention, and, on the contrary, determining the five elements referred to above as the basis for exclusive direct negotiations with the COB, ignoring the employers’ sector, which has been obliged to take measures in this regard.

In addition, with regard to the minimum wage fixing criteria – according to the Government, inflation, productivity, gross domestic product (GDP), per capita GDP, the consumer price index, economic growth, the unemployment rate, market fluctuations and the cost of living – evidence shows that this statement is inaccurate. Between 2006 and the current year 2021, on account of the increases imposed by the Government, the national minimum wage has undergone an overall increase of more than 324 per cent. In the current year, 2021, it set an increase of 2 per cent, the national minimum, as a result of negotiations that were held only with the COB. This was counter-productive for the economy, as reflected in the level of informality in the country, which stands at over 70 per cent. This situation also acts as a disincentive for investment and for the conclusion of employment contracts owing to the total uncertainty among employers, who are finding it impossible to adopt the necessary measures and take the action required to assume the cost represented by the discretionary increase in wages, which, moreover, is retroactive to the month of January each year.

In conclusion, the Government is deliberately refraining from consulting the employers’ organization in the country on minimum wage fixing. It also fails to comply with its obligations deriving from the Convention by disregarding technical criteria which should underpin wage fixing, and this goes against the culture of social dialogue which is mandatory under the most fundamental principles of the ILO. It also affects employers and workers in practice, as well as the general public, with sources of decent employment being reduced, accompanied by an incessant growth in the informal economy, where no minimum wages are guaranteed, and there is no other type of labour protection or social security. The Committee must promptly take note of all these serious circumstances and take action accordingly.

**Employer member, Plurinational State of Bolivia** – As is known to the members of this Committee, at both the 107th and 108th Sessions of the Conference held in 2018 and 2019 respectively, in view of the complaints made jointly by the CEPB and the IOE, the failure of the Government to apply and comply with the Convention was examined. In view of its ratification by our country, the Convention certainly forms part of the constitutional bloc envisaged in article 410 of the Political Constitution of the Plurinational State of Bolivia.

In this light, it should be recalled that the complaint made by our employers’ organization is based on the fact that the Government has been setting the wage increases to be applied, not only in relation to the national minimum wage, but also to the “basic wage”, without engaging in any consultations with the employers, and particularly not in the form of the “full” consultations required by Article 4 of the Convention. On the contrary, the Government has set such increases on the basis of direct negotiations it has held with the COB, completely disregarding the private employers, who have been required to accept the measures imposed upon them in this respect. It should also be recalled that between 2006 and this year, 2021, the national minimum wage has risen in overall terms by over 324 per cent. Such a measure has been

counter-productive for the economy, as reflected in the level of informality in our country, of over 70 per cent, and the disincentive to investment and labour recruitment.

It is important to emphasize that this is confirmed by ILO documents, including the various reports of the Committee of Experts in 2006, 2007, 2008, 2009 and 2010, in which it indicated that the authorities of the Government should engage objectively in full consultations and that it was essential to draw a distinction between the concepts of "consultation", "co-determination" and mere "information", on which clear guidance is contained in Paragraphs 1, 4 and 5 of the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113). Nevertheless, the Government has failed to give effect to the full consultation process which it was specifically required to implement with private sector employers.

Regrettably, it would appear that in the view of the government authorities, social dialogue, which has always been promoted by this Organization, is not a component of the Convention. We therefore assume that this misconception explains the reason why employers' representatives are excluded from any consideration in relation to the determination of the national minimum wage, and the failure to take into consideration aspects, which, according to Article 3 of the Convention, include economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

In addition, notwithstanding the proactive approach always taken by the Bolivian employers and despite undergoing, from early 2020, the pandemic and all its devastating economic fallout, this year, in 2021, as our Minister has acknowledged, in view of the direct negotiations the Government held solely with the COB, by Supreme Decree No. 4501 of 1 May 2021, it once again increased the national minimum wage by 2 per cent. It did so without calling for, let alone requiring, the participation of or consultation with the employers' sector, regardless of the letters dated 13 and 16 April 2021 from the CEPB to the President of the Plurinational State of Bolivia, or our willingness to engage in dialogue with the COB's executive secretary expressed in a letter dated 16 April 2021.

However, as a result of the foregoing facts, in its conclusions at the 2018 and 2019 sessions of the Conference, the Committee, while expressing its concern about the dysfunctional operation of social dialogue and calling on the Government of the Plurinational State of Bolivia to comply with the Convention, urged the Government to take a number of measures, including availing itself of ILO technical assistance and accepting a direct contacts mission. The government authorities not only ignored these suggestions, they refused to accept them. Consequently, in its 2019 conclusions, the Committee expressed regret at this refusal, reminding the Government that these missions constitute an effective form of dialogue designed to find a positive solution to the problems.

Lastly, I have to say that our organization is convinced that the basis for any rule of law is faithful and in-depth compliance with the law and the standards by which each society chooses to be governed. Therefore, we once again call on the Government to understand the gravity of this lack of compliance in view of the need for all ILO Member States to be subject to the supervisory bodies of this Organization to ensure compliance with the Conventions ratified by each country, and the Plurinational State of Bolivia cannot be an exception in relation to the supervisory bodies.

**Worker member, Plurinational State of Bolivia** – As workers at the national level of the Plurinational State of Bolivia, and also as representatives of all the workers of the

Plurinational State of Bolivia at the meetings that we have attended and participated in past years, together with the commissioners and with our state authorities, we have always raised awareness among the international community of the defence of workers' labour rights. Therefore we, as workers and on the basis of the responsibility that we have assumed, have raised awareness of the Convention, which has been discussed year after year, so that all the demands of workers across the country may be addressed publicly and openly. We have therefore engaged in ongoing coordination with the Government in recent years, given that it is a popular Government, a Government of the people. In our view, I think that all of the coordination and consensus that exists currently is highly important with regard to the standards, laws and decrees that benefit workers.

With that in mind, today more than ever, after having gone through perhaps difficult moments in 2019 and 2020 when it was not possible to coordinate or work with the *de facto* Government at the time, we are resuming that coordinated work, which we have been undertaking for more than 14 years.

This year, under the leadership of President Luis Arce Catacora, the current President of our Plurinational State, with the Ministry of Labour, and today with our Minister of Labour, we are carrying out new projects to benefit and defend workers' rights. I think that we have always adopted this approach: openly, beyond the employers, in other words with the private sector, and the workers' position will therefore always be to maintain our independence with respect to the topic under discussion so that we may raise our social demands directly with the central Government. It is therefore undoubtedly the Ministry of Labour that deals with these matters to defend labour rights in some way.

Beyond the problems that the Plurinational State of Bolivia experienced, I repeat, in the previous year, during which coordination was not possible and representation at the international level did not take place, today more than ever we once again have the opportunity, we are working together, sharing things beyond work and what our Government offers us under the leadership of the Ministry of Labour, which today is the representative at the international level at this event, and I think that consensus is important.

We are sharing a forum because we are working on the same matters that affect the workers in our country.

On the other hand, I think that it is important to mention the large number of workers who were dismissed as a result of the pandemic and because of the *coup d'état*. These are two factors that have combined in recent years; although the pandemic is global, we have seen extra dismissals thanks to the *de facto* Government when it assumed power and gained a footing in all the ministries, and ultimately in the whole Plurinational State of Bolivia.

A number of dismissed workers have yet to be reintegrated, legal proceedings are ongoing, and, at the same time, there are outstanding wages that have yet to be paid. In some sectors, including among entrepreneurs, the pandemic has seen businesses closed and workers unjustly dismissed. On the other hand, I also think that it is important, today in particular, that workers are mobilized in judicial institutions, including the Constitutional Court, to identify some of the judges who handed down sentences against workers during the past year. I repeat, they violated workers' rights. This is about more than making our position known. We are also working to examine

how we will initiate court proceedings to determine the responsibility of those judges who ruled against the country's workers.

One sector was hit hard: the manufacturing sector. But to this we can add the mining sector, the construction sector, municipal and administrative workers, and others.

The task today is to examine, jointly, how this high number of workers across the country can be reintegrated, under the leadership of the Ministry of Labour.

With regard to joint action, and the sentences of some judges, coordination is under way, not only at the executive level but also at the legislative level, with the Legislative Assembly of our State to initiate these court proceedings to determine the responsibility of some judges who ruled against the workers.

We are working on that, and there are a few more projects that we are negotiating. I think that it is very important for us to make known these coordination efforts in our State with the democratically elected popular Government as a whole, today led by, I repeat, President Luis Arce Catacora.

There is full coordination with all State ministers and therefore, as I said, with the legislative authorities, which is very important because they are the operating branch that produces laws that benefit the workers in our State.

**Government member, Portugal** – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The Candidate Country **Montenegro** and the EFTA country **Norway**, member of the European Economic Area, as well as **Georgia**, align themselves with this statement.

The EU and its Member States attach great importance to human rights, including labour rights, and recognize the important role played by the ILO in developing, promoting and supervising international labour standards.

We firmly believe that compliance with ILO Conventions is essential for social and economic stability in any country and that an environment conducive to dialogue and trust between employers, workers and governments contributes to the creation of a basis for solid and sustainable growth and inclusive societies.

The EU and its Member States also remain committed to sustainable development and good governance. In this context, we have granted the Plurinational State of Bolivia preferential access to the EU market's Generalized Scheme of Preferences Plus (GSP+). It is specifically premised upon the ratification and effective implementation of the ILO fundamental Conventions and on good cooperation with the ILO on these issues. While the EU is encouraged by its recent positive exchanges with the Plurinational State of Bolivia, we note that no report has yet been received from the Government in response to the Committee's conclusions from 2018 and 2019 on the Convention. To our knowledge, no follow-up measures have been implemented either.

The Committee's invitation to the Government to accept a direct contacts mission to the country may, in our view, help in finding a solution to the difficulties faced in the application of the Convention. Recalling that these missions constitute an effective form of dialogue designed to find a positive outcome to the issues in question, the EU and its Member States join the Committee's firm expression of hope that the Government will welcome a direct contacts mission in the near future.

We stand ready to support the Government in its effective engagement with the ILO in implementing and enforcing labour standards and organizing meaningful tripartite

consultations. The EU and its Member States will continue to support the Government of the Plurinational State of Bolivia in this endeavour.

**Government member, Barbados** – I am making this statement of behalf of the **group of Latin American and Caribbean countries (GRULAC)**. We appreciate the information provided by the Minister of Labour, Employment and Social Welfare of the Plurinational State of Bolivia, regarding compliance with the Convention.

GRULAC takes note of the 2020 report of the Committee of Experts. Furthermore, we take note of the response of the Government of the Plurinational State of Bolivia regarding its efforts to promote permanent, open and transparent dialogue with all social sectors within the framework of a democratic and participatory political system in accordance with its Constitution.

We highlight the vision of the Government, stressed by the Minister of Labour, regarding the consultation with the various sectors and search for consensus with them.

In addition, we emphasize that the decision to set the minimum wage in that country is not a discretionary measure of the Government but rather takes into account the need for prior dialogue and consideration of Article 3 of the Convention, the needs of workers and their families and economic factors, including the requirements of economic development, productivity levels and the desirability of attaining and maintaining a high level of employment.

In this regard, GRULAC is aware that, in the 2020 report of the Committee of Experts, mention is made of an important fact which has been highlighted by the International Trade Union Confederation (ITUC), referring to the various social and economic factors, taken into account in fixing the minimum wage, noting that Bolivia is the country that has increased the minimum wage the most over the present decade in Latin America, without affecting the most relevant macroeconomic variables and without inflationary consequences. This information indicates that the system used by the Government in fixing the minimum wage brings together the necessary efforts to take care of economic stability in the country and the demands of the sectors. This balance is often very difficult to achieve.

The COVID-19 pandemic affected the entire world, but the Latin American and Caribbean region was one of the most affected. Each country in our region has very complex challenges that require the participation and commitment of the different sectors, mainly aimed at overcoming the health crisis and moving towards an economic recovery.

In the case of the Plurinational State of Bolivia, in addition to the health crisis, the country was facing a social and political crisis resulting from the interruption of the constitutional order in 2019. To overcome this situation, we call on the Government, workers and employers, to reach the necessary consensus to protect political stability and improve the social and economic situation of the country, taking into account especially those sectors most disadvantaged by the pandemic.

Likewise, we note that this discussion is recurrent in this Committee, so we request that technical conclusions be adopted that clearly explain the specific provisions of the Convention with which the Government of the Plurinational State of Bolivia is not in compliance and that show a balance between the needs of the workers and the employers.

Taking into consideration all of the above, we encourage the Government of the Plurinational State of Bolivia to continue its commitment to the application of the Convention and we encourage the ILO to continue cooperation with the Government.

**Government member, Cuba** – Cuba believes that the Government of the Plurinational State of Bolivia has duly provided the information requested by the Committee of Experts. Since 2006, the Plurinational State of Bolivia has developed economic and social policies that protect the sectors that have historically suffered exclusion and discrimination. Through the Ministry of Labour, Employment and Social Welfare, the Government has stated that it fulfils its role of protecting decent work, fair remuneration and efforts to eliminate pay gaps. When fixing the minimum wage, it takes into consideration economic growth indicators, unemployment rates, market fluctuations, the cost of living and other analyses that provide a specific approximation of the country's socio-economic reality. Additionally, since 2006 the Government has increased the minimum wage four times. It also has legislation on dialogue round tables, proposals, development and government policies.

With that in mind, the fixing of the minimum wage is the result of dialogue with the sectors, as set out in the Convention. The wage increases therefore were the result of consideration of the social partners' positions thanks to the work of highest-level round tables with their representatives. This is without forgetting the needs of workers and their families, taking into account general wage levels in the country, the cost of living, social security benefits, economic factors, productivity levels and the benefits of reaching and maintaining high rates of employment.

For these reasons, Cuba hopes that this Committee's conclusions, resulting from this debate, will be objective, technical, balanced and based on the information provided by the Bolivian Government.

**Employer member, Argentina** – We agree with our Employer colleagues that it is regrettable that the Government of the Plurinational State of Bolivia continues to fail to acknowledge the recommendations adopted by this Committee in 2018 and 2019.

As recalled by the Employer members' spokesperson, for several years the Committee of Experts has been requesting the adoption of urgent measures to ensure full consultation with the most representative employers' and workers' organizations and their direct participation in the minimum wage fixing process. In this same spirit, in 2018 this Committee expressed the need for a direct contacts mission, which was not undertaken.

The employers' sector expects ILO Members to comply in good faith with the Conventions that they have ratified and to pay close attention to the recommendations made by the supervisory bodies. In this case, the Government has failed to acknowledge the recommendations and continues to fix minimum wage increases without any consultation whatsoever with the employers, much less the full consultation stipulated in Article 4 of the Convention. It is our understanding that failing to acknowledge in this way the obligations arising from ratified international standards is a prejudicial act for all constituents.

We hope that this Committee recognizes the gravity of the situation in its conclusions and will urgently request the Government to undertake full consultation with the social partners within the meaning of the Convention and to accept a direct contacts mission and technical assistance from the Office to assist in resolving the difficulties faced in the application of the Convention.



**Government member, Bolivarian Republic of Venezuela** – My Government aligns itself with the statement by GRULAC. We have noted that the Committee of Experts' 2021 report indicates, as stated by the Government of the Plurinational State of Bolivia, that consultations to determine the minimum wage take place within the framework of the Convention, and that consensus is sought through dialogue with the social partners representing Bolivian workers and employers.

We recall that, for the purpose of minimum wage fixing, the Government takes into consideration the needs of workers and their families, observing socio-economic factors and levels of productivity, with a view to maintaining a high level of employment, without affecting macroeconomic variables and without inflationary consequences.

Let us remember that the Convention does not provide for a model specifying how such consultations should be conducted, and in this regard the Government of the Plurinational State of Bolivia has emphasized that it conducts such consultations in good faith, thereby seeking to close wage gaps and protecting workers with fair remuneration.

Lastly, my country's Government trusts that the conclusions of this Committee will be objective and balanced, so that the Government of the Plurinational State of Bolivia continues to progress in its compliance with the Convention.

**Worker member, Nicaragua** – The observations made in relation to the Plurinational State of Bolivia and submitted for the Committee's consideration are not dissimilar to those made about other Latin American countries whose governments have promoted minimum wage increases as a social policy to improve the working population's quality of life.

In the Plurinational State of Bolivia's case, the 2 per cent increase announced in May, equivalent to some US\$311, does not heed the original stance of the workers, who sought a higher increase.

Business organizations, whose political stance contrasts with that of the Government, maintain without any economic or statistical evidence that the fixed amount will have an impact on enterprises and will push more people into informal labour. To demonstrate the falsity of this argument, we need only recall that there were no minimum wage increases throughout 2020, a period in which the country endured a coup d'état and disruption to its democracy.

Furthermore, we can easily show on the basis of official statistics that increases in previous years did not affect enterprises' performance, nor did they increase inflation, let alone informality. This is the case because the impact of wages on enterprises' cost structure is minimal, and because the quality of life of workers and their families can be improved by balancing this objective with enterprises' sustained profitability.

We reiterate that what must be safeguarded here is a minimum wage policy that is conducive to improving the quality of life for working people, as opposed to a view that essentially rejects any minimum wage policy, with or without consultation, if we look to other cases in which such matters have recently been discussed.

**Government member, China** – We thank the representative of the Government of the Plurinational State of Bolivia for the presentation. We have read carefully the report of the Committee of Experts. We commend the Government for its commitment to sustained, open and transparent social dialogue with the social partners within the framework of the democratic political system in accordance with the Constitution. Since 2006, thanks to various economic and social policies adopted by the Government, we

see improved living standards for the people and protection for the development of sectors that were once excluded and discriminated against.

Private entrepreneurs of the Plurinational State of Bolivia have also benefited greatly from economic, political and social stability and legal security offered by the Government. The important role played by the Ministry of Labour, Employment and Social Welfare in promoting decent work, equal pay and the elimination of wage gaps is worthy of our recognition.

It should be stressed that the Government of the Plurinational State of Bolivia engaged, as the Convention provides for, in exhaustive consultation, discussion and dialogue with employers and workers in all social sectors and fixed minimum wages on the basis of consensus reached.

In the process, the country considered fully such factors as economic growth, the unemployment rate, market volatility and the cost of living, and took concrete measures tailored to social and economic development in the country.

In the past 15 years, the minimum wage in the country has quadrupled. We note that the Plurinational State of Bolivia is identified by the World Bank as one of the leading countries in its region with regard to reducing inequalities in wages. The proportion of people living in extreme poverty in the Plurinational State of Bolivia decreased from 38.2 per cent in 2005 to 15.2 per cent in 2018. More than 3 million people have been lifted out of poverty. We speak highly of this result. At present, 60 per cent of the country's labour force could receive an average level of wage and enjoy a stable life, which are in line with the Sustainable Development Goals of the United Nations.

We hope that the Committee's conclusions on the case could reflect objectively and fairly the evident progress made by the Government of the Plurinational State of Bolivia in fixing minimum wages and promoting economic and social development, so as to encourage the country to continue its implementation of the Convention.

**Employer member, El Salvador** – The Government has violated Articles 3 and 4 of the Convention in relation to two matters: firstly, the factors for determining the level of the minimum wage and, secondly, full consultation with the social partners.

As has been mentioned in the Committee's conclusions, in 2019 the Government was requested, firstly, to carry out full consultations in good faith with the most representative employers' and workers' organizations with regard to minimum wage setting. Allow me to highlight that when the Committee refers to consultations, it refers to consultations with both sectors, not only with the workers. Secondly, the Government was requested to take into account when determining the level of the minimum wage the needs of workers and their families as well as economic factors as set out in Article 3 of the Convention, and, thirdly, to avail itself without delay of ILO technical assistance. However, the Government has not complied with any of the conclusions adopted by this Committee, and in its report it has continued to assert, falsely, that the annual increase in minimum wages takes into account the positions of workers and employers.

In reality, it has not undertaken any consultations with the most representative employers' organization in the Plurinational State of Bolivia, and much less "full consultation" as stipulated by Article 4 of the Convention.

Minimum wages not only involve those who receive them and the enterprises that pay them. Minimum wages impact the entire economy of any country because they are one of the three most important markers of macroprices, together with exchange rates

and interest rates. Fixing minimum wages with the participation of both social partners, as provided for in the Convention, is beneficial for the entire country.

For that reason, we request that the Committee adopt conclusions that will allow this situation to be overcome.

**Worker member, Zimbabwe** – Once again, the Employers bring this case to the Committee under the same argument: that a pay rise for workers will cause unemployment. The sky will fall on businesses across the Plurinational State of Bolivia. But, just like last time around, the sky will not fall in and Bolivian businesses will continue to flourish.

Adequate living wages do not cost jobs in theory, and evidence suggests they do not cost jobs in practice. The most serious academic studies conducted in the past 30 years have shown that there is no unemployment effect from minimum wage rises. So, if there is no scientific evidence, we are led to believe that the employers are not really concerned with unemployment or with informality. They just do not want the State to be able to carry out public policies to the benefit of workers and their families.

Raising incomes and reducing poverty is a moral duty for any government, and especially for a country like the Plurinational State of Bolivia, one of the poorest in South America. The national minimum wage of the Plurinational State of Bolivia is now about US\$311 a month. In fact, I challenge anyone in this meeting to attempt to bring healthy food to the table and cover the costs of transport, clothing, utility bills and healthcare with this amount in the Plurinational State of Bolivia or anywhere.

Let me try to understand what the employers are saying. Are they suggesting that their existence as businesses relies on the impoverishment of the majority in society? If so, I urge them to change their business model immediately.

Here we should be urging the Plurinational State of Bolivia to raise wages much further than a meagre 2 per cent. This amount does not meet the test of the Convention that clearly states that wages must fulfil the needs of workers and their families. This is the real purpose of the Convention.

**Government member, Russian Federation** – The Russian Federation fully shares the assessment given by the representative of the Plurinational State of Bolivia with regard to the application of the Convention, particularly taking into account the situation of developing countries.

We would note that, recently, there have been significant challenges caused by the COVID-19 pandemic for the Plurinational State of Bolivia. Despite that, the Government has continued to make efforts and develop and implement socio-economic policies which respond to the interests of all Bolivians: protecting the sectors of the economy which were in a difficult situation; ensuring fair wages; and trying to do away with significant inequalities in wages.

Overall, the Government of the Plurinational State of Bolivia has been carrying out an open and sincere dialogue with all social partners within the context of a democratic and inclusive system of state structure. The basis for this has been the country's Constitution, where social fairness is identified as one of the main objectives of state development.

In light of all this, we believe that complaints against the Plurinational State of Bolivia for not observing the provisions of the Convention do not have any foundation. We believe that the Committee should note with satisfaction the information in the

detailed report which the representative of the Plurinational State of Bolivia has given to us today, and conclude consideration of this question.

**Employer member, Mexico** – We regret that this case is continuing in the same, or worse, conditions as in previous years.

How much longer will we have to wait for the Government to comply with its obligations under the Convention and with the recommendations of this Committee? How many more times will we have to listen in this room to baseless and unjustified excuses for behaviour that damages the country as a whole, given that informality is growing in the face of these arbitrary increases and has reached more than 70 per cent of the population?

This is not a minor point. Everyone here knows that informality does not bring decent work or sustainable employment and, far from improving a country's economic conditions, it creates a decline that is increasingly difficult to reverse.

We hope that the Government avails itself of the technical assistance provided by the Office and accepts the direct contacts mission as soon as possible in order to resolve the problem with willingness and commitment, strengthening social dialogue through full consultation with the most representative employers' and workers' organizations in accordance with the Convention.

**Another Employer member, Mexico** – The explanations and reports received by this Committee confirm that the Government of the Plurinational State of Bolivia has repeatedly and constantly failed to comply with the obligations set out in the Convention.

It is a serious matter that the Government fails to comply with Articles 3 and 4 of the Convention by failing to hold consultations with the most representative employers' and workers' organizations so that they may participate in wage fixing; by refusing to accept technical assistance from the ILO; and by fixing wage increases after negotiating only with the COB, without allowing the employers to participate.

The simple fact that between 2006 and 2021 the minimum wage rose by more than 324 per cent and that informality is in excess of 70 per cent demonstrates that when the Government imposes wage adjustments, it not only infringes the Convention but also discourages investment and the generation of formal employment owing to the uncertainty caused in the employers' sector.

This Committee must therefore consider the background to the case and deem serious the deliberate failure of the Government of the Plurinational State of Bolivia to comply with the Convention.

**Government member, Argentina** – The Government of Argentina supports the statement by GRULAC on the importance of the minimum wage increase in the Plurinational State of Bolivia. This notwithstanding, we should like to make a few additional points that will serve to further underline the significance of Convention No. 131 for the social and labour policy of the Government of the Plurinational State of Bolivia.

The effect of the minimum wage increase in the Plurinational State of Bolivia must be viewed in the context of a much broader policy, as described by the Bolivian State in its defence. In this regard, it is worth recalling that the entire international community, including the ILO, has channelled all its efforts into its commitment to eradicate poverty by 2030 under the Sustainable Development Goals, principally Goal 8: "Promote inclusive and sustainable economic growth, employment and decent work for all". It is the responsibility of the ILO to implement this goal vis-à-vis the international community.

This is the thrust of the overall policy of the Government of the Plurinational State of Bolivia, and this Organization ought to support it.

Furthermore, the Government of the Plurinational State of Bolivia has provided evidence of sufficient compliance with Article 3 of the Convention, through the implementation of consultations. The difficulties it reports as regards their implementation do not exactly derive from the Government. Therefore, we also consider that the direct contacts mission, reserved for serious situations, would not appear to be the appropriate remedy in this case. In the Argentine Government's view, if there were any reason to bring the Government of the Plurinational State of Bolivia before this Committee, it would be precisely to acknowledge a case of progress in the application of the Convention, in the context of the international community's commitment to eradicate poverty under the 2030 Agenda.

**Government member, Nicaragua** – The Government of Reconciliation and National Unity of Nicaragua warmly greets the Plurinational State of Bolivia, which has demonstrated its commitment to working with international labour standards.

We acknowledge the efforts of the Government of the Plurinational State of Bolivia to promote ongoing, open and transparent dialogue with all sectors of society, fulfilling its role in the framework of a democratic and participatory political system that aims to build social justice.

The Government has reported that, through the Ministry of Labour, it continues to fulfil its role of protecting decent work and fair remuneration and is fighting to eliminate wage gaps, with the aim of achieving the 2030 Agenda for Sustainable Development.

The Government of Nicaragua emphasizes that the information presented by the State indicates that the Plurinational State of Bolivia does not fail to comply with the Convention. This has also been stated by the World Bank, which agrees with the progress made regarding the minimum wage policies of the State, which, using multidimensional analysis, endeavours to understand the country's social and economic reality in defence of workers through fair wages for their work and the elimination of inequality.

We encourage this Committee to adopt conclusions, resulting from this debate, that are objective, technical, balanced and based on the information provided by the Government of the Plurinational State of Bolivia.

**Worker member, Uruguay** – Once again we have a case such as that of the Plurinational State of Bolivia in which it is clear that the employers' sector is engaging in something that it always criticizes: the use of political motives to bring cases before our Committee. Clearly, the Plurinational State of Bolivia is once again on the list for a political motive because the employers' sector does not approve of the political views of the current Government.

We wish to welcome the minimum wage policy of the Plurinational State of Bolivia. Recalling that the Plurinational State of Bolivia is part of our region here in Latin America, the most unequal in the world, it is a false comparison to seek to pit the minimum wage against the generation of employment, formality and so on. In fact, the opposite is true: a good minimum wage policy such as that of the Plurinational State of Bolivia creates greater consumption and a stronger domestic economy in general, and that is subsequently corroborated by improvements to investment, formality and the living conditions of the people.

Therefore, this basis of the trickle-down theory that the employers wish to implement once more, while it has been shown empirically that everything left over trickles down, that is not the reality in the Plurinational State of Bolivia.

We are sure that the employers in the Plurinational State of Bolivia will have proposals, but until now the employers have not proposed policies that will improve the lives of the people.

**Government member, Sri Lanka** – The Government of Sri Lanka welcomes the efforts of the Government of the Plurinational State of Bolivia in ensuring effective implementation of the provisions of the Convention.

We note the important steps taken by the Government of the Plurinational State of Bolivia in fixing the minimum wage, including inclusive dialogue with the employers as well as with the workers, by establishing working groups with high-level government representation and adopting a holistic approach through consideration of a broad range of indicators, such as economic growth, unemployment rates, market fluctuations and the cost of living, in fixing the minimum wage in accordance with Article 3 of the Convention.

Since 2006, the Government of the Plurinational State of Bolivia has quadrupled the minimum wage. Moreover, the 2020 report of the Committee of Experts notes the ITUC's acknowledgement of Bolivia as the country that has increased the minimum wage the most over the present decade in Latin America, without affecting the most relevant macroeconomic variables and without inflationary consequences.

We support the continuous efforts of the Government of the Plurinational State of Bolivia to reduce the economic gap and wage inequalities, in consultation with employers as well as workers, and believe that the Committee will adopt a balanced and objective approach to the situation in the Plurinational State of Bolivia.

**Government member, Egypt** – We take note of the measures and efforts by the Government of the Plurinational State of Bolivia to achieve harmony between the national legislation and the provisions of the Convention with regard to the minimum wage.

The Government has promoted a sustainable and constructive social dialogue with the social partners in the framework of a democratic and participatory political process, according to the provisions of the 2009 Bolivian Constitution, which instituted social justice as a basic state pillar, in addition to the Government's efforts to develop socio-economic policies in the best interests of the citizens and to protect all sectors which have been discriminated against and excluded in the past. In addition to the Government's efforts, through its Ministry of Labour, with regard to promoting decent work, providing fair wages and striving to close wage gaps, the Government of the Plurinational State of Bolivia has taken also consecutive steps to increase the minimum wage amounting to four times the initial level. The Government of the Plurinational State of Bolivia was keen to adopt a minimum wage policy aimed at closing the enormous economic gaps, thus benefiting excluded sectors while safeguarding the sustainability of the private and public sectors.

In conclusion, we highly value the efforts and measures taken by the Government of the Plurinational State of Bolivia to achieve harmonization with Convention No. 131 and trust that the Committee's conclusions will reflect these efforts.

**Government representative** – I would like to begin by clarifying to the representative of the Employer members that on this occasion, as Minister of the



Plurinational State of Bolivia, I did not on any account mention the supposed statutory impossibility of participation of the employers' sector in any negotiation or dialogue. This may have been the case in previous years but the gentleman is repeating old speeches.

Furthermore, and this is fundamental, I would like to mention that our theoretical framework, our legal framework and our political framework for action is precisely our Political Constitution, article 9(1) of which provides as follows: "The essential purposes and functions of the State are to construct a fair and harmonious society, grounded in decolonization, without discrimination or exploitation, with full social justice, in order to consolidate plurinational identities." And I also refer, precisely because I am reading out a principal function of the State, to article 410(2) concerning the primacy of our Constitution: "The Constitution is the supreme instrument of the Bolivian legal order and enjoys primacy over any other normative provision. The constitutional bloc comprises international human rights treaties and conventions and standards of community law, ratified by the country."

In our Plurinational State of Bolivia we have a legal framework which is the protector and guarantor of the rights of all sectors. Since we consider ourselves a plurinational State with a social, community and productive economic model, we therefore protect not only all economic models but also all nations that make up this Plurinational State.

I would therefore like to use my statement as a servant of the State to express gratitude for the positions of support for the Plurinational State of Bolivia and repudiate the calls to attention, since, like the narrative on fraud and the coup d'état under discussion in Bolivia, there is a presumption of fraud without a shred of evidence. There is also a presumption of a possible violation of Articles 3 and 4 of the Convention without a shred of evidence.

The Workers who have made statements have praised our State, our wage policy, precisely because it gives priority to the needs of workers and their families. Because let us not forget that the workers for any State in the world must not be just another number, they must signify a family that forms an important part of the people. That is why our wage policies protect the social well-being of the families of Bolivian workers. But they also protect growth and economic stability.

It comes as no surprise, precisely, to hear our representative from private enterprise putting forward arguments about a pandemic attack in 2020, which has endangered the continuity of many enterprises. But he forgets to mention that there was also an abysmal state administration, which is why I remind him that it was precisely during this year that the wage increase was frozen at zero and yet it was the year when unemployment peaked and unjustified dismissals went up to almost 12 per cent.

Hence there is no connection whatsoever between the economic policies of the neoliberal periods and supposed economic stabilization.

We have shown in the course of 14 years of government by President Evo Morales that it is rather we who have made use of our constitutional right, our interventionist constitutional power that is the guarantor of human rights and fundamental rights established in the Constitution for the whole Bolivian population. We have protected the social stability of the workers and we have also protected the economic stability of enterprises.

It is our sovereign right as the Bolivian State to use our official data, and macroeconomic indicators show us – even though some sectors, perversely, do not even consider them – that we are growing once more, they show us that our interventionist

wage policies have not had any effect on unemployment rates, let alone on any supposed decline of Bolivian enterprises. On the contrary, all the figures have been positive over the years.

With regard to the direct contacts mission called for in one statement, the Plurinational State of Bolivia affirms that since there is no violation of the Convention, or at least none that has been demonstrated at this session, there is no need for this mechanism. On the contrary, we urge the ILO to focus technical assistance on the promotion of labour rights and on the creation of opportunities for work, but decent work, improving social protection.

We are aware that we are on the right side in these class contradictions which have been made evident in these statements.

**Employer members** – First of all, let me say that the Employer members have very generously accepted all the statements of all speakers. However, when a speaker speaks out of turn and does not refer to the case or use the parliamentary language to which this Committee should adhere, there is good reason to request a point of order. The Employer members request that the statements of the Worker member of Uruguay be removed from the record of the meeting of this Committee.

Having made this clarification, we are surprised to see something very unusual in this case, which is that the Government of the Plurinational State of Bolivia and the Workers are making their statements from the same venue. Besides being unusual, this may be the real evidence, the true reflection of what is happening in the Plurinational State of Bolivia, specifically with regard to fixing the national minimum wage.

The Government of the Plurinational State of Bolivia continues in its non-compliance with the Convention, which, like all the Conventions, was adopted on a tripartite basis. It was freely ratified by the Plurinational State of Bolivia in 1977. We do not have to explain, therefore, that the Plurinational State of Bolivia must fulfil its international commitment.

Furthermore, the Committee is one of the manifestations of the ILO supervisory bodies and nothing entitles us to judge political intentions when requiring compliance with the standard adopted on a tripartite basis and ratified voluntarily by a State. Such is the case we are dealing with. Nor is it feasible to distinguish between Conventions that are fundamental, governance or technical, as in this case. They are all subject to the supervisory mechanisms of this Organization and must all be properly enforced. Tiny or insignificant non-compliance does not exist, and in this case there is only one situation, which is non-compliance.

Once again, the Employers wish, on this occasion, to state that we cannot and must not fail to warn this Committee in the strongest possible terms of such non-compliance by the Plurinational State of Bolivia, and to demand compliance with its international commitments. It is unacceptable for a Government to disregard social dialogue just because the views expressed may be uncomfortable to hear. This time it is the employers but, in this and other cases, it could also be the workers who are affected, and this Organization must use the same standards to judge all these situations.

Hence, the Employer members propose the following conclusions for the case, in which this Committee should highlight the seriousness of the situation and should request the Government, as a matter of urgency, to: (1) carry out full consultations with all actors in the world of work with regard to wage setting, both with the representative workers' organizations and the most representative employers' organizations and, in

these consultations and in setting the minimum wage, take into account all the elements set forth in Article 3(a) and (b) of the Convention; (2) provide information on such actions to the Committee of Experts in its next report; (3) accept the direct contacts mission already repeatedly requested by this Committee and the technical assistance of the Office, possibly in order to realize the extent of the non-compliance currently denied by the Bolivian Government; and (4) lastly, owing to the seriousness of this matter, the Employers' group requests that the conclusions of this case be included in a special paragraph in the Committee's report.

**Worker members** – I should like to thank the Government of the Plurinational State of Bolivia for the explanations provided. We note the indignation expressed by some speakers. The same approach would be most welcome when it comes to discussing cases where workers' fundamental rights are flouted, or even situations where lives are quite simply taken.

I can only reiterate our request to the Government to hold minimum wage fixing consultations, as provided for in the Convention.

Nevertheless, we highlight the Government's efforts to improve the lives of workers and to fulfil the commitment made by ratifying the Convention. In this regard, it is worth noting that economic factors have been fully taken into consideration in the minimum wage increases.

We should also like to state that we absolutely disagree with the analysis of the Employers' group, which draws a direct link between informality in the country and the increase in the minimum wage. This is a risky assertion that would certainly require more detailed analysis.

A careful examination of the situation should logically enable us to distinguish between its various factors, so as to make an adequate assessment of the situation.

## Conclusions of the Committee

**The Committee took note of the information provided by the Government representative and the discussion that followed.**

**The Committee recalled the high importance of full consultation with the social partners, as well as the elements to be taken into consideration in determining the level of minimum wages as set forth in Article 3 of the Convention.**

**The Committee regretted that the Government did not accept a direct contacts mission, as they were invited to by the Committee in 2019 in order to implement all its 2019 recommendations.**

**The Committee therefore, once again, urges the Government of Bolivia to:**

- **carry out full consultations with the social partners with regard to minimum wage setting; and**
- **take into account the needs of workers and their families as well as economic factors when determining the level of the minimum wage as set out in Article 3 of the Convention.**

**The Committee requests that the Government avail itself, without delay, of ILO technical assistance to ensure compliance with the Convention in law and practice.**

**The Committee requests the Government to provide, in consultation with the social partners, further information to the Committee of Experts on the application of the Convention before its next sitting in 2021.**

**The Committee once again urges the Government to accept an ILO direct contacts mission before the next session of the International Labour Conference in 2022.**

**Government representative** – We note the Committee’s conclusions. We regret that the Committee gives the impression of defending the privileged sector more than families from historically vulnerable sectors. We are concerned at the fact that no account has been taken of indicators of sustained economic growth since 2006, which undermine the Employers’ arguments and contradict the report issued by the Committee itself.

The Plurinational State of Bolivia takes note of the Committee’s suggestions and reaffirms the strong commitment to achieve a State with social justice through compliance with the principles and rights enshrined in the Political Constitution of the State. These criteria were even referred to only yesterday by the Pope, appealing to the trade unions and the most disadvantaged not to forget their true calling, namely to produce wealth in the service of all and not just the few.

The Government reiterates that it is not failing to comply with the Convention, which is why it does not consider a direct contacts mission to be necessary, since dialogue is the basis on which state policies are formulated. On the contrary, we urge the ILO to generate technical cooperation to guarantee the full exercise of labour rights.

We vigorously underline the fact that the Committee’s second suggestion is what we, as a democratic Government, have taken into account. It appears that the Committee is unwilling to recognize this.

We are on the list of cases because in order to determine the minimum wage we take account of the factors mentioned in Article 3 of the Convention. Hence we affirm that we have succeeded in maintaining this balance.

The Plurinational State of Bolivia reaffirms its compliance with the agreements and its commitment to continue generating better conditions of employment and decent work in the context of our sovereignty.

# Appendix I. Table of Reports on ratified Conventions due for 2020 and received since the last session of the CEACR (as of 18 June 2021)

(articles 22 and 35 of the Constitution)

*The table published in the Report of the Committee of Experts, page 745, 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.*

<b>Albania</b>	<b>15 reports requested</b>
<ul style="list-style-type: none"> <li>· 12 reports received: Conventions Nos. 11, 81, 87, 98, 111, 129, 135, 141, 144, 151, 154, 177</li> <li>· 3 reports not received: Conventions Nos. 100, 185, (MLC)</li> </ul>	
<b>Bahamas</b>	<b>6 reports requested</b>
<ul style="list-style-type: none"> <li>· 5 reports received: Conventions Nos. 11, 87, 98, 144, MLC</li> <li>· 1 report not received: Convention No. 185</li> </ul>	
<b>Barbados</b>	<b>21 reports requested</b>
<ul style="list-style-type: none"> <li>· 4 reports received: Conventions Nos. 11, 29, 81, 118</li> <li>· 17 reports not received: Conventions Nos. 12, 17, 19, 42, 87, 97, 98, 100, 102, 105, 111, 122, 128, 135, 138, 144, 172</li> </ul>	
<b>Belize</b>	<b>22 reports requested</b>
<p><i>(Paragraph 102)</i></p> <ul style="list-style-type: none"> <li>· 6 reports received: Conventions Nos. 11, 19, 105, 135, 141, 151</li> <li>· 16 reports not received: Conventions Nos. 29, 87, 88, 97, 98, 100, 111, 115, 138, 140, 144, 150, 154, 155, 156, 182</li> </ul>	
<b>Iraq</b>	<b>13 reports requested</b>
<p><i>(Paragraph 110)</i></p> <ul style="list-style-type: none"> <li>· 8 reports received: Conventions Nos. 22, 23, 92, 122, 144, 146, 147, 172</li> <li>· 5 reports not received: Conventions Nos. 100, 107, 111, 149, 182</li> </ul>	
<b>Jamaica</b>	<b>14 reports requested</b>
<p><i>(Paragraph 104)</i></p> <ul style="list-style-type: none"> <li>· 3 reports received: Conventions Nos. 100, (MLC), (189)</li> <li>· 11 reports not received: Conventions Nos. 29, 94, 97, 105, 111, 117, 122, 138, 144, 149, 182</li> </ul>	
<b>Lao People's Democratic Republic</b>	<b>7 reports requested</b>
<ul style="list-style-type: none"> <li>· 1 report received: Convention No. 144</li> <li>· 6 reports not received: Conventions Nos. 6, 29, 100, 111, 138, 182</li> </ul>	
<b>Malawi</b>	<b>17 reports requested</b>
<p><i>(Paragraph 110)</i></p> <ul style="list-style-type: none"> <li>· 5 reports received: Conventions Nos. 45, 98, 100, 111, 144</li> <li>· 12 reports not received: Conventions Nos. 26, 81, 97, 99, 105, 107, 129, 149, 150, 158, 159, 182</li> </ul>	
<b>Malaysia</b>	<b>6 reports requested</b>
<ul style="list-style-type: none"> <li>· 5 reports received: Conventions Nos. 88, 95, 123, 144, MLC</li> <li>· 1 report not received: Convention No. 100</li> </ul>	

**Maldives** 8 reports requested*(Paragraphs 104, 106 and 110)*

- 1 report received: Convention No. MLC
- 7 reports not received: Conventions Nos. 29, 100, 105, 111, 138, 182, 185

**Netherlands - Aruba** 13 reports requested*(Paragraphs 102 and 110)*

- All reports received: Conventions Nos. 29, 87, 88, 94, 105, 113, 114, 122, 138, 140, 142, 144, 182

**Netherlands - Sint Maarten** 3 reports requested*(Paragraphs 102 and 110)*

- All reports received: Conventions Nos. 88, 94, 122

**Nigeria** 6 reports requested*(Paragraphs 102 and 110)*

- 5 reports received: Conventions Nos. 88, 94, 100, 111, 159
- 1 report not received: Convention No. 18

**Papua New Guinea** 13 reports requested

- 1 report received: Convention No. 138
- 12 reports not received: Conventions Nos. 26, 27, 29, 87, 98, 99, 100, 105, 111, 122, 158, 182

**Saint Vincent and the Grenadines** 15 reports requested*(Paragraph 110)*

- 5 reports received: Conventions Nos. 81, 111, 129, 138, 144
- 10 reports not received: Conventions Nos. 11, 12, 19, 29, 100, 105, 108, 122, 182, MLC

**Sao Tome and Principe** 8 reports requested*(Paragraphs 102 and 110)*

- 5 reports received: Conventions Nos. 29, 81, 87, 98, 105
- 3 reports not received: Conventions Nos. 138, 182, (183)

**Sri Lanka** 9 reports requested*(Paragraph 104)*

- 6 reports received: Conventions Nos. 81, 98, 105, 138, 182, (MLC)
- 3 reports not received: Conventions Nos. 29, 90, 185

**United Republic of Tanzania** 15 reports requested*(Paragraph 104)*

- 14 reports received: Conventions Nos. 17, 19, 29, 63, 95, 105, 131, 138, 140, 142, 148, 170, 182, (185)
- 1 report not received: Convention No. 1

**United Republic of Tanzania.Tanganyika** 3 reports requested*(Paragraphs 102 and 110)*

- 1 report received: Convention No. 81
- 2 reports not received: Conventions Nos. 45, 101

**Viet Nam** 11 reports requested

- 10 reports received: Conventions Nos. 14, 29, 45, 81, 120, 138, 155, 182, MLC, 187
- 1 report not received: Convention No. 12



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<b>Grand Total</b>
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A total of 1,796 reports (article 22) were requested,  
of which 768 reports (42.76 per cent) were received.

A total of 208 reports (article 35) were requested,  
of which 158 reports (75.96 per cent) were received.

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**Appendix II. Statistical table of reports received on ratified Conventions**  
(article 22 of the Constitution)

**Reports received as of 18 June 2021**

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%
<p align="center"><b>As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions</b></p>							
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
<p align="center"><b>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</b></p>				
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%
<p align="center"><b>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</b></p>				
2019	1788	645 36.1%	1217 68.1%	ILC 2020 deferred due to the COVID-19 pandemic
<p><b>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</b></p>				
2020	1796	394 21.9%	712 39.6%	768 42.8%

## ► **Report of the Committee on the Application of Standards**

**Submission, discussion and approval**



## ► Record of proceedings

6C

International Labour Conference – 109th Session, 2021

Date: 8 July 2021

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### Plenary sitting: Report of the Committee on the Application of Standards

Saturday, 19 June 2021, 2.30 p.m.

President: Mr Zniber

#### Submission, discussion and approval of the report of the Committee on the Application of Standards

##### The President

We now turn to the next item on our agenda, which is the submission, discussion and approval of the report of the Committee on the Application of Standards. Part One of the report is contained in *Record of Proceedings No. 6A*. Part Two will be published in due course in *Provisional Record No. 6B*.

It is my pleasure to introduce the Officers of the Committee: Ms Corine Elsa Angonemane Mvondo (Cameroon), Chairperson; Ms Sonia Regenbogen (Canada), Employer Vice-Chairperson; and Mr Marc Leemans (Belgium), Worker Vice-Chairperson; as well as Mr Pedro Pablo Silva (Chile), Reporter.

I now give the floor to the Reporter, Mr Silva, so that he may present the Committee's report and the conclusions contained therein.

##### Mr Silva

##### Reporter of the Committee on the Application of Standards (Original Spanish)

It is an honour to present to the plenary the report of the Committee on the Application of Standards. The Committee is a standing body of the International Labour Conference and is empowered under article 7 of the Standing Orders of the Conference to consider the measures taken by Member States to give effect to the provisions of Conventions that they have voluntarily ratified. It also considers matters related to the reporting obligations and other duties under the ILO Constitution. It is a unique tripartite social dialogue forum that discusses the application of international labour standards all over the world.



Before presenting this report, I would like to note that this 109th Session will go down in history as the first session of the International Labour Conference to be held virtually. Naturally, this posed some challenges. Therefore, tripartite consultations were held between March and April 2021 to agree on extraordinary working methods, which allowed the Committee to successfully complete its work.

The report of the Committee that is now before the plenary comprises two parts. The first contains the General Report, which includes the records of the Committee's general discussion and its discussion of the General Survey of the Committee of Experts on the Application of Conventions and Recommendations on employment-related instruments. The second part contains the records of the discussion of the individual cases concerning compliance with ratified Conventions and the conclusions adopted for each case. It also contains the records of the discussion of the cases of serious failure by Member States to comply with reporting obligations or other relevant constitutional obligations.

I would now like to turn to some of the main aspects addressed during the Committee's discussions.

The general discussion highlighted the fruitful dialogue between the Committee on the Application of Standards and the Committee of Experts on the Application of Conventions and Recommendations. In fact, this cross-fertilization of ideas is already an established practice that is used by both Committees to handle various matters of joint interest. For example, between November and December 2020, the Vice-Chairpersons of the two Committees exchanged insights on the impact of COVID-19 on the world of work and the functioning of the ILO supervisory system.

In the same vein, during the general discussion and the consideration of the General Survey, our Committee had the pleasure of welcoming the Chairperson of the Committee of Experts, Judge Graciela Dixon Caton, as an observer. In her statement, she underscored the commitment to maintain this interaction between the two Committees in order to enhance the efficiency and effectiveness of the standards supervisory system. The Committee also had the pleasure of welcoming the Chairperson of the Committee on Freedom of Association, Professor Evance Kalula, who presented his Committee's annual report, thus guaranteeing complementarity between the supervisory procedures.

Of course, the general discussion also addressed the impact of the pandemic on the application of international labour standards. All members agreed that respect for and effective application of the ILO standards system and the focus on a human-centred future of work promoted by the ILO Centenary Declaration for the Future of Work, 2019, are now more crucial than ever. Furthermore, all members were in agreement that ensuring respect for international labour standards through effective social dialogue is essential in order to achieve a sustainable and resilient recovery from the COVID-19 crisis with productive jobs, sustainable enterprises and opportunities for decent work for all.

In its consideration of the General Survey and the addendum, the Committee welcomed the opportunity to discuss the fundamental question of promoting employment and decent work in a rapidly evolving world of work. The Committee underscored the urgent nature of the matter and noted with concern the devastating social and economic impact of the pandemic globally. It also noted that employment is at the very core of the ILO's mandate to achieve social justice, as expressed in its Constitution of 1919 and reaffirmed in the Declaration of Philadelphia of 1944 and the Centenary Declaration of 2019.

The Committee emphasized once again the importance of focusing on a human-centred future of work that places workers' rights at the heart of social and economic policies. It also reiterated that, in order to ensure a sustainable, employment-intensive recovery, States must adopt policies and programmes founded on international labour standards and effective social dialogue, based on empirical data and with a broad and inclusive scope that is gender-responsive and takes into account specific groups, such as women, young people, persons with disabilities and workers in the informal economy.

Moreover, the Committee noted that those measures must recognize the key role of the private sector in employment creation and the importance of promoting sustainable business initiatives. Such policies should also promote innovation and continuous, quality education and training that are responsive to labour market needs.

Lastly, our Committee adopted a list of 19 individual cases to examine this year. In drawing up the list, a balance was sought between the fundamental Conventions, governance Conventions and technical Conventions. Geographical balance was also ensured, as well as a balance between developing and developed countries.

Despite the limited time available, I am pleased to report that the Committee was able to consider all cases and adopt conclusions in respect of them. The Governments in question had an opportunity to voice their opinions, which were reflected in the records contained in the Committee's report. I would like to take this opportunity to express my appreciation for the great commitment of all parties, despite the challenge of holding the discussions virtually.

I would like to close by thanking the Chairperson of the Committee, Ms Corine Elsa Angonemane Mvondo, for her skilful leadership of the meetings and efficient time management, which undoubtedly helped the Committee to complete its work. I would also like to take this opportunity to thank the Employer Vice-Chairperson, Ms Sonia Regenbogen, and the Worker Vice-Chairperson, Mr Marc Leemans, for the collaborative spirit with which they engaged with the Committee's work. And, of course, I would also like to thank all members of the Secretariat and the representative of the Secretary-General, Ms Corinne Vargha. To conclude, I recommend the report of the Committee on the Application of Standards to the Conference for adoption.

### **Mr Leemans**

#### **Worker Vice-Chairperson of the Committee on the Application of Standards (Original French)**

The Committee on the Application of Standards was able to conduct and conclude its work. It carried out its work in very particular circumstances, which forced us to adopt a number of exceptional measures. One example is the reduction in the number of cases, which caused much frustration within our group, as many workers around the world continue to have their rights infringed.

We can nevertheless be satisfied that we adopted significant conclusions for the cases examined and we hope that they will have an impact in the real world. In this regard, we are deeply concerned to learn of the deteriorating situation in certain cases examined by our Committee this year. We call on the Governments concerned to act wisely and ensure the full implementation of the conclusions adopted.

Furthermore, our Organization will not stand for reprisals being taken as punishment for discussions within the Committee. As you know, our Committee bases its work on the Report of the Committee of Experts on the Application of Conventions and Recommendations.

We cannot overemphasize the independence of the Committee of Experts. Contrary to what has sometimes been implied, it is not simply a technical committee that prepares the work of our Committee. It is a fully-fledged supervisory body that freely and independently examines compliance with the Conventions and Recommendations. This independence would be severely damaged if the Committee of Experts were to act on suggestions that it should promote vague concepts. Even if such concepts could be taken into account, they would only be relevant in the formulation of standards, but in no way in the supervision of their application.

The Workers' group is not at all opposed to discussing any given concept, such as sustainable enterprises, but it is unrelated to the supervision of the application of standards. That discussion can be held in another ILO forum, as we did, in fact, in 2007. In addition, the suggestions made by the Employers' group, with which the Workers' group disagrees, concerning the right to collective bargaining must be put to one side.

It is therefore essential to respect the independent expression of the experts concerning all the issues examined, including the right to strike. In this regard, the Workers' group wishes to recall its position that this is a fundamental right that is integral to freedom of association and is covered by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

We would also like to emphasize that the Committee on the Application of Standards is not mandated to provide guidance or instructions to the Committee of Experts, and certainly not to oversee its work. In this respect, the dialogue between the two Committees, which is based on mutual respect and an equal footing, is intended solely to highlight their complementarity and enable them to discuss their future cooperation.

Our Committee also examined the impact of the pandemic on the application of international labour standards by devoting a special discussion to the subject. That provided an occasion to underscore the need to respect standards, especially in circumstances such as those of the pandemic. There cannot be one body of standards for prosperous times and another for troubled times.

Standards must also be at the heart of the post-COVID recovery, paying particular attention to instruments that offer a suitable framework to that end, such as the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205). Further, it is important that the supervisory bodies ensure specific follow-up to the measures taken during the pandemic and continue to examine their conformity with the standards of our institution.

The General Survey that our Committee discussed this year was devoted to instruments related to employment policy, a subject of particular importance in the post-COVID recovery. The conclusions adopted provide an overview of the measures and actions that must be taken, which must place the highest value on workers and respect for their rights. States must play a key role in these circumstances through public investment, regulation of economic activities and expansion of public services. Their capacity for action must remain intact and policies of austerity must no longer come into play. Economic activities are only meaningful if they improve the lot of the majority of the population, not just a few. Hence it is critical to ensure that workers benefit from the fruits of these activities, which would simply not be possible without them.

I would now like to turn to certain events that arose during our Committee's discussions. On several occasions, some participants unfortunately considered it useful to describe certain cases as cases of progress. For all intents and purposes, I must recall

that a case can only be characterized as a case of progress if both the Workers' and the Employers' groups explicitly agree to define it thus. No cases were designated as such this year. We also noted that some delegates took it upon themselves to determine what does and does not fall within the scope of the discussion. We must repeat, once and for all, that our Committee's mandate is to ensure respect by Member States of the Conventions that they have ratified. Anything that relates, closely or loosely, to the compliance of the State in question with the Conventions falls within the scope of our Committee's discussions.

In addition, it is important for us to come back to the way in which some people used points of order, taking it upon themselves to interrupt speakers and to request that statements be removed from the record. Such an attitude is clearly unacceptable and it must not be allowed to happen again.

The Committee on the Application of Standards bears an important responsibility within the ILO supervisory system. Like the other supervisory mechanisms, it enables us to breathe life into the instruments adopted by our Organization. Beyond the differences in opinion that may arise, let us not lose sight of our institution's reason for being and its mandate, which determines and guides our activities.

On behalf of the Workers' group, I would like to thank the Chairperson of our Committee, Ms Corine Elsa Angonemane Mvondo, and the International Labour Standards Department, in particular Ms Corinne Vargha, as well as the team from the Bureau for Workers' Activities and the Employer Vice-Chairperson, Sonia Regenbogen, whose work illustrates that differences do not preclude respect. I, of course, thank all members of the Workers' group for their active participation and solidarity in the various discussions. Thank you all for your attention and I wish you all the best going forward.

## **Ms Regenbogen**

### **Employer Vice-Chairperson of the Committee on the Application of Standards**

I would like to endorse the report of the Committee on the Application of Standards and recommend its adoption. This year, owing to the ongoing pandemic, the Committee's session took place for the very first time in a virtual format. Overall, the Employers are pleased that the Committee was able to successfully conclude its work on time, thanks to the discipline and cooperation of all delegates. In particular, we thank our Chairperson for the effective time management of our substantial work.

We must also highlight the challenges of a virtual format. Regrettably, we noticed that members from some regions were not able to participate effectively in certain cases due to potential time zone differences and connectivity issues. Furthermore, the fixed and limited time for sittings meant that we had to compromise on certain cases on the depth of the discussion. In our view, we should have discussed fewer cases but in greater depth. Nevertheless, despite these constraints, the Committee once again demonstrated its ability to conduct a results-oriented tripartite dialogue and adopt clear, consensual and straightforward conclusions.

Regarding the discussion of individual cases, the Employers were pleased that many governments had already started taking remedial actions or intended to do so in the near future. We note positively that the majority of governments constructively engaged in the Committee process and expressed a clear and firm commitment to engagement in the supervisory system.

The Employers have also on earlier occasions called upon the Committee of Experts to orient its preparatory observations of compliance with ratified Conventions more

strictly to the text of the Conventions, and in this regard the Committee of Experts should fully adhere to the applicable methods of the Vienna Convention on the Law of Treaties. Where ILO Conventions deliberately grant flexibility in implementation, for instance through the use of general terms, this must not be altered by restrictive, non-binding observations by the Committee of Experts.

In the discussion of the experts' General Report, the Employers highlighted several important issues of concern that need to be addressed. First, we believe that the need for sustainable enterprises should become more visible in ILO standards supervision, which could contribute to more balance and more acceptance in the application of international labour standards at the level of Member States. This seems to be of particular relevance in the current context, where Member States are designing or implementing COVID-19 recovery strategies in which sustainable enterprises are expected and must play a key role. To reiterate, the Employers' view is different from the Workers' view in this regard, and considers that sustainable enterprises absolutely have a place in the supervisory system.

Second, the Employers have made comments that are related to the experts' non-binding observations on the promotion of collective bargaining under Article 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). In particular, we highlighted our concerns on the questions of: who has the right of collective bargaining, the level of collective bargaining, whether there is a hierarchy of norms in which collective agreements cannot depart from applicable legislation and individual labour contracts cannot depart from an applicable collective agreement, as well as questions as to the legal obligation to negotiate for employers. The Employers request the experts, and the office that supports the work of the experts, to fully respect the wording of Article 4 of Convention No. 98, and the flexibility afforded by this provision, in order to allow governments and social partners in Member States to find ways of implementation in line with their national circumstances and needs.

Third, the Employers must, once again in reference to the General Report, raise the question of the experts' assessment on the general application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in respect of the experts' assessment on the right to strike. It is important to note that, not only the Employers, who have been very clear about their views on this question, but also the entire Government group of the Governing Body in a March 2015 statement expressed the view that conditions and practices of the right to strike are to be defined at national level. It is also important to recall that the legislative history of Convention No. 87 is indisputably clear: that the proposed Convention relates only to the concept of freedom of association and not the right to strike. Therefore, in the Employers' view, neither the Convention itself nor the tripartite constituents intend for a right to strike to be included in Convention No. 87. Therefore, we find the insistence by the experts on a detailed regulation of the modalities and practices of the right to strike in Convention No. 87 increasingly concerning, as it divides and weakens the ILO's standards supervisory system. To be clear, the Employers have never excluded the possibility to discuss in a tripartite manner at the International Labour Conference an ILO instrument on the right to strike. However, we cannot accept the Committee of Experts making extensive assessments that seek to create new and additional obligations for Member States, and thereby bypassing the legislator of the ILO, which is the tripartite International Labour Conference.

Turning to the discussion and outcome of the General Survey, the private sector as the principal source of economic growth and job creation, the need to promote an

enabling environment for entrepreneurship and sustainable enterprises, and the role of sustainable enterprises as generators of employment and promoters of innovation and decent work were clearly recognized. We note that the ratification prospects for the three Conventions examined – that is, the Employment Policy Convention, 1964 (No. 122), the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), and the Home Work Convention, 1996 (No. 177) – are limited. In particular, there seem to be significant ratification obstacles to Convention No. 177. The lesson learned from this is that it is not advisable to set internationally binding rules on particular forms of work, especially when these forms are extremely diverse, both nationally and internationally. We also raised concerns about the usefulness and appropriateness of the Employment Relationship Recommendation, 2006 (No. 198), in view of its unduly narrow focus on the employment relationship. Having said that, the Employers consider that the other employment instruments examined overall retained relevance as guideposts for designing balanced policies that help achieve the objective of full, productive and freely chosen employment.

Turning now to the discussion of individual cases, I would like to highlight the following cases. The case of the Plurinational State of Bolivia concerns the absence of consultations with employers' organizations, as well as the inadequacy of the criteria used when fixing the minimum wage. We trust that the Government will accept the direct contacts mission, avail itself of ILO technical assistance and provide information before the Committee of Experts' next meeting in 2021.

The case of El Salvador regarding the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), has been discussed for the past two years and deals with the lack of reactivation of the Higher Labour Council and significant deficiencies in social dialogue, despite an ILO direct contacts mission in 2017. We trust that the Government will accept the high-level mission very soon.

Also, it is no surprise that the Employers would like to have discussed the very serious and continued case of the Bolivarian Republic of Venezuela in respect of Convention No. 87. The experts' observation contains the strongest possible terms to highlight continuous non-compliance, including a reference to the fact that the Government has not yet accepted the recommendations of the ILO Commission of Inquiry. The Employers look forward to the Director-General's report and the discussion at the next session of the Governing Body in November on this case.

Let me highlight that this year again we worked to draft the conclusions of individual cases in a fair, just and balanced manner, reflecting shortcomings in the application of ratified Conventions, but also recognizing progress made. Conclusions reflected only those recommendations that were agreed to by consensus. We continue to express our firm commitment to the idea that the Committee must adopt short, clear and straightforward conclusions. Any controversial issues or fundamental disagreements, such as those related to the right to strike in the context of Convention No. 87 cases, are not reflected and accordingly not covered in the conclusions.

Finally, we would like to emphasize the importance of the follow-up to the Committee's conclusions. The Committee's conclusions represent tripartite consensus on compliance issues and thus set out the limits of the mandate of Office-related technical assistance and follow-up missions. In this light and taking into account the tripartite structure of the ILO, the Employers encourage specialists from the Bureau for Employers' Activities and the Bureau for Workers' Activities to be systematically involved in such follow-up actions and to assist the employers' and workers' organizations in the respective countries on ways to achieve compliance with the Conventions that take into



account their needs. We also stress that the Office plays a vital role in assisting countries to better understand how to comply with their standards-related obligations, and appreciate these efforts. We encourage the International Labour Standards Department to continue to consult with the employers' and workers' secretariats to ensure that the most representative employers' and workers' organizations are well-placed to contribute to the success of the respective missions.

In conclusion, the Employers are generally satisfied with the operation of the first ever virtual session of the Committee. Overall, consensus was reached where possible, and disagreements were highlighted when necessary. We see room to continue to improve on the work of the Committee in respect of the balance, transparency, relevance and effectiveness of the tripartite governance of the Committee.

I would like to conclude with words of thanks and appreciation to the International Labour Standards Department for facilitating this virtual format, and in particular, I would like to thank its Director, Ms Corinne Vargha. Also, a special thanks goes to our Chairperson, Ms Corine Elsa Angonemane Mvondo, for the fair parliamentary running of the Committee's meetings this year and very effective time management. She managed this difficult role with poise, confidence and always good spirit. Please allow me also a moment to thank the Employers' group for their support and guidance, many of whom are long-standing participants with deep experience and knowledge of the work of the Committee. I would also like to thank Kaizer Moyane, Paul MacKay, Annick Hellebuyck, Juan Mailhos, Miriam Pinto, Laura Giménez and Fernando Yllanes for their support and assistance in preparing and presenting the Employers' perspective on individual cases and the General Survey. I would like to also express gratitude for the invaluable support of María Paz Anzorreguy and Rita Yip from the International Organisation of Employers and Christian Hess and María Ángeles Palmi Reig from the Bureau for Employers' Activities. I would also like to thank the Canadian Employers Council and the current chair, Kirk Newhook, for their support in my role. Finally, I would like to thank my friend Marc Leemans and his team. Our cooperation demonstrates that even though we do not often agree, we are able to find consensus and express our divergence of views in a spirit of respect. I would also like to thank the Government representatives who participated actively in the Committee to ensure that our discussions were constructive and productive. In many cases, Government representatives connected from time zones where it was either very early or very late, and we appreciate their participation. Last, but not least, of course, thank you to the interpreters for making our discussions possible in the various languages.

### **Ms Angonemane Mvondo**

#### **Chairperson of the Committee on the Application of Standards (Original French)**

I am very honoured to take the floor this afternoon in my capacity as Chairperson of the Committee on the Application of Standards at the 109th Session of the International Labour Conference, as we adopt our Committee's report.

The Committee on the Application of Standards is one of the key committees of the International Labour Conference and, with the Committee of Experts on the Application of Conventions and Recommendations, is at the heart of the supervisory system for which the ILO is known. This session has taken place against an exceptional backdrop and it should be noted that we have nevertheless been able to demonstrate a significant ability to adapt to these unusual circumstances.

The arrangements adopted at the informal tripartite consultations on the working methods of the Committee laid the groundwork for a smooth and productive session. It was productive because, despite the unique circumstances in which we conducted our work, the Committee rose to the challenge of examining all of the items that were on its agenda.

This year, the Committee discussed matters that were particularly topical, such as the impact of the pandemic on the application of international labour standards and the question of promoting employment and decent work in a changing landscape, which is the subject of the General Survey.

These discussions served to highlight the shared commitment among the constituents of this Organization to design policies for recovery that are respectful of international labour standards. Different points of view were put forward, but these only enriched the debate.

As for the examination of individual cases, the discussions were able to proceed as scheduled and all of the cases on the list were examined within the time available. Again, the discussion was rich and passionate. We heard different – even opposing – views, but these were always expressed with respect for the views of others, in parliamentary language and in a way that reflected a firm commitment to standards and the supervisory system.

I would like to take this opportunity to thank all the delegates for their commitment and the constructive spirit in which they participated in the work of the Committee. I would like to commend all those delegates who took the floor in the discussions for the discipline that they showed and for their efforts to be concise. I would now like to ask them for their understanding and indulgence, especially if I offended them in any way during their interventions, when I had to apply the speaking time limits, which we all know can be frustrating, as it is so important for all the delegates to be able to present their point of view and contribute to the discussion. This was all the more difficult for me given the virtual nature of our discussions.

The work of the Committee was followed very closely by a considerable number of delegates. The public platform was also very successful. All of this is testimony to the interest generated by the discussions of the Committee and, more generally, highlights the relevance and importance of the supervisory system.

Let us not forget that the issues discussed by the Committee on the Application of Standards are and will remain central to the lives of workers and employers. I would like to thank in particular the Employer Vice-Chairperson, Ms Sonia Regenbogen, and the Worker Vice-Chairperson, Mr Marc Leemans, for their cooperation. Thanks to their experience and their spirit of conviviality, we were able to complete the examination of the items on our agenda. I would also like to thank my Government colleague from Chile, Mr Pedro Pablo Silva, for his efficient work and for his accurate account of the work of our Committee.

Finally, I would like to express my sincere and very special gratitude to the representative of the Secretary-General, Ms Corinne Vargha, from whom I have learned a great deal. I would also like to convey my thanks to all the members of the Secretariat for their professionalism and support. They were essential to the organization and success of the virtual work of this Committee.

Of course, I would like to pay tribute to the excellent work of the interpreters who enabled us to understand each other perfectly. I cannot forget the technicians this year,

who made us feel a little closer to each other, despite the distance and the differences in time zones. To conclude, and to echo those who have spoken before me, if I had to use only two words to sum up the work of our Committee, they would be: dialogue and respect. It only remains for me now to recommend that you approve the report of the Committee on the Application of Standards.

### **Ms Krüger**

#### **Government (Canada), speaking on behalf of the group of industrialized market economy countries**

The group of industrialized market economy countries (IMEC) is pleased with the work of the Committee on the Application of Standards this year, which successfully and fully discharged its duty, despite the challenging virtual context. We thank the Chairperson, the Worker and Employer Vice-Chairpersons, all participants and all staff, who worked tirelessly behind the scenes to ensure the smooth functioning of this Committee over these past several weeks.

We underscore the critical importance of the work of the Committee in supervising countries in the application of the international labour standards that they have ratified and agreed to meet in both law and practice. IMEC has full confidence in the ILO supervisory system and the Committee, and supports the independence and impartiality of the Committee of Experts. The ILO's supervisory system, including the Committee, is unique, an essential cornerstone of the ILO's mandate and mission, and is critical to the credibility of the ILO's work as a whole. IMEC remains strongly committed to ensuring the proper functioning of the ILO supervisory mechanism going forward, with a view to creating and maintaining decent work and social justice for all.

### **Mr Nunes**

#### **Government (Portugal), speaking on behalf of the European Union and its Member States**

I have the honour to speak on behalf of the European Union (EU) and its Member States. The candidate countries, North Macedonia and Albania, and the European Free Trade Association countries Iceland and Norway, members of the European Economic Area, align themselves with this statement. We align ourselves with the IMEC statement.

To begin with, we would like to thank the President of the Conference, the Chairperson of the Committee, the Reporter, as well as the Secretary-General and the Secretariat for their dedication and perseverance in making this session of the Conference a success, and ensuring that after its one-year deferral, this important Committee's work could go on during the crisis resulting from the COVID-19 pandemic. In the same vein, we would like to thank the spokespersons of the Workers and Employers for their constructive spirit and contributions. We welcome the Governments' positive approach and engagement in the process. The Committee embodies the true essence of tripartism, and we strongly believe that commitment to the work of our Committee to improve the implementation of Conventions should remain a priority for all constituents.

We are firm advocates of the need for an independent, expert-based, efficient and robust supervisory system to oversee the implementation of ILO Conventions. We are convinced that a well-functioning supervisory system is crucial to ensuring the credibility of the Organization's work as a whole. We underline the importance of the guidance given by the ILO in support of the application of international labour standards in law

and in practice. Putting this system under pressure of any kind would be not only inefficient and ineffective, but also very worrying, in particular in the current context of the pandemic.

The EU and its Member States strongly underline that the Committee's independent, expert opinions are key to maintaining an environment of technical tripartite cooperation on international labour standards. In this regard, we reiterate our full support for the premise that democracy and the full exercise of trade union rights, freedom of association and the right to organize go hand in hand.

We also express our support to the Committee of Experts' reaffirmation of the right to strike being an intrinsic component and logical consequence of the freedom of association and the right to organize, as defined in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). We fully respect and support the independence and impartiality of the experts, which is a crucial aspect of the strength of the ILO's supervisory system.

Under the current circumstances, human rights, including labour rights, and democracy are being challenged and called into question. As always, human rights, democracy and the rule of law, as well as gender-responsive and inclusive approaches, should continue to remain at the heart of all our responses, also in the recovery from the COVID-19 pandemic. We believe that international labour standards have a central role in addressing socio-economic regression, and in putting recovery efforts on a more resilient footing.

We strongly reaffirm our support for the Committee of Experts' observation that recovery measures should never weaken the protection afforded by labour and social protection laws, as that would only further undermine social cohesion and stability, and erode citizens' trust in public policies.

The Committee on the Application of Standards is a unique mechanism that enables all constituents to discuss the implementation of ILO Conventions in a constructive, tripartite manner, based on unbiased and independent observations by experts. It enables the exchange of views and fosters progress. We encourage ILO Members to comply with the recommendations and follow up on the observations and conclusions, where appropriate and necessary with the support of ILO technical assistance and/or direct contact missions.

The EU and its Member States will continue to fully support the ILO's supervisory system and the promotion of the ratification and implementation of international labour standards. We remain convinced that they provide for the most elaborate and one of the most valuable examples of a multilateral rules-based order, which has gained even more importance during this crisis.

### **Mr Mavima**

#### **Minister of Public Service, Labour and Social Welfare (Zimbabwe)**

Thank you for giving me the floor, to make a few remarks following the presentation of the report of the Committee on the Application of Standards. I wish to speak in respect of the conclusions in the case of Zimbabwe.

My Government has taken note of the conclusions and would like to point out that technical assistance from the Office is never rejected. However, the context of technical assistance arising from an examination of the country has to be in line with the terms of reference and the related issues discussed. Therefore, issues that are not related to the

Convention, including previous conclusions on other Conventions, should not be the subject of the conclusions and the recommended technical assistance. To this end, the conclusions on the discussion under the Abolition of Forced Labour Convention, 1957 (No. 105), cannot be grounded in the 2009 Commission of Inquiry that related to the observance by Zimbabwe of 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).

With the concurrence of this Committee, the Government of Zimbabwe would like to proceed to engage with the Office in order to streamline the technical assistance that is being recommended. My Government wants it on record that it is accepting the technical assistance to address, through labour law reform, aspects in the Labour Act, Chapter 28:01, that are not in sync with Convention No. 105, and more importantly to align the Act with the national criminal justice system.

Regrettably, my Government does not accept the special paragraph. This position is based on the following: Firstly, there is no forced labour in the prisons of Zimbabwe. Secondly, the Committee of Experts has never proved that the practice exists in the prison system in Zimbabwe. Thirdly, most issues contained in the reports of the Committee of Experts and those presented by the Workers' delegates, in particular the Worker Vice-Chairperson during the discussion, relate to Convention No. 87, which Zimbabwe is not listed under.

For the record once again, the Committee of Experts did not analyse the new Maintenance of Public Order Act that was promulgated in November 2019 and it does not dispute the commitment of the Government of Zimbabwe to address the issues in the Labour Act that relate to Convention No. 105. The conclusion does not take into account the submissions made by several delegates which noted the absence of forced labour in the prison system of Zimbabwe and commended Zimbabwe for the progress regarding labour law reform. Equally relevant was the call by some delegates for engagement, not confrontation.

## The President


As there are no other requests for the floor, we shall proceed with the approval of the report of the Committee on the Application of Standards.

If there are no objections, may I take it that the Conference approves the report, as contained in *Record of Proceedings* No. 6A?

**(The report is approved.)**

On behalf of the Conference, I wish to express our sincere gratitude to the members of the Committee and to the Secretariat. I am aware of the fact that the Committee held an extended sitting yesterday in order to complete its work, for which we are very grateful. Furthermore, the work carried out by the Committee is one of the cornerstones of the ILO's mission to promote social justice, and the Committee takes on subjects that can be both complex and difficult. Congratulations to all for such a positive outcome. The Conference as a whole thanks you for your hard work and dedication.

**(The Conference continues its work in plenary.)**



## Advancing social justice, promoting decent work

The International Labour Organization is the United Nations agency for the world of work. We bring together governments, employers and workers to drive a human-centred approach to the future of work through employment creation, rights at work, social protection and social dialogue.

The Conference Committee on the Application of Standards, a standing tripartite body of the International Labour Conference and an essential component of the ILO's supervisory system, examines each year the report published by the Committee of Experts on the Application of Conventions and Recommendations (CEACR).

Since 2007, with a view to improving the visibility of its work and in response to the wishes expressed by ILO constituents, a separate publication has been produced in a more attractive format bringing together the usual three parts of the work of the Conference Committee. This publication is structured in the following way:

- ▶ General Report of the Conference Committee on the Application of Standards.
- ▶ Discussion on the General Survey and on the situation concerning particular countries.
- ▶ Report of the Conference Committee on the Application of Standards: submission, discussion and approval.

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