



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

Report of the Committee on the Applications 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 139 members (117 Government members, 6 Employer members and 16 Worker members). It also included 12 Government deputy members, 81 Employer deputy members, and 226 Worker deputy members. In addition, 27 international non-governmental organizations were represented by observers.¹

2. The Committee elected its Officers as follows:

Chairperson: Ms Gloria Gaviria Ramos, Ministry of Labour
(Government member, Colombia)

Vice-Chairpersons: Ms Sonia Regenbogen (Employer member, Canada) and
Mr Marc Leemans (Worker member, Belgium)

Reporter: Ms Cecilia Mulindeti (Government member, Zambia)

3. The Committee held 18 sittings.

4. In accordance with its terms of reference, the Committee considered the following: (i) information supplied under article 19 of the Constitution on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference; (ii) reports supplied under articles 22 and 35 of the Constitution on the application of ratified Conventions; and (iii) reports requested by the Governing Body under article 19 of the Constitution on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135).²

Statement by the Chairperson of the Committee on the Application of Standards

5. The Chairperson expressed her honour at being able to preside over the Conference Committee on the Application of Standards. It was worth recalling that this Committee, which was a cornerstone of the regular ILO supervisory system, was the forum for dialogue in which the Organization debated with the governments concerned and social partners with regard to the difficulties encountered in the application of international labour standards. The Committee had a truly unique persuasive capacity and had made a hugely significant impact over the years. She trusted that the overall constructive spirit in

¹ For changes in the composition of the Committee, refer to *Provisional Records* Nos 4A to 4G. For the list of international non-governmental organizations, see *Provisional Record* No. 3.

² Report III to the International Labour Conference – Part 1A: Report of the Committee of Experts on the Application of Conventions and Recommendations; Part 1B: General Survey concerning minimum wage systems; Part 2: Information document on ratifications and standards-related activities.

which work was carried out in this Committee would allow for the impasse, which had hindered the harmonious work of the 2012 Committee, to be overcome. The Chairperson encouraged all of the governments and social partner representatives to stay on this path and continue striving for even greater social dialogue. She firmly hoped that the Committee could fulfil its mandate and would make every effort to work harder to meet this objective.

Opening statements of Vice-Chairpersons

6. The Worker members called for a minute of silence to pay homage to the 301 workers who lost their lives in the depths of the Soma mine in Turkey. The Committee could not merely stand by and fail to mention this disaster, which was unquestionably caused by an unbridled quest for profit. Mining accidents were not inevitable, but rather could be avoided, in accordance with the Safety and Health in Mines Convention, 1995 (No. 176).
7. The Worker members expressed the hope that at the end of this 2014 Conference, the climate of crisis prevailing in the work of the Committee would be dissipated and that confidence would reign once again so that the Committee might do its work and reach operational conclusions, providing real prospects of progress for the ILO's three constituents. The points of contention had been connected to the issue of the right to strike, as reflected in the conclusions of a number of cases concerning the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), examined by the Committee in 2013. Thus, it was stated that: "The Committee did not address the right to strike in this case, as the employers do not agree that there is a right to strike recognized in Convention No. 87." It should however be noted that there was no record over the past few years of any Committee conclusions referring to the right to strike.
8. Beyond the disputes over wording and legal formula, the efficiency of the supervisory mechanism had to guide the work of the Committee and allow it to unanimously adopt conclusions drafted on the basis of a balanced exchange between the Worker and Employer members. Aware that there was much more to this issue than the right to strike, the Worker members expressed the hope that other Conventions would not be used to wage a war against the standard-setting system under the banner of the competitiveness of enterprises and short-term profit. Undermining core standards when confronted with economic difficulties not only demonstrated a blatant disregard for a legal obligation, committed an injustice, and also posed the threat of making a serious error from an economic standpoint. The year 2013 was a bridge year that did not allow to draw definitive conclusions that could bind the Worker members, particularly with respect to the right to strike. The aim then had been not to repeat the failure of 2012. The year 2014 must be the year of solutions or, at least, the year in which the groundwork will be laid to reach future solutions.
9. The Worker members recalled that the ILO Governing Body was presented, in March 2014, with a document on the follow-up to the events that had occurred in the Committee in June 2012. This document concerned, in particular, the mandate of the Committee of Experts, as expressed in its 2014 report, and the running of the present Committee. In its decisions, the Governing Body had: (1) "reaffirmed that in order to exercise fully its constitutional responsibilities, it was essential for the ILO to have an effective, efficient and authoritative standards supervisory system commanding the support of all constituents"; (2) "welcomed the clear statement by the Committee of Experts of its mandate as expressed in the Committee's 2014 report" and "underscored the critical importance of the effective functioning of the Committee on the Application of Standards in conformity with its mandate at the 103rd Session of the International Labour Conference"; and (3) "called on all parties concerned to contribute to the successful

conclusion of the work of the Conference Committee on the Application of Standards at the 103rd Session of the International Labour Conference". The Worker members declared that it was within this framework that they would conduct their activities within this Committee.

10. The Employer members looked forward to constructive dialogue in the work of this Committee. The Employer members expressed their appreciation for both the informal and formal interaction enjoyed with the Committee of Experts over the past year, looked forward to working together with the Committee of Experts, and expressed their desire for continued, constructive and sustainable interaction. They also restated the view that international labour standards were of vital importance in an increasingly globalized world and highlighted the opportunity for international labour standards to play an even more important role in enterprises around the globe.
11. The Employer members reiterated their commitment to the ILO supervisory system, both to the work of this Committee and of the Committee of Experts, as these two bodies made up the two pillars of the supervisory system. They hoped that the supervisory system would continue to maintain its relevance and effectiveness, stressed that tripartite governance was necessary to ensure its credibility, continued relevance and sustainability and reaffirmed their continued support in this regard. The Employer members were cohesive and united in their commitment to the proper work of the supervisory system, which was best illustrated by the increase in the number of comments of employers' organizations provided to the Committee of Experts. They welcomed the opportunity to continue to actively and constructively participate in each of the facets of the supervisory system.
12. The Employer members also wished to thank the Worker members on the work done relating to the list of cases. Within the negotiation process, the Employer members remained committed to the effectiveness of the work of this Committee and concurred with the Worker members on the value of balanced negotiations within the Committee and the hope that the year 2014 would be the year of solutions. They were heartened by the constructive tone of the Worker members and looked forward to a constructive and efficient adoption of the list of individual cases and the constructive and efficient discussion of each individual case.

Work of the Committee

13. In accordance with its usual practice, the Committee began 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 part of the general discussion, reference was made to Part One of the report of the Committee of Experts on the Application of Conventions and Recommendations and to the information document on ratifications and standards-related activities. During the first part of the general discussion, the Committee also considered its working methods with reference being made to a document submitted to the Committee for this purpose.³ A summary of this part of the general discussion is found under relevant headings in sections A and B of Part One of this report.

³ Work of the Committee on the Application of Standards, ILC, 103rd Session, C.App./D.1 (see Appendix I).

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14. The second part of the general discussion dealt with the General Survey concerning minimum wage systems carried out by the Committee of Experts. It is summarized in section C of Part One of this report.
 15. Following the general discussion, the Committee considered various cases concerning compliance with obligations to submit Conventions and Recommendations to the competent national authorities and to supply reports on the application of ratified Conventions. Details on these cases are contained in section D of Part One of this report. Section E contains a summary of the discussion on the 19 individual cases for which the Committee did not adopt conclusions. The adoption of the report and closing remarks are contained in section F of this report.
 16. The Committee considered 25 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 once again 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 the tripartite dialogue in its work and trusted that the governments of all those countries selected would make every effort to take the measures necessary to fulfil the obligations they had undertaken by ratifying Conventions. A summary of the information submitted by Governments, the discussions, and conclusions of the examination of individual cases were contained in Part Two of this report.
 17. With regard to the adoption of the list of individual cases to be discussed by the Committee, the Chairperson of the Committee announced that the final list of individual cases was now available.⁴
 18. Following the adoption of the final list of individual cases by the Committee, the Employer members recalled that the adoption of the list of cases was a difficult process. They were pleased that consensus had been reached well in advance of the deadline established. This demonstrated their commitment to ensuring that there was no delay in the work of the Committee. Considerable effort had been made to ensure regional balance, as well as balance between the fundamental, governance and technical Conventions. The Employer members expressed the hope that the work taking place in the Governing Body relating to the process of the adoption of the list of individual cases would continue, including identification of objective criteria for this list. They expressed the hope that the issue would be addressed, at the latest, in the Governing Body held in March 2015, in order to facilitate an orderly and efficient conclusion of the list of cases for the following year.
 19. The Worker members recalled their commitment to avoiding a recurrence of the situation in 2012, when there had been no list of cases to discuss, or of the situation in 2013 when they had to concede to the request to include a disclaimer by the Employers' group in the conclusions adopted by the Committee on a number of individual cases relating to Convention No. 87, to guarantee the adoption of a list. The past issues concerning the Committee of Expert's mandate were no longer relevant given that this matter had been

⁴ ILC, 103rd Session, Committee on the Application of Standards, C.App./D.4/Add.1 (see Appendix II).

clarified by the Committee and unanimously recognized by the Governing Body in March 2014. There could therefore no longer be any discussion of incorporating the disclaimer used last year in the conclusions of this year's individual cases. For a number of years, the selection of individual cases had become a very difficult exercise, whereas it should be a process in which the social partners must work together with a view to reaching compromises without any recourse to veto. Since 2012, the Worker members had been undertaking considerable preparatory work to come up with a proposal for the list of cases, in accordance with the criteria adopted. This list was now challenged by proposals emanating from the Employer members, before being adopted and immediately communicated to the Governments. This year again, in the interest of the smooth running of the Committee's work, the Worker members had had to waive a number of highly significant cases, such as that of Guatemala and Zimbabwe. It was a source of considerable frustration that the case of Turkey concerning the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), was missing from the final list, for reasons that were very obscure. Could this be attributed to the prospect of a special meeting of the World Economic Forum in Istanbul in September 2014, the fear of discouraging foreign investment or the Government's view that the case was poorly documented in the report of the Committee of Experts? These considerations were not valid reasons because economic development could not be pitted against workers' fundamental rights, and the Government could have taken the opportunity of a discussion to counter any possible misrepresentations the Committee of Experts might have made in handling the case. The worrying case of Turkey, where the implementation of Conventions Nos 87 and 98 had been examined for years, was included in the preliminary list after considerable reflection by the Turkish trade unions, who nevertheless accepted its withdrawal from the final list – in a spirit of compromise and solidarity that was noteworthy. The Committee's examination of the matter in 2013 had enabled it to guarantee the follow-up of the issues under consideration, mostly linked to the application difficulties of a legislation that supposedly regulated issues related to freedom of association and collective bargaining. Although reforms had been made, their implementation was encountering serious obstacles and the Government seemed to refuse the assistance that the Committee of Experts and the Office could provide it. As part of its adaptation process to the standards of the European Union, it was in Turkey's interest to bring itself into line with ILO Conventions. The Worker members therefore formally called upon the Turkish employers and Government to join the workers to take the opportunity provided by this Conference in order to draft, in a constructive spirit, a joint statement in which they committed themselves to continuing their efforts from a legislative standpoint and took the necessary measures to move forward in these areas, even in the absence of a discussion in this Committee.

20. Following the adoption of the list of individual cases to be discussed by the Committee, the Employer and Worker spokespersons conducted an informal briefing for Government representatives.

Working methods of the Committee

21. The Chairperson announced, in accordance with Part V(E) of document D.1, the time limits for speeches made before the Committee. These time limits were established in consultation with the Vice-Chairpersons and it was the Chairperson's intention to strictly enforce them in the interest of the work of the Committee. The Chairperson also called on the members of the Committee to make every effort so that sessions started on time and the working schedule was respected. Finally, the Chairperson recalled that all delegates were under the obligation to abide by parliamentary language. Interventions should be relevant to the subject under discussion and be within the boundaries of respect and decorum.

B. General questions relating to international labour standards

General aspects of the supervisory procedure

Statement by the representative of the Secretary-General

22. The representative of the Secretary-General pointed out that the mandate of this Committee under the Constitution and the Standing Orders of the Conference was at the core of the ILO's work in supervising the effective implementation of international labour standards at the national level. The Committee had a long standing practice of focusing its discussions on a list of individual cases proposed by the representatives of the Employers and Workers on the basis of the report of the Committee of Experts. Further details concerning the work of this Committee were set out in document D.1 which reflected the decisions taken so far by the Committee on the basis of the recommendations made by its tripartite Working Group on Working Methods.
23. With respect to the discussion of the General Survey of the Committee of Experts concerning minimum wage systems, she wished to highlight, in addition to the significance of this topical subject-matter, an important institutional dimension: this year, for the fifth time, the subject of the General Survey had been aligned with the strategic objective that would be examined in the context of the recurrent discussion under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008 (2008 Social Justice Declaration). The General Survey on the minimum wage fixing instruments would inform the recurrent discussion on the strategic objective of social protection (labour protection) to be held at the 104th Session (2015) of the Conference. In accordance with a decision taken by the Governing Body in November 2010, the review of this General Survey by this Committee was to take place, for the first time, one year in advance of the recurrent discussion by the Conference so as to facilitate better consideration and integration of the standards-related aspects in the report prepared by the Office for the recurrent discussion and into the outcome of that discussion.
24. Turning to the follow-up to the 2012 Committee on the Application of Standards (CAS), the representative of the Secretary-General recalled that, following a very constructive discussion in March 2014, the Governing Body had taken a number of decisions. They included a call on all parties concerned to contribute to the successful conclusion of the work of this Committee at the current session of the Conference. The Governing Body had also recommended that this Committee consider convening its Tripartite Working Group on Working Methods to take stock of current arrangements and develop further recommendations in relation to its working methods. This was a matter that the Committee may wish to consider, also having regard to the possible implications on the work of this Committee of the decisions on the reform of the Conference which would be implemented on a trial basis at the 104th Session of the Conference in 2015 (including a reduced duration of the Conference). For these reasons, the necessary arrangements would have to be made for such a meeting of the Tripartite Working Group in November 2014, the findings of which would then be submitted to the tripartite Working Party on the Functioning of the Governing Body and the International Labour Conference before formalizing final recommendations. The Governing Body had also requested the Director-General to prepare a document for its November 2014 session setting out the possible modalities, scope and costs of action under article 37(1) and (2) of the ILO Constitution to address a dispute or question that might arise in relation to the interpretation of an ILO Convention, as well as a document on a time frame for the consideration of remaining

outstanding issues in respect of the supervisory system and for the launching of the standards review mechanism.

- 25.** In terms of other important developments that needed to be highlighted, the speaker stated that the Maritime Labour Convention, 2006, had entered into force on 20 August 2013 and had become binding international law for the first 30 Members whose ratification of the Convention had been registered by 20 August 2012. Argentina had submitted the instrument of ratification on 28 May 2014, bringing the number of ratifying member States to 59 and the coverage of the world fleet to more than 80 per cent. This Convention established minimum international standards for working and living conditions for seafarers and presented novel features of particular relevance to the future orientation of the ILO standards policy that could usefully be considered for the purpose of designing ILO standards that met the requirements of the 2008 Social Justice Declaration. The first meeting of the Special Tripartite Committee (STC) established by the Governing Body in accordance with Article XIII of the Maritime Labour Convention, 2006, had taken place at the ILO in Geneva from 7 to 11 April 2014. The STC had a central role with respect to the more rapid process for amendment of the Convention to allow it to respond to changes and important needs in the sector. Two proposals for amendments had been jointly submitted by the Shipowner and Seafarer representatives and related to financial security in cases of abandonment of seafarers and in the event of death or long-term disability of a seafarer due to occupational injury, illness or hazard. The proposals for amendments had been adopted by the STC and were submitted to the current session of the Conference for approval. This very rapid process for amendment was unique and a source of inspiration in the reflection on the need to keep the ILO body of standards up to date.
- 26.** The speaker further referred to two standard-setting items placed on the agenda of the current session of the Conference: the first related to supplementing the Forced Labour Convention, 1930 (No. 29) – single discussion; and the second related to facilitating transitions from the informal to the formal economy (with a view to the adoption of a Recommendation under the double discussion procedure, the second discussion being scheduled in 2015). In 2016 and 2017, the Governing Body had selected the revision, under the double discussion procedure, of the Employment (Transition from War to Peace) Recommendation, 1944 (No. 71) – decent work for peace, security and disaster resilience. It should be noted that a number of Governing Body members – in particular from the Government group, but also the Employers’ group – had consistently underlined that the standards review mechanism adopted by the Governing Body in November 2011 but not yet operationalized should be implemented as soon as possible to keep the ILO body of standards up to date.
- 27.** The representative of the Secretary-General also wished to recall another important decision taken by the Governing Body in relation to the evaluation of the impact of the 2008 Social Justice Declaration to be undertaken by the International Labour Conference in 2016. The evaluation would include the issue of the cycle of recurrent discussions and their coordination with the General Surveys and the related CAS discussion. In taking this decision, the Governing Body had decided to postpone to 2017 the last recurrent discussion of the first cycle, which related to fundamental principles and rights at work and was initially scheduled for 2016.
- 28.** With regard to recent actions taken by the Office to improve the impact of the standards system, including the supervisory system, the speaker reported that the Office had been very active in following up with countries on the basis of the conclusions adopted by this Committee in 2013. The case of the application of Convention No. 182 on the worst forms of child labour by Uzbekistan was a particularly positive example. The 2013 conclusions of this Committee had encouraged the Government to agree on the monitoring of the cotton harvest, and a joint ILO–Uzbek monitoring had taken place from 11 September

until 31 October 2013. The monitoring units had undertaken unannounced visits covering approximately 40,000 kilometres across the country (over 800 documented site visits and 1,500 documented interviews with employers, farmers, children found in or around cotton farms, teachers, etc.). The results of the monitoring (inter alia, 57 confirmed cases of children working in the cotton fields) had been presented to the Government and the social partners, for discussion and follow-up. In December 2013, the Committee of Experts had noted these developments with interest and welcomed the Government's collaboration with the ILO. This case demonstrated how the ILO supervisory system, coupled with effective technical assistance, could have a significant impact towards the effective application of ILO standards and the advancement of decent work. In 2014, the ILO had continued work with the Uzbek Government and the social partners leading to the signature on 25 April 2014 of the first Decent Work Country Programme for Uzbekistan, which contained a strong international labour standards component. The information document also contained information on other countries where the technical assistance of the Office, including that provided in the framework of the time-bound programme financed by the Special Programme Account (SPA), had had a significant impact at the country level.

- 29.** The representative of the Secretary-General noted the important work carried out by the Committee on Freedom of Association (CFA) as well as the continued review of its working methods and procedures. At its March 2014 session, the CFA had supported the use of special national complaints mechanisms for the review of alleged violations of freedom of association and had encouraged the Office to continue to foster the further development of such mechanisms with full participation of the social partners. The CFA had invited governments to consider recourse to this practice, especially in cases where it was felt that resolution could be achieved at an early stage. The implementation of such tripartite dispute settlement mechanism in Latin America (mostly in Colombia and Panama) had proved useful to prevent and solve disputes related to freedom of association and collective bargaining. Such a mechanism had just been created in Guatemala, and other countries in the region were considering this possibility. In the framework of the work undertaken under the area of critical importance on the protection of workers from unacceptable forms of work, the possibility of extending the application of this type of tripartite dispute settlement mechanisms both to interested countries in other regions and to areas covered by other international labour standards was currently being considered.
- 30.** The representative of the Secretary-General wished first to recall that May 2014 marked the 70th anniversary of the adoption of the Declaration concerning the aims and purposes of the International Labour Organisation (Declaration of Philadelphia), which affirmed the fundamental principles on which the ILO was based: social justice; labour is not a commodity; freedom of expression and of association are essential to sustained progress; and poverty anywhere constitutes a danger to prosperity anywhere. She called on ILO member States to ratify and effectively implement up-to-date ILO Conventions, including the ILO fundamental and governance Conventions. In the light of continuing difficulties in labour markets in many countries and the discussion by the Conference this year of the recurrent item report concerning the strategic objective of employment as a follow-up to the ILO 2008 Social Justice Declaration, she highlighted the 50th anniversary of the adoption of Convention No. 122 (ratified by 108 member States) and the guidance provided by the Global Jobs Pact adopted by the International Labour Conference in 2009.
- 31.** Lastly, the speaker wished to draw attention to the up-to-date Conventions on occupational safety and health (OSH), in particular the Occupational Safety and Health Convention, 1981 (No. 155), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). The recent tragic events in the mining sector in Turkey but also in the Central African Republic (2013), Chile (2010), China (2012, 2013), New Zealand (2010), South Africa (2012) and United States (West Virginia, 2010), had

seen the deaths of a staggering number of workers. These events, as well as other tragic events such as in Bangladesh (Rana Plaza, 2013) and in Japan (Fukushima, 2011) underlined the paramount importance of OSH particularly as regards dangerous occupations, such as mining, construction and agriculture. The protection of workers against sickness, disease and injury arising out of their employment was enshrined in the Preamble of the ILO Constitution, while adequate protection for the life and health of workers in all occupations was reaffirmed in the Declaration of Philadelphia and the 2008 Social Justice Declaration. A significant body of international instruments and guidance documents had been developed and adopted by the ILO over the years. Presently it could be affirmed that the right to a safe and healthy working environment was a human right; it was the right of every worker to his or her physical integrity and personal security in the workplace. The representative of the Secretary-General therefore wished to take this opportunity to urge all ILO member States that had not yet done so to examine as a matter of urgency the possible ratification of up-to-date ILO OSH Conventions, including those that addressed specific OSH hazards and dangerous occupations. For those countries with mining industries, the ILO Safety and Health in Mines Convention, 1995 (No. 176), provided an excellent framework for putting in place a coherent policy for occupational safety and health in mines. Workers had a right to information, training and genuine consultation on and participation in the implementation of safety and health measures concerning the hazards and risks they faced in the mining industry, and urgent action was needed to prevent any fatalities, injuries or ill health affecting workers or members of the public, or damage to the environment arising from mining operations.

32. She concluded by congratulating all those governments who had taken action to implement or otherwise give effect to ILO Conventions and Recommendations and the employers' and workers' organizations for their engagement to advance the ILO standards agenda.

Statement by the Chairperson of the Committee of Experts

33. The Committee welcomed Mr Abdul Koroma, Chairperson of the Committee of Experts, who expressed his appreciation for the opportunity to participate in the general discussion and the discussion of the General Survey concerning minimum wage fixing systems of the Committee on the Application of Standards. He stressed the importance of a solid relationship between the two Committees in a spirit of mutual respect, collaboration and responsibility.
34. At the outset, the Chairperson of the Committee of Experts paid tribute to Dr Dierk Lindemann who had passed away in March 2014. Dr Lindemann had been appointed by the Governing Body to the Committee of Experts in March 2012; before that he had made an invaluable contribution to standard setting in the maritime field, including as a spokesperson for the Shipowners' group at the International Labour Conference (ILC) maritime session that had adopted the Maritime Labour Convention, 2006. Dr Lindemann's expertise and wisdom would be sorely missed in the Committee of Experts.
35. The speaker further pointed out that the special sitting of the Committee of Experts with the two Vice-Chairpersons of the Committee on the Application of Standards, and the participation of the Chairperson of the Committee of Experts in the work of the Committee on the Application of Standards, were the means whereby representatives of the two Committees exchanged views on matters of common interest. During the special sittings of the 2012 and 2013 sessions of the Committee of Experts, the exchange of views had focused on matters arising from the June 2012 discussions of the Committee on the Application of Standards. At the time of the Committee of Experts' examination of those matters, namely the mandate of the Committee of Experts and the right to strike under

Convention No. 87, diverging views had prevailed among the constituents. As an independent body with a specific mandate vested in it by the Conference and the Governing Body, the Committee of Experts should give priority to fulfilling that mandate. Its credibility and authority rested first and foremost on the quality of its technical and impartial examination of the application of ratified Conventions, which represented a significant amount of work to be performed in a limited period of time. Yet, being cognizant that its work and relationship with this Committee were at the heart of the ILO supervisory system, and that, since June 2012, the integrity, effectiveness and authority of the ILO's supervisory system were at stake, the Committee of Experts had decided to adopt a constructive approach. It had carefully examined the matters of its mandate and the right to strike under Convention No. 87, in order to contribute to the institutional challenge in a way consistent with its mandate and befitting its role in the overall supervisory system. In this endeavour, it had confidently relied upon the principles at the core of its existence and functioning, and on its dialogue with the Committee on the Application of Standards.

- 36.** The Committee of Experts had made a statement on its mandate, contained in paragraph 31 of its General Report, which the Governing Body had welcomed in March 2014. On the right to strike in relation to Convention No. 87, the Committee of Experts had appreciated the additional thoughts shared by the two Vice-Chairpersons, as well as the extensive presentations by the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC) concerning the issue; it had noted, however, that the two groups' viewpoints were diametrically opposed. As indicated in paragraph 92 of its General Report, as an independent body, the Committee of Experts had set out its observations on the right to strike under Convention No. 87 on numerous occasions taking into account the criteria applied by the CFA. These observations could be questioned by the tripartite constituents or recourse could be made to article 37 of the ILO Constitution. As it had noted in paragraphs 26 and 27 of its General Report, the Committee of Experts had devoted considerable time to discussing the issues raised and preparing to communicate its positions, at the expense of time that the Committee would be spending reviewing reports from governments and comments from the social partners. The Committee of Experts had also recalled in its General Report that it had made adjustments to its working methods over the years and would continue to do so, including by reviewing the proposals made during the June 2013 general discussion of the Committee on the Application of Standards. Importantly, it had considered that it was for the tripartite constituents to address and resolve ultimately political issues; the Committee of Experts had never been, and was not, a political body.
- 37.** During its March 2014 session, the Governing Body had encouraged the continuation of informal dialogue between the Committee of Experts and the Committee on the Application of Standards. It had also invited the Committee of Experts to continue to review its working methods with a view to further enhancing effectiveness and efficiency. The Committee of Experts had decided to convene its subcommittee on working methods at its next session. In this regard, the Committee of Experts had also aimed to streamline the contents of its report to ensure that it focused on the most important issues regarding the application of Conventions and to facilitate their examination by this Committee and the Conference.
- 38.** With regard to the General Survey on minimum wage fixing instruments, the speaker indicated that its scope was limited to the most recent and comprehensive ILO wage-fixing instruments, namely the Minimum Wage Fixing Convention, 1970 (No. 131), and its corresponding Recommendation No. 135. These instruments called for the establishment of minimum wage systems covering all groups of wage earners whose terms of employment were such that coverage would be appropriate. He pointed out that, in light of the economic crisis, the Committee of Experts had devoted a chapter to the role of minimum wages in the difficult contexts that some ILO member States faced due to the

economic crisis, as underlined by the Global Jobs Pact, and had recalled the need to involve the social partners in minimum wage fixing, particularly in times of economic difficulties. The Chairperson hoped that the ILO would have the capacity to respond positively to the large number of requests made by governments and employers' and workers' organizations for technical or advisory assistance with the implementation or operation of minimum wage fixing machinery. He concluded by indicating that Convention No. 131 was one of the most flexible ILO instruments in terms of its methods of application, making it possible for countries at very different levels of development to give effect to its provisions. The Committee of Experts had concluded that the objectives, principles and methods set out in Convention No. 131 and Recommendation No. 135 remained highly relevant, and that ILO member States that had not ratified the Convention should be strongly encouraged to do so. Minimum wage fixing was positive for employers as well, as it contributed to ensuring a level playing field. It was, therefore, necessary to breathe new life into Convention No. 131 and Recommendation No. 135 to reflect the current trends towards global reactivation of minimum wage policies.

39. The Employer members and the Worker members welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of the Conference Committee. The Employer Vice-Chairperson thanked the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations for his comments concerning the solid relationship between the two Committees in a spirit of mutual respect, collaboration and responsibility.

Statement of the President of the Conference

40. The President of the Conference indicated that his visit came with the responsibility of establishing contact with the Conference committees, determining the status of the work in progress and making himself available. The particularity of the Committee on the Application of Standards lay in the difficulties and tensions of consensus building, and in the satisfaction of achieving that consensus through dialogue. The Organization's comparative advantage was its standard-setting role and its tripartite structure. The Committee was central to the supervisory work of the Organization. Underscoring the arduousness of such work, he emphasized his unconditional support to the work of this Committee. Fortunately, the list of cases had been adopted and a new stage had begun, namely the discussion of each of the cases, with a shared responsibility based on the wish to maintain harmonious social and labour relations. One had to trust in the efficacy and responsibility of all members of the Committee to reach conclusions that would exemplify the tripartism which was the advantage of the ILO.
41. The Employer members welcomed the attendance of the President and the Vice-Presidents of the Conference in the Committee and greatly appreciated the statement of the President and especially the value given by him to consensus and to the supervisory system as a whole. His words would guide the Committee in its work.
42. The Worker members observed that the presence of the Chairperson and Vice-Chairpersons of the International Labour Conference highlighted the Committee's importance for the ILO and for its standard-setting system. Adopting standards and monitoring their application was an important way of improving labour relations. Since the ILO was the only global institution in which the workers were directly represented, they fully intended to assume their responsibilities in the matter. He concluded with the hope that the Committee would be guided by the maxim that "every worker is worth more than all the gold in the world".

Statements by the Employer members

- 43.** The Employer members emphasized that the Committee of Experts was only one of the two pillars of the ILO supervisory system, and that ultimate responsibility for the supervision of standards lay with the tripartite constituents, who were represented in the Conference Committee. In previous comments, they had emphasized the importance of the role of the Committee of Experts in assisting in understanding the voluminous information provided each year with respect to the application of standards.
- 44.** The Employer members welcomed the fact that the deadline for the selection of individual cases had been met, which reflected the commitment of Employer and Worker members to ensuring that there was no delay in the work of the Conference Committee. They added that the negotiation and adoption of the list of individual cases was a difficult and challenging process for both the Worker and Employer members, which gave rise to concerns with regard to the sustainability of the present system. They emphasized that additional objective criteria needed to be developed and considered for the adoption of the list, based on automatic, objective and transparent elements. They reaffirmed the importance of this issue, which they hoped would be resolved by the March 2015 session of the Governing Body at the latest. They hoped that by the time of the Conference discussion next year, the Worker and Employer members would have an improved method for the adoption of the list in place.
- 45.** Another issue that needed to be highlighted was the negotiation of the conclusions of the Conference Committee. Short, clear and straightforward conclusions were needed indicating in a clear and unambiguous fashion what governments needed to do to improve compliance with ratified Conventions. Moreover, while conclusions could reflect consensual recommendations, from time to time diverging views in the Conference Committee concerning certain conclusions could also arise. The Employer members hoped that, if this was the case, the Conference Committee would be able to note the difference of opinions in its conclusions, where appropriate.
- 46.** The Employer members welcomed the spirit of mutual respect, cooperation and responsibility that had consistently prevailed over the years between the Committee of Experts and the Conference Committee. They encouraged the intensification of frank dialogue, which was vital to the relevance of the supervisory system. They also welcomed the response of the Committee of Experts to the discussions in the Conference Committee and the clarification by the Committee of Experts in paragraph 31 of the General Report concerning the scope of their mandate. The Committee of Experts indicated that their recommendations were non-binding, being intended to guide the actions of the national authorities, which provided clarity on the scope of the mandate of the Committee of Experts, without undermining the importance of the supervisory system. Moreover, noting that the heading “mandate” was used twice, before paragraph 31 of the General Report, as well as in the Reader’s note, the Employer members expected the clarification set out in paragraph 31 should only be set out once in the report so as to avoid confusion. They further encouraged the Committee of Experts to continue to set out this section of the text in bold, in all future reports, including the General Survey, as it was important to highlight its significance.
- 47.** The Employer members reiterated that, as they had done when the mandate of the Committee of Experts was being clarified, they accepted that the role of the Committee of Experts required a certain degree of interpretation when formulating their non-binding guidance. However, to ensure the credibility of the entire supervisory system, it was crucial that the Committee of Experts remained within its mandate. The Committee of Experts should avoid straying into indirect labour standard setting by adding further obligations to Conventions through extensive interpretations, filling in gaps that had

appeared since a Convention was negotiated or by narrowing the flexibility of Conventions by providing subsequent restrictive interpretations. Standard setting was vested solely with ILO constituents and the Employer members vowed to resolutely defend this principle. The Committee of Experts could not fill the void created by the continued absence of an operational standards review mechanism. There was a consensus in the Governing Body regarding the need for a relevant and up-to-date body of ILO standards and the proposals to commence the standards review mechanism were awaited. The non-binding observations and recommendations of the Committee of Experts were not a substitute for a standards review mechanism and any expansion of the mandate of that Committee by the Experts risked undermining the supervisory system and hampering the work in the Governing Body.

- 48.** The Employer members questioned why the Committee of Experts' annual reports were published with no prior review or approval of the Governing Body. Such a procedure would further strengthen governance within the supervisory system. Moreover, the Committee of Experts should avoid criticizing general government policies, such as austerity measures and fiscal consolidation. Such opinions were not appropriate as the mandate of the Committee of Experts was to examine the application of standards, and it did not have a political mandate.
- 49.** In paragraph 92 of the General Report, the Committee of Experts recalled that it had set out in great detail its observations relating to the right to strike, taking into account the criteria applied by the Committee on Freedom of Association (CFA). This created the risk of a critical misunderstanding. The CFA was neither a mechanism for supervising ILO Conventions nor a tripartite standard-setting body, as its work was based on the call of the ILO Constitution to recognize the principle of freedom of association. The decisions taken by the CFA in relation to specific cases could therefore not be elevated as general principles or general rulings with reference to Conventions Nos 87 and 98. The CFA was not concerned with the application of any Convention, and its recommendations could not be deemed as case law for the interpretation of the principles in Conventions. Moreover, the members of the CFA served in their personal capacities and, while they came from the constituencies of the ILO, they did not represent these constituents.
- 50.** Referring to paragraph 92 of the General Report, the Employer members thanked the Committee of Experts for having recognized that the supervisory system allowed for its work to be questioned and for having confirmed that, if there was a dispute concerning the correct interpretation of a Convention, then article 37 of the ILO's Constitution provided a way forward. This meant that if the constituents in this Committee did not agree with an interpretation, the correct functioning of a credible supervisory system would require that such a disagreement be visible in its conclusions and, if necessary, brought forward pursuant to article 37. The need for visibility of disagreement in this Committee's conclusions was at odds with the opening statement made by the Worker members when they challenged the sentence that had been included in the majority of the conclusions adopted by this Committee in 2013 regarding the application of Convention No. 87. The inclusion of this sentence in the conclusions had reflected the position of the Employer members, and consensus at all costs was no longer sustainable or credible. There was no agreement within this Committee on the recognition of a "right to strike" in Convention No. 87, as developed by the non-binding guidance of the Committee of Experts. The crisis resulting from the 2012 General Survey had confirmed that there was a divergence in views between this Committee and the Committee of Experts on the question of the interpretation of the right to strike, which needed to be addressed. There should be a fresh tripartite examination of this subject in light of the overall current industrial relations in ILO member States. In this regard, a discussion at the ILC on the right to strike deserved serious consideration.

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- 51.** It was clear that the dispute concerning the right to strike would not go away simply if it was ignored or by postponing consideration of the issue. With regard to the discussion of individual cases concerning the application of Convention No. 87 containing a right to strike issue, the Employer members would be coherent with their approach of the previous year, and would support proposals for conclusions that did not, explicitly or implicitly, call upon governments to bring their law and practice into line with the detailed right to strike rules outlined by the Committee of Experts. Governments under examination for the application of Convention No. 87 were free to confirm during the supervision process whether or not they agreed to adhere to the Committee of Experts non-binding guidance on this subject in their country. The Employer members would insist that, when appropriate, the conclusions should explicitly state that there was no consensus concerning the right to strike and that the conclusions therefore did not cover that subject. The Employer members expected that the agreement of the previous year would continue, particularly as the list of cases for examination this year contained cases concerning the right to strike. The Employer members emphasized that the conclusions adopted had to reflect the views of the participants of the discussion.
- 52.** Regarding the individual cases that had not been selected for discussion, the Employer members indicated that the case of Chile on the application of Convention No. 87 was a clear example of the Committee of Experts exceeding its mandate, as that Committee had been requesting for a number of years the amendment of various sections of the Labour Code regarding the right to strike. Regarding the application by El Salvador of Convention No. 144, the Employer members requested the Government to comply with the Convention by meaningfully consulting with the most representative employers' and workers' organizations, within the framework of the Labour Council, to find a solution guaranteeing a balanced tripartite composition in all board councils of autonomous institutions. Moreover, observations submitted to the Committee of Experts had not been taken into account for several cases, including Serbia concerning the application of Conventions Nos 87 and 144, Uruguay concerning the application of Convention No. 98, and the Plurinational State of Bolivia concerning the application of Convention No. 131. The Employer members indicated that the case of Togo, concerning the application of Convention No. 87 was a clear demonstration of breach of freedom of association principles due to government interference in the free and democratic election process of the President of the most representative employers' organization at national level.
- 53.** The Employer members recalled that the previous year they had made a number of proposals regarding the working methods and outputs of the Committee of Experts. They welcomed the fact that the Committee of Experts had already taken measures to accommodate some of those proposals and trusted that there would be a broader discussion in which all the parties would engage constructively. With regard to the individual points raised the previous year, they made the following comments.
- 54.** *Closer cooperation between the Conference Committee, the Committee of Experts and the Office.* The previous year, the Employer members had expressed their appreciation of the informal exchange of views organized in February 2013 between the members of the Conference Committee and members of the Committee of Experts, together with representatives of the Office. They emphasized the vital relevance of more direct dialogue with the Committee of Experts to facilitate its understanding of the realities and needs of the users of the supervisory system. They trusted that further steps would be taken in the future to intensify that dialogue and cooperation. One important measure to strengthen links between the Committee of Experts and constituents could be to involve the Bureau for Employers' Activities (ACT/EMP) and the Bureau for Workers' Activities (ACTRAV) in the briefing programme for new members of the Committee of Experts.

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- 55.** *A more participatory approach for the report of the Committee of Experts.* The Employer members added that they had proposed changes to the format of reports of the Committee of Experts with a view to increasing tripartite participation and better reflecting tripartite inputs in its reports. Some progress had been achieved, as the Committee of Experts now reflected more extensively on the submissions made by the International Organisation of Employers and employers' organizations, both in the General Report and in the observations on individual countries. Further steps in that direction would be desirable and sections of the report could be jointly identified where the views of employers and workers regarding particular supervisory issues could be set out visibly and on a permanent basis. Such sections could, for instance, consist of "general observations" preceding the observations by the Committee of Experts on individual Conventions or groups of Conventions. The Employer members were convinced that a report format which provided more room for inputs from constituents would strengthen the credibility and acceptance of the supervision of ILO standards, and they were prepared to consider jointly with the Committee of Experts and the Office possible adaptations to that effect.
- 56.** *Addressing reporting failures in a more sustainable way.* The Employer members noted that in overall terms compliance with reporting obligations seemed to have improved this year. They noted in particular the efforts made to provide technical assistance to countries with the support of the Special Programme Account (SPA). As the Committee of Experts had indicated in paragraph 82 of its General Report, there had been concrete and tangible examples of improvements brought about by the SPA. Over and above individual cases of progress, the SPA had also made it possible to put in place a strategy for the rationalization of all technical assistance provided by the ILO concerning international labour standards. The Employer members joined the Committee of Experts in welcoming this new approach, thanked the Office for its work and trusted that the SPA would be continued and adequately resourced in the future. Nevertheless, the reporting situation was still far from satisfactory, as over a quarter of all reports due on the application of ratified Conventions had not been received by the beginning of the meeting of the Committee of Experts. Further steps were therefore needed to address the problem at its roots. Ratifying countries should not just rely on the offer of technical assistance, but should take responsibility for reporting seriously. Before ratifying Conventions, countries needed to evaluate and, if need be, reinforce their reporting capacities. From a wider perspective, there was a need to consolidate and simplify ILO Conventions, and to focus reporting on the essential. Identifying ways to do so would be a task for the standards review mechanism, which they hoped would soon be operational.
- 57.** *Achieving more focus in standards supervision by reducing the number and improving the quality of observations.* The Employer members noted significant progress this year, as the report of the Committee of Experts had been shortened by almost one third, with less serious and minor technical cases being addressed through direct requests. The increased focus of the report would make it a more useful tool for the supervisory work of the Conference Committee, which would have a better idea of major infringements of ratified Conventions. They called on the Committee of Experts to continue concentrating its report on the crucial compliance issues and to ensure that its observations were drafted in a clear and straightforward manner. Observations should be limited to real problems of application and requests for information should be made in direct requests only.
- 58.** *Measuring progress in compliance with ratified Conventions in a more meaningful way.* In this regard, the Employer members welcomed the fact that the Committee of Experts had stopped identifying cases of "good practice" in the implementation of Conventions. The identification of such cases, in addition to cases of "progress", would appear to be outside the scope of the supervision of standards. The identification and dissemination of good practice was a task for the Office in the context of its technical assistance on international labour standards and could involve the preparation of promotional materials

or the organization of training. They noted that the Committee of Experts had continued to record cases of progress, with 32 cases of progress noted in 25 countries, bringing the overall number of cases of progress to 2,946 since the Committee had begun listing them. The Employer members recalled their proposals made in 2013 on possibilities to improve the measurement of progress in the implementation of ratified Conventions which went beyond counting cases of progress. While appreciating that measuring progress in this area was an ambitious and complex undertaking, they still considered that it should be attempted. Measuring progress properly would be a means of proving the effectiveness of the system, and would help to address possible weaknesses to make it even more effective. That was all the more necessary as the proper implementation of Conventions appeared to be the exception, rather than the rule. Taking as an indicator government reports which, according to the Committee of Experts, did not call for observations, and thus reflected compliance, they noted that there had been only 248 such reports in 2013, out of the 1,719 reports received on ratified Conventions. In other words, only 14 per cent of ratifying countries were considered by the Committee of Experts to be implementing ratified Conventions properly, compared to 20 per cent in 2012. The Employer members once again expressed their readiness to discuss new ways of measuring progress in the application of ratified Conventions with other ILO constituents, the Office and the Committee of Experts. Serious consideration should be given to the implementation of tripartite mechanisms at the national level to deal with problems of application.

- 59.** In conclusion, the Employer members recalled that the outputs of ILO supervisory mechanisms, including the Committee of Experts, were increasing in relevance and importance for a number of reasons, including the consideration by national courts of the international obligations of member States and the globalization of business. In that context, the Employer members were committed to ensuring the relevance, sustainability and credibility of the ILO supervisory system, as clearly illustrated by the number of comments made by employers' organizations to the Committee of Experts in 2013, which had doubled in comparison with previous years. They added that, as they had stated previously, they were open to considering different alternatives to make the adoption of the list of individual cases more transparent and objective, and called for a solution to be found by March 2015 at the latest. Finally, they recalled that they were committed to working towards the standards initiative process proposed by the Director-General to make a better and more transparent ILO supervisory system that responded to the current needs of the world of work. The technical work undertaken by the Committee of Experts, part of which was reflected in the report before the Conference Committee, was an invaluable and crucial part of the system. The standards review mechanism, which they expected would become operational without further delay so that it could examine at all times whether the body of standards was up to date, was another crucial piece of the puzzle.
- 60.** The Employer member of Germany stated that the position of the Employer members on the right to strike was very clear and did not need to be repeated. She wished to clarify that the agreement on how to deal with the conclusions of Convention No. 87 cases containing a right to strike that had been reached last year was not limited in time.

Statements by the Worker members

- 61.** The Worker members recalled the consensus concerning the need to have relevant and sustainable supervisory machinery for the application of international labour standards. However, given that the Employer members did not envisage the status quo in this respect, it was vital to act in a constructive way to ensure that the work of the Committee on the Application of Standards retained all its impact.
- 62.** A number of prospects had appeared feasible after the consultations carried out by the ILO Director-General and in the context of the March 2014 Governing Body. Without wishing

to gloss over the differences, there was a broad consensus on the need to take rapid action to maintain a strong supervisory body, which had authority and was supported by all the parties.

- 63.** In the light of the above, the Committee on the Application of Standards should operate efficiently and in accordance with its mandate this year. In the medium term, discussions should be initiated, within its working group, on the ways to improve the Committee's working methods. With respect to the divergence of views on the application or interpretation of international labour standards, an examination of the options available under article 37 of the ILO Constitution should be initiated by the Governing Body at its November 2014 session.
- 64.** The Worker members considered that the matter of the mandate of the Committee had been settled by the Committee itself in its two last reports. The Committee was a body – unique within the United Nations system – made up of eminent jurists with proven expertise, appointed in a tripartite manner by the Governing Body. Its role was to make a technical and impartial evaluation of the implementation in law and in practice of ratified Conventions, while taking account of the various national realities and different legal systems. This acknowledged work allowed the Committee of Experts to guide the action of the national authorities, both the legislative and the judicial action.
- 65.** The Worker members noted that the Employer members not only called into question the work of the Committee of Experts, as it had evolved over the years, but also – and for the first time – that of the Committee on Freedom of Association, a tripartite body, which, by its very composition, represented the Organization's constituents.
- 66.** Furthermore, the Worker members pointed out that the conclusions adopted by this Committee pursuant to the discussions on the individual cases would be undermined and no longer have any relevance if they were no longer to be adopted by consensus and unanimously, as suggested by the Employer members.
- 67.** Regarding the report of the Committee of Experts, it was regrettable to note that the Committee seemed to be limiting itself in its dialogue with governments. There had been an increase in the number of direct requests, which were far less visible and accessible than the observations. In the case of certain Conventions, the observations were very short. Any attempt to reduce the volume of the report of the Committee of Experts should not be made at the expense of the substance of its comments. This cut in the length of comments contradicted what the experts considered to be the core of their mandate, i.e. their supervisory and advisory functions. Similarly, deferring certain cases to the following report cycle would be liable to undermine the implementation of instruments and create a sense of impunity among governments. The considerable number of comments that received no reply from the governments would only continue to increase if the experts continued on this path of self-censorship.
- 68.** More specifically, the Worker members regretted that the comments of the Committee of Experts concerning the Conventions on maternity protection lacked substance. Discrimination against women on grounds linked to maternity was nonetheless widespread, even when national legislation existed in that area.
- 69.** Furthermore, forthcoming discussions on working methods should allow for a better determination of the nature of a case of progress because a certain number of cases recorded as such in the report of the Committee of Experts had been somewhat surprising.
- 70.** Finally, the Worker members were pleased by the fact that the Committee of Experts had highlighted the follow-up to the conclusions of the Committee on the Application of

Standards. This made it possible to evaluate clearly and rapidly the impact of the Committee's work.

- 71.** In conclusion, the Worker members stated that they were particularly concerned by the statements of the Employer members.
- 72.** The Worker member of Brazil expressed his concern about the promotion of collective bargaining in Brazil. Convention No. 154 had been ratified by Brazil in 1992, and Article 5(2)(d) and (e) of the Convention stipulated that collective bargaining should not be hampered by the absence or inappropriateness of rules governing the procedure to be used, and that bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining. Although indisputable advances had been made in institutional democratization and the application of international labour standards since the end of the civil–military dictatorship and the adoption of the Federal Constitution in 1988, many mechanisms of state interference in collective bargaining remained in force as a legacy of the period of dictatorship. Those mechanisms discouraged collective bargaining and included the following: (1) provisions of collective labour agreements which established by consensus workers' financial contributions were constantly overturned by the Labour Prosecution Service, whose rulings were invariably upheld by the labour courts, without being based on any clear criterion of legal reasonableness. These actions made political survival impossible for dozens of workers' organizations and were a real threat to freedom of association; (2) the use of strike-breakers was not systematically opposed by the Labour Prosecution Service or the labour courts, which operated on the principle of expediency and decided on a case-by-case basis whether an administrative or judicial order was required to prevent that practice; (3) the labour courts, in turn, granted injunctions to prevent picketing – an additional right to the right of action contained in freedom of association – , which in practice made it impossible to exercise the right to strike in various categories; (4) the Brazilian law governing strikes recognized several activities as essential which were not recognized as such by the ILO supervisory bodies; and (5) the final issue was protection of the stability of workers' representatives through decisions of the Higher Labour Court. In conclusion, the speaker requested the Office to suggest to the Government that a tripartite commission be sent to address the legislative changes that would ensure the effectiveness of Convention No. 154 in Brazil.
- 73.** The Worker member of the Netherlands, speaking on behalf of Worker members of the Nordic countries and Belgium agreed to the statement made earlier by the Employer members highlighting the increased relevance of international labour standards in today's world of globalization. The ILO Conventions, including Conventions Nos 87 and 98, were crucial for the creation of fair globalization based on common standards, to be respected by all. She recalled the statement of the President of the Dutch employers' organization that one does not compete on fundamental standards. The Employer members had correctly noted that ILO Conventions were included in national legislation, instruments of regional organizations as well as in codes of conduct of multinational enterprises and international standards for business and human rights, such as the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development and the UN Guiding Principles on Business and Human Rights. Trade unions in the Netherlands, Belgium and the Nordic countries negotiated in good faith with employers' organizations and multinational companies about the implementation of these Guidelines. It was hard to believe that the Employer members were committed to the ILO and its supervisory mechanism when they saw no role for these in the protection of the right to strike. This was particularly harmful in countries which did not or insufficiently protected the fundamental rights of workers, and where the responsibility of the Committee was the greatest. Workers took huge risks in these countries by standing up and defending these fundamental rights by going on strike. The Employer members lost their credibility when

taking away the protection from these workers by removing the fundamental right to strike from international protection by the ILO supervisory mechanism.

74. The Worker member of Uruguay indicated that he intended to speak on behalf of the most vulnerable workers who did not have freedom of speech, and stressed that freedom of association was based on three main components, namely the right to organize, the right to engage in collective bargaining and the right of trade unions to draw up their constitutions and formulate their programmes. With regard to the argument that ILO standards did not expressly refer to the right to strike, he highlighted the fact that they did not include the right to private property of companies either. The answer was to be found in dialogue. Tripartism was not an end in itself but was an instrument to achieve better living conditions for all. In that regard, the ILO provided conditions that were conducive to fighting for fundamental rights, which included the right to strike.
75. The Worker member of France considered certain statements made by the Employer members shocking and regretted that the Committee and the most fundamental workers' rights were once again taken hostage even as discussions were ongoing before the competent body, namely the Governing Body. The right to strike, in France as in many countries, was a right recognized by the Constitution. France was a country of social dialogue but also of relations of power, and extensive strikes had sometimes been necessary to secure recognition of important acquired rights. ILO standards served as a rampart against social Darwinism "where man became a wolf to his fellow men". Rights must prevail over economic freedoms and maintaining the contrary diverted from the objectives of social justice, democracy and peace which characterized the ILO, and in which the system of supervising the application of standards and the mandate of the experts played a fundamental role. She concluded by underscoring the importance of adopting the Committee's decisions consensually in order to guide governments as best as possible on the application of the ILO Conventions.

Statements by Government members

76. The Government member of France was pleased that agreement had been reached again this year on the list of 25 cases to be examined by the Committee. She trusted that the Committee would work calmly and reach its decisions by consensus, which was one of the ILO's strong points. Her Government supported the ILO's standard-setting system, which was at the very heart of the Organization, and the system had to be both effective and credible and include proper supervisory machinery. France was in favour of the establishment of machinery that conformed to the spirit of article 37(2) of the ILO Constitution and her Government would continue to advocate that a solution along those lines be reached on a tripartite basis at the forthcoming Governing Body meeting in November 2014.
77. The Government member of Uruguay, referring to the statement by the Employer members, indicated that his country fully supported the supervisory system. Although a case concerning Uruguay had been examined in the past, reporting to the Committee on the Application of Standards should be no cause for anxiety or concern. Uruguay applied and enforced the principles of freedom of association, collective bargaining and the right to strike. Of course it was possible that some laws might not be in full conformity with ILO standards, but a solution could always be found and the Government had never balked at the cost entailed. It had passed laws that guaranteed the right to bargain collectively in every sector of the economy and submitted a bill to Parliament in which every party would have its say.
78. The Government member of Sudan highlighted the considerable efforts made by her Government to apply international labour standards, which were based on the conviction

that dialogue, coordination and monitoring involving government, employers and workers, were the only way to realize progress. The ultimate objective for the social partners was to achieve justice, safeguard rights and achieve equality. Her Government requested ILO technical assistance with a view to ratifying Convention No. 87. The ILO technical assistance received to enhance the capacity of labour inspectors had been greatly appreciated and technical assistance in the area of occupational safety and health would be equally useful. Highlighting the re-establishment of the National Advisory Committee on Labour Standards in November 2013, which included the Ministry of Labour and the social partners in equal numbers as well as relevant ministries and bodies, her Government invited the Office to participate in the deliberations of this Committee which would be inaugurated in August 2014.

79. The Government member of Belgium, also speaking on behalf of the Government member of Germany, expressed his deep concern in the wake of certain views conveyed earlier on. It was important to respect the decision taken at the previous session of the Governing Body in March 2014, to reaffirm confidence in the mandate of the Committee of Experts and the standards supervisory system, to ensure that the Committee's work was not jeopardized and that the unanimity principle was not called into question. The complex issues facing the world as a whole could not be resolved without social dialogue and it was essential that this principle, which was a defining feature of the ILO, was fully observed by its constituents, as indicated in the wise words of the President of the Conference.

Reply of the Chairperson of the Committee of Experts

80. The Chairperson of the Committee of Experts recalled that his statement at the opening sitting of this Committee centred on the importance of the relationship between the Committee of Experts and the Conference Committee. These two pillars in the ILO supervisory system were bound by a relationship of mutual respect, cooperation and responsibility. Through the work of the two Committees, the ILO guided member States to apply or give effect to Conventions. The combination of this joint work would enable the ILO to assess accurately the needs of its members and to respond effectively to them. He considered that his primary duty was to ensure that the Committee of Experts continued to fully take into consideration the views expressed by the Conference Committee. In addition to the report of the Conference Committee, which would be communicated to each member of the Committee of Experts, he would make an oral report to the Committee during its opening session. The subcommittee on working methods of the Committee of Experts would certainly give due consideration to the issues raised during this discussion.
81. With respect to the comments made by the Employer members on the appropriate placement in the report of the Committee of Experts of the statement on its mandate, which currently appeared in paragraph 31 of the report, the Committee of Experts would certainly take this comment into account through its subcommittee on working methods.
82. Concerning the comments made by the Employer members during the general discussion that the Committee of Experts should avoid criticizing general policies of a State, such as austerity measures or fiscal consolidation policies, he indicated that in accordance with the mandate of the Committee of Experts set out in paragraph 31 of its General Report, the Committee of Experts would examine general policies of a State in the economic, fiscal or other areas only where the Convention itself expressly required member States to declare and pursue such general policies in a coordinated manner. This was the case under Article 3(b) of Convention No. 131 which provided that in determining the level of minimum wages, the following should be taken into consideration: "economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment".

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83. As regards the comments made by the Worker members on the observations made by the Committee of Experts on the Application of Conventions and Recommendations relating to maternity protection, he indicated that 12 countries whose reports had been due in 2013 had not been received.
84. Turning to the comments by the Employers members that in certain specific cases, comments submitted by employers' organizations had not been reflected in the report of the Committee of Experts, he referred to paragraphs 95–99 of the General Report concerning the treatment of comments received from employers' and workers' organizations in a non-reporting year. The Office was also available to reply to any requests for information concerning the specific comments referred to by the Employer members.
85. With respect to the comments made by the Worker and the Employer members on the criteria used by the Committee of Experts to identify cases of progress, this was a matter which the Committee had regularly examined. In paragraph 72 of its General Report, the Committee of Experts clarified its approach when expressing its satisfaction or interest, in particular: it may express its satisfaction or interest at a specific issue while also expressing regret concerning other important matters which, in its view, had not been addressed in a satisfactory manner; in addition, an indication of progress was limited to a specific issue related to the application of the Convention and the nature of the measure adopted by the government concerned.
86. In conclusion, he assured that he would report the outcome of this meeting of the Conference Committee back to the members of the Committee of Experts for their due consideration.

The reply of the representative of the Secretary-General

87. The representative of the Secretary-General stated that the secretariat would carefully review the issues which had been raised by the Conference Committee and would take the necessary follow-up action where appropriate.
88. Turning to the SPA, such technical assistance was guided by the comments of both the Committee of Experts and the Conference Committee and took into consideration the suggestions made by both Committees concerning priorities in member States. To date, that assistance had targeted 43 countries, which included 24 countries in Africa, seven countries in Asia, three countries in Europe and Central Asia, seven countries in Latin America and the Caribbean, and two countries in the Arab States. The Committee of Experts had welcomed the Programme's results of the previous year, which were provided in the information document, and both Committees had expressed the hope that the Programme could be expanded and adequately resourced to benefit all member States needing such assistance. During discussions which had taken place since the beginning of the work of the Committee, the Office had taken note of eight additional requests for technical assistance made by member States, namely Afghanistan, Angola, Cambodia, Malaysia, Mauritania, Mozambique, Russian Federation and Sudan. The Programme had been approved by the Governing Body, at its 310th Session (March 2011), for the 2012–13 biennium to provide additional resources with a view to improving the application of international labour standards. With the support of the tripartite constituents, it was hoped that the assistance would continue beyond 2014, particularly as it had significantly impacted the capacity of member States to give effect to international labour standards.
89. With respect to the comments made by the Employer members concerning the submission of the report of the Committee of Experts to the Governing Body, that was a long-standing

matter which was to be decided by the Governing Body. In the early years of the Committee of Experts, the Governing Body had regularly discussed the modalities of its consideration of the report of the Committee of Experts, but it soon had to acknowledge that there was not sufficient time to examine it in detail before its communication to the Conference. Consequently, the Governing Body authorized the Director-General to transmit the report simultaneously to the Conference, without first discussing it. Following the 1946 constitutional amendments, and the corresponding extension of the mandates of both the Committee of Experts and the Conference Committee, those arrangements were considered to have become “standard procedure”, although the right of the Governing Body to discuss the actual contents of the report of the Committee of Experts was reaffirmed. From the mid-1950s to the present, the Governing Body had confined itself to taking note of the report and thus not commenting on it.

- 90.** The representative of the Secretary-General then addressed the historical relationship between the Committee on Freedom of Association (CFA) and the Committee of Experts. In 1953, following the creation of the CFA, the Governing Body noted in its minutes that the “ILO Director-General considered that it would be inappropriate to express an opinion on the interpretation 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), owing to the existence of a special procedure laid down by the Governing Body for dealing with complaints concerning alleged infringements of freedom of association”. That created a long tradition of respect and coherence between the independent body responsible for examining the application of Conventions and Recommendations and the tripartite CFA. The decisions of both Committees, which often cross-referenced one another, reaffirmed that mutual recognition. In addition, the CFA would specifically refer the legislative aspects of certain cases to the Committee of Experts. The Committee of Experts also referred, where appropriate, to the conclusions and recommendations of the CFA concerning country cases. Consequently, when this Committee considered individual cases, it took into account the views of both the Committee of Experts as well as the Committee on Freedom of Association where reflected in the Committee of Experts’ report. To illustrate the dynamic interaction that had taken place between the independent and tripartite perspectives of the ILO supervisory machinery, the representative of the Secretary-General made reference to a case in which the Employer members had noted that: “The conclusions reached on the case by the CFA contained a point concerning the issue of strike pay which had not been taken up in the comments of the Committee of Experts, even though the latter had referred to the conclusions of the CFA in their totality. Considering the reason for such an omission, the Employer members in the Committee on the Application of Standards believed that it might have been due to a more formal reason, since the right to strike had always been examined under Convention No. 87, which was not, however, the Convention under examination by the CEACR last year.” As the issue had, however, been referred to in another case, the Employer members stated that this omission of an issue raised by the CFA “constituted an act of arbitrary judgement by the Committee of Experts and the Employer members could not accept such a procedure”.
- 91.** Finally, the speaker announced that the next meeting of the Tripartite Working Group on the Working Methods of the Conference Committee, which would be held during the next session of the Governing Body, could take place on Saturday, 1 November 2014, so as to ensure proper coordination with the work of the Working Party on the Functioning of the Governing Body and the Conference. The composition of the meeting needed to be agreed upon; during the last meeting, the composition was as follows: nine Employer representatives, nine Worker representatives and nine Government representatives, including two from Africa, two from the Americas, two from Asia–Pacific, two from Europe and one from the Arab States.

C. Reports requested under article 19 of the Constitution

General Survey concerning minimum wage systems

92. The Committee devoted part of its general discussion to the examination of the third General Survey carried out by the Committee of Experts on minimum wages, which covered the Minimum Wage Fixing Convention (No. 131) and Recommendation (No. 135), 1970. In accordance with the usual practice, the General Survey took into account the information provided by 129 member States under article 19 of the ILO Constitution, as well as the information provided by member States which had ratified the Convention in their reports under articles 22 and 35 of the Constitution. The comments received from 95 employers' and workers' organizations to which government reports had been communicated, in accordance with article 23, paragraph 2, of the Constitution, were also reflected in the General Survey.

General remarks on the General Survey and its articulation with the 2015 recurrent discussion on social protection (labour protection)

93. Several members of the Committee welcomed the General Survey prepared by the Committee of Experts, emphasizing in particular the relevance of its subject, minimum wage systems, which were of great importance in the world of work.

94. The Government member of Morocco, however, considered that the General Survey should also have covered the Conventions on the protection of wages and the protection of workers' claims in the event of the insolvency of the employer, in view of the complementarity of those instruments.

95. The Employer members observed that the high number of reports sent by constituents for the preparation of the General Survey reflected the significant interest in the subject of minimum wages. The General Survey was a useful reference point, but had two limitations. In the first place, it showed significant divergences between countries with regard to wage policy and minimum wage systems. That supported the overriding message of employers that one size did not fit all. The divergence of approaches between countries in the establishment of minimum wage systems was not simply a product of whether or not they had ratified Convention No. 131. Secondly, the General Survey did not clearly identify the points on which it dealt with objectively verifiable facts about national law and practice, and those where it dealt with contested opinions or subjective narrative. Some contentious matters were expressed as fact, or as having general application, when they only arose from a specific national circumstance, or the interpretation of the national context by the government or one of the social partners. As the General Survey was by nature limited, as Convention No. 131 served as its reference point, broader areas of wage policy would need to be covered in the discussion, including: the financial capacity of enterprises, enterprise productivity, the trade-off between minimum wages and unemployment, the question of equity in the income levels of employers in small and medium-sized enterprises, as well as the self-employed, and the agility of wage systems to deal with short-term economic change.

96. The Worker members emphasized that the subject covered by the General Survey was topical, as the current tendency was to consider wages as merely an economic variable, and no longer as an element related to decent work and employment protection. For the first time since the implementation of the follow-up to the 2008 Social Justice Declaration an

interval of one year had been introduced between the discussion of the General Survey and the recurrent discussion on the corresponding strategic objective. That interval should allow to better reflect on the operational aspects of the conclusions in the Committee.

- 97.** The Government member of Greece, speaking on behalf of the European Union and its Member States, recalled that it was the third time that a General Survey had covered the minimum wage fixing instruments. For the first time, it addressed the issue in the light of the 2008 Social Justice Declaration, which established a framework on the basis of which the ILO could support the efforts of its member States to promote the four strategic objectives of the Organization (employment, social protection, social dialogue and tripartism, and fundamental principles and rights at work) through the Decent Work Agenda. She welcomed the fact that the discussion of the General Survey would serve to prepare the recurrent discussion in 2015 on social protection (labour protection). The information contained in the General Survey on national law and practice in countries which had and had not ratified the Convention were very useful and would ensure an informed and up-to-date debate. The aim of the discussion should be to provide strategic and action-oriented governance advice to the Office on the action that the Committee considered to be necessary.
- 98.** The Government member of Belgium supported the statement made on behalf of the European Union. He stated that the General Survey would contribute to the recurrent discussion in 2015 on social protection (labour protection), but that there was also a link between minimum wage systems, which contributed to poverty reduction, and the transition from the informal to the formal economy.
- 99.** The Worker member of Uruguay also emphasized the links between the discussion in the present Committee, which was intended to combat inequality and make the world more just, and the debates held in parallel in other Conference committees.
- 100.** The Government member of the Islamic Republic of Iran said that the General Survey, which described different types of minimum wage systems, served as a reference and a source of information for States wishing to apply the principles of Convention No. 131 or to ratify it. In general terms, General Surveys were useful in providing guidance to national authorities for the preparation of a conducive environment for the application of ILO Conventions.

Importance and impact of minimum wage policies

- 101.** The Employer members emphasized that the subject of minimum wages did not give rise to fundamental differences of views. They nevertheless made a number of remarks concerning the issues covered by the General Survey. For example, although poverty reduction and wage equality were objectives attributed to minimum wages, they could not be their sole objectives. It was necessary to preserve the capacity of enterprises to create jobs, as no one could benefit from a minimum wage who did not have a job. It would also have been interesting to have been provided with information on the alternative approaches adopted in certain countries.
- 102.** The Worker members, recalled that, when they affirmed that labour was not a commodity, the ILO had not only affirmed a humanist value, it had given expression to a fundamental economic reality. In contrast with commodities, for which a price could be established that balanced supply and demand, there was no equilibrium price enabling all those offering their services to find an employer willing to give them employment. For the great majority of workers, work was not one commodity among others: it was the means of meeting their needs and those of their families. The response to those who claimed that a minimum wage system had a negative impact on employment was that the absence of a minimum wage did

not prevent those workers who were best placed on the employment market from seizing the available jobs. Certain countries used the setting of a minimum wage as an instrument to combat poverty, inequality and social dumping in the context of globalization. By promoting domestic consumption, the guarantee of a minimum wage could create a virtuous economic circle. It gave workers the assurance that it was possible to go beyond that wage, and provided them with motivation to engage in training and to show commitment to the performance of their enterprise. It was an instrument of progress oriented towards economic growth, and not levelling down. The principle of a minimum wage was linked to other ILO values, such as combating child labour, which was directly related to the insufficiency of their parents' income. Working and earning a wage for the work performed must enable workers to escape poverty. Unfortunately, this view did not appear to be shared by the International Organisation of Employers (IOE), which called for a minimum income guaranteed by social security or tax policy to make up for low wages. The 2015 recurrent discussion would cover the decisive issue of wages versus income, a fair remuneration from work versus social security. The issue of a decent wage was clearly a matter for the ILO and did not solely lie within the competence of member States.

- 103.** The Government member of Greece, speaking on behalf of the European Union and its Member States, said that minimum wages existed in all the Member States of the European Union, even if they were established in very different ways, such as by legislation or collective bargaining, and they did not cover all those who were employed in all Member States. In general, minimum wages aimed to establish a minimum rate under which any employment relationship was considered unacceptable. Wage and tax policies should allow all earnings and social benefits to interact in a way that lifted people out of poverty and made work pay. The conclusions of the General Survey showed that the principles of minimum wage fixing were also applied in countries which had not ratified Convention No. 131.
- 104.** The Government member of Belgium emphasized the low number of ratifications of Convention No. 131 in comparison with other ILO Conventions. However, the question of low wages arose throughout the world, which was partly due to the current crisis, the growth of inequality and the existence of a world in which many workers were seeing their jobs destroyed, their wages frozen or reduced, or worked for long hours for wages that did not enable them to live in decent conditions. It was also necessary to encourage international initiatives intended to ensure minimum wages throughout the production chain. The debate concerning minimum wage systems had not changed. Opponents of minimum wages considered that they resulted in the loss of many jobs and the delocalization of enterprises, and that they discouraged employers from taking on low-skilled workers, on the grounds that their productivity was lower than their remuneration. In contrast, advocates of minimum wages emphasized their importance for the dignity of workers, their purchasing power and increased consumption. Economists also disagreed on the impact, whether positive or negative, of minimum wages on employment. He considered that challenging minimum wages would only lead to an unbearable rise in poverty for workers, and recalled that wage disparities had increased enormously over the past few decades. The negative employment effects could be avoided, provided that the minimum wage was set at an appropriate level, and the crucial question was therefore the determination of the “ideal” level of minimum wages. Labour market competitiveness was another important element to be taken into account. Agreement between the social partners on this subject, or their consultation, was in principle the best guarantee of this balance. Minimum wages should not however be seen in isolation, nor as the only “anti-crisis” measure. No one should receive the minimum wage for the whole of their career and countries needed to help their population gain access to better jobs. The unions also had an important role to play in the promotion of education, the strengthening of skills and the development of new sectors.

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- 105.** The Worker member of Colombia said that in most countries minimum wages were survival wages, adding that it was untrue to claim that wage rises resulted in increased unemployment and inflation. Without Convention No. 131, one would live in a world characterized by social Darwinism in which might was right. Humanity produced great wealth, but most human beings lived in poverty. It was therefore necessary to discuss living minimum wages, which were well above statutory minimum rates so as to create a more just society. The links that existed between minimum wages and other elements, such as pensions, first job policies and apprenticeship contracts, also needed to be taken into account.
- 106.** The Worker member of Chile expressed the view that minimum wages needed to be considered primarily as an instrument of public and social policies. It was unacceptable for wage earners to have to live under the poverty line. Work should allow workers to live with dignity. Advocates of the neo-classical model held that minimum wages were likely to have negative effects on employment. However, recent studies had concluded that the effects of minimum wages on employment were imperceptible, or even positive. It was necessary to stop affirming that wage flexibility would result in full employment. That hypothesis had led to a situation characterized by the greatest income inequalities in history. A development strategy based on an increase in minimum wages resulted in an improvement in enterprise productivity. Minimum wages needed to enable workers and their families to climb out of poverty. They should be universal and determined with the participation of the tripartite partners. Non-compliance with minimum wages should give rise to penalties. Finally, minimum wages needed to be considered as a component of a stable labour market and of economic development.
- 107.** The Government member of the Russian Federation said that the existence of transparent machinery for the determination of minimum wages contributed to compliance with labour rights and the development of industrial relations. They were also an effective means of ensuring that the measures taken to overcome economic crises did not have the effect of reducing the incomes of workers. The exclusion of agricultural workers and domestic workers from minimum wage systems in a large number of industrialized countries was intolerable and needed to be corrected.
- 108.** The Employer member of Costa Rica challenged the claim by the International Trade Union Confederation (ITUC), as reported in the General Survey, that there was no correlation between the minimum wage and economic factors, such as the employment level. That issue was important at a time when the Conference was addressing the question of the transition from the informal to the formal economy.

The role of minimum wages in a context of economic or social crisis

- 109.** The Employer members observed that in Chapter VIII of the General Survey the Committee of Experts had sought to provide evidence for the relevance of minimum wage setting in a crisis context. The Committee of Experts had provided information on the manner in which member States, particularly in Europe, had used minimum wages in the context of the economic crisis. It had also referred to the views of international and European institutions which had been critical of so-called austerity policies, and concluded by emphasizing the positive role which, according to governments, minimum wages had played in the crisis. In the view of the Employer members, wage policy, including minimum wages, had indeed been one component among others in the crisis management of many countries. However, the presentation given by the Committee of Experts could give the false impression that they had been a central element. Minimum wages were a social policy instrument that needed to be open to adaptation in the same way as other areas of national policy. The Global Jobs Pact of 2009 referred to minimum wages, and to

Convention No. 131, as one element among others to be taken into consideration. It referred to many other elements, such as sustainable enterprises. The General Survey should also have referred to the Oslo Declaration, entitled “Restoring confidence in jobs and growth”, adopted at the conclusion of the Ninth European Regional Meeting held in 2013, which was the most recent ILO instrument on crisis management. The Oslo Declaration referred to concepts such as job creation, competitiveness and enterprise sustainability, but did not contain any reference to wages or minimum wages.

110. The Committee of Experts also appeared to suggest that raising minimum wages would generally be the appropriate response in the crisis to prevent a downward trend in labour conditions. In particular, it had indicated that the adoption of counter-cyclical measures had supported private consumption and facilitated Brazil’s emergence from the crisis. The Employer members considered that the Committee of Experts needed to be careful in establishing causal relationships regarding economic matters. There was no proof that it was specifically the increase in the minimum wage that had facilitated Brazil’s emergence from the crisis. Moreover, the examples contained in the chapter showed that quite a number of countries had felt the need to freeze minimum wages, or even to lower them temporarily. There was no one-size-fits-all model of how to deal with minimum wages during a crisis. The recent crisis had shown that the countries that were better prepared for crisis situations, for example by keeping wage levels, including minimum wages, at reasonable levels in line with developments in productivity and enterprise competitiveness, had been in a better position to recover from the crisis.
111. The Worker members emphasized that the reference point for crisis response remained the Global Jobs Pact, which was universal in scope. Regional initiatives, such as the 2013 Oslo Declaration, were relevant to supplement the Global Jobs Pact, but were not intended to replace it.
112. The Government member of Brazil expressed agreement with the idea, set out in paragraph 329 of the General Survey, that “[i]n view of the international nature of the crisis, a generalized reduction in wages aimed at maintaining enterprise competitiveness is likely to have negative impacts on global demand, and on the contrary it would appear to be preferable to maintain the purchasing power of wage earners”. The *World of Work Report 2014* was also very relevant in that respect. She also confirmed the indications in the General Survey concerning the measures taken by the Government of Brazil during the debt crisis in 1982 and then at the time of the international economic and financial crisis of 2008.

Definition of minimum wages

113. The Employer members recalled that Convention No. 131 did not contain a definition of the concept of minimum wages and that country practice varied in that regard and they observed that the General Survey established a link that could be criticized between the concepts of minimum wages and the living wage, which was much broader. Wages were only part of the income of workers, which also included government allowances and social benefits. The concepts of a living wage and a fair wage were not well understood and their definitions varied. Moreover, the underlying idea of a living wage, according to which wages should ensure workers an income that met their economic and social needs and those of their families, would imply that social assistance measures were no longer necessary. But the advocates of a living wage were not proposing the abolition of such measures. It would appear to be more of a strategy aimed at an increase in minimum wages based on a theory of income- and demand-led growth. However, that theory was open to criticism and, in any case, such issues should not be covered in a report on national law and practice.

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- 114.** The Employer member of Mexico, recalling that, within the framework of Convention No. 131, a broad range of mechanisms could be used to determine minimum wages, emphasized the need to ensure that the conclusions of the General Survey did not go beyond the provisions of the Convention. He added that it would be better to keep to minimum wages, and to leave aside such concepts as the living wage or a fair wage.
- 115.** The Employer member of Costa Rica indicated that, as noted in the General Survey, the Convention did not contain a definition of the concept of minimum wages. The definition was left to national legislation, which determined their technical parameters and the criteria for their determination. Minimum wages contributed to setting the rules of the game and provided a basis from which the parties could engage in negotiations. It should be distinguished from the living wage and from the average wage.

The fundamental principles of Convention No. 131 and Recommendation No. 135 and the flexibility of these instruments

- 116.** The Employer members recalled, with regard to the scope of application of Convention No. 131, that the Convention called for the establishment of minimum wage systems which covered “all groups of wage earners whose terms of employment are such that coverage would be appropriate”. It was not therefore necessary to cover all wage earners, or even the majority of wage earners in all cases. Even for the most vulnerable categories of workers, a minimum wage system, if badly designed, could impair their access to the labour market. The General Survey also emphasized that countries were free to adopt the minimum wage fixing machinery of their choice, provided that it was in compliance with the requirements of the Convention. It was however very important that States complied with their other obligations, including those relating to collective bargaining. Collective agreements offered a better basis for the determination of minimum wages than decisions imposed by governments, as they were reached by the parties concerned. Minimum wage systems should not be based on arbitrary political decisions unrelated to the world of work.
- 117.** The Employer members added that Convention No. 131 did not require the establishment of a national minimum wage and that the determination of different minimum wages by region, sector, occupational category or on the basis of other criteria was in principle permitted, on condition that the other requirements of the Convention were met. In particular, minimum wages could not be determined in a discriminatory manner. However, it was important not to confuse cases of discrimination with situations in which different minimum wages were established on the basis of objectively verifiable criteria. Such situations existed in many countries, where minimum wages were differentiated, for example, on the basis of the nature of the job and productivity. That was also the case where different minimum wages were established for young workers or apprentices, which was not a minor matter when it was considered that countries such as India would see 120 million young workers enter the labour market over the next ten years. The temporary introduction of different minimum wages might also be necessary in countries where a minimum wage system was being introduced for the first time.
- 118.** The General Survey correctly emphasized that the consultations required by Convention No. 131 should be real and not a mere formality, should not be limited to the most representative organizations, did not imply the requirement to establish a wage-fixing body and should ensure that all views were taken into account equally. There was no single approach to be adopted in that field and the process of consultation should be responsive, and not rigid. It should be capable of responding to differing circumstances, such as crisis periods. The Convention promoted a framework for information sharing and discussion leading to governments making informed decisions. That did not preclude the

establishment of negotiated mechanisms for the determination of minimum wages, but did not require them either.

- 119.** Convention No. 131 enumerated a wide range of criteria to be taken into consideration in setting minimum wages, and there was no single approach to be followed in that respect. In addition to the economic and social factors mentioned in the General Survey, such as the needs of workers and their families, the cost of living, inflation and productivity, other factors, such as the financial capacity of enterprises and the need to attract investment also needed to be taken into consideration. The Employer members criticized the position taken by the Committee of Experts in considering that minimum wages could be established beyond the financial capacity of enterprises. That would imply the adoption of special support measures, which would have consequences on social security and taxation. The General Survey should be confined to observations on country practice, and should avoid encouraging particular practices.
- 120.** The Employer members considered that, without enforcement measures, minimum wages would be meaningless. However, such measures needed to be adaptable to changing circumstances, such as periods of financial crisis. The General Survey emphasized the need for effective penalties to underpin the enforcement of minimum wages, although Convention No. 131 did not require penalties as such. Non-penal responses could also be adopted to issues of non-compliance. Countries should be encouraged to develop a broad range of means to encourage compliance with the relevant provisions, rather than simply focusing on penalty regimes, which might incentivize the development of informality.
- 121.** The Worker members observed that the principle that a minimum wage should apply to all workers was related to the definition of the employment relationship, and therefore to informal work, disguised employment relationships and atypical forms of employment. Difficulties arose in relation to restrictions on the scope of minimum wage systems and the principle of equal remuneration for work of equal value. That raised other fundamental questions, including: the needs that should be covered by net wages and the means by which such needs were to be determined; the hours of work to which the minimum wage should correspond and, if it was considered to cover a full-time job, the manner in which the needs were covered of workers who were not able to work full time, or could not work at all, for example due to disability; the arrangements for the payment of the minimum wage, exclusively in cash, or totally or partially in the form of benefits in kind; the alternative between a minimum wage fully covered by the employer, or a system based on some form of sharing; and the age from which the minimum wage had to be guaranteed. The latter issue was fundamental for the employment of young persons in view of the many abuses that had been observed. The Worker members were firmly opposed to the very principle of a “youth wage” related to the age of the worker without any other objective justification. Moreover, recourse to practices such as apprenticeship and training contracts were likely to result in abuses and led to the exploitation of young workers. Employers needed to ensure that apprenticeship contracts were focused on training, and not used to obtain low-paid labour.
- 122.** Convention No. 131 required measures to be taken for the full consultation of employers’ and workers’ organizations, not only concerning the coverage of minimum wage systems, but also at all stages of the establishment and operation of such systems. Many comments had been made concerning the difficulties encountered in complying with this requirement. The choice of criteria for determining and adjusting minimum wages was also a difficult matter. The Convention called for account to be jointly taken of both the needs of workers and their families and of economic factors, and the General Survey showed that this principle was not always given effect. The question of the intervals between adjustments of minimum wages also gave rise to difficulties, and it was particularly important to ensure that their level remained adapted to the economic and social situation of the country.

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- 123.** The Committee of Experts emphasized that neither Convention No. 131 nor Recommendation No. 135 required member States to establish a national minimum wage or, in contrast, a system based on sectoral minimum wages. It was for the tripartite constituents to determine the system that was best adapted to the national context. For example, they could take into account differences in productivity between sectors, or any differences in the cost of living between urban and rural areas, as well as objectives such as the reduction of inequality, poverty reduction and the need to ensure fair competition. The Worker members endorsed the comment made by the Committee of Experts that “whatever system is chosen at the national level, it needs to ensure respect for the principle of equal remuneration for work of equal value”, including with regard to young and trainee workers, migrant workers and persons with disabilities. They also supported the call made by the Committee of Experts for any national practice to be abolished that was likely to reintroduce a different minimum wage for men and women workers. The crisis and austerity were sometimes invoked as a pretext to overlook the fundamental obligation of equality between men and women. The objective evaluation of jobs was necessary to prevent the introduction or reintroduction of discrimination that was hidden to a greater or a lesser extent.
- 124.** All of that was inconceivable without effective social dialogue, as provided for by 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). Compliance with the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), was also essential. As emphasized by the Committee of Experts, the close involvement of employers’ and workers’ organizations, at all stages of the process of determining minimum wages, was essential for the effective operation of the process. However, social dialogue was endangered in many countries. Guarantees of the existence of open and constructive dialogue conducted in good faith were therefore a key element in the application of Convention No. 131. That was all the more essential as, behind the question of the setting of minimum wages by the social partners, there remained the issue of the coverage of collective bargaining, as well as that of freedom of association. Recent events in Cambodia, Bangladesh and the Philippines in the context of action to claim a decent wage illustrated the close links between those Conventions.
- 125.** Finally, if minimum wages were to be legally binding, it was necessary for there to be a clear legal framework which prohibited the avoidance of minimum wages through practices such as unpaid trial periods and on-call work. An effective system of inspection and penalties was also necessary. That presupposed the existence of sufficient numbers of trained labour inspectors provided with the material means and powers necessary to be able to discharge their duties. Effective procedures for the enforcement of penalties in cases of violation were also necessary. In addition, workers required access to rapid procedures for the recovery of amounts that were due and protection from the risk of victimization for asserting their rights.
- 126.** The Employer member of Mexico indicated that the only criteria that needed to be taken into account for the determination of minimum wage levels were those indicated in Article 3 of the Convention, namely, where appropriate in the national situation, the needs of workers and their families and economic factors, including productivity. If the economic situation of the country was not taken into account, that would give rise to an inflationary situation, resulting in serious economic problems and a reduction in the purchasing power of workers. He also emphasized that consultations needed to be held with the most representative organizations of employers and workers, as provided for in the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

National practices

- 127.** The Government member of Germany explained that a statutory minimum wage, applicable to all economic sectors, would be introduced in Germany on 1 January 2015 and that the social partners had significantly participated in the process. The only workers excluded from coverage by the minimum wage would be young persons under 18 years of age and the long-term unemployed. As from 2018, a minimum wage commission, including representatives of employers and workers in equal numbers would re-examine the minimum wage with a view to proposing adjustments. The federal Government was convinced that the introduction of a minimum wage would result in greater social justice in the country.
- 128.** The Worker member of Germany indicated that in his country nearly one worker in four was on a low wage. The unions had been fighting for a long time for the introduction of a statutory minimum wage so as to bring an end to downward pressure on wages and they therefore welcomed the introduction of a minimum wage in the near future. However, the exclusion of young persons under 18 years of age and the long-term unemployed was a cause of concern and would be opposed by the unions. In that regard, it should be noted that paragraph 175 of the General Survey reported that provisions fixing lower minimum wages for young workers had been repealed or restricted in scope in a significant number of countries in view of their discriminatory nature.
- 129.** The Government member of the Bolivarian Republic of Venezuela welcomed the fact that on several occasions the General Survey noted progress in his country in the determination of minimum wages, particularly with regard to the protection of domestic workers, the guarantee of equality of treatment for migrant workers and workers with disabilities, and the penalties applicable in the event of failure to comply with minimum wage provisions. The 1999 Constitution required the State to determine and revise annually a minimum living wage for all workers and the labour legislation provided for the adoption of a national minimum wage without discrimination in its application. The cost of the basic consumer basket had to be taken into consideration in the determination of the minimum wage. In 2014, its amount had been adjusted twice, with an increase of 10 per cent in January and 30 per cent in May.
- 130.** The Government member of Brazil confirmed that, as indicated in the General Survey, the annual adjustment of the minimum wage in Brazil took into account inflation and fluctuations in the gross domestic product (GDP), which made it possible to maintain the purchasing power of workers while at the same time sustaining economic growth and social inclusion.
- 131.** The Government member of Morocco reviewed the history of the national legislation on minimum wage fixing since 1936. The new Labour Code, which had entered into force in 2004, reaffirmed that the statutory minimum wage could not be lower than the rates set by decree for agricultural and non-agricultural work after consultation with the occupational organizations of employers and the trade unions of the most representative wage earners. The minimum wage ensured workers with a limited income a purchasing power which followed changes in price levels and contributed to economic and social development, as well as enterprise development. The provisions governing the minimum wage formed part of public law and infringements gave rise to fines. The Labour Code also established the right of workers to recover amounts due to them. The Moroccan minimum wage system was in conformity in its overall configuration with the relevant international standards. Morocco, which had already ratified the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), and the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99), had ratified Convention No. 131 in 2013.

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- 132.** The Worker member of Morocco recalled the importance of tripartite social dialogue in determining minimum wages. Unfortunately, in Morocco, social dialogue had been frozen for two years, with catastrophic repercussions on the purchasing power of workers. Moreover, many workers did not receive even two-thirds of the minimum wage rate and were dismissed if they put forward wage claims. He hoped that the Moroccan Government would follow the recommendations of the Committee of Experts so that a minimum wage could be adopted that guaranteed the dignity of workers.
- 133.** The Government member of Mexico emphasized that the minimum wage was of a high priority and that it was essential to endeavour to re-establish the purchasing power of the minimum wage in relation to productivity growth. Technical knowledge should be strengthened and effective tripartite strategies proposed to ensure compliance with the provisions of Convention No. 131. The Government recognized the need to reinforce its efforts to improve wages and to increase labour productivity which, together with the formalization of labour, was a prerequisite for the improvement of wages and, as a consequence, the strengthening of the internal market, which would in turn have a positive impact on families and enterprise competitiveness.
- 134.** The Government member of Mozambique said that the issue of minimum wages was a priority for the national authorities in her country. She described the role played by the Labour Advisory Commission in determining sectoral minimum wages. Regulations on domestic work had been adopted in 2010, although the determination of the wages of these workers still required in-depth reflection.
- 135.** The Worker member of Ireland criticized the modification of the national legislation on minimum wage fixing which had been introduced in response to the crisis. The Government had been forced to reduce the rate of the minimum wage. As a result of a campaign led by the unions, it had subsequently been brought back up to its original level, even if the new change had been made under the terms of the same bad legislation. The country was slowly beginning to come out of the crisis and it was essential for ILO standards to prevail, and not emergency measures. Moreover, the hourly wage rate was only part of the story in view of the development of on-call work, and particularly zero-hours contracts, which were unfair and undermined the whole purpose of Convention No. 131. Finally, the growth of unpaid work, in the context of internships, work trials and work experiences, was also a problem. The labour inspection services should ensure that the workers involved benefited from the minimum wage.
- 136.** The Employer member of the Plurinational State of Bolivia said that minimum wage fixing was a very sensitive issue for Bolivian employers. It was important to seek alternatives to improve wage income, as the setting of a national minimum wage only offered part of the solution, which depended on comprehensive policies in different areas of state action. Although Convention No. 131 had been ratified in 1977, the Government had since 2007 been determining unilaterally the annual increases in the minimum wage, as well as the minimum rates for the negotiation of sectoral wage rises. Over that period, the national minimum wage had almost tripled. Moreover, those increases had had a multiplier effect, as the minimum wage served as a basis for the calculation of certain bonuses and allowances. In 2012, the Confederation of Private Employers of Bolivia (CEPB) had been called into a meeting with Government representatives and the Bolivian Central of Workers with a view to launching negotiations on wage increases. Apart from that initiative, which had not been successful in view of the refusal of the workers' representatives to enter into dialogue with the employers' representatives, the latter had been totally excluded from the process of determining the national minimum wage and sectoral wage rises, with the Government only maintaining contact with workers' representatives. Employers' representatives had on many occasions drawn attention to the need for tripartite dialogue in that area with a view to developing balanced policies. The

Government had not yet taken up the call. In conclusion, he reaffirmed the need to consult both employers' and workers' organizations when setting minimum wages, to take into account the differences between economic sectors and the importance of establishing measures to increase the income of workers and their families, without however neglecting the productivity factor in setting wage levels.

- 137.** The Government member of Argentina indicated that there was an error in the General Survey in relation to the participation of union representatives in the work of the National Council on Employment, Productivity and the Minimum Adjustable Wage. In the General Survey, the Committee of Experts appeared to share the views expressed by one trade union concerning the method of selecting workers' organizations invited to sit on the Council. However, it was not correct to indicate that the composition, structure and operation of the Council were faulty. The Government of Argentina had always followed the principle set out in the ILO Constitution, article 3 of which referred to the most representative industrial organizations. The National Council on Employment, Productivity and the Minimum Adjustable Wage had been operating without interruption since 2004 and included, under the presidency of a Government representative, 16 employers' representatives and 16 workers' representatives. The General Confederation of Labour of the Republic of Argentina (CGTRA) and the Confederation of Workers of Argentina (CTA) were represented on it.
- 138.** The Worker member of Kenya recalled that his country had ratified Convention No. 131, as well as Conventions Nos 98 and 144. In 1973, the Government had issued wage revision guidelines which had made it compulsory to review collective agreements every two years and had put in place annual wage increases based on inflation, productivity and comparisons between workers receiving the highest and the lowest wages, with a view to narrowing the wage gap. Tripartite wage councils revised sectoral minimum wages on 1 May each year. Unfortunately, this year the Minister of Labour and Social Security had declined to announce the increase in the minimum wage on the pretext that the tripartite General Wage Council had not met, when he was the one who had failed to convene it. Moreover, the National Labour Board, which had the role of advising the Minister on all issues pertaining to the well-being of workers, had not met for a year. He called on the Government to respect the right of workers to fair remuneration and reasonable working conditions. If it did not do so, the unions would complain to the Committee of Experts that the Government was in violation of the Conventions ratified by the country.
- 139.** The Government member of Lebanon explained that, in accordance with the Labour Code, the minimum wage had to be sufficient to meet the essential needs of wage earners and their families, taking into account the nature of the work. The concept of essential needs needed to be re-examined, as many types of needs, such as housing, transport and education, were now considered essential. The minimum wage in the private sector had been adjusted in 2012. Its rate was higher than the minimum wage in the public sector and the difference was being made up temporarily by a monthly allowance. However, Lebanon was facing a difficult situation in view of the large number of refugees living in the country, who represented around one third and perhaps even half of the population. The presence of refugees gave rise to a situation of competition between workers, as they would agree to work for less than the minimum wage. The public debt was high, the balance of payments was in deficit and the unemployment rate was 46 per cent of the active population. The national economy was moribund and the country was also exposed to security problems. The question arose of how a minimum wage could be set under such conditions. Lebanon had embarked upon a process of amending its Labour Code to bring it into conformity with ILO standards and those of the Arab Labour Organization, and draft legislation was being prepared on domestic workers and agricultural workers. In that respect, it should be noted that the wages of domestic workers could sometimes be higher than those of other workers due to the fact that they enjoyed benefits such as food and

accommodation. Lebanon was also envisaging the ratification of Conventions Nos 87 and 144 and the Domestic Workers Convention, 2011 (No. 189). Assistance from international organizations, including the ILO, would be necessary to resolve the economic problems related to the presence of Syrian refugees. It was important to prevent recourse to child labour in the country, as cheap labour intended to improve competitiveness.

- 140.** The Government member of Malaysia provided information on the conclusion of the process of setting minimum wages in Malaysia following the adoption of legislation on the subject in 2011. The process had been completed as a result of collaboration between the Government and employers' and workers' representatives in the National Wages Consultative Council. Enforcement of the relevant provisions was ensured through many inspections, as well as complaints brought by workers to the Labour Department and the settlement of disputes relating to the payment of minimum wages. Minimum wages had to be reviewed at least once every two years. In 2014, a seminar organized with the participation of the ILO and the World Bank had enabled the members of the National Wages Consultative Council to improve their knowledge of the parameters to be taken into consideration in reviewing minimum wages. Another seminar, in the context of ASEAN, was due to be held before the end of 2014, and Malaysia would be grateful for ILO technical assistance in that connection.
- 141.** The Government member of Libya indicated that, although his country had ratified Convention No. 131 in 1971, minimum wages had been frozen for many years. An advisory board on minimum wages, including representatives of employers' and workers' organizations, as well as experts, had been established in accordance with the Labour Code. The board had decided that the minimum wage would be doubled. Family allowances and housing assistance would also be increased. In accordance with the Labour Code, the minimum wage had to be reviewed regularly on the basis of studies on the cost of living so as to ensure decent living standards for workers.
- 142.** The Government member of Uruguay recalled that the Committee on the Application of Standards had examined the application of Convention No. 131 by his country in 2003. At that time, the minimum wage had been set at US\$100. It has since risen exponentially, and it was now set at US\$500. As a result of social dialogue and collective bargaining, most workers earned more than the national minimum wage. A large number of collective agreements had been concluded, which contributed to the rise in real wages. Over half of the labour market had now been formalized and the unemployment rate was at a historically low level. The methods used for the determination of wages, in a context of social dialogue, had contributed to the redistribution of wealth in the country.
- 143.** The Worker member of Uruguay, emphasizing that minimum wages needed to be determined as a function of the economic situation of each country, referred to inequalities of income in Uruguay. The national minimum wage rate did not allow a single person to afford decent housing. There were also negotiated sectoral minimum wages covering 24 groups of activities. It was not only necessary to discuss minimum wages, but also to take into account the most precarious jobs when determining wage policy. The Uruguayan trade union movement had done that recently through its support for supermarket cashiers.
- 144.** The Government member of Senegal indicated that her country gave effect to the provisions of Convention No. 131 and Recommendation No. 135 through the establishment of guaranteed minimum interoccupational wages set by Presidential decree and wages for occupational categories set by collective agreement, which determined the occupational categories and the corresponding sectoral minimum wages at rates that were higher than those set by decree. Their rate varied according to the work performed, the level at which workers were recruited and the competitiveness of the economic sectors. Minimum wages were determined through social dialogue in the National Advisory

Labour and Social Security Council, as well as the joint commission, composed of employers and workers. In practice, the basic wages specified in collective agreements or enterprise agreements were applied in nearly all economic sectors, as they were higher. Reflection was being undertaken with a view to the coverage in future of workers in the informal economy, who were currently excluded from the minimum wage system. Moreover, the application of the principle of equal remuneration for men and women workers for work of equal value was guaranteed by the Labour Code. Finally, in view of the importance of the purchasing power of workers and the need for them to benefit from an effective social protection system, the Government had lowered taxes on wages in 2013 and had begun a process of reviewing low retirement pensions.

- 145.** The Government member of Sudan said that his Government was making praiseworthy efforts to give effect to international labour standards. As a result of the collaboration of the social partners, a collective agreement setting minimum wages in the private sector had been concluded in March 2014, which would remain in force until 2017.
- 146.** The Employer member of Costa Rica explained that in Costa Rica the formula for the adjustment of minimum wages had been established in 2011 on a tripartite basis. It took into account inflation and productivity, which made it possible to ensure the real growth of the minimum wage. The unemployment rate and changes in the exchange rate were also taken into consideration.
- 147.** The Government member of the Islamic Republic of Iran said that, although his country had not ratified Convention No. 131, it endeavoured to implement its provisions. The national minimum wage was adjusted every year in full consultation with the social partners, in the context of the Supreme Labour Council. The legislation provided for the inflation rate to be taken into account and that the minimum wage should be sufficient to meet the living expenses of a family, irrespective of the physical and intellectual capacities of workers and the characteristics of their work. He emphasized the importance of a clear definition of the minimum wage and of taking into account Paragraph 1 of Recommendation No. 135, under the terms of which “[m]inimum wage fixing should constitute one element of a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families”. In that regard, it was necessary to shed light on the concept of poverty for operational purposes.
- 148.** An observer speaking on behalf of the International Trade Union Confederation (ITUC) said that, following the struggles of the workers’ movement in Cambodia, a minimum wage had been set for the garment sector. However, the minimum wage setting mechanism was strongly dominated by the Government and by employers. This lack of transparency had led to a national strike in December 2013 calling for an increase in the minimum wage. Five workers had been killed and 23 workers and union representatives had been arrested and were being prosecuted. The establishment of an appropriate mechanism to set the minimum wage, so that it could be determined in accordance with Convention No. 131, was therefore of particular importance. It was also essential for workers to be informed of minimum wage rates so that they could ensure their rights.

Prospects for ratification and status of Convention No. 131

- 149.** The Employer members observed that the ratification prospects of Convention No. 131, as they appeared in the General Survey, did not seem to be overwhelming. The Committee of Experts had indicated that there were real prospects of ratification in 13 member States. However, most countries that had provided replies on that point indicated that they had not yet considered the possibility of ratification, or that they were not envisaging ratification, partly because of divergences between the provisions of the Convention and national law

and practice. In particular, larger countries, such as Bangladesh, China, Germany, India, Indonesia, Islamic Republic of Iran, Russian Federation, Turkey, United Kingdom and United States did not seem to have any intention of ratifying the Convention. It was also interesting to note that in a number of countries the trade unions were not in favour of ratification either.

150. The Committee of Experts had endeavoured to dispel the concerns expressed by a number of governments which had reported problems in relation to specific provisions of the Convention, particularly with regard to the possibility of setting minimum wages by collective bargaining or in relation to the criteria for determining minimum wages. However, the Employer members considered that there existed important rigidities and other difficulties of application which hindered ratification, particularly in relation to the following points.

151. The objective of the Convention was not quite clear. If it was poverty reduction, as suggested by the Committee of Experts, that should have been addressed in a more integrated manner, and not by dealing with minimum wages in isolation. Article 1 of the Convention provided that any exemptions from its application had to be indicated in the first report on the application of the Convention, which was due one year after ratification, and it was not possible to introduce exemptions subsequently. Article 2 required minimum wages to have the force of law and not to be subject to abatement. That meant that enterprises confronted with a difficult economic situation were unable to conclude agreements with their workers for temporary reductions of the minimum wage. Moreover, collective agreements that did not have force of law would not be eligible as a method of minimum wage setting under the Convention. Article 3, which dealt with criteria to be considered in minimum wage setting, did not require the competitive needs of enterprises to be taken into account. Governments were free to give priority to social criteria, which could have potentially damaging effects for sustainable enterprises. Article 3 could also be clearer with regard to the extent to which wage supplements provided by the State, such as tax credits and family allowances, could be considered in determining the needs of workers, and hence in setting minimum wages. In view of those rigidities, the Employer members did not agree with the view expressed by the Committee of Experts that Convention No. 131 remained “an up-to-date and topical instrument and that member States not yet parties to this Convention should be strongly encouraged” to ratify it. The revision of the Convention should be envisaged and the standards review mechanism could be the appropriate forum for that purpose.

152. The Worker members agreed with the Committee of Experts that Convention No. 131 was one of the most flexible of ILO Conventions in terms of the means for its implementation. It did not require the adoption of a national minimum wage, nor its establishment by legislative means. The level of minimum wages had to be determined taking into account both the needs of workers and their families and economic factors. Its provisions could therefore be applied in countries with very different levels of development. Many countries recognized the relevance of its principles, but had not taken the step of ratifying the Convention. Countries which had not ratified the Convention included many of the wealthiest industrialized countries, and most of the Member States of the European Union, which was a very bad signal. Nevertheless, the reasons for which countries held back from ratification could be very different and nuanced, and did not necessarily mean that the Convention was not useful. One of the lessons of the General Survey was that problems arose in the understanding of the concepts of the Convention and that more in-depth assistance was necessary for the effective application of a flexible and resolutely modern instrument. The ILO should take the following action: (1) formulate a complete plan to promote the ratification of Convention No. 131, without overlooking its links with other instruments, such as Conventions Nos 87 and 98, and the Labour Inspection Convention, 1947 (No. 81); (2) provide support to governments so that they could resolve legal issues

that were likely to arise when envisaging the adoption of minimum wage regulations; (3) provide guidance through appropriate tools on the setting of minimum wages in conformity with the requirements of the Convention; (4) supply exhaustive comparative data on wage trends and minimum wage legislation; and (5) provide guidance on best practices in relation to minimum wage machinery and the application of minimum wages. They recalled in that regard that the ILO Training Centre in Turin had valuable expertise in that field which should be put to good use.

- 153.** The Worker member of Morocco expressed support for the statement made by the Worker members in relation to the five types of action that should be taken by the ILO.
- 154.** The Government member of Belgium thanked the Committee of Experts for providing replies in the General Survey to the issues raised by his Government in the report provided for the preparation of the survey. Those replies would enable Belgium to re-examine the possibility of ratifying Convention No. 131.
- 155.** The Government member of Germany indicated that, in the view of her Government, the provisions respecting the national minimum wage that would be introduced as of 1 January 2015 were in conformity with the Convention, and the possibility of ratification would therefore be examined.
- 156.** The Worker member of Germany regretted that his country had not yet ratified the Convention, but welcomed the announcement made by the Government member of Germany in that respect. There were no legal or political obstacles to the implementation of the Convention in Germany. The German Confederation of Trade Unions (DGB) would be at the side of the Government in overcoming political and parliamentary hurdles to its ratification.
- 157.** The Government member of Mozambique reported that her country was making efforts with a view to the ratification of the Convention and would appreciate the provision of technical assistance from the Office for that purpose.
- 158.** The Government member of the Russian Federation said that her country had set itself the objective of raising the minimum wage to the level of the subsistence threshold by 2018. The General Survey was useful in preparing the ground for the ratification of the Convention, to which effect the Russian Federation was currently examining the conformity of national legislation with the Convention. She concluded by calling on the Office to provide technical assistance to countries which so wished, with a view to strengthening their minimum wage systems.
- 159.** The Employer member of Denmark recalled that his country had not ratified the Convention. He raised the issue of possible conflicts between Article 2 of the Convention and the principle of collective bargaining, which meant that ratification could hamper national collective bargaining systems. He endorsed the observations made by the Government of Cyprus, as was reflected in paragraph 375 of the General Survey. Those who had a vital interest in wage determination, namely employers and workers, were best placed to fix wage levels.

Concluding remarks

- 160.** The Employer members said that the discussion had been useful and had gone into the subject in depth, despite the lack of time available to discuss such a complex subject. The discussion had provided a very interesting basis for reflection on the existing instruments and to envisage future instruments. It showed that national circumstances needed to be taken into account in the setting of minimum wages. Many governments had established

minimum wage systems in very different national contexts. The Employer members welcomed the explanations provided by members of the Committee concerning the difficulties and tensions which arose in relation to the criteria for the determination of minimum wages and the need to take into account the financial capacity of enterprises, productivity and competitiveness. Those considerations were important if minimum wage legislation was not to be solely theoretical.

- 161.** In response to the comments made by the Worker members, the Employer members recognized the very serious efforts, and sometimes the struggles of unions for the establishment of minimum social rights in the various countries. The opinions expressed during the discussion converged on many points, including the fact that the process of setting minimum wages needed to be consultative and inclusive, and that a credible system for the enforcement of the relevant provisions was necessary to guarantee the implementation of the Convention. However, there were divergent views on two points. In the first place, Convention No. 131 dealt with the minimum wage, and not the concept of the living wage. In certain countries, the two concepts might be closely linked, particularly where there was no functioning social welfare system. Article 3 of the Convention, in relation to the criteria for the determination of minimum wages, made direct reference to the needs of workers and their families, as well as to “economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment”. The balance between those considerations was important for the Employer members and should be central to future ILO work. Secondly, in the view of the Employer members, it was not contrary to the provisions of the Convention to establish a different minimum wage for young workers, apprentices and trainee workers. In that respect, sufficient attention needed to be paid to Article 3(b) of the Convention, in view of the importance of the access of young persons to the labour market. Where they were justified in light of the national situation, measures to establish different minimum wage rates on the basis of objective and verifiable criteria were not incompatible with the Convention.
- 162.** In conclusion, the Employer members welcomed the discussion in the ILO of this important issue. It was important for the Office, in the framework of capacity-building programmes, to provide support for employers in their efforts to provide jobs which could lift the population out of poverty by ensuring minimum wages.
- 163.** The Worker members disagreed with the idea put forward by the Employer members that it was necessary to review the Convention. In contrast, they agreed with the Committee of Experts that the objectives of Convention No. 131 and Recommendation No. 135 were just as relevant now as when the instruments had been adopted in 1970, despite the major changes and developments which had affected the world of work. The Declaration of Philadelphia had proclaimed 70 years ago that labour was not a commodity. Wages were not merely a price that balanced supply and demand. That was not merely a humanistic principle, but also a fundamental socio-economic reality. The fundamental problem, which was emphasized by many union representatives, some of whom had spoken during the discussion, was that the minimum wages applicable at the national level were not sufficient to meet the needs of workers and their families, even when they were in full-time employment. It was necessary to recognize the numerous issues that arose in relation to the definition of minimum wages and the need to take into account the economic and social situation in each country. However, the Worker members profoundly disagreed with the position expressed by the Employer members on the subject of minimum wages for young workers and the constraints on their employment prospects resulting from the minimum wage. Those issues would be examined in greater depth in 2015 during the recurrent discussion on social protection (labour protection). In any case, emphasis needed to be placed on the added value of the close involvement of the social partners in that area. Moreover, the General Survey and several interventions during the discussion had

suggested that certain countries were hesitant to ratify the Convention out of a fear that it prohibited the setting of minimum wages by collective agreement. That interpretation was paradoxical in countries where social dialogue was undertaken in accordance with the letter and the spirit of ILO standards, and clarification on that point would be desirable. In conclusion, the Worker members expressed the hope that several countries would ratify the Convention in the near future.

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- 164.** In response to a comment by the Government member of Argentina to the effect that the information contained in the General Survey concerning the participation of the social partners in the operation of national minimum wage systems was not accurate, the Chairperson of the Committee of Experts indicated that the respective passage in the General Survey referred to the comment made on the subject by a workers' organization.

Outcome of the discussion by the Committee on the Application of Standards of the General Survey concerning minimum wage systems

- 165.** The Committee examined the draft outcome of its discussion of the General Survey concerning minimum wage systems (document C.App./D.17). The Employer members supported the draft, drawing attention to the final paragraph, which requested the Office to take into account the General Survey and the outcome of its discussion by the Committee in the preparation of the report for the recurrent discussion on social protection (labour protection) to be held at the 104th Session (2015) of the Conference, so that it can feed into the framework within which priorities are set for future ILO action. The Worker members supported the statement of the Employer members and the proposal to adopt the examined draft.
- 166.** The Committee approved the outcome of its discussion of the General Survey concerning minimum wage systems, which is reproduced below and which it wishes to bring to the attention of the Conference concerning the recurrent discussion on social protection (labour protection) which will take place at its 104th Session (2015).

Introduction

1. The Committee on the Application of Standards welcomes the opportunity, in the context of its examination of the General Survey on the Minimum Wage Fixing Convention (No. 131) and Recommendation (No. 135), 1970, to discuss issues of critical importance to the world of work. It notes in this respect that it was not possible to reflect in full in the General Survey the detailed information contained in the reports provided by governments, and the comments made by employers' and workers' organizations, and it hopes that the Office will make this information available to constituents in an easily accessible format.
2. The Committee notes that, in accordance with the decisions taken by the ILO Governing Body, its examination of the General Survey is being undertaken for the first time one year before the recurrent discussion by the Conference of the corresponding strategic objective. It welcomes this innovation and firmly hopes that the interval of one year will make it possible for the outcome of its work to be fully taken into account in the framework of the recurrent discussion on social protection (labour protection) to be held at the 104th Session (2015) of the Conference.
3. As emphasized in the Preamble of Convention No. 131, minimum wage fixing is intended to protect wage earners against unduly low wages. It gives effect to the principle, set out in the Declaration of Philadelphia of 1944, that "labour is not a commodity". Convention No. 131 also provides that the price of labour cannot be determined purely and simply through the application of the rules of supply and demand and that minimum wage is to be provided to all employed and in need for such protection.

4. Minimum wage fixing also offers a means of establishing a level playing field for all employers. Moreover, the Committee recalls that appropriate minimum wage systems supplement and reinforce social and employment policies. Several types of measures can be used to tackle income and labour market inequality, including policies to generate decent work and reduce informal employment, which can be combined with other initiatives, such as wage policies, including appropriately designed minimum wage systems to protect wage earners against unduly low pay. The Committee also emphasizes that the protection of workers through minimum wages requires first of all that they have a job, that pro-employment social and economic policies, including public and private investments, are necessary, and that the promotion of sustainable enterprises is essential for that purpose.

5. The Committee has also examined the role played by minimum wage policies in a context of economic crisis or where fiscal consolidation policies are applied with a view to reducing excessive public debt. It recalls that the Global Jobs Pact, adopted by the Conference in 2009, calls for a series of measures to be taken in response to the international financial and economic crisis that has affected certain countries since 2008. These measures within a structural reform approach cover a large number of fields, including for instance the priority to be given to employment protection and growth through sustainable enterprises, and the regular adjustment of minimum wages so as to avoid a deflationary wage spiral. In this respect, the Global Jobs Pact refers explicitly to Convention No. 131. The Oslo Declaration, adopted by the ILO's Ninth European Regional Meeting in 2013, which supplements the Global Jobs Pact at the regional level, also outlines a series of measures to be taken by the ILO to assist constituents to address social and economic crises. This includes the promotion of policies that foster decent work and job creation through employment-friendly macroeconomic policies and investment in the real economy; an enabling environment for enterprises; appropriate strategies to enhance competitiveness and sustainable development while respecting fundamental principles and rights at work, as well as strategies that improve job quality and close the gender wage gap.

The essential principles of Convention No. 131 and Recommendation No. 135

6. Convention No. 131 and Recommendation No. 135 set out a number of essential principles, while offering flexibility to member States in their implementation.

7. The first of these principles is the full consultation and, insofar as possible, direct participation, on a basis of equality, of the social partners at all stages of the establishment and operation of minimum wage systems. To be effective, such consultations have to be carried out in a context of open social dialogue and held before decisions are taken by the public authorities, and employers' and workers' organizations need to have access in advance to relevant information as a basis for formulating their views.

8. Secondly, national minimum wage systems have to cover "all groups of wage earners whose terms of employment are such that coverage would be appropriate". While the determination of the protected groups of wage earners is the responsibility of the competent national authorities, in agreement with the employers' and workers' organizations concerned, or at least after they have been fully consulted, exclusions should be kept to a minimum, as called for by Recommendation No. 135, particularly in relation to vulnerable categories of workers, such as domestic workers. Moreover, according to Article 1, paragraph 3, of Convention No. 131, exclusions can only be made in – and by the time of – the first article 22 report, not later on.

9. Thirdly, compliance with the principle of equal remuneration for work of equal value, as set out in the Preamble to the ILO Constitution, must be ensured when determining the coverage of minimum wage systems, particularly where different minimum wages are set by sector or by occupational category. For that purpose, the objective evaluation of jobs is essential to prevent any indirect discrimination against women as a result of their over-representation in certain categories of jobs. It is also important to avoid wage discrimination against migrant workers and workers with disabilities.

10. There is a link between the implementation of the principle of equal remuneration for work of equal value and the provisions adopted in a number of member States, where reduced minimum wages are applicable to young workers below a certain age with a view to facilitating their entry into the labour market. In other countries, such differences have been abolished or limited in scope in the framework of policies to combat discrimination on

grounds of age. In this regard, the Committee considers that it is essential to avoid wage differentiation which is not based on objective valid reasons, such as educational objectives, work experience or skills. The same considerations apply in cases where different minimum wage rates are in force for apprentices and trainee workers.

11. Fourthly, Convention No. 131 provides that, in determining and periodically adjusting minimum wage rates, the elements to be taken into consideration include, on the one hand, the needs of workers and their families and, on the other, economic factors. The maintenance of an appropriate balance between these two sets of considerations is crucial to ensuring the operation of a minimum wage system adapted to the national context which ensures both effective protection for workers and the development of sustainable enterprises, as well as the proper application in practice. The precise criteria set out in the Convention, such as the cost of living and levels of productivity, are of great importance in this respect, but are not exhaustive.

12. Fifthly, Convention No. 131 requires the adoption of appropriate measures to ensure the effective application of the provisions on minimum wages, and Recommendation No. 135 sets out a series of complementary measures for that purpose. These measures include labour inspection services with sufficient capacities and powers to carry out their duties, as provided for in the Labour Inspection Convention, 1947 (No. 81), provisions enabling workers to recover amounts due to them, while being protected against victimization, and adequate sanctions for infringements of the relevant provisions. Employers' and workers' organizations also have an important role to play in this regard. Incentive measures to encourage compliance with minimum wages can also contribute to these efforts, while reducing the risk of the expansion of the informal economy.

Flexibility of the instruments examined

13. Far from seeking to impose a single model on all ILO member States, Convention No. 131 is based on the idea that effective and sustainable minimum wage systems need to reflect the specific circumstances of the different countries and correspond to their level of economic and social development. For that reason, it offers member States some flexibility in the implementation of the principles that it establishes. Accordingly, it does not define its scope of application precisely, but leaves decisions on that point to the national authorities, in the context of dialogue with the social partners. The Convention does not set out requirements concerning the machinery for fixing minimum wages which may be established by legislation, by decision of the public authorities after consultation of employers' and workers' organizations, or on a tripartite basis, or through collective agreements provided they are legally binding. Nor does it require the establishment of a national minimum wage, or different minimum wages by region, sector or occupational category. Convention No. 131 does not contain an exhaustive list of criteria which have to be taken into account in the determination of minimum wage rates, or a universal formula for the periodic adjustment of such rates.

Contribution to the preparation of the recurrent discussion on social protection (labour protection)

14. The follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008, calls for the organization of recurrent discussions with a view to understanding better the diverse realities and needs of member States and responding to them more effectively, using all the means of action at the disposal of the Organization, including standards-related action, technical cooperation, and the technical and research capacity of the Office.

15. In this regard, a number of lessons can be drawn from the General Survey on minimum wage systems and its examination by the Committee.

The needs of member States

16. The General Survey has shown that existing minimum wage systems in ILO Member States are diverse and that many approaches are possible. With a view to establishing operational minimum wage systems adapted to specific national circumstances, governments, as well as employers' and workers' organizations, need to have an in-depth knowledge of the various aspects of these systems. These include: institutional minimum wage fixing machinery; possible variations between a system based on a national minimum wage and different minimum wages by region, sector or occupational category; the type of factors to be

taken into consideration in determining minimum wage rates and the weighting to be given to such factors; procedures for the adjustment of minimum wages; and the most appropriate measures to ensure the effective application of the relevant provisions. The General Survey and the Committee's work have also shown that certain provisions of Convention No. 131 and Recommendation No. 135 require further analysis so that their purpose, scope and application can be clearly understood by all concerned.

17. Constituents also need to have at their disposal reliable statistical data and analytical capacities to enable them to take decisions based on empirical data and for the subsequent evaluation of the impact of minimum wage adjustments. From this perspective, access to data on wage distribution and trends is indispensable. Knowledge of minimum wage systems and their effects in other member States is also important. Furthermore, constituents need to have access to studies on the effects of minimum wage policies on variables such as employment, income inequality and poverty, as well as the articulation between minimum wage policies and other policies and instruments.

ILO means of action

(1) Standards-related action

18. The Committee considers that the principles established by Convention No. 131 and Recommendation No. 135 remain relevant. Convention No. 131 has currently been ratified by 52 member States, with the latest ratification, by Morocco, being registered in 2013. Thirteen member States referred to real prospects of ratification in the reports provided for the preparation of the General Survey. The Committee also welcomes the fact that the Government representatives of four other countries (Belgium, Germany, Mozambique and Russian Federation) announced during the discussion that they would examine the possibility of ratifying the Convention. Some countries are considering ratification. Some countries have indicated that they do not plan to ratify, partly because of concrete divergences between the Convention and their national laws and practices. On the other hand, the General Survey has also shown that many member States which are still bound by one of the older Conventions on minimum wage fixing, or which have not ratified any instruments on the subject, nevertheless comply with the fundamental principles underlying Convention No. 131. The Committee further recalls that the Convention contains some flexibility clauses allowing the development of minimum wage systems adapted to the circumstances of countries. However, it would appear to be necessary to provide information on the precise scope of some of its provisions.

19. The Committee invites member States that examine the possibility of ratifying Convention No. 131 to request, where necessary, the technical assistance of the Office.

(2) Technical cooperation and assistance

20. Many governments, as well as employers' and workers' organizations, requested technical assistance or advisory services from the Office in the reports that they provided for the preparation of the General Survey, or during its discussion by the Committee. These requests relate, for example, to the undertaking of surveys or studies with a view to the adjustment of minimum wages, capacity building for constituents involved in the operation of such systems, and the dissemination of good practices. The Committee hopes that the Office will have the necessary capacity to respond to these requests with a view to facilitating the establishment or improvement of national minimum wage systems.

21. Capacity building for constituents should deal with, in particular: different approaches of minimum wage fixing; means of ensuring compliance with the principle of equal remuneration for work of equal value; the various economic and social indicators that can be used as criteria for setting and adjusting minimum wages; and measures to ensure effective compliance with minimum wage rates. The exchange of good practices between member States should also be encouraged. In addition, the Committee invites the Office to develop tools, such as practical guides and training manuals, to improve understanding of the requirements of Convention No. 131 and to facilitate the implementation of its provisions.

(3) The technical and research capacity of the Office

22. The Committee considers it important for the Office to continue and develop its research work in the field of wage policies, including the impact of minimum wages, as a function of their level, on income and employment, particularly for vulnerable workers, such as young workers and domestic workers; the articulation between minimum wage fixing and

social protection; interactions between minimum wages and collective bargaining; and the effects of the various policy measures intended to enforce compliance with minimum wage provisions.

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23. The Committee requests the Office to take into account the General Survey on minimum wage systems and the outcome of its discussion of the General Survey, as reflected above, in the preparation of the report for the recurrent discussion on social protection (labour protection) to be held at the 104th Session (2015) of the Conference, so that it can feed into the framework within which priorities are set for future ILO action.

D. Compliance with specific obligations

- 167.** The Chairperson explained the working methods of the Committee for the discussion of cases of serious failure by member States to respect their reporting and other standards-related obligations.
- 168.** The Employer members noted a general improvement in terms of compliance with reporting obligations, with an increase of around 6 per cent as compared to last year. They noted in particular the efforts made by eight countries with persistent difficulties in previous years (Grenada, Ireland, Kiribati, Kyrgyzstan, Libya, Sao Tome and Principe, Seychelles and Sierra Leone), which had now complied with their constitutional obligations vis-à-vis ratified Conventions. Despite this progress, the Employer members believed that the reporting situation was still not satisfactory given that more than a quarter of all due reports on the application of ratified Conventions were not received by the time of the meeting of the Committee of Experts. Further steps were therefore needed to address the problem at its roots. As far as ratifying countries were concerned, the Employer members stressed that these countries should not just rely on the offer of technical assistance but take their responsibility for reporting seriously. Even before ratifying an ILO Convention, countries needed to consider whether they would be able to discharge their reporting obligation and, if need be, reinforce their reporting capacities. From a wider perspective, there was a need to consolidate and simplify ILO Conventions and thus focus reporting on the essential. Identifying ways to do so would be a task for the standards review mechanism. The Employer members trusted that it would soon be operational.
- 169.** The Worker members stated that although some countries had made an effort, an effective supervisory system implied that each State had to meet its obligations. Submitting instruments to the competent authorities was therefore part and parcel of the process. Unless that was done, the competent authorities could have no knowledge of the ILO's instruments and of the action taken by the Organization. As to the failure of some countries to respond to the Committee of Experts' comments, the latter had to be able to analyse government reports on the subject. It was essential that there be fewer and fewer cases each year of countries failing to meet their standards-related obligations.
- 170.** In examining individual cases relating to compliance by States with their obligations under or relating to international labour standards, the Committee applied the same working methods and criteria as last year.
- 171.** In applying those methods, the Committee decided to invite all governments concerned by the comments in paragraphs 44 (failure to supply reports for the past two years or more on the application of ratified Conventions), 50 (failure to supply first reports on the application of ratified Conventions), 53 (failure to supply information in reply to comments made by the Committee of Experts), 106 (failure to submit instruments to the competent authorities) and 113 (failure to supply reports for the past five years on

unratified Conventions and Recommendations) of the Committee of Experts' report to supply information to the Committee in a half-day sitting devoted to those cases.

Submission of Conventions, Protocols and Recommendations to the competent authorities

- 172.** In accordance with its terms of reference, the Committee considered the manner in which effect was given to article 19, paragraphs 5–7, 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.
- 173.** The Committee noted from the report of the Committee of Experts (paragraph 104) that considerable efforts to fulfil the obligation to submit had been made in certain States, namely: Botswana, Georgia, Peru and Ukraine.

Failure to submit

- 174.** 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 seven sessions at least (from the 92nd Session in June 2004 to the 101st Session in June 2012, because the Conference did not adopt any Conventions and Recommendations during the 93rd (2005), 97th (2008) or 98th (2009) Sessions. This time frame was deemed long enough to warrant inviting Government delegations to the special sitting of the Conference Committee so that they may explain the delays in submission.
- 175.** The Committee noted the regret expressed by several delegations at the delay in providing full information on the submission of the instruments adopted by the Conference to parliaments. Some governments had 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.
- 176.** The Committee expressed great concern at the failure to respect the obligation to submit Conventions, Recommendations and Protocols to national parliaments. It also recalled that the Office could provide technical assistance to facilitate compliance with this constitutional obligation.
- 177.** The Committee noted that 38 countries were still concerned with this serious failure to submit the instruments adopted by the Conference to the competent authorities, that is, **Angola, Bahrain, Belize, Brazil, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, El Salvador, Equatorial Guinea, Fiji, Guinea, Haiti, Iraq, Jamaica, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Libya, Mali, Mauritania, Mozambique, Pakistan, Papua New Guinea, Rwanda, Saint Lucia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Sudan, Suriname, Syrian Arab Republic, Tajikistan, Uganda and Vanuatu.** The Committee hoped that appropriate measures would be taken by the governments and the social partners concerned so that they could bring themselves up to date, and avoid being invited to provide information to the next session of this Committee.

Supply of reports on ratified Conventions

178. The Committee noted that by the date of the 2013 meeting of the Committee of Experts, the percentage of reports received was 72.5 per cent (67.8 per cent for the 2012 meeting). Since then, further reports had been received, bringing the figure to 80.6 per cent (as compared with 78.9 per cent in June 2013, and 77.4 per cent in June 2012).

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

179. The Committee noted with regret that no reports on ratified Conventions had been supplied for the past two years or more by the following States: **Burundi, Comoros, Equatorial Guinea, Gambia, San Marino, Somalia, Tajikistan and Vanuatu.**

180. The Committee also noted with regret that no first reports due on ratified Conventions had been supplied by the following countries:

State	Conventions Nos
Afghanistan	– Since 2012: Conventions Nos 138, 144, 159, 182
Equatorial Guinea	– Since 1998: Conventions Nos 68, 92
Sao Tome and Principe	– Since 2007: Convention No. 184
Vanuatu	– Since 2008: Conventions Nos 87, 98, 100, 111, 182 – Since 2010: Convention No. 185

181. It stressed the special importance of first reports on which the Committee of Experts based its first evaluation of compliance with ratified Conventions.

182. In this year's report, the Committee of Experts noted that **69** governments had not communicated replies to the observations and direct requests relating to Conventions on which reports were due for examination this year, involving a total of **476** cases (compared with 387 cases in December 2012). The Committee was informed that, since the meeting of the Committee of Experts, 12 of the governments concerned had sent replies, which would be examined by the Committee of Experts at its next session.

183. The Committee noted with regret that no information had 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 2013 from the following countries: **Burundi, Cambodia, Comoros, Croatia, Dominica, El Salvador, Equatorial Guinea, Gambia, Ghana, Guinea, Guyana, Haiti, Malaysia (Malaysia Peninsular, Malaysia Sarawak), Malta, Mauritania, Rwanda, San Marino, Sierra Leone, Syrian Arab Republic, Tajikistan, Timor-Leste, Turkmenistan and Vanuatu.**

184. The Committee noted the explanations provided by the Governments of the following countries concerning difficulties encountered in discharging their obligations: **Afghanistan, Angola, Eritrea, Guyana, Kuwait, Libya, Mauritania, Papua New Guinea and Sudan.**

Supply of reports on unratified Conventions and Recommendations

185. The Committee noted that 217 of the 385 article 19 reports requested on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135), had been received at the time of the Committee of Experts' meeting. This is 56.4 per cent of the reports requested. Since then, further reports had been received, bringing the figure to 56.8 per cent of the reports requested.
186. The Committee noted with regret that over the past five years none of the reports on unratified Conventions and Recommendations, requested under article 19 of the Constitution, had been supplied by: **Democratic Republic of the Congo, Equatorial Guinea, Guinea, Guinea-Bissau, Libya, Marshall Islands, Saint Kitts and Nevis, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Tuvalu and Vanuatu.**

Communication of copies of reports to employers' and workers' organization

187. Once again this year, the Committee did not have to apply the criterion: "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(2) of the Constitution, copies of reports and information supplied to the ILO under articles 19 and 22 have been communicated".

Application of ratified Conventions

188. The Committee noted with particular interest the steps taken by a number of governments to ensure compliance with ratified Conventions. The Committee of Experts listed in paragraph 74 of its report new cases in which governments had made changes to their law and practice following comments it had made as to the degree of conformity of national legislation or practice with the provisions of a ratified Convention. There were 32 such cases, relating to 25 countries; 2,946 cases where the Committee of Experts was led to express its satisfaction with progress achieved since it began listing them in 1964. These results were tangible proof of the effectiveness of the supervisory system.
189. This year, the Committee of Experts listed in paragraph 77 of its report, cases in which measures ensuring better application of ratified Conventions had been noted with interest. It noted 157 such instances in 95 countries.
190. At its present session, the Conference Committee was informed of other instances in which measures had recently been or were about to be taken by governments with a view to ensuring the implementation of ratified Conventions. While it was for the Committee of Experts to examine these measures, the present Committee welcomed them as fresh evidence of the efforts made by governments to comply with their international obligations and to act upon the comments of the supervisory bodies.

Specific indications

191. The Government members of **Afghanistan, Angola, Bahrain, Brazil, Cambodia, Comoros, Guyana, Jordan, Kazakhstan, Kuwait, Libya, Mauritania, Papua New Guinea, Sudan and Suriname** had promised to fulfil their reporting obligations as soon as possible.

Special case

- 192.** The Committee considered it appropriate to draw the attention of the Conference to its discussion of the cases mentioned in the following paragraphs, a full record of which appears as Part Two of this report.
- 193.** As regards the application by **Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee took note of the written and oral information provided by the Government representative and the discussion that ensued.
- 194.** The Committee took note of the comments of the Committee of Experts and of the report transmitted to the Governing Body in March 2014 of the direct contacts mission, which visited the country in January 2014 with a view to obtaining a full picture of the trade union rights situation in the country and assisting the Government in the rapid and effective implementation of all outstanding recommendations of the Commission of Inquiry.
- 195.** The Committee noted that in light of the findings and concrete proposals formulated by the direct contacts mission, the Government has accepted ILO technical assistance to conduct a series of activities aimed at improving social dialogue and cooperation between the tripartite constituents at all levels, as well as enhancing knowledge and awareness of freedom of association rights. The Committee took note of the Government's statement that these activities would contribute to the effective implementation of the recommendations of the Commission of Inquiry. The Government considered, in particular, that a seminar for the Tripartite Council for the Improvement of Legislation in the Social and Labour Sphere would improve its effectiveness and thus assist in addressing Recommendations Nos 5 and 7; a training for judges, prosecutors and lawyers would assist in implementing Recommendations Nos 4 and 8; and an activity on collective bargaining would allow the elaboration of a set of guidelines on collective bargaining to ensure that trade union pluralism is respected in practice, thus addressing Recommendations Nos 6 and 12.
- 196.** Noting the Government's stated commitment to social dialogue and cooperation with the ILO, the Committee expressed the hope that these activities would give rise to concrete results. The Committee hoped, in particular, that the Tripartite Council would evolve into a forum where solutions could be found at the national level, including as regards cases of anti-union discrimination and issues relating to trade union registration. The Committee expected that amendments would be made to Presidential Decree No. 2 dealing with trade union registration, Decree No. 24 concerning the use of foreign gratuitous aid, the Law on Mass Activities and the Labour Code, in line with the provisions of the Convention. The Committee called upon the Government to continue engaging with the ILO, to intensify its cooperation with all the social partners in the country and to accelerate its efforts towards rapid and effective implementation of the outstanding recommendations of the Commission of Inquiry.
- 197.** The Committee invited the Government to submit detailed information on the results of the abovementioned activities and all other measures taken to implement the outstanding recommendations of the ILO supervisory bodies to the Committee of Experts at its meeting this year, and trusted that it would be in a position to note significant progress with respect to all remaining matters at its next session.

Participation in the work of the Committee

198. The Committee wished to express its gratitude to the 52 governments which had collaborated by providing information on the situation in their countries and participating in the discussion of their individual cases.
199. The Committee regretted that, despite the invitations, the governments of the following States failed to take part in the discussions concerning their countries and the fulfilment of their constitutional obligations to report: **Burundi, Croatia, Democratic Republic of the Congo, Côte d'Ivoire, Djibouti, El Salvador, Fiji, Guinea, Haiti, Iraq, Jamaica, Kyrgyzstan, Malaysia** (Malaysia Peninsular, Malaysia Sarawak), **Mali, Malta, Mozambique, Pakistan, Rwanda, San Marino, Sierra Leone, Somalia, Syrian Arab Republic, Turkmenistan** and **Uganda**. The Committee decided to mention the cases of all these States in the appropriate paragraphs of its report and to inform them in accordance with the usual practice.
200. The Committee noted with regret that the governments of the States which were not represented at the Conference, namely: **Belize, Dominica, Equatorial Guinea, Gambia, Guinea-Bissau, Marshall Islands, Saint Kitts and Nevis, Saint Lucia, Sao Tome and Principe, Solomon Islands, Tajikistan, Timor-Leste, Tuvalu** and **Vanuatu** were unable to participate in the Committee's examination of the cases relating to them. It decided to mention these countries in the appropriate paragraphs of this report and to inform the governments, in accordance with the usual practice.

E. Discussion on the 19 remaining individual cases

201. The Worker members stated that they were facing a situation where it was no longer feasible to reach any kind of conclusions by consensus, and that the Employer members had tabled demands that were simply not compatible with the working methods of the Committee. The Worker members asked the Employer members to explain why elements on which there was no consensus should be included in the Committee's conclusions.
202. The Employer members wished to clarify their position on the issue. They remained ready to negotiate the conclusions of the cases before the present Committee. The Employer members were of the view that it had been the Worker members who had refused to negotiate the conclusions of 19 cases because of a disagreement between the parties with respect to a legal issue that involved three cases. The Employer members considered that it was the Worker members who must explain the reason why they had adopted the position to decline negotiations on the conclusions of 19 cases due to difficulties that had arisen in three cases.
203. The Worker members stated that they did not refuse to negotiate the 19 cases which had been discussed, but they emphasized that it was impossible to negotiate consensual conclusions. It was inappropriate to introduce divergent elements in the conclusions since the latter should give governments clear guidelines on adjusting and improving practices. The difference of views between the Worker members and the Employer members only related to three cases, but that put into question the whole mechanism, which had been functioning since the 1980s. Today, it concerned three cases, but tomorrow it could be four, five or six, depending on the number of cases relating to Convention No. 87 to be discussed. Consequently, the Worker members requested that the Employer members explain why they wanted to include non-consensual elements in the conclusions.

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- 204.** The Employer members pointed out that, in paragraph 91 of its General Report, the Committee of Experts had taken note of the arguments advanced by both sides on the issue as to whether the right to strike was included in Convention No. 87, and had observed that the views of the two groups continued to be diametrically opposed. The Committee of Experts had therefore recognized the divergence of views in its report. The Employer members were prepared to negotiate conclusions with respect to the three cases involving the right to strike issue, provided that their view on the right to strike was reflected in the conclusions by the inclusion of the sentence agreed upon by the social partners and adopted by the Committee the previous year. This sentence had constituted the compromise solution at the 2013 Conference. Since the issue remained unresolved, the Employer members had requested that the very same sentence be included in the conclusions to record their views in this regard. It was thus regrettable that the Worker members refused such inclusion and any negotiation of the conclusions relating to these three cases. The Employer members found it, however, deeply regrettable that, because of their request to have the difference of opinion appropriately reflected, the Worker members had now taken the position not to negotiate any conclusions on the remaining 19 cases. They requested the Worker members to clarify why they declined the negotiation of 16 conclusions, none of which faced any divergence of views and which concerned the supervision of a variety of Conventions. The Employer members remained willing to negotiate conclusions for all outstanding cases and asked for an explanation as to why a disagreement on three cases had to result in a refusal to negotiate on all 19 cases.
- 205.** The Worker members confirmed their willingness to provide the necessary explanations. They emphasized that the situation facing the Conference Committee was not of their making and stated that they were willing, in line with what had been decided under the agreement reached within the Governing Body at its 320th Session in March 2014, to participate in the work of the Committee in a constructive manner. Regarding the reference made by the Employer members to the mandate of the Committee of Experts, it should be recalled that the Governing Body had unanimously accepted the Committee of Experts' own formulation of its mandate and that this was not the place to be calling that mandate into question again. The differing views of the Employer members concerning the right to strike were well known but that was not an issue to be settled in the context of the Conference Committee but in another place, at another time and according to other procedures. After some 30 years of adopting consensus-based conclusions, consensus was no longer possible today. It was regrettable to observe that certain elements had been brought into the debate albeit clear that they were going to create problems. Today it was Convention No. 87 that was concerned but tomorrow it might be other Conventions on which the Employer members disagreed with the Committee of Experts. It should be recalled that the purpose of the conclusions was to give clear and consensual instructions to governments reflecting the agreement of the two groups.
- 206.** In reply to the Employer members, the Worker members set out the reasons why such a situation had been reached and started by recalling certain elements to be taken into consideration in order to have a clear understanding of the situation and to assess the kind of solutions capable of achieving the future restoration of the standards system in which they believed. The ILO had a key role to play in promoting and achieving progress, social justice and fundamental rights such as freedom of association and the effective recognition of the right to collective bargaining. Social dialogue and the practice of tripartism by governments and representative workers' and employers' organizations at the national, regional and international levels were the most meaningful way to arrive at solutions that were useful not only to workers and employers but also to governments.
- 207.** The Worker members believed in the standards system of the ILO, whose tripartite structure was unique within the United Nations system. At the heart of that system was the supervision of the application of standards in law and in practice, through the interaction

between the Committee of Experts and the Committee on the Application of Standards, together with the work of the Committee on Freedom of Association, which was another tripartite component of the supervisory machinery. There now appeared to be a growing tendency to push for a “soft law” approach and for purely voluntary rules as opposed to binding standards, and that was something that the Worker members refused to countenance. It was testimony to the fact that the issues which had been fiercely debated when the ILO had been founded in 1919 were still relevant in 2014, and more so than ever. Standards were just as relevant today and there was no question of forgetting the lessons of the past.

208. In March 2014 the Governing Body had reaffirmed that “in order to exercise fully its constitutional responsibilities, it was essential for the ILO to have an effective, efficient and authoritative standards supervisory system commanding the support of all constituents”. There was thus tripartite agreement on the standard-setting activity, on the one hand, and on the supervision of that activity, on the other. The Governing Body had also stressed “the critical importance of the effective functioning of the Committee on the Application of Standards in conformity with its mandate at the 103rd Session of the International Labour Conference”. The Committee’s mandate was linked to the application of articles 19 and 35 of the Constitution, and implicit in supervising the application of Conventions and Recommendations was a discussion of the information that would be supplied by member States, and specifically those on the list of 25 cases. According to the document on working methods, the list was established in terms of the likelihood of the discussion having a tangible impact on the countries on the list. As the governments had often asserted, notably in the discussions on working methods, drawing up the list was the joint responsibility of the social partners. That responsibility presupposed that joint conclusions reached by consensus could be adopted on the cases that the Employer and Worker members had together decided to examine. Consequently, if the Committee was to function fully and effectively as required by its mandate, it needed to be able to consider conclusions that were presented jointly by the two groups.

209. The Worker members refused to submit conclusions that became non-consensual as soon as it concerned the interpretation of Convention No. 87, and considered that accepting once again the reservations put forward by the Employer members on the cases concerning Convention No. 87 would give the impression that a tacit jurisprudence in relation to freedom of association cases was creeping into the Committee. Furthermore, discussions in the Committee had shown that the Employer members were also turning their attention to other Conventions. In the case of the application of Convention No. 98 by Croatia, for example, the Employer members had requested that the conclusions should reflect their disagreement with the interpretation given by the Committee of Experts to Article 6 of the Convention in question. However, conclusions were meaningless unless they had a tangible impact on the country concerned, and it might be asked how a tangible effect could result from conclusions in which the Employer members stated that they did not agree that the right to strike was recognized in Convention No. 87. That formulation served no purpose at all. As far as effectiveness was concerned, one might wonder how asking one group to give in to another could be effective. The Worker members declared that they did not intend remaining silent and referred once again to the Governing Body decision of March 2014, in which the Governing Body “deemed it necessary to give further consideration to options to address a dispute or question that may arise with respect to the interpretation of a Convention”. A reference to paragraphs 1 and 2 of article 37 of the ILO Constitution was clearly implicit in those words. The Governing Body had also recognized “that a number of steps could be examined with a view to improving the working methods of the standards supervisory system”. This was not an attempt to avoid discussion because a working group could be set up on the matter. By reiterating their request to introduce the reservations they had expressed the previous year, the Employer members were clearly

undermining the attempts to find common ground that had been made within the Governing Body.

- 210.** In 2012, even though there had been nothing to suggest it would happen, the Conference Committee had failed to function. In 2013, to prevent any recurrence of the failure of 2012, the Worker members had made a one-time concession. They had also clearly indicated that they would no longer accept that the situation of 2012 repeated itself nor a repetition of the 2013 wording. The Employer members had expressed their disagreement at the time, as freedom of speech had entitled them to do, but they had been informed of the clear and determined position of the Worker members. In June 2014, the Worker members were resolved to negotiate the conclusions as they had undertaken to do in March but the situation had turned out differently and, in order to reach solutions, they had had to make constructive proposals throughout the negotiations. They had proposed to include in the Committee's report, after the summary of the statements but before the jointly adopted conclusions, the following sentence (in bold and in the same font as the conclusions): "The Committee took note of the opinions expressed by the Employers' group according to which it does not agree that the right to strike is recognized in Convention No. 87 and recalled that the question of the interpretation of Conventions is currently under discussion in the Governing Body". The Worker members deeply regretted that that proposal had not been supported by the Employer members.
- 211.** The Worker members emphasized that the absence of conclusions, which was not their choice but something imposed upon them, did not do justice to the Worker members who, for the second time, were returning to their countries more vulnerable than ever. As part of the follow-up to the Conference, the Worker members proposed that the Committee should request the Governments whose cases had been discussed to provide a report for examination by the Committee of Experts at its next meeting. Deploring the situation that had been imposed on them, the Worker members concluded that the intransigence which had been shown could never, in the context of tripartism and social dialogue, be the way to finding a solution that was acceptable to all.
- 212.** The Employer members emphasized their commitment to the ILO supervisory system. They recognized the immeasurable value of the work of the Office, of the Committee of Experts and of the International Labour Standards Department within the Office. This work was particularly important at the present time, due to the increasing globalization that was taking place. The Employer members wished to participate in the work of the Organization in every way, including in the supervision of international labour standards. They remained fully committed to tripartism and recognized the unique nature of the ILO. Tripartism was the ILO's greatest strength, which gave it relevance and credibility. However, tripartism did at times entail difficult disagreements. That said, there was much more that united the Worker and Employer members than that which divided them. It was possible to move forward, while at the same time allowing tripartite constituents to express disagreement from time to time. The legitimate difference between the Employer and the Worker members on the question as to whether the right to strike was included in Convention No. 87 had existed for decades. In 2012, it had become clear that this difference of view needed to be managed with a new approach. As a result, in 2013 the social partners had agreed to resolve their disagreement with the inclusion in the conclusions of six cases that involved the issue of the right to strike of a single simple, short sentence that nevertheless represented compromise. The sentence had been "The Committee does not address the right to strike in this case, as Employers do not agree that there is a right to strike in Convention No. 87." It had been a compromise that allowed the Employers' view to be reflected visibly within the conclusions of the Committee.
- 213.** During the current session of the Conference, the Employer members had negotiated the list of cases for consideration in good faith, and had delivered the list to the governments

by the proposed deadline. The Employer members had advised the Worker members that there were cases on the list that involved the right to strike, which the Employer members considered to be outside the mandate of the Committee of Experts. For the last two years, the Employer members had been transparent about their views both before the present Committee and the Governing Body that the Employers' view on the right to strike was to be visibly reflected in the conclusions of the Committee. They had therefore highlighted to the Worker members that they expected that the conclusions of cases concerning Convention No. 87 which involved the right to strike would again include the sentence that had been agreed upon the previous year. After negotiating the list of cases for examination, the Committee had moved forward, and had completed the discussion of all 25 cases over the course of the week. The discussions of each case had been fruitful and the Committee had had the opportunity to provide guidance to governments on how to ensure that national law and practice complied with international labour standards. The Employer members appreciated the effort the Government members had made to travel to Geneva, as well as their time and the presentations they had made. The Committee's work had proceeded, and, in their view, the cases had been supervised. A number of cases had raised extremely serious issues relating to violations of fundamental Conventions. The Committee's work had progressed well and conclusions had been adopted for the six double-footnoted cases. The Employer members had worked diligently towards reaching conclusions on the remaining 19 cases. There had only been three cases (Algeria, Cambodia and Swaziland), where disagreement had emerged as to how to reflect the difference of opinion regarding the right to strike. The Employer members had expressed the expectation that the issue could be addressed by using the same sentence that had been used in 2013. However, they had been open to other forms of compromise, such as the inclusion of a second sentence in the conclusions expressing the Worker members' views on the right to strike; or the use of different language to reflect the Employer members' views, provided that the substance remained the same. The Committee of Experts had observed the divergence of views in paragraph 91 of its report. The Employer members had proposed that the exact wording of that paragraph of the Committee of Experts' report be included in the conclusions, as a possible compromise. However, the Worker members had adopted the position that under no circumstances could the Employer members' view be reflected in the conclusions.

214. The Employer members had not proposed a new approach this year; they had believed, and hoped that, given that the issue had remained unresolved before the Governing Body, the sentence agreed upon the previous year and adopted by the Committee could be used again, at the current session, and would again provide a way of coping with the difference of opinion. However, the Worker members had rejected that approach. The Employer members had been disappointed, but they had nevertheless tried to remain constructive, and had proposed to continue negotiating conclusions on the 16 outstanding cases to which the disagreement was irrelevant. In their view there had been an opportunity for broad consensus on those cases. The Employer members had been, and were still ready, to proceed to adopt conclusions on the cases where agreement already existed. Disagreement on one issue should not be used to prevent consensus on other issues. The Worker members' refusal to work to agree conclusions on all the remaining 16 cases was unfortunate.

215. The Employer members reaffirmed their commitment to the supervisory system including the present Committee. The work that the Committee had accomplished over the last two weeks was very important and was central to the work of the ILO. The Employer members regretted that the Committee's work would not culminate in conclusions, at the election of the Worker members. Nevertheless, Governments had been made aware of the Committee's opinions on the cases that concerned them, and the Employer members hoped that they would take appropriate action. They agreed that the relevant Governments should report to the next meeting of the Committee of Experts. The Employer members remained willing and committed to seek solutions to the issue relating to the right to strike in a

tripartite manner. In their view, a sentence reflecting the views of the Employer members did not in any way undermine the nature of the conclusions or the authority of the present Committee. The direction given to governments with respect to the supervision of the cases remained clear. Disagreements were part of tripartism, and it was appropriate that they be reflected from time to time.

- 216.** The Government member of Costa Rica, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), regretted the present scenario which put the Committee in a similar situation to that of June 2012, in which it seemed that the Governments' role was reduced to one of mere spectators. GRULAC had never been a mere spectator in the discussion and those present knew that in all situations, from 2012, it had presented well-founded views aimed at safeguarding the good name and leadership of the Organization, with strict respect for legality. GRULAC called on the social partners to intensify their dialogue and involve the governments from the outset, as a core component of tripartism, which was the fundamental pillar of the Organization. The speaker regretted that the institutional channels made available by the Office had not been used with regard to the Governments. She urged the social partners to find an inclusive solution for the benefit of the system. Until now, short-term solutions had been proposed but no holistic remedy had been identified. GRULAC reaffirmed its commitment to the roadmap adopted in March 2014 relating to the present situation, and recalled that the Organization had the support of the Governments of Latin America and the Caribbean in finding a solution. The regional group reserved the right to comment more extensively to the Conference, once it was provided with more complete and accurate information on the current events.
- 217.** The Government member of Canada, speaking on behalf of the members of IMEC, noted that the situation was profoundly disappointing and worrying. The issues that had so deeply divided the Committee in 2012 were presently under Governing Body consideration and, while that work was under way, it was imperative for the good of the entire ILO supervisory system that differences of opinion regarding the right to strike not prevent the Conference from fulfilling its appointed task. That previous March, the Governing Body had "underscored the critical importance of the effective functioning of the Committee on the Application of Standards in conformity with its mandate at the 103rd Session of the International Labour Conference" and had "called on all parties concerned to contribute to the successful conclusion of the work of the Committee on the Application of Standards [CAS]". The IMEC members welcomed the fact that a final list of country cases had been negotiated by the Worker and Employer members and had been adopted, on schedule, by the Committee, which was an important accomplishment. However, it took more than a list of cases to bring the Committee's work to a successful conclusion. While Governments had no role in negotiating the conclusions or determining the contents of the list of country cases, they had a vested interest in the Committee's successful adoption of conclusions in all cases which had been discussed. Those conclusions reflected the Committee's deliberations and highlighted the importance that the Committee attached to the application of international labour standards in those cases. If they were unable to reach conclusions, the Committee would not have fulfilled its commitment to ensuring the successful completion of its work, and the IMEC members were deeply troubled by the message which that failure would send, not only to the rest of the Conference but, more importantly, to the entire international community about the strength and credibility of the ILO supervisory system, of which their Committee was an essential component. The IMEC members urged, once again, that the Worker and Employer members find a mutually-acceptable solution that would allow for the adoption of conclusions. They recognized that the solution would not be perfect, as that was the nature of compromise, and that it could be temporary. Nevertheless, the Governing Body must be allowed to continue its deliberations with a view to finding more lasting solutions that all groups could accept. They reiterated their strong support for the Director-General and the process towards a

lasting solution. If the conclusions could not be adopted for the 19 cases, their Governments would be profoundly disappointed.

218. The Government member of Greece, speaking on behalf of the European Union and its Member States, aligned themselves with the statement of IMEC. She emphasized the importance of the ILO supervisory system, which contributed to the promotion of universal human rights and which played a key role in monitoring and promoting international labour standards. The members attached great importance to maintaining a functioning Conference Committee for its impartial supervision of the implementation of international labour standards. The failure to produce conclusions jeopardized the credibility of the ILO supervisory system and freedom of association, a basic human right all over the world. It also affected the European Union, as some of its policies and instruments made references to the promotion of international labour standards and to the results of their supervision, including the conclusions of the Conference Committee. The members were seriously concerned about the current situation of the Committee, observing a real risk for the ILO's unique tripartite setting and its cornerstone activity of supervision. They called on all constituents, in particular the social partners, to support the work of the Governing Body and the Director-General in seeking a long-term solution to the points of disagreement.

219. The Government member of Brazil aligned himself with the statement of GRULAC. As agreed at the session of the Governing Body in March 2014, it was essential that the ILO had an efficient system of standards which had been agreed upon by Governments and Worker and Employer members. The Governing Body had stressed the importance of the good functioning of the Conference Committee and encouraged all members of the Committee to contribute to ensure that its work would be conducted successfully. Under article 37 of the ILO Constitution, all questions or disputes relating to the interpretation of a Convention had to be submitted to the International Court of Justice. That article gave only one alternative, i.e. a tribunal to expeditiously deal with the interpretation of Conventions. Without prejudice to the authority of the International Court of Justice, the Constitution provided that the Governing Body might establish rules for the setting up of that tribunal and submit them for approval by the Conference. The Conference Committee could not act as the tribunal. Questions regarding the interpretation of Conventions should not be included in the conclusions of that Committee. He recognized the historical role of the Committee of Experts in consolidating international labour standards. Members of the Conference Committee could express individual views on questions related to international labour standards. In this respect, he considered that the right to strike was recognized under international law. However, it had to be emphasized that the Conference Committee had no interpretation mandate, and needed to abstain from pronouncement on matters that were the object of the consensus achieved in March 2014.

F. Adoption of the report and closing remarks

220. The Committee's report was adopted as amended.

221. The Government member of Libya asked why his country had been mentioned in paragraphs 177 and 186 of the General Report, as he had provided explanations in this regard to the Committee.

222. The Chairperson underlined that the explanations to which he referred had been noted in the General Report in paragraphs 184 and 191 respectively.

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- 223.** The Worker members referred to the issue of who was responsible for the absence of conclusions on the 19 individual cases. They observed that draft conclusions had only been discussed for the six double-footnoted cases, and not for the other 19 cases. They emphasized that their position was the product of mature reflection after several fruitless attempts to reach a compromise in accordance with the spirit of social dialogue. Fundamentally, what was at stake was a conception of the role of the ILO. It was easier to destroy than to save what had been built up over the years in the very complex perspective of finding a lasting means of reconciling human development, peace and prosperity, based on cultural, geographical, geopolitical and legal realities that sometimes appeared irreconcilable. The Worker members reaffirmed their will to save the situation, without being bogged down in an ideological debate on “how it could be saved”, while at the same time being aware that the status quo was not a viable option. In their view, the responsibility for this task now lay with the Governing Body. They reiterated their readiness to explore short-term solutions, particularly for the work of the 2015 Conference, through discussion of working methods or any other solution which would provide an uncontested framework for discussion in the years to come, and for however long that was necessary.
- 224.** The Worker members recalled that there was nothing neutral in political terms in the work of the ILO. Those who made the law, who applied it and enforced it were by default engaged in political activity. ILO Conventions were negotiated in the Conference, taking into account the need to reconcile legal cultures strongly influenced by social and economic factors, and also by societal choices that influenced the law. The supervision of standards was a legal, but also a political, process, as member States made political choices in terms of both the ratification and application of standards.
- 225.** The Worker members referred to certain cases that had been examined by the Committee in the course of its work, the discussion of which shed light on the probable roots of future difficulties over and above the disagreements concerning Convention No. 87. They referred in particular to the discussion of the application by Greece of the Social Security (Minimum Standards) Convention, 1952 (No. 102), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in 2013 and 2014 respectively, during which the Employer members had expressed the view that the Committee was not supposed to address issues of economic policy. However, addressing legal and political aspects was not in itself an error. Convention No. 102 was an instrument that addressed economic systems and the level of development of countries. In 2013, in Oslo, there had been tripartite agreement that the Convention was a legal treaty which was necessarily embedded in a political context. The Worker members also referred to the discussions on the application of the Employment Policy Convention, 1964 (No. 122), by Portugal and Mauritania, during which the Employer members had denied the right of the Committee of Experts, the Conference Committee and the ILO to assess the validity, efficacy or soundness of the measures adopted by a government, or to take inspiration from the principles of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration). The Worker members reaffirmed that in its work the Committee of Experts made use of all documents relevant to the application of Conventions, including texts produced by the ILO, such as the MNE Declaration. Finally, in the discussion of the application of Convention No. 98 by Croatia, the Employer members had raised the issue of the mandate of the Committee of Experts in relation to certain articles of that Convention. The Worker members reiterated their belief in the relevance of binding standards, the supervision of their application, and not in corporate social responsibility, which would only be worth discussing when it left the sphere of the optional and a framework was developed within which assessment and supervision could be exercised.

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- 226.** The Worker members refused to be denied the right in the future to discuss individual cases relating to freedom of association in which reference could be made to the right to strike. Convention No. 87 was one of the international instruments that provided a basis for the right to strike and for collective action. The claim to regulate the right to strike solely at the national level was unacceptable, as the strengths at that level were clearly unbalanced. What was happening was a national war against unions and against social dialogue, instigated by a very small group of actors who had chosen the wrong social model and had failed to understand that there could be no productive economy unless there was a high quality labour supply from the workers.
- 227.** The Worker members welcomed the fact that it had been possible to complete the preparatory work during the months of April and May 2014 with the Employer members. The Committee had been able to discuss the six double-footnoted cases and to adopt conclusions on a consensual basis. It had also been possible to discuss the other 19 cases. Only the question of the conclusions to the three cases involving Convention No. 87 had tipped the balance developed in good faith when agreeing on the list of 25 cases. According to the Employer members, agreement had been reached in 2013 on a wording for Convention No. 87 cases which would be used at all the sessions of the Committee. The Worker members did not agree with that interpretation, as they had indicated in their statements in 2013 (see, for example, paragraph 231 of the General Report of the Committee of 2013) and in 2014. In 2013, so as not to repeat the failure of 2012, they had made concessions, as a further failure would have been fatal to the Committee. Moreover, the work of the Governing Body in March 2014 had “underscored the critical importance of the effective functioning of the Committee on the Application of Standards in conformity with its mandate”. The decision adopted by the Governing Body had also “deemed it necessary to give further consideration to options to address a dispute or question that may arise with respect to the interpretation of a Convention”. Underlying that point there was a clear reference to the possible use of paragraphs 1 and 2 of article 37 of the Constitution. The Governing Body had also “recognized that a number of steps could be examined with a view to improving the working methods of the standards supervisory system”. The Committee should therefore have been able to work without raising issues of interpretation, which were due to be addressed by the Governing Body in November 2014 and thereafter, if necessary. In the meantime, it was clear that it was not appropriate to change working methods that were considered valid until a decision was made to modify them. The Worker members considered that the only error they had made was to have kept their word to the Governing Body and to have wanted the Committee to fulfil its mandate by seeking conclusions on a consensual basis, as only such conclusions were of any use, in all the cases discussed. They reaffirmed their belief in the ILO, which had a vital role to play in promoting and achieving progress and social justice, and in the importance of fundamental rights, such as freedom of association and the effective recognition of the right to collective bargaining. They believed in social dialogue and tripartite practices involving governments and the representative organizations of workers and employers.
- 228.** The Employer members reiterated their full commitment to the ILO supervisory system. They also remained fully committed to tripartism, which was a driving force behind the work of the ILO. However, tripartism did at times entail difficult disagreements, which had occurred this year in the Committee’s work. The legitimate difference between the Employer and the Worker members on the question as to whether the right to strike was included in Convention No. 87 had existed for decades. In 2012, it had become clear that this difference of views needed to be managed with a new approach. As a result, in 2013 the social partners had reached a compromise to address this disagreement, with the inclusion in the conclusions of cases that involved the issue of the right to strike of a single simple and short sentence.

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- 229.** During the current session of the Conference, the Employer members had negotiated the list of cases for consideration in good faith, and the short list had been delivered to the Governments by the proposed deadline during the first week of discussion. They had advised the Worker members that there were cases on the list that involved the right to strike, which the Employer members considered to be outside the mandate of the Committee of Experts. The Employer members had accordingly highlighted that they expected that the conclusions of any case which involved the right to strike would again include the sentence that had been agreed upon in 2013. After negotiating the list of cases for examination, the Committee had moved forward, and had completed the discussion of all 25 cases. A number of cases had raised extremely serious issues relating to violations of fundamental Conventions. The Committee's work had progressed well and conclusions had been adopted for the six double-footnoted cases. The Employer members had worked diligently towards reaching conclusions on the remaining 19 cases. They disagreed with the characterization by the Worker members of their work in this regard, as they had provided comments and engaged in negotiations with regard to conclusions on 14 of the cases discussed. They had also intended to review and negotiate conclusions for four other cases when the Worker members had made it clear that they would not move forward with negotiations with the remaining cases.
- 230.** While larger issues were being considered by the Governing Body, it had been necessary to find methods to allow the Committee to continue with its work. Therefore, the Employer members had not proposed a new approach this year. They had hoped that the sentence agreed upon in 2013 could be used once more, to again provide a way of coping with the divergence of views with regard to Convention No. 87 and the right to strike.
- 231.** In an effort to be constructive, the Employer members had proposed using the language of the Committee of Experts to reflect this divergence. They had proposed that the exact wording of paragraph 91 of the General Report of the Committee of Experts, which referred to the diametrically opposing views of the two groups, be included in the conclusions, as a possible compromise. The Employer members had also remained open to amending the language in the sentence, as long as the substance of the concerns raised were reflected, and they had been receptive to inserting an additional sentence to reflect the views of the Worker members regarding the right to strike. However, the Worker members had rejected these approaches. The Worker members had subsequently refused to continue negotiations on the three cases (Algeria, Cambodia and Swaziland) where disagreement had emerged as to how to reflect the difference of opinion regarding the right to strike, and had indicated that they were not prepared to adopt conclusions on the other 16 cases. The position of the Worker members was regrettable, as the Employer members had remained open to adopting conclusions for the cases on which there was agreement. There had been an opportunity for broad consensus, and disagreement on one issue should not be used to prevent the adoption of conclusions for such cases. It was unfortunate that a disagreement on the legal and technical provisions of a Convention, which impacted only three cases, had prevented the negotiation on conclusions for all of the cases discussed by the Committee, save six. The Employer members emphasized that their conduct could not be understood as a refusal to supervise or discuss cases on the application of Convention No. 87 in the Committee. They had agreed to several cases concerning Convention No. 87 on both the short and long lists, and had engaged in negotiations on the conclusions of those cases. There had also been agreement on several issues within these cases.
- 232.** The Employer members indicated that they would not respond to the comments of the Worker members concerning the individual cases discussed in the Committee. The opportunity for discussion of these cases had passed, due to the Worker members' refusal to negotiate conclusions. Despite the regrettable position of the Worker members, and the adoption of conclusions in only six cases, the Committee had been able to engage in supervision of 25 cases. Governments had been able to make submissions on all cases, and

had been made aware of the opinions of the social partners with regard to guidance and supervision in the application of various Conventions. The Employer members hoped that governments would take appropriate action to bring national law and practice into compliance with the Conventions examined. The Employer members remained willing and committed to seek solutions to the issue relating to the right to strike in a tripartite manner. They looked forward to a constructive and positive resolution of these issues in the future.

- 233.** The Chairperson said that she shared the concerns expressed and considered that the approach to be adopted to resolve them was to further develop social dialogue and tripartism. She thanked the Employer and Worker Vice-Chairpersons, the Reporter and all the Government, Employer and Worker members for their engagement in the work of the Committee. She also thanked the secretariat for its continuous collaboration and support.

Geneva, 10 June 2014

(Signed) Ms Gloria Gaviria Ramos
Chairperson

Ms Cecilia Mulindeti
Reporter

Annex 1

INTERNATIONAL LABOUR CONFERENCE
103rd Session, Geneva, May–June 2014

C.App./D.1

Committee on the Application of Standards

Work of the Committee

I. Introduction

This document sets out the manner in which the work of the Committee on the Application of Standards is carried out. It is submitted to the Committee for adoption when it begins its work at each session of the Conference, in particular to enable the Committee to approve the latest adjustments made in its work. The work undertaken by the Committee is reflected in a report. Since 2007, in response to the wishes expressed by ILO constituents, the report 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.¹

Since 2002, ongoing discussions and informal consultations have taken place concerning the working methods of the Committee. In particular, following the Governing Body's adoption of a new strategic orientation for the ILO standards system in November 2005,² consultations began in March 2006 regarding numerous aspects of this system,³ including the question of the publication of the list of individual cases discussed by the Committee. A tripartite Working Group on the Working Methods of the Committee on the Application of Standards was set up in June 2006 and has met 11 times since then. The last meeting took place in November 2011. On the basis of these consultations, and the recommendations of the tripartite Working Group, the Committee has made certain adjustments to its working methods. An overview of these adjustments is detailed below.

Since 2006, an early communication to governments (at least two weeks before the opening of the Conference) of a preliminary list of individual cases for possible discussion by the Committee concerning the application of ratified Conventions has been instituted. 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 Worker Vice-Chairpersons, to explain the criteria used for the selection of individual cases.⁴ Since 2010, cases included in the final list have been automatically registered and

¹ The report of the Committee submitted to the 102nd Session (2013) of the Conference can be found at: http://www.ilo.org/global/standards/WCMS_216704/lang--en/index.htm.

² See documents GB.294/LILS/4 and GB.294/9.

³ See para. 22 of document GB.294/LILS/4.

⁴ See below Part V, B.

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. Since 2012, the Committee has begun its discussion of individual cases with those cases in which the Committee of Experts on the Application of Conventions and Recommendations requested governments to submit full particulars to the Conference (“double-footnoted cases”). In 2013, a decision was made to begin the discussion of the double-footnoted cases on the first Saturday of the Conference. Steps have been taken to ensure that, as soon as this discussion is completed, the discussion of the other individual cases can begin.

Improvements have been introduced in the preparation and adoption of the conclusions relating to cases. Since June 2010, important arrangements have been implemented to improve time management.⁵ Specific provisions have also been adopted concerning the respect of parliamentary rules of decorum.⁶

In June 2008, measures were adopted to address those cases in which Governments were registered and present at the Conference, but chose not to appear before the Committee; the Committee now has the ability to discuss the substance of such cases. In November 2010, the tripartite Working Group discussed the possibility for the Committee to discuss a case of a government which is not accredited or registered to the Conference. In such a case, the Committee will not discuss the substance of the case, but will draw attention in its report to the importance of the questions raised. In both situations, a particular emphasis will be put on steps to be taken to resume the dialogue.⁷

In addition, modalities have been established for discussion of the General Survey of the Committee of Experts, in light of the discussion of the recurrent report on the same subject under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008.⁸

At its last meeting in November 2011, the tripartite Working Group reached the following main conclusions:

- (i) Adoption of the list of individual cases: at the time, it was agreed that the Employer and Worker spokespersons would meet informally before the 101st Session (2012) of the Conference to elaborate a process to improve the adoption of the list and would report on the outcome of their consultations.
- (ii) Balance in the types of Conventions among the individual cases selected by the Conference Committee: the importance of this issue was reaffirmed, notwithstanding difficulties in achieving diversity in the types of Conventions selected for discussion. The issue would be kept under review, including by exploring the option of establishing a quota system which could mandate the selection of cases per each type of Convention.
- (iii) Possibility for the Conference Committee to discuss cases of progress: it was recalled that there had been long-standing consensus on the inclusion of a case of progress in the Conference Committee’s report, but that the practice had been temporarily

⁵ See below Part V, B – Supply of information and automatic registration – and E.

⁶ See below, Part V, F.

⁷ See below, Part V, D, footnote 21.

⁸ See below, Part V, A.

suspended in 2008 due to concerns about time management. The issue would be kept under review.⁹

In addition, the question of the impact of the deliberations of the Working Party on the Functioning of the Governing Body and the International Labour Conference on the work of the tripartite Working Group on the Working Methods of the Committee has been considered. During the last meeting of the tripartite Working Group, in November 2011, it was recalled that the Working Group reported to the Conference Committee on the Application of Standards. At the same time, it was noted that the work of the Conference Committee could also be affected by discussions in the Working Party on the Functioning of the Governing Body and the International Labour Conference. At the last meeting of the tripartite Working Group, it was decided that although there was no need for the Working Group to meet in March 2012, it might be useful to retain the option for it to meet in the future, including to follow-up, as necessary, upon questions raised by the Working Party on the Functioning of the Governing Body and the International Labour Conference.

At its 320th Session (March 2014), under the item *The standards initiative: Follow-up to the 2012 ILC Committee on the Application of Standards*, the Governing Body recommended to the Conference Committee on the Application of Standards that it consider convening its Working Group on the Working Methods of the Committee to take stock of current arrangements and develop further recommendations on the Committee's working methods.¹⁰ At the meeting of the Working Party on the Functioning of the Governing Body and the International Labour Conference during the 320th Session (March 2014) of the Governing Body, the representative of the Director-General indicated that the findings of the tripartite Working Group on the Working Methods of the Committee on the Application of Standards would be submitted to the Working Party before formalizing final recommendations.¹¹

II. Terms of reference of the Committee

Under its terms of reference as defined in article 7 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;
- (c) the measures taken by Members in accordance with article 35 of the Constitution.

⁹ See below Part V, B.

¹⁰ See document GB.320/LILS/PV/Draft, para. 50(a).

¹¹ See document GB.320/INS/13, para. 11.

III. Working documents

A. Report of the Committee of Experts

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 1A and B)), printed in two volumes.

Volume A of this report contains, in Part One, the General Report of the Committee of Experts (pages 5–41), and in Part Two, the observations of the Committee 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 (pages 43–586). At the beginning of the report there is a list of Conventions by subject (pages v–x), an index of comments by Convention (pages xi–xvii), and by country (pages xix–xxvi).

It will be recalled that, as regards ratified Conventions, the work of the Committee of Experts is based on reports sent by the governments.¹²

Certain observations carry footnotes asking the government concerned to report in detail, or earlier than the year in which a report on the Convention in question would normally be due, and/or to supply full particulars to the Conference.¹³ The Conference may also, in accordance with its usual practice, wish to receive information from governments on other observations that the Committee of Experts has made.

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.¹⁴ A list of these direct requests can be found at the end of Volume A (see Appendix VII, pages 633–645).

The Committee of Experts 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.¹⁵

Furthermore, the Committee of Experts has continued to highlight the cases for which, in its view, technical assistance would be particularly useful in helping member States to address gaps in law and in practice in the implementation of ratified Conventions, following-up on the practice established by the Conference Committee in this regard since 2005.¹⁶

¹² See paras 36–51 of the General Report of the Committee of Experts.

¹³ See paras 65–67 of the General Report of the Committee of Experts.

¹⁴ See para. 56 of the General Report of the Committee of Experts.

¹⁵ See paras 71–77 of the General Report of the Committee of Experts. See also Appendix II to the present document on the criteria for identifying cases of progress.

¹⁶ See paras 78–79 of the General Report of the Committee of Experts.

Volume B of the report contains the General Survey by the Committee of Experts, which this year concerns the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135).

B. Summaries of reports

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. In this connection, it adopted changes along the following lines:

- (i) information concerning reports supplied by governments on ratified Conventions (articles 22 and 35 of the Constitution) appears in simplified form in two tables annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) (Appendices I and II, pages 589–604);
- (ii) information concerning reports supplied by governments as concerns General Surveys under article 19 of the Constitution (this year concerning minimum wage fixing instruments) appears in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B) (Appendix II, pages 203–208);
- (iii) summary of information supplied by governments on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference (article 19 of the Constitution) appears as Appendices IV, V and VI to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) (pages 616–632).

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

C. Other information

In addition, as and when relevant information is received by the secretariat, documents are prepared and distributed containing the substance of:

- (i) supplementary reports and information which reached the International Labour Office between the meetings of the Committee of Experts and the Conference Committee;
- (ii) 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 list of individual cases adopted by the Conference Committee.

IV. Composition of the Committee, right to participate in its work and voting procedure

These questions are regulated by the Standing Orders concerning committees of the Conference, which may be found in section H of Part II of the Standing Orders of the International Labour Conference.

Each year, the Committee elects its Chairperson and Vice-Chairpersons as well as its Reporter.

V. Schedule of work

A. General discussion

1. *General Survey.* In accordance with its usual practice, the Committee will discuss the General Survey of the Committee of Experts, Report III (Part 1B). This year, for the fifth time, the subject of the General Survey has been aligned with the strategic objective that will be examined in the context of the recurrent discussion under the follow-up to the 2008 Social Justice Declaration. Thus, the General Survey on the minimum wage fixing instruments will inform the recurrent discussion on the strategic objective of social protection (labour protection) to be held at the 104th Session (2015) of the Conference. It should be recalled in this respect that, at its 309th Session (November 2010), the Governing Body decided that the review of the General Survey by the Conference Committee on the Application of Standards should take place one year in advance of the recurrent discussion by the Conference as this would facilitate better consideration and integration of the standards-related aspects into the recurrent discussion.¹⁷ This required a shift from the existing arrangement under which the General Survey and the recurrent discussion report on the same theme were submitted to the Conference in the same year. The shift will be effective for the first time at the current session of the Conference.

2. *General questions.* The Committee will also hold a brief general discussion which is primarily based on the General Report of the Committee of Experts, Report III (Part 1A) (pages 5–41).

B. Discussion of observations

In Part Two of its report, the Committee of Experts makes observations on the manner in which various governments are fulfilling their obligations. The Conference Committee then discusses some of these observations with the governments concerned.

Cases of serious failure by member States to respect their reporting and other standards-related obligations¹⁸

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 single sitting. Governments may remove themselves from this list by submitting the required information before the sitting concerned. Information received both before and after this sitting will be reflected in the report of the Conference Committee.

¹⁷ See documents GB.309/10, para. 8, and GB.309/PV, para. 288.

¹⁸ Formerly “automatic” cases (see *Provisional Record* No. 22, International Labour Conference, 93rd Session, June 2005).

Individual cases

A draft list of observations (individual cases) regarding which countries will be invited to supply information to the Committee is established by the Committee's Officers. The draft list of individual cases is then submitted to the Committee for approval. In the establishment of this list, a need for balance among different categories of Conventions as well as geographical balance is considered. In addition to the abovementioned considerations on balance, criteria for selection have traditionally included the following elements:

- the nature of the comments of the Committee of Experts, in particular the existence of a footnote (see Appendix I);
- 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.

Moreover, there is also the possibility of examining one case of progress as was done in 2006, 2007, 2008 and 2013.

Supply of information ¹⁹ and automatic registration

1. *Oral replies.* The governments are requested to take note of the preliminary list and prepare for the eventuality that they may be called upon to appear before the Conference Committee. Cases included in the final list will be automatically registered and evenly distributed by the Office, on the basis of a rotating alphabetical system, following the French alphabetical order. This year, the registration will begin with countries with the letter "U", thus continuing the experiment started in 2011.

Cases will be divided in two groups: The first group of countries to be registered following the above alphabetical order will consist of those cases in which a double footnote was inserted by the Committee of Experts and are found in paragraph 66 of that Committee's report. The second group of countries will constitute all the other cases on the final list and they will be registered by the Office also following the abovementioned alphabetical order. Representatives of governments *which are not members* of the Committee are kept informed of the agenda of the Committee and of the date on which they may be heard:

¹⁹ See also section E below on time management.

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- (a) through the *Daily Bulletin*;
 - (b) by means of letters sent to them individually by the Chairperson of the Committee.

2. *Written replies.* The written replies of governments – which are submitted to the Office prior to oral replies – are summarized and reproduced in the documents which are distributed to the Committee (see Part III, C, above; and Part V, E, below). These written replies are to be provided at least **two days** before the discussion of the case. *They serve to complement the oral reply and any other information already provided by the government, without duplicating them.* The total number of pages is not to exceed **five pages**.

Adoption of conclusions

The conclusions regarding individual cases are proposed by the Chairperson of the Committee, who should have sufficient time for reflection to draft the conclusions and to hold consultations with the Reporter and the Vice-Chairpersons before proposing them to the Committee. The conclusions should take due account of the elements raised in the discussion and information provided by the Government in writing. The conclusions should be adopted within a reasonable time limit after the discussion of the case and should be succinct.

C. Minutes of the sittings

No minutes are published for the general discussion and the discussion of the General Survey. Minutes of sittings at which governments are invited to respond to the comments of the Committee of Experts will be produced by the secretariat in English, French and Spanish. It is the Committee's practice to accept corrections to the minutes of previous sittings prior to their approval by the Committee, which should take place 36 hours at the most after the minutes become available. In order to avoid delays in the preparation of the report of the Committee, no corrections may be accepted once the minutes have been approved.

The minutes are a summary of the discussions and are not intended to be a verbatim record. Speakers are therefore requested to restrict corrections to the elimination of errors in the report of their own statements, and not to ask to insert long additional passages. It would be helpful to the secretariat in ensuring the accuracy of the minutes if, wherever possible, delegates would hand in a written copy of their statements to the secretariat.

D. Special problems and cases

For cases in which governments appear to encounter serious difficulties in discharging their obligations, the Committee decided at the 66th Session (1980) of the Conference to proceed in the following manner:

1. *Failure to supply reports and information.* The various forms of failure to supply information will be expressed in narrative form in separate paragraphs at the end of the appropriate sections of the report, and indications will be included concerning any explanations of difficulties provided by the governments concerned. The following criteria were retained by the Committee for deciding which cases were to be included:

- None of the reports on ratified Conventions has been supplied during the past two years or more.

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- 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(5), (6) and (7) of the Constitution has been supplied during the past five years.
 - No indication is available on whether steps have been taken to submit the Conventions and Recommendations adopted during the last seven sessions of the Conference to the competent authorities, in accordance with article 19 of the Constitution.²⁰
 - 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(2) of the Constitution, copies of reports and information supplied to the Office under articles 19 and 22 have been communicated.
 - The government has failed, despite repeated invitations by the Conference Committee, to take part in the discussion concerning its country.²¹

²⁰ This year the sessions involved would be the 92nd (2004) to 101st (2012).

²¹ In conformity with the decision taken by the Committee at the 73rd Session (1987) of the Conference, as amended at the 97th Session (2008) of the Conference, for the implementation of this criterion, the following measures will be applied:

- 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 report to the importance of the questions raised. In both situations, a particular emphasis will be put on steps to be taken to resume the dialogue.

2. *Application of ratified Conventions.* The report will contain a section entitled “Application of ratified Conventions”, in which the Committee draws the attention of the Conference to:

- cases of progress (see Appendix II), where governments have introduced changes in their law and practice in order to eliminate divergences previously discussed by the Committee;
- discussions it had regarding certain cases, which are mentioned in special paragraphs of the report;
- continued failure over several years to eliminate serious deficiencies in the application of ratified Conventions which it had previously discussed.

E. Time management

- Every effort will be made so that sessions start on time and the schedule is respected.
- Maximum speaking time for speakers are as follows:
 - Fifteen minutes for the spokespersons of the Workers’ and the Employers’ groups, as well as the Government whose case is being discussed.
 - Ten minutes for the Employer and Worker members, respectively, from the country concerned to be divided between the different speakers of each group.
 - Ten minutes for Government groups.
 - Five minutes for the other members.
 - Concluding remarks are limited to ten minutes for spokespersons of the Workers’ and the Employers’ groups, as well as the Government whose case is being discussed.
- However, the Chairperson, in consultation with the other Officers of the Committee, could decide on reduced time limits where the situation of a case would warrant it, for instance, where there was 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.
- During interventions, a screen located behind the Chairperson and visible by all speakers will indicate the remaining time available to speakers. Once the maximum speaking time has been reached, the speaker will be interrupted.
- 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 (see also section B above).
- In the eventuality that discussion on individual cases is not completed by the final Friday, there is a possibility of a Saturday sitting at the discretion of the Officers.

F. Respect of rules of decorum and role of the Chairperson

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.

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.

Appendix I

Criteria for footnotes

Excerpts of the General Report of the Committee of Experts (103 III(1A))

61. 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.

62. 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.

63. 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.

64. 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 II

Criteria for identifying cases of progress

Excerpts of the General Report of the Committee of Experts (103 III(1A))

72. 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 measure 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 or interest relates to the adoption of legislation or to draft 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.

73. 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.

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76. 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.** In comparison to cases of satisfaction, cases of interest relate to progress, which is less significant. 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;

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- 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.

Annex 2

INTERNATIONAL LABOUR CONFERENCE

C.App./D.4/Add.1

103rd Session, Geneva, May–June 2014

Committee on the Application of Standards

Case regarding which governments are invited to supply information to the Committee

The list of the individual cases on the application of ratified Conventions appears in the present addendum to Document D.4.

The text of the corresponding observations concerning these cases will be found in document C.App./D.4/Add.2.

Index of observations regarding which governments are invited to supply information to the Committee

Report of the Committee of Experts
(Report III (Part 1A), ILC, 103rd Session, 2014)

Country	Convention No. (the page numbers in parentheses refer to the English version of the Report of the Committee of Experts)
Algeria	87 (page 50)
Bangladesh	81 (page 351)
Belarus	87 (page 62)
Cambodia	87 (page 74)
Central African Republic	169 (page 558)
Colombia	81 (page 360)
Croatia	98 (page 90)
Democratic Republic of the Congo	29 (page 133)
Dominican Republic	111 (page 291)
Ecuador	98 (page 98)
Greece	102 (page 516)
Kazakhstan	111 (page 312)
Republic of Korea	111 (page 315)
Malaysia	29 (page 137)
Mauritania	122 (page 431)
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Pakistan	81 (page 384)
Portugal	122 (page 441)
Qatar	81 (page 392)
Saudi Arabia	29 (page 153)
Swaziland	87 (page 120)
Uganda	26 (page 465)
United States	182 (page 265)
Bolivarian Republic of Venezuela	26 (page 465)
Yemen	182 (page 273)

**103rd Session of the International Labour Conference, May–June 2014
Committee on the Application of Standards – Working schedule for the examination of individual cases**

Saturday 31 May morning	Monday 2 June morning	Tuesday 3 June morning	Wednesday 4 June morning	Thursday 5 June morning	Friday 6 June morning
<u>Yemen:</u> Convention No. 182	<u>Greece:</u> Convention No. 102	<u>Saudi Arabia:</u> Convention No. 29	<u>Croatia:</u> Convention No. 98	<u>Mauritania:</u> Convention No. 122	<u>Democratic Republic of the Congo:</u> Convention No. 29
<u>Bangladesh:</u> Convention No. 81	<u>Niger:</u> Convention No. 138	<u>Cambodia:</u> Convention No. 87	<u>Ecuador:</u> Convention No. 98	<u>Uganda:</u> Convention No. 26	<u>Swaziland:</u> Convention No. 87
Saturday 31 May afternoon	Monday 2 June afternoon	Tuesday 3 June afternoon	Wednesday 4 June afternoon	Thursday 5 June afternoon	Friday 6 June afternoon
<u>Belarus:</u> Convention No. 87	<i>Election of the members of the Governing Body</i>	<u>Central African Republic:</u> Convention No. 169	<u>United States:</u> Convention No. 182	<u>Pakistan:</u> Convention No. 81	
<u>Dominican Republic:</u> Convention No. 111		<u>Colombia:</u> Convention No. 81	<u>Kazakhstan:</u> Convention No. 111	<u>Portugal:</u> Convention No. 122	
Saturday 31 May evening	Monday 2 June evening	Tuesday 3 June evening	Wednesday 4 June evening	Thursday 5 June evening	Friday 6 June evening
	<u>Bolivarian Republic of Venezuela:</u> Convention No. 26	<u>Republic of Korea:</u> Convention No. 111	<u>Malaysia:</u> Convention No. 29	<u>Qatar:</u> Convention No. 81	
	<u>Algeria:</u> Convention No. 87				

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