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**Committee on the Application of Standards**

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PART ONE

**DRAFT GENERAL REPORT**

**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 234 members (122 Government members, eight Employer members and 104 Worker members). It also included six Government deputy members, 30 Employer deputy members, and 129 Worker deputy members. In addition, 32 international non-governmental organizations were represented by observers.<sup>1</sup>

2. The Committee elected its Officers as follows:

*Chairperson:* Ms Gloria Gaviria Ramos (Government member, Colombia)

*Vice-Chairpersons:* Ms Sonia Regenbogen (Employer member, Canada) and  
Mr Yves Veyrier (Worker member, France)

*Reporter:* Ms Cecilia Mulindetí (Government member, Zambia)

3. The Committee held 18 sittings.

4. In accordance with its terms of reference, the Committee considered: (i) the reports supplied under articles 22 and 35 of the Constitution on the application of ratified Conventions; (ii) the reports requested by the Governing Body under article 19 of the

<sup>1</sup> For changes in the composition of the Committee, refer to *Provisional Record* No. 4. For the list of international non-governmental organizations, see *Provisional Record* No. 3-2.

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Right of Association (Agriculture) Convention, 1921 (No. 11), the Rural Workers' Organisations Convention, 1975 (No. 141), and the Rural Workers' Organisations Recommendation, 1975 (No. 149); and (iii) the information supplied under article 19 of the Constitution on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference.<sup>2</sup>

## Opening sitting

5. The Chairperson of the Committee on the Application of Standards expressed her honour at being able once again to preside over this Committee, which was a cornerstone of the regular ILO supervisory system. It was the forum for tripartite dialogue in which the Organization debated the application of international labour standards and the functioning of the standards system. The conclusions adopted by the Committee and the technical work of the Committee of Experts, together with the recommendations of the Committee on Freedom of Association and the technical assistance of the Office, were essential tools for member States when implementing international labour standards. She trusted that, in the course of the two-week session of the Conference, the Committee would be able to work harmoniously and efficiently and in a spirit of constructive dialogue.
  
6. The Worker members indicated that their priority objective was that the Committee on the Application of Standards could be able to do its work and reach operational conclusions, providing real prospects of progress for the tripartite constituents of the ILO. In a context of economic crisis and the deregulation of financial markets, which were hitting economic actors and leaving workers in an ever more precarious situation, social protection was essential to progress and social justice. It should therefore be reaffirmed that the role of international labour standards was to guarantee economic development aimed at improving the lives of men and women and preserving their dignity.

<sup>2</sup> 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 the right of association and rural workers' organizations instruments; Part 2: Information document on ratifications and standards-related activities.

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7. The Employer members noted that the Committee on the Application of Standards was the cornerstone of the supervisory system of the ILO. Therefore, they took their responsibility in the Committee very seriously. They reiterated their commitment to social dialogue. They were looking forward to productive discussions at this session of the Committee.

## **Work of the Committee**

8. At the end of its opening sitting, the Committee adopted document C.App./D.1, which set out the manner in which the work of the Committee was carried out.<sup>3</sup> At that occasion, the Committee considered its working methods, as reflected under the next heading below.
9. 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 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. A summary of the general discussion is found under relevant headings in sections A and B of Part One of this report.
10. The Committee then examined the General Survey concerning the right of association and rural workers' organizations instruments. Its discussion is summarized in section C of Part One of this report.
11. Following these discussions, the Committee considered the cases of serious failure by member States to respect their reporting and other standards-related obligations. The result of the examination of these cases is contained in section D of Part One of this report. More detailed information on that discussion is contained in section A of Part Two of this report.

<sup>3</sup> Work of the Committee on the Application of Standards, ILC, 104th Session, C.App./D.1 (see Annex 1).

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**12.** The Committee then considered 24 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. The result of the examination of these cases is contained in section D of Part One of this report. A summary of the information submitted by Governments, the discussions and conclusions of the examination of individual cases are contained in section B of Part Two of this report.

**13.** The adoption of the report and closing remarks are contained in section E of Part One of this report.

### **Working methods of the Committee**

**14.** Upon adoption of document C.App./D.1, the Chairperson announced the time limits for interventions made before the Committee. 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.

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**15.** The Worker members considered that the results of the last meeting of the informal tripartite working group on working methods of the Committee were very positive. With reference to the impact on the work of the Committee of a shortened duration of the Conference, they stressed that time was needed to discuss the General Survey, which was an important task of this Committee, not only because it allowed the application of the instruments concerned to be monitored, but also as General Surveys were an important part of the mechanism established under the follow-up to the 2008 ILO Declaration on Social Justice for a Fair Globalization (thereafter, the Social Justice Declaration). Time was also needed to examine the individual cases. The speaking time had already been reduced in the past and should not be restricted any further. Having dedicated sittings to adopt conclusions was a positive development. If it proved impossible to consider all cases in depth, reinstating a longer session of the Conference should be recommended when the two-week session was evaluated.

**16.** The Worker members noted that a particular effort would have to be made to ensure that the list of cases respected, as far as possible, a balance between fundamental, governance and technical Conventions, a geographical balance, and a balance between developed and developing countries. Examination 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), should never be taboo, nor should it be the case regarding the Employment Policy Convention, 1964 (No. 122). The Worker members stressed that the joint objective was to arrive at consensual conclusions and to reach conclusions on all the cases, avoiding any possible references to differences of opinion. Conclusions had to be short, clear and simple and give governments specific, unambiguous indications with regard to law and practice. They came within the sole responsibility of the Employer and Worker spokespersons.

**17.** The Employer members noted that the shortened duration of the Conference was a pilot project. There was a need to work in some new ways to meet the constraints. They were

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hopeful that the Committee would be able to work within the time allocated in a comprehensive manner. They considered it too early to predict how a two-week session of the Conference would proceed.

- 18.** The Government member of Cuba, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), indicated that GRULAC had taken note with satisfaction of the changes made to document C.App/D.1, which resulted from the work of the informal tripartite working group on working methods. GRULAC underlined the need, when preparing the list of cases, to ensure balance between developed and developing countries, among the fundamental Conventions, and between the fundamental, governance and technical Conventions. GRULAC expressed support for a new meeting of the informal tripartite working group to be arranged during the November 2015 session of the Governing Body, with the new composition of 16 Government members, eight Employer members and eight Worker members. The speaker recalled that the results of this working group should be transmitted to the Working Party on the Functioning of the Governing Body and the International Labour Conference, as agreed during the November 2014 session of the Governing Body.
- 19.** The Government member of Egypt stressed, in light of the fact that this session of the Conference was confined to two weeks, the need for efficient time management of the Committee's work in order to ensure sufficient time for the discussion of individual cases while avoiding night work.

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## Adoption of the list of individual cases

- 20.** During the course of the second sitting of the Committee, the Chairperson of the Committee announced that the list of individual cases to be discussed by the Committee was available.<sup>4</sup>
- 21.** Following the adoption of this list, the Worker members recalled that, for some years, choosing the list of individual cases had proved a very difficult exercise. Every effort had been made to ensure the timely adoption of the list, while respecting the balance sought between the fundamental, governance and technical Conventions, as well as geographical balance and balance between developed and developing countries. Over the years, they had explained the reasons why cases concerning Convention No. 87 were numerous. These cases had been placed on the list by common consent. The Worker members recalled the outcome of the February 2015 Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at the national level (thereafter, the February 2015 Tripartite Meeting), which had been endorsed by the Governing Body at its 323rd Session (March 2015). This demonstrated that consensus had prevailed over individual interests.
- 22.** The Worker members indicated that, while the corresponding cases would not be discussed, certain serious events affecting the world of work could not pass without comment: this was the case in Colombia, Peru and the Islamic Republic of Iran.
- 23.** At the end of the sitting, the Employer and Worker spokespersons conducted an informal briefing for Government representatives.

<sup>4</sup> ILC, 104th Session, Committee on the Application of Standards, C.App./D.5 (see Annex 2).

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## **B. General questions relating to international labour standards**

### **Statement by the representative of the Secretary-General**

24. 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 Employer and Worker members 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 informal tripartite Working Group on Working Methods. This year's document D.1 also reflected the recommendations adopted by the informal tripartite working group in March 2015. The informal working group was reconvened by the Governing Body in the context of the standards initiative to ensure the effective functioning of this Committee at the present session of the Conference. In reconvening the informal working group, the Governing Body requested it to prepare recommendations on the establishment of the list of cases and the adoption of conclusions. The informal working group also made recommendations on the effective functioning of this Committee during the current two-week session of the Conference. This shortened duration was a pilot project that was being tried out and would be analysed by the Governing Body at its November 2015 session. The representative of the Secretary-General considered that it would be important that this Committee contribute to this analysis by expressing its views in its report to the Conference.

25. The 2012 discussions in this Committee had sparked off a challenging but very useful dialogue in the ILO on its standards system. The further developments that took place in this Committee in 2014 influenced the solutions which ultimately enabled the 2015 March session of the Governing Body to move forward. The ILO was not a static organization but



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one that was regularly confronting issues. It was inspiring that after intensive tripartite exchanges, the ILO constituents were able to find a way to move forward together.

**26.** With respect to the discussion of the General Survey concerning the right of association and rural workers' organizations instruments, the representative of the Secretary-General wished to highlight, in addition to the significance of this topical subject matter, that General Surveys were an important tool for the Organization. General Surveys and their discussion by this Committee were making an important contribution to the Office's preparation of the recurrent discussions under the follow-up to the Social Justice Declaration. This year's General Survey and its discussion by this Committee would therefore inform the recurrent discussion on the strategic objective of fundamental principles and rights at work to be held at the 106th Session (2017) of the Conference. It would also inform the work towards attaining the ILO's goal of increasing the voice of rural people, as identified under the area of critical importance 5 (decent work in the rural economy) and outcome 5 of the Programme and Budget for 2016–17. In addition, this General Survey was intrinsically linked with the standard-setting item concerning the transition from the informal to the formal economy. The General Survey also referred to the Standards Review Mechanism (SRM) and covered the possibility of the Office conducting background work to explore the usefulness of consolidating the various agricultural and rural instruments and to promote their usefulness.

**27.** The representative of the Secretary-General indicated that the International Labour Standards Department had continued to upscale its assistance to member States and to the social partners to enable them to effectively implement ILO Conventions and to respond to the comments of the ILO supervisory bodies. In particular, follow-up missions to the conclusions adopted by the Conference at its recent sessions were undertaken in a number of countries. The Information document contained a table detailing the technical cooperation provided by both the International Labour Standards Department and the field

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offices at the national and subregional levels, as well as the assistance provided by the International Training Centre, Turin.

**28.** With regard to the institutional context, the representative of the Secretary-General recalled that the objective of the standards initiative was to establish full tripartite consensus on the functioning of an authoritative standards supervisory mechanism and to enhance the relevance of international labour standards through a Standards Review Mechanism. She referred to a number of recent developments in this regard, including the February 2015 Tripartite Meeting, during which the Workers' and Employers' groups presented a joint statement concerning a package of measures intended to provide a constructive way forward for the questions that had arisen with respect to the role of the supervisory system. The Government group had also expressed its common position on these matters. At its 323rd Session in March 2015, noting the outcome and report of the Tripartite Meeting, the Governing Body took a comprehensive decision embracing all the matters that had been put on the table. It decided not to pursue for the time being any action in accordance with article 37 of the Constitution to address the interpretation question concerning Convention No. 87 in relation to the right to strike. The Governing Body also decided to establish a Tripartite Working Group under the SRM, which was due to report to the Governing Body at its 325th Session in November 2015. Finally, the Governing Body requested the Chairperson of the Committee of Experts and the Chairperson of the Committee on Freedom of Association (CFA) to jointly prepare a report, on the interrelationship, functioning and possible improvement of the various supervisory procedures related to articles 22, 23, 24 and 26 of the ILO Constitution and the complaints mechanism on freedom of association. Preparations were under way for the presentation of the joint report to the 326th Session of the Governing Body in March 2016.

**29.** The representative of the Secretary-General also made reference to the Future of Work initiative, the objective of which was to enable a far-reaching reflection on the major trends impacting on the world of work, and what this meant for the ILO in the pursuit of its social

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justice mandate in its second century of existence. The Future of Work initiative must build on a vigorous implementation of the standards initiative with a marked tripartite engagement. As regards the Programme and Budget proposals for 2016–17 which were presented at the current session of the Conference, she stressed that international labour standards were addressed both as one of the ten policy outcomes but also has key cross-cutting policy instruments. Making reference to the various items on the agenda of this session of the Conference, the speaker indicated that she expected that these discussions and their outcome would in due course feed into the implementation of the SRM, bearing in mind that one of the SRM's guiding principles would be to ensure a clear, robust and up-to-date body of standards for the purpose of protecting workers, while taking into account the needs of sustainable enterprises.

- 30.** Finally, she made reference to a resolution adopted by this Committee in 1945 through which it contributed to the debate taking place at the time on the revision of the ILO Constitution to equip the ILO for a new international order. This resolution had far-reaching consequences for the constitutional architecture of the supervisory system. Most of the proposals contained in the resolution were endorsed by the Conference. In a similar fashion, this Committee could make a marked contribution to the celebration of the ILO centenary in 2019 which would take place in an international environment in which a solid, credible and authoritative ILO would be able to make a difference, particularly in the area of social standards.

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

- 31.** 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 the right of association and rural workers' organizations instruments. He stressed the importance of a solid relationship between the two Committees in a spirit of mutual respect, collaboration and responsibility.

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**32.** The Chairperson of the Committee of Experts indicated that the Committee of Experts had duly noted that the statement of its mandate in its 2014 General Report had been welcomed by the Governing Body. The Committee of Experts had therefore decided to reiterate this statement in its 2015 General Report. It had also noted that divergences of views between constituents on certain matters had an impact on its work and required it to pay particular heed to abiding strictly by its mandate and its core principles of independence, objectivity and impartiality.

**33.** The speaker noted that consideration of its working methods by the Committee of Experts had been an ongoing process since its establishment, and, in this process, the Committee had always given due consideration to the views expressed by the tripartite constituents. In its reflection on possible improvements and the strengthening of its working methods, the Committee of Experts had directed its efforts towards identifying ways to adapt its working methods to better meet its challenges, in particular that of its workload and of better assisting the tripartite constituents in meeting their obligations in relation to international labour standards. More specifically, the Committee had addressed the issue of the streamlining of the content of its report. In this respect, the Committee had considered that there was a need to make clear that its objective was to ensure a better understanding and an enhanced quality and visibility of its work, which would not only facilitate the work of the Conference Committee, but also help the tripartite constituents, and in particular governments, to better identify and understand the requests of the Committee of Experts, implement them with a view to complying with their obligations in relation to international labour standards and report back effectively. To achieve this objective required striking the right balance. In particular, the Committee of Experts had discussed the importance of ensuring uniformity in carrying out its work, including in the application of the criteria to distinguish between observations and direct requests, and in the language used to formulate its views and requests. It had underlined that coherence in the supervision of the application of ratified Conventions was to be ensured not only by subject matter, but also by country.

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- 34.** The speaker also underlined the importance of the Committee of Experts being able to function with its full membership. He had been informed of the decision taken by the Governing Body in March 2015 to appoint, in order to fill three of the four current vacancies, three new experts as members of the Committee.
- 35.** With regard to the General Survey, he indicated that the Committee of Experts had noted that the living and working conditions in the rural sector of many countries often appeared to be largely the same as they had been when Convention No. 141 was adopted in 1975 – and, in fact, in some places were not dissimilar from the conditions that had existed in 1921, when Convention No. 11 was adopted. The Committee of Experts had emphasized that legal and practical obstacles reported by member States and workers’ organizations were not insurmountable, and that the instruments covered in the General Survey were key to national economic and social development and integral to nation building, by allowing rural workers to participate fully in the development of their countries through organizations of their own choosing. Further, the Committee had noted that governments and social partners did not always appear to have fully understood the promotional nature of Convention No. 141, which provided more than a rights-based, legislative framework for equal rights for rural and agricultural workers, but actually focused on the importance of taking active measures to associate their collective voice in the elaboration of economic and social policies related to rural development. The Committee of Experts had emphasized that Recommendation No. 149 contained a set of guidelines for constituents, that responded to many of the challenges described in member State reports. A number of governments and workers’ organizations had requested technical assistance from the Office on the application of the instruments in accordance with national circumstances, including capacity building, the compilation of good practices and exchanges of ideas and experiences across countries. The Committee of Experts trusted that the Office would be able to provide the technical and advisory support requested, to ensure that the full potential of these very important instruments was reached.

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**36.** Finally, the Chairperson of the Committee of Experts reiterated that the Committee of Experts was looking forward to strengthening its relations with the Conference Committee, including by pursuing a meaningful dialogue, in the interest of an authoritative and credible ILO supervisory system and ultimately for the cause of ILO international labour standards and social justice worldwide.

### **Statement by the Employer members**

**37.** The Employer members welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of this Committee and in its discussion of the General Survey. They welcomed his comments that the Committee of Experts had always taken the proceedings of the Conference Committee into full consideration and on the importance of continuing to strengthen the relationship between the two Committees. They also welcomed his comments on the necessity for the Committee of Experts to consider divergences of views between constituents, as they had an impact on its work and required it to pay particular heed to abiding strictly by its mandate. These were important and timely comments. They looked forward to continued cooperation and collaboration with the Committee of Experts. Direct dialogue between the two Committees, along with the Office, was of the utmost importance to facilitate the Committee of Experts' understanding of the realities and needs of the tripartite constituents. They trusted that possibilities for additional dialogue would be explored.

**38.** The Employer members welcomed the 2015 report of the Committee of Experts and highlighted a number of very positive elements in that report. First, the Committee of Experts had clearly defined its mandate in paragraph 29 of its General Report, which the Employer members trusted would be visibly reproduced in all future reports of the Committee of Experts. It made clear that the opinions and recommendations expressed by the Committee of Experts were not legally binding and that its observations were not judicial nor had legal authority. They were intended to guide the actions of national authorities and derived their persuasive value from the legitimacy and rationality of the

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work of the Committee of Experts. It was of crucial importance for the Committee of Experts to carefully take into account the realities in the countries and the perspectives of the tripartite constituents. In this regard, they welcomed paragraphs 24 and 26 of the General Report of the Committee of Experts. They noted with interest the increased focus on essential issues of application in the report. They assumed that the shortening of the report had, in essence, been achieved by more frequent use of direct requests instead of observations. They requested having more clarity on the respective use of those two forms of comments. With reference to paragraph 53 of the report, they considered that the criteria for distinction did not seem to be coherently applied to all instances in the report. Noting positively that the report identified further cases of progress, they recalled that they had previously proposed additional methods to measure overall progress in the implementation of ratified Conventions and reiterated their readiness to discuss that important subject. They also noted with interest that the number of comments from the social partners considered for that year's report had increased, which demonstrated the social partners' greater interest in standard supervision and was an indicator for increased relevance of the work of the supervisory system. They trusted the Office would continue to provide capacity building to social partners for a better and more efficient contribution to the work of providing comments to the Committee of Experts.

- 39.** Despite those very positive elements, the Employer members remained very concerned that the Committee of Experts continued to interpret the right to strike in the context of Convention No. 87. A major part of the Committee of Experts' comments on Convention No. 87 concerned the right to strike, including in direct requests which were not different from observations in that they called upon governments to bring their law and practice in to line with the Committee of Experts' views on that issue. The Employer members wished to clarify that their concerns regarding this issue had not been settled by the visible clarification of the Committee of Experts' mandate. They had repeatedly argued that the Committee of Experts' findings could not be justified on the basis of the interpretation methods prescribed by the Vienna Convention on the Law of Treaties and had moved into

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the territory of standard setting. In their view, the rules developed by the Committee of Experts in relation to the right to strike were not balanced, which may be the result of the fact that they were not the outcome of a tripartite standard-setting process. This was a governance issue as well as an issue related to the credibility of the supervisory system. In that regard, the Employer members wished to draw attention to the Government group statement, adopted at the February 2015 Tripartite Meeting, which noted that the right to strike was not an absolute right and that the scope and conditions of this right were regulated at the national level. It was to be highlighted that the Government group did not state that the scope and conditions of the right to strike were regulated in Convention No. 87. Against that background, the Employer members urgently called upon the Committee of Experts to reconsider its interpretation on the right to strike, whether made in observations, direct requests or other documents of the Committee of Experts.

**40.** The Employer members concluded by reiterating that the 2015 report of the Committee of Experts contained a considerable number of positive elements to be commended and looked forward to any input they could make for further improvements. They remained concerned by the Committee of Experts' interpretation of the right to strike in the context of Convention No. 87. They warmly welcomed the Committee of Experts' comments in paragraphs 24 and 26 of its report, where that Committee expressed its willingness to contribute to resolving the current challenges and where it recalled that its existence and functioning was anchored in tripartism. The Employer members trusted that the Committee of Experts would consider at its next session the guidance provided in the February 2015 Tripartite Meeting and subsequent discussions in the March 2015 session of the Governing Body.

**41.** Finally, turning to the intervention of the representative of the Secretary-General, the Employer members expressed their appreciation for her comprehensive review of recent work on standards-related issues, as well as for her explanations concerning the roadmap on the work that lay before the Committee.



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## Statement by the Worker members

42. The Worker members welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of the Conference Committee and in its discussion of the General Survey. They reiterated their appreciation of the climate of mutual respect, collaboration and responsibility that had presided over the relations between this Committee and the Committee of Experts.
43. As regards the evolution of the report of the Committee of Experts, the Worker members noted that it appeared once again that a number of observations from organizations, in particular the International Trade Union Confederation, were not taken into account or were too shortened to be usable. Since a better report meant a more comprehensive report, the question arose of strengthening the human and technical resources allocated to the tasks involved in compiling the regular reports of the member States. Along the lines of the discussion launched on the strengthening of the supervisory system, there may be a need to conduct fresh discussions on the cycles and form of the reports and to contemplate collaboration with jurisdictional bodies belonging to regional systems on subjects covered by the ILO Conventions.
44. Concerning the respect by member States of their reporting obligations, they supported the Committee of Experts' comments concerning the importance of submitting the reports regularly and in full, along with all useful and relevant documents. They placed particular emphasis on the need for the reports to be submitted by the deadline, without which the supervisory procedure could not function efficiently. This implied that labour administrations must be equipped with the appropriate resources and capacity. The Worker members were themselves requesting workers' organizations to facilitate the work of the supervisory bodies by sending in any observations they deemed useful.
45. Making reference to the increase of inequality and the high rates of unemployment and job insecurity, the Worker members considered that the flexible employment and cost-cutting policies that had been pursued since the early 1980s had greatly contributed to these issues.

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At the same time, social protection networks had been badly hit by austerity policies. They were counting on the commitment of the members of this Committee to the ILO's mandate to bring about social justice through the effective implementation of international labour Conventions. Recalling that, in 2014, the Committee had failed to adopt conclusions on 19 cases, they wished to make a new start, given that everyone was anxious to ensure that the ILO standards system regain its full strength. Tripartism was the best way of resolving the so-called "standards crisis". In this regard, the Worker members recalled the major steps of the ongoing process in the framework of the Governing Body. First, the November 2014 session of the Governing Body, during which article 37 of the Constitution had been invoked but on which the Governing Body had chosen not to take a decision given the tripartite consensus that had been reached. And, secondly, the February 2015 Tripartite Meeting, the outcome of which was based on an important joint statement of the Workers' and Employers' groups, which had been endorsed by the Governing Body in March 2015. The Worker members appreciated the fact that, although the Employers' group disagreed on the interpretation of Convention No. 87, it had recognized the workers' right to take industrial action in support of their legitimate industrial interests.

- 46.** The Worker members stressed the importance to demonstrate in 2015 that the joint statement made it possible for the ILO to resume its supervision of the application of international labour standards. The Workers' group had not changed its position on the right to strike, which was a fundamental feature of democracy and an essential means of action for workers, protected by Convention No. 87. At the February 2015 Tripartite Meeting, the Government group had itself issued a most important statement recognizing that the right to strike is linked to freedom of association. There was also an explicit agreement on the mandate of the Committee of Experts, as contained in paragraph 29 of its 2015 report, which had been endorsed by the Governing Body at its March 2015 session. The Worker members therefore considered that there was no point in reverting to this matter during the discussion of the individual cases at this session of the Committee. They

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were determined to conduct a normal examination of the cases and to reach, by consensus, meaningful conclusions that would have a genuine impact.

47. The Worker members emphasized that collective bargaining and social dialogue, based on freedom of association, had in some countries helped to mitigate the negative impact of the economic and employment crisis. However, they felt that that was much less the case in 2015, when social dialogue was looked upon as a cost factor. That was a serious mistake that had consistently ended in failure, including economic failure.

48. The Worker members were obliged to react to the statement made by the Employer members on the mandate of the Committee of Experts. The Worker members considered that it was contradictory to try to dictate the content of that Committee's comments while, at the same time, recalling its independence. The Conference Committee was the appropriate forum to discuss the cases in a tripartite manner and agree on conclusions to be addressed to the governments. In the context of a global economy, which was often driven by competitiveness, this tripartite Committee had a role to play in ensuring social justice, by providing the necessary guidance to governments on the action that was needed to effectively implement international labour standards, in particular when many governments were constrained by commercial or financial institutions. Finally, the Worker members reaffirmed that they were determined to pursue the spirit of dialogue that had allowed the Governing Body to adopt a path for the resolution of the crisis.

### **Statements by Government members**

49. The Government member of Cuba, speaking on behalf of GRULAC, highlighted the importance of the statements made by the Government group during the February 2015 Tripartite Meeting and expressed the expectation that the Committee of Experts, in preparing its next report, would take due account of the criteria agreed among Governments. GRULAC noted with satisfaction paragraph 9 of the General Report of the Committee of Experts, in which the Committee of Experts considered the importance of

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uniformity in the criteria of distinction between observations and direct requests and in the language used to formulate its views and requests.

**50.** The Government member of Belgium indicated that it was not up to this Committee to interpret the conclusions of the February 2015 Tripartite Meeting and of the 323rd Session (March 2015) of the Governing Body. His Government would actively contribute to the Committee's work in order to ensure that it was successful and led to conclusions agreed by consensus.

**51.** The Government member of France stressed that it was not the mandate of this Committee to revisit the principles of the functioning of the supervisory system. As regards the mandate of the Committee of Experts, it was clarified in paragraph 29 of the General Report of the Committee of Experts. He called for steps to be taken to ensure that, in facing the current challenges, the Committee's work paved the way in its conclusions towards shared social progress. His Government would continue to play an active role in the Committee's work.

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

**52.** The Chairperson of the Committee of Experts recalled that the ongoing dialogue between the Committee on the Application of Standards and the Committee of Experts had an important impact on the methods of work of the Committee of Experts. The positive comments that had been made on the report of the Committee of Experts demonstrated that this dialogue was an important component of the successful functioning of the ILO supervisory system. The Committee of Experts would continue to give careful consideration to the views expressed by the tripartite constituents. With respect to the comments of the Worker members that certain observations from workers' organizations had not been taken into account in the last report of the Committee of Experts, he drew attention to paragraphs 78 to 84 of the General Report of the Committee of Experts, which set out its approach with regard to the treatment of observations received from employers'

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and workers' organizations, in particular those received in a non-reporting year. The Committee of Experts would continue to pay particular attention to this crucial matter, and it had always attached great importance to the contribution by employers' and workers' organizations to its work. The effectiveness of this contribution hinged not only on the support provided by the Office, in terms of capacity building and training, but also the outreach made by the Employers' and Workers' groups to national employers' and workers' organizations.

53. With reference to the comment of the Employer members concerning the distinction between direct requests and observations, he referred to the explanation contained in paragraph 53 of the Committee of Experts' General Report. This explanation had been the result of that Committee's discussion on its working methods at its session in 2014 and had been inserted to provide a clarification on the distinction between the two types of comments. The comments made by the Employer members highlighted the need for the Committee of Experts to keep the matter under examination.
54. In conclusion, he assured that he would transmit the comments made during this discussion to the members of the Committee of Experts for their due consideration, and report back to them on the outcome of this meeting of the Conference Committee.

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

55. The representative of the Secretary-General replied positively to the call for the continuation of the Office's support to build the capacity of the social partners for a better and more efficient contribution to the work of the Committee of Experts. The Office would also pursue its support to governments in respect of the timely submission of reports containing the information requested by the Committee of Experts. Capacity building, both as regards the supervisory system and standards policy, was a priority for the Office under the Director-General's Programme and Budget proposals for 2016–17 which were before the Conference at this session. This would include an enhanced collaboration with the

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Turin Centre which was expected to see the creation of a flagship academy on international labour standards and the supervisory system.

## **Concluding remarks**

**56.** The Worker members noted that, following this general discussion, there was agreement between the Employer and Worker members on the interpretation and analysis of paragraph 29 of the General Report of the Committee of Experts, which was essential in the framework of the follow-up to the March 2015 session of the Governing Body. The joint statement of the Workers' and Employers' groups of February 2015 was important for the Committee's work, not only as it reaffirmed the right to take industrial action by workers and employers in support of their legitimate industrial interests, but also as, together with the two statements of the Government group, it had paved the way for an effective and durable solution to the issues surrounding the ILO's supervisory system. Consequently, at its March 2015 session, the Governing Body had called on all parties to contribute to the successful conclusion of the work of the Conference Committee at this session. In the Worker members' view, the Governing Body's message would appear to have been weakened by the Employer members' interpretation of the Government group's position. The Employer members were once again raising the issues that had rendered the Committee's work difficult since 2012. This reopened the question of the mandate of the Committee of Experts, as well as the agreement within the Governing Body. The Worker members had never maintained that the right to strike was absolute. They highlighted that the affirmation of the right to strike and its limitations had never appeared in the Committee's conclusions. They wanted to work efficiently and were concerned about the current situation.

**57.** The Employer members welcomed the leadership and experience of the Chairperson of the Committee of Experts and looked forward to continued close collaboration. His commitment to continue to examine the distinction between the use of direct requests and observations was appreciated. In response to the comments of the Worker members, the

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Employer members reiterated their commitment and support for the joint statement of February 2015. They would work in this Committee in a constructive and productive manner during the discussion of the individual cases and in dealing with conclusions for each case.

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

### **General Survey concerning the right of association and rural workers' organizations instruments**

- 58.** The Committee examined the General Survey carried out by the Committee of Experts on the right of association and rural workers' organizations, which covered Conventions Nos 11 and 141, and Recommendation No. 149.
- 59.** In accordance with the usual practice, the General Survey took into account information on law and practice provided by 110 governments 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 General Survey also reflected the comments received from 56 workers' organizations and eight employers' organizations in accordance with article 23 of the Constitution.

### ***General remarks on the General Survey and its topicality***

- 60.** The Committee welcomed the subject matter of the General Survey, emphasizing its topicality and the need for a comprehensive approach to ensuring the implementation of basic labour rights for rural communities.
- 61.** The Employer members observed that the high number of reports sent by constituents reflected a significant interest in the subject matter. Labour conditions in agriculture and rural employment deserved more attention than they currently received. The instruments examined in the General Survey encouraged development in rural employment by

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promoting rural workers' organizations and giving a voice to rural workers. The promotion of rural workers' organizations needed to be embedded in an overall strategy to improve living and working conditions in rural areas.

62. The Worker members noted the importance of this General Survey and recalled its importance for evaluating the relevance of instruments and facilitating ownership by constituents of those instruments. It will enrich the recurrent item discussion on fundamental principles and rights at work in 2017.

63. The Government member of Niger and the Worker member of South Africa said that the theme of the General Survey was highly topical, and of particular importance to the African continent. The Government member of Morocco noted that the General Survey underscored the importance of freedom of association in the rural sector and the need for strong and independent rural workers' organizations. The Government member of Belgium referred to the significant proportion of the world's population in the sector and their deplorable living and working conditions which, in part, reflected the lack of freedom of association and the lack of capacity of trade unions to have their voice heard. The Employer member of India believed that a study of the working conditions of rural workers, their education and skill profiles, and opportunities for employment and self-employment would have been useful.

***Importance and scope of the instruments covered by the General Survey: Conventions Nos 11 and 141 and Recommendation No. 149***

64. A number of members of the Committee commented on the value and relevance of the instruments covered by the General Survey and their potential to contribute to decent work in the rural economy.

65. The Worker members stated that the instruments were relevant and vital, and recalled that freedom of association was one of the ILO's fundamental principles and that active steps in support were necessary in view of the particular challenges that rural workers faced.



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- 66.** The Employer members noted that Convention No. 141 and Recommendation No. 149 went beyond Convention No. 11, requiring a policy of active encouragement to rural workers' organizations with a view to overcoming the obstacles to their establishment and functioning that are specific to this sector. The Employer members were of the view that this needed to be put into perspective and that the low rate of ratification of Convention No. 141 suggested that the countries that had ratified Convention No. 11 did not see much added value in Convention No. 141.
- 67.** The Employer members raised a number of points of scope and definition. First, they considered that, from today's perspective, the fact that the instruments only covered rural workers' organizations, and not rural employers' organizations, was a deficiency as rural development needed effort from all representative groups. Rural employers and their organizations may also require assistance for capacity building. Further, it should be noted that while cooperatives could be rural workers' organizations pursuant to Convention No. 141, they could also be members of employers' organizations.
- 68.** The Employer members considered that, as "rights of association and combination" was not defined in Convention No. 11, it should be determined at the national level. The Employer members also noted that Convention No. 11 did not prescribe any special protection as regards the "rights of association and combination" for agricultural workers but only required equal treatment ("the same rights") with industrial workers. In relation to external trade union representatives, the Employer members considered that access to workplaces normally was to be authorized by the employer. Neither Convention No. 11 or Convention No. 141, nor Conventions Nos 87 and 135, contained specific entitlements for trade union officers in this regard.
- 69.** Further, the Employer members considered that Convention No. 141 derived its authority on freedom of association from its parent, Convention No. 87. Convention No. 87 did not provide a "right to strike" and neither did Conventions Nos 11 and 141. The Employer members believed that, in the absence of provisions in ILO Conventions regulating the

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“right to strike”, ILO member States were autonomous in determining their own laws and practices on this issue, including for rural workers. The Employer members observed that, given the acknowledged differences of view on the interpretation of a right to strike in Convention No. 87, it was unhelpful for the General Survey to make no mention of these differences when making statements about Conventions that derive their essence from Convention No. 87.

- 70.** The Government member of Kenya, the Government member of Belgium and the Worker member of Senegal noted that the instruments captured the essential issues in relation to freedom of association in the rural sector and remained relevant even if their adoption dated back several decades. The Government member of Niger was encouraged to note that the legislation of most countries provided for trade unions and associations in the form of cooperatives and organizations of farmers and rural producers. The instruments, albeit complementary and interdependent, pursued different objectives, and further efforts were needed to ensure that rural workers enjoyed the fundamental rights enshrined in them and had a voice in economic and social development.

***The rural economy: Practical obstacles to the full implementation of the instruments***

- 71.** A number of members of the Committee commented on the specificities of the rural economy and the way in which this impacted on the implementation of the instruments.
- 72.** The Employer members emphasized that most of the obstacles were related to practical difficulties in organizing workers in the sector rather than legal obstacles. These practical difficulties often resulted in a vicious cycle in the inability of rural workers’ organizations to provide relevant services to members. In many countries, a significant proportion of work in the rural sector was undertaken outside the formal economy. Most employment in rural areas was self-employment, unpaid family work or employment in small and micro-businesses. Seasonality was a major factor in determining the nature of engagement of those working in agriculture, creating a need for flexibility in forms of engagement. The

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concept of full-time work or employment was not achievable in the way expressed in labour standards governing other areas of the economy.

- 73.** The Worker members stated that rural workers and their organizations continued to face substantial challenges. While the means for resolving those challenges were effective in many industrial settings, this was rarely the case for workers in agricultural settings. Their representatives faced more discrimination, and they encountered greater difficulties in the world of work. Rural workers were affected by challenges in access to land, food sovereignty, and were often migrant workers. Globalization, global supply chains and the increased use of subcontracting made it difficult to identify the responsible economic actors. The issue of climate change and resulting land impoverishment disrupted production patterns, and the impact of HIV/AIDS and climatic degradation deepened inequalities to the detriment of rural workers. The informal nature of agricultural work and the diversity of labour relationships prevented effective protection of workers. Such workers participated very little in decision-making and struggled to assert their rights.
- 74.** The Worker member of South Africa stated that structural changes and racial factors impacted on the working and living conditions of rural workers and their families. The Worker member of India stated that agriculture was now not only for consumption but also for profit with the ownership of lands concentrated in a few hands. The Worker members of Colombia and the United Kingdom underlined that living and working conditions of rural workers remained dismal and that their situation had hardly improved in decades. The Government representative of Latvia, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Armenia, Bosnia and Herzegovina, Republic of Moldova, Norway, Serbia, the former Yugoslav Republic of Macedonia and Turkey, explained that rural workers frequently were not fully covered by national labour law, nor were their rights recognized or enforced, even in the formal sector. The Government member and a Worker member of Colombia referred to very high levels of informality.

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75. The Employer member of India pointed to a lack of education, training and cohesive organizational structure and the Worker member of Senegal noted that rural workers were often denied social protection. The Worker member of Canada indicated that migrant rural workers faced discrimination and had no right to collective bargaining, low or no wages, extensive hours of work and no health and safety protection; women migrant workers were vulnerable to sexual exploitation and rape. The Government member of Morocco underlined challenges due to the dependence on climate, fragmentation of farms, the lack of financial resources available to workers' organizations and the lack of labour inspectors. The Worker member of the United Kingdom indicated that agricultural workers in the United Kingdom were often migrant or women workers, living in poverty, with poor language and literacy skills, working on seasonal or temporary arrangements, and often subject to employment arrangements that disguised a dependent relationship, depriving them of their rights.

### ***National laws and practices***

76. A number of members of the Committee provided information concerning the situation in their own countries.

77. The Government member of Egypt emphasized that a large number of trade unions represented rural workers in social dialogue forums. The Government member of Morocco referred to several rural sector trade union organizations and a number of recent collective agreements and memoranda of understanding. The Government member of Argentina said that the right to collective bargaining, previously reserved for certain agricultural activities, now applied to the whole rural sector.

78. The Government member of Brazil said that rural workers' organizations in Brazil contributed to social dialogue within specific federal bodies and had played a substantial role in investments in infrastructure, rural credit, insurance and technical assistance. The Government member of Senegal indicated that there was a very dense network of trade union organizations and occupational associations or cooperatives in the country.

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- 79.** The Government member of the Republic of Korea enumerated a number of measures taken to improve the working conditions of migrant rural workers who were not adequately protected, while the Worker member of the Republic of Korea explained that migrant workers had limited ability to change workplace; national legislation did not apply to agricultural workers; and they did not enjoy the protection of fundamental principles and rights at work or promotional policies for rural workers' organizations.
- 80.** The Government member of Colombia emphasized that progress had been made in collective bargaining in the banana, sugar, floriculture and palm oil sectors. The Government, Worker and Employer members of Colombia referred to the agreement between the Government and the Director-General to cover this sector.
- 81.** The Worker member of Canada indicated that the United Food and Commercial Workers Canada (UFCW) had worked with migrant workers' organizations to assist migrant workers. The Worker member of the United States referred to the so-called Dunlop Commission, which established a private system of union recognition, dispute resolution and bargaining between corporations, growers and workers.
- 82.** The Worker members of Benin and Niger indicated that any participation in a strike by rural workers would often result in their dismissal. The Worker member of Benin said that rural workers in the wood industry did not have any legal status as they were considered subcontractors. The Worker member of Mexico noted the internal migration of hundreds of thousands of seasonal migrant workers and mentioned a recent case which illustrated various violations of rural workers' rights, including child labour, the exploitation of women workers, failure of compulsory social security registration, lack of training, low wages, lack of adequate housing, and excessive working hours.
- 83.** The Worker member of Switzerland indicated that rural workers were not covered by national labour law and that it had not been possible to conclude a sectoral collective agreement. The Worker member of New Zealand commented on a recent labour inspection

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audit finding that the basic rights of migrant rural workers were not adequately safeguarded. The Worker member of the United Kingdom indicated that the tripartite Agricultural Wages Boards had been abolished by the Government in 2013.

### ***Prospects for ratification***

**84.** The Employer members recalled that the General Survey recorded that only one government reported concrete steps taken towards ratification of Convention No. 141, and only a few governments reported their intention to consider ratification of the Conventions. Other governments, for various reasons, did not seem to have ratification plans. The hesitation to ratify Convention No. 141 pointed to a lack of relevance. The Employers highlighted the fact that the instrument only considered “rural workers’ organizations” but not “rural employers’ organizations” and may be seen as somehow unbalanced by member States. It may be timely for these Conventions, along with others concerning freedom of association, to be reviewed for continuing relevance.

**85.** The Government member of Morocco confirmed that its ratification of Convention No. 141 was in its final phase.

**86.** Certain Worker members, including those from Colombia and Mexico, called on their governments to ratify and apply Conventions Nos 11 and 141 and/or the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Safety and Health in Agriculture Convention, 2001 (No. 184). The Worker member of Niger called for ratification of the relevant Conventions, thereby allowing for a global improvement in the working and living conditions of rural workers.

### ***The way forward***

#### National policies of active encouragement

**87.** Many members of the Committee commented on the need for active steps to be taken by governments to promote freedom of association, rural workers’ organizations, and their participation in economic and social development.

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- 88.** The Employer members supported the approach of Conventions Nos 11 and 141, and Recommendation No. 149 to promote the establishment and functioning of rural workers' organizations as a means to facilitate rural development. However, as doing so in isolation held little prospect of success, they stressed the need for a comprehensive rural development strategy which also included assistance to rural employers' organizations. Efforts to promote economic reforms, invest in rural infrastructure, improve efficiency and productivity, and attract modern food-processing enterprises were equally important in this context. A comprehensive strategy to improve working and living conditions in rural areas should promote a more conducive environment for entrepreneurship and for the transition from informal to formal work. The Employer members expressed some doubts about the relevance of collective bargaining in rural areas, except in the relatively rare case of big agricultural enterprises. The priority should be in ensuring that associations of workers and employers developed, as it was a prerequisite to collective bargaining.
- 89.** The Worker members called for agricultural and rural workers to enjoy the same trade union rights as other workers in law and in practice. The promotion of freedom of association was essential for the composition and growth of strong and effective rural workers' organizations which were capable of enabling those workers to really participate in economic and social development. The instruments protected the rights of rural workers' organizations, including their right to strike.
- 90.** The Worker members stated that freedom of association should be enjoyed by all rural workers, including entrepreneurs, informal workers and subsistence farmers. Referring to the Employment Relationship Recommendation, 2006 (No. 198), the Worker members noted that difficulties in establishing employment relationships created serious problems for workers, their families and society as a whole. Measures in favour of rural workers and agriculture in general that resulted in greater justice and a better distribution of wealth were to be welcomed. This was not just an issue for southern countries; post-industrial countries should address the issue of rural work in combination with that of migrant

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workers and international subcontracting. The situation could not improve if responsibility was placed on the shoulders of the workers' organizations; governments had to assume their share of responsibility by establishing active national policies involving financial, educational and administrative measures to promote effective freedom of association for rural workers. Success also depended on a greater commitment from employers and their organizations.

- 91.** The Worker members emphasized that organizations should subsequently play a leading role in the formulation of policy. Greater inclusion of rural workers and their organizations would enable crucial, but frequently overlooked, subjects, to be addressed in rural and national development.
- 92.** The Government member of Senegal underlined the importance of the Committee taking advantage of the discussion of the General Survey to make strong recommendations to inspire States to formulate effective agricultural policy to encourage economic and social development. The Government member of Kenya indicated that the implementation of integrated national policies were needed to promote rural workers' organizations that, in turn, would have a great impact on the socio-economic progress of countries. The growing number of fair trade initiatives that had an influence on global supply chains presented an important opportunity for action.
- 93.** The Government member of Morocco stressed the importance of education, training and technical assistance in order for freedom of association rights to be effectively enjoyed. The Worker members of Benin, New Zealand and the United Kingdom underlined the importance of appropriate language usage. The Worker member of Senegal underlined the necessity of ensuring a proper balance between rural and urban development and the importance of labour inspection. The Employer member of India stated that the exploitative nature of the work of rural workers, which included women, children and migrant workers, should be addressed through policy interventions and appropriate instruments in order to ensure equitable, just and decent working conditions. The



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Employer member of Colombia indicated that rural policy should be aimed at strengthening the State's presence throughout its territory and offering rural workers the same conditions as urban workers with respect to personal safety and food security.

### Labour inspection

- 94.** A number of members of the Committee highlighted labour inspection as a crucial element in the implementation of rights in the rural economy and deserving the particular attention of the ILO and its member States. The Worker members emphasized the importance of strengthening the powers, resources and mandate of the national labour inspectorates with a view to improving the real and practical application of legislation.
- 95.** The Government member of Niger indicated that it was a source of concern that labour inspection, which was the only tool whereby the State ensured the observance of the legal provisions, had insufficient resources for taking action in the rural economy. Good governance presupposed the existence of effective inspection services having well-trained staff and the appropriate material and financial resources to enable better performance of their tasks throughout the national territory. The countries of Africa needed sustained support from the international community in this regard in order to ensure better protection and promotion of the fundamental rights of rural workers.
- 96.** The Government member of Belgium indicated that labour inspection was fundamental to ensure respect of law. The low rate of ratification of Convention No. 129 had the effect of leaving a large number of these workers without protection. The Government member of Kenya recalled that effective implementation of these instruments was anchored in strong labour institutions and the possibility of labour inspectorates to reach workplaces in rural areas. The Worker member of India stated that relevant legislation should provide for inspection, without which implementation would be ineffective, and the Worker member of the United Kingdom noted that the various challenges for migrant rural workers meant that many workers relied on the existence of robust inspection regimes for protection.

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Possible ILO action

- 97.** The members of the Committee indicated possible action that the ILO could take in follow-up to the General Survey. The Government member of Egypt supported the conclusions contained in the General Survey and hoped that they would contribute to improving living and working conditions in the rural sector. A Worker member of Colombia stated that the situation of poverty and social exclusion of rural workers required urgent measures to be taken by the ILO constituents, in particular to tackle informality and combat child labour.
- 98.** The Government member of Kenya emphasized that the extraordinary advances in new communication technologies could be used to have the voices of rural workers heard in innovative ways, as these technologies could be used in terms of awareness-raising and training initiatives, and could facilitate rural workers' participation in economic and social development, through dialogue, consultation and programmes.
1. *Standards-related action*
- 99.** The Employer members stated that a review of the standards applicable to the rural economy could draw on the comprehensive and successful review of the standards in the maritime sector resulting in the adoption of the Maritime Labour Convention, 2006 (MLC, 2006). As well as looking at agriculture-specific standards, account could also be taken of a large number of ILO instruments on enterprise development, such as the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), or the 2007 resolution and conclusions concerning the promotion of sustainable enterprises. The Employer members stated that the proper body for dealing with this matter would be the SRM.
- 100.** The Government representative of Latvia, speaking on behalf of the EU, its Member States and other associated States, likewise indicated that background work for the consolidation of agricultural standards should be done in the context of the SRM. The representative further stated that ratification and implementation of the ILO fundamental Conventions

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should be supported, and the Government member of Kenya called on the ILO to conduct the necessary background work to enable the consideration of the usefulness of the consolidation of the various instruments on agricultural and other activities in the rural sector. The Worker member of the Republic of Korea supported the possibility of consolidating instruments.

2. *Technical cooperation and assistance*

**101.** The Worker members believed that the ILO should carry out activities related to all the relevant instruments with a view to identifying the particular and general issues specific to rural workers, and the most effective programmes of action regarding equality, non-discrimination, health, the fight against HIV/AIDS, and the question of child labour and children's access to education. The Worker members believed that ILO technical assistance could be valuable in relation to many issues. A compilation of good practices regarding the implementation of the instruments would be useful, as would an exchange of ideas and experiences between countries. Within the framework of decent work in the rural economy, these actions should consider safety and health in agriculture, migrant workers, women, and the implications of subcontracting and global supply chains.

**102.** The Government member of Colombia indicated that technical assistance from the ILO was essential to ensure training in the rural economy. Measures should be taken in line with the guidelines established in Recommendation No. 149. The Government representative of Latvia, speaking on behalf of the EU, its Member States and other associated States, encouraged the ILO to provide technical assistance in accordance with national circumstances, which could focus on women workers in terms of accessing jobs, land, finance, new technologies, health, childcare and other basic services; and on child poverty and social exclusion, given children's exposure to forced labour, trafficking and hazardous work in the rural economy.

**103.** The Government representative of Latvia, speaking on behalf of the EU, its Member States and other associated States, also encouraged the Office to compile a collection of good

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practices concerning the implementation of the instruments and arrange for exchanges of ideas and experiences across countries, within the context of the area of critical importance on decent work in the rural economy. Acknowledging the need for interdisciplinary expertise, she called for a close coordination within the Office and in its partnerships with other international and intergovernmental organizations. The Government member of Kenya called on the ILO to compile good practices in respect of the implementation of the relevant instruments and arrange for exchanges of ideas and experiences across countries.

**104.** The Employer member of India considered that factors such as access to skills, finance and marketing institutions and promoting income-generating activities led to rural prosperity, and encouraged the ILO to focus on the promotion of creating an enabling environment for rural development. In this regard, successful employment-based rural development models, such as India's Mahatma Gandhi National Rural Employment Guarantee Scheme, should be looked into.

**105.** The Government member of Belgium stated that the ILO should promote the establishment of workers' organizations within the informal economy. International framework agreements between multinational enterprises and international trade union federations should be considered. ILO action was crucial to strengthen public awareness of the issue, particularly in cooperation with the Food and Agriculture Organization (FAO) of the United Nations (UN). The Government member of Brazil had supported the inclusion of rural employment among the areas of critical importance in the Programme and Budget for 2016–17 and called on the ILO to continue coordinating its activities with trade union organizations.

### ***Concluding remarks***

**106.** The Employer members noted consensus in relation to many of the issues discussed. In the first place, there was a common commitment to ensuring that rural workers and employers benefit from the fundamental Conventions, and the rural-specific Conventions,

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guaranteeing freedom of association. Secondly, given the reality in the rural economy, effective action was necessary on a wide range of fronts.

**107.** The Worker members stated that many points of consensus had emerged. The importance and quality of the analysis of the Committee of Experts contained in the General Survey had been widely stressed, as had the necessity and urgency of the issues identified as needing to be addressed. The breadth of the subject and the large numbers of workers concerned had been underlined, as had the difficulties that they encountered particularly with regard to recognition of their fundamental rights, their rights to occupational safety and health, access to housing and education, and their meagre income levels. There was a common recognition of the need to ensure that those workers enjoyed their rights to freedom of association and collective action, by taking steps to promote ratification of the relevant Conventions and application of Recommendation No. 149.

**108.** Many Worker members had referred to the difficulties connected with the exercise of the right to strike in the rural sector, which had its rightful place in the discussion of the General Survey. It had also been emphasized that the right to freedom of association gave rural workers a voice and that strong organizations contributed to the formulation of better policies, and helped to promote access to land for rural workers, a sensitive issue that related to the precarious situation of those workers. The problems stemming from the scale of informality and the relevance of Recommendation No. 198 had also been underlined, as had the problems of health and safety at work, especially the particular situation of women and their access to employment; the situation of children, including the risk to be involved in the worst forms of child labour and the problem of their access to education; and the vulnerability of migrant workers particularly in relation to seasonal work and the risk of exploitation and forced labour.

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**109.** In reply to the discussion on the General Survey, the Chairperson of the Committee of Experts noted with particular interest the points made by many speakers as regards the

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situation of migrant workers in the rural economy in light of the forthcoming General Survey on labour migration instruments.

**110.** The representative of the Secretary-General noted that the members of this Committee had agreed on the need for the ILO to ensure that working women and men in the rural economy were able to benefit from freedom of association. In his opening address to this session of the Conference, the Director-General had referred to the General Survey and stressed the importance of the ILO addressing the situation of rural workers. Decent work in the rural economy was a major ILO priority. This Committee's discussion had clearly shown that the situation of rural workers cut across a broad range of issues and called for combined interventions together with existing means of action, including standards. With reference to the comments made during the discussion as regards potential future standard setting, the speaker considered those comments very useful in the perspective of the implementation of the SRM, in particular: the fact that rural or agricultural instruments could be a possible area for consideration by the SRM working group and the possibility to consider consolidation of existing standards taking into account the approach followed with the MLC, 2006. In this regard, the speaker indicated that, in her view, other areas of possible consolidation would include the working-time instruments, as well as the occupational safety and health instruments.

**111.** She noted that reference had also been made to the linkages to be considered between the different processes that would shape the ILO standards policy for the future, in addition to the SRM, such as the topicality of instruments for General Surveys, the related discussions by this Committee, and their coordination with the recurrent discussions provided for under the Social Justice Declaration. Finally, she indicated that the secretariat had taken due note of the need for technical assistance highlighted by a number of speakers and would follow up as appropriate.

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## **Outcome of the discussion by the Committee on the Application of Standards of the General Survey concerning the right of association and rural workers' organizations instruments**

- 112.** The Committee examined the draft outcome of its discussion of the General Survey concerning the right of association and rural workers' organizations instruments (document C.App./D.13).
- 113.** The Committee approved the outcome of its discussion, which is reproduced below and which it wishes to bring to the attention of the Conference with a view to the recurrent discussion on fundamental principles and rights at work, which will take place at its 106th Session (2017).

### ***Introduction***

1. The Committee on the Application of Standards welcomed the opportunity, in the context of its examination of the General Survey on the Right of Association (Agriculture) Convention, 1921 (No. 11), the Rural Workers' Organisations Convention, 1975 (No. 141), and the Rural Workers' Organisations Recommendation, 1975 (No. 149), to discuss the rural economy, a significant sector in the world of work.

2. The Committee's discussion of this year's General Survey, together with the outcome of this discussion and the General Survey itself, will feed into the preparation of the recurrent item report and discussion on the strategic objective of fundamental principles and rights at work to be held at the 106th Session (June 2017) of the Conference, and will further inform other ILO work, particularly in the context of outcome 5 of the Programme and Budget for 2016–17.

3. The Committee highlighted the fact that the right of association of agricultural workers and the involvement of organizations of rural workers in economic and social development are linked with other topical issues currently being tackled by the ILO, such as the transition from the informal to the formal economy, labour migration, economic development, poverty reduction, non-standard forms of employment, decent work in global supply chains, and significant environmental and climatic pressures.

4. The Committee noted the persistent obstacles to implementation of the instruments identified by the Committee of Experts and also the Experts' comment that the dismal living and working conditions in the rural sector often appear to be largely the same as they were in 1975 and, in fact, in some places are not dissimilar from the conditions that existed in 1921. The Committee reaffirmed its commitment to ensuring the application in law and practice of freedom of association for all workers and employers. Freedom of association is not only a fundamental right at work, but is also an enabling condition of particular importance to enable the attainment of the strategic objectives of employment, social protection, social dialogue and tripartism, and fundamental principles and rights at work, as set out in the ILO Declaration on Social Justice for a Fair Globalization, 2008. As a result, the Committee stressed that agricultural and rural workers should enjoy full freedom of association in law and in practice, in common with other workers and employers.

### ***Core elements of the instruments***

5. The Committee recalled that Convention No. 11 aimed to ensure that agricultural workers had the same rights of association and combination as other workers. Convention No. 141 reaffirmed and built on the basic rights of freedom of association of rural workers, as a basis for giving rural workers a voice in economic and social development.

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6. The Committee also recalled that Convention No. 141, beyond providing a framework for equal rights for rural and agricultural workers, required active measures to be taken to ensure that rural workers' collective voice contributed to the elaboration and implementation of economic and social development. The Committee further noted that Convention No. 141 and Recommendation No. 149 set out a strategy to ensure that rural workers' organizations were strong, independent and effective, so as to be able to participate in economic and social development.

***Contribution to the preparation of the recurrent discussion on the strategic objective of fundamental principles and rights at work***

7. 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 and technical cooperation and assistance.

8. In this regard, a number of issues are raised by the General Survey on rural workers' organizations and its examination by the Committee.

***Realities and needs of member States***

9. The Committee recognized that there were a range of challenges in relation to freedom of association and collective bargaining in the rural economy. Rural workers often were not able to enjoy full freedom of association rights. While some obstacles to implementation of the instruments were legal, others were related to the nature of the rural economy such as geographical isolation, lack of access to technology and means of communication, lack of capacity in the labour inspectorate, low levels of skills and education, and the high incidence of child labour, forced labour, and discrimination.

10. The Committee considered that the vulnerable position of women and of migrants, both of which made up significant numbers of rural workers, was a particular challenge, and that the vulnerability of many rural workers to breaches of their fundamental rights was increased by the seasonal nature of agriculture. Recalling the high level of informality in the rural economy and the predominance of non-standard forms of employment, the Committee noted that there was sometimes a lack of clarity in labour relationships in rural areas. Globalization, global supply chains, and changes in land ownership and management had accentuated this challenge.

11. The Committee emphasized the need for integrated national policies to promote active steps to be taken for the establishment, growth and functioning of rural workers' organizations. Organizations in the rural economy should be strong, independent and effective, so as to be able to participate in economic and social development. Such national policies would contribute to integrated national decent work strategies for the rural economy, addressing all of the ILO's strategic objectives and intrinsically involving rural workers and employers in their development and implementation.

12. Reference was also made to the need for an overall strategy to include measures to promote investment, entrepreneurship, modernization of means and methods of production which reassures the conditions of an enabling environment for agricultural enterprises.

13. The Committee further stressed the importance of organizations of rural workers and employers as a means to ensure better resolution of many of the critical issues in the rural economy. Through representative organizations, rural workers and employers would be able to have their voices heard in the elaboration and implementation of law and policy, as well as contribute to the improvement of specific issues such as land, housing, occupational safety and health (including HIV/AIDS), sanitation, access to education, social protection and promotion of entrepreneurship and employment.

***ILO means of action***

***1. Standards-related action***

14. The Committee considered that the Office should conduct background work with a view to understanding better the barriers to ratification and implementation of the instruments and enabling a consideration of the up-to-dateness of instruments concerned to ensure that international labour standards effectively respond to the many and varied challenges for rural communities. An appropriate process could be undertaken with the Standards Review



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Mechanism to consider both instruments specific to agriculture and the rural economy, as well as other relevant instruments of broader application. This would include the clarification of the various forms of labour relationships in this context as well as the relationship between employment relationships and other forms of relationship such as collectives and partnerships.

15. In addition to a wider review within the context of the Standards Review Mechanism, and in recognition of the value of the instruments for promoting collective voice and representation for workers and employers in the rural economy, the Committee further considered that the Office should take the necessary steps to promote the ratification and implementation of Conventions Nos 11 and 141, and the effect given to Recommendation No. 149 by member States. The promotion of the ratification and implementation of the Labour Inspection (Agriculture) Convention, 1969 (No. 129), should be included in any such promotion effort, given the critical role of labour inspection in ensuring the full implementation of the instruments in rural areas.

## *2. Technical cooperation and assistance*

16. Acknowledging the references by a number of member States to the need for technical assistance in relation to the instruments, the Committee considered that the Office should provide the opportunity for member States to share experiences and information concerning the ways in which the instruments may be implemented in practice. The General Survey illustrated the variety of means and mechanisms that existed to facilitate the establishment and growth of strong and independent rural workers' organizations to ensure participation of rural workers in economic and social development as set out in Article 4 of Convention No. 141. The Committee considered that, to enable a broad outreach of such exchanges of experiences, a compilation of global good practices could be disseminated. The Committee also considered that the Office should conduct capacity building to enable existing rural workers' organizations to more effectively represent workers, in particular through collective bargaining.

17. The Committee further considered that the Office should undertake research to identify possible responses to the challenges in the rural economy, harnessing the potential of rural workers' and employers' organizations. In addition, the Office was encouraged to look into ways in which existing ILO capacity-building and awareness-raising tools could be adapted, in a short time frame, to the situation of the rural economy. Emphasizing the importance of labour inspection to facilitate and monitor the application of legislation and policy in rural areas, the Office should pay particular attention to the situation of labour inspection, in particular by addressing specific challenges such as resources and access by inspectors to isolated rural workplaces, or those workplaces that are also homes, ensuring the rights and obligations of all parties are respected. In this regard, the Committee noted that a training programme aiming to build knowledge among labour inspectors on freedom of association in the rural sector was recently pilot tested by the ILO and could be adapted for use in other countries.

18. The Committee further recorded its belief that the Office should take particular steps to investigate the use of new communication technologies in improving the effectiveness of its consultation, capacity building, awareness raising and training initiatives in rural areas.

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19. The Committee requests the Office to take into account the General Survey on the right of association and rural workers' organizations instruments and the outcome of its discussion of the General Survey, as reflected above, in the preparation of the report for the recurrent discussion on the strategic objective of fundamental principles and rights at work to be held at the 106th Session (June 2017) of the Conference, so that it can feed into the framework within which priorities are set for future ILO action. The Committee further requests the Office to ensure that the General Survey and outcome of its discussion of the General Survey will be taken into account in other relevant ILO work, particularly in the context of outcome 5 of the Programme and Budget for 2016–17.

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## **D. Compliance with specific obligations**

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

**114.** During a dedicated sitting, the Committee examined the cases of serious failure by member States to respect their reporting and other standards-related obligations.<sup>5</sup> As explained in document C.App./D.1, part V, the following criteria are applied: failure to supply the reports due for the past two years or more on the application of ratified Conventions, failure to supply first reports on the application of ratified Conventions for at least two years, failure to supply information in reply to all or most of the comments made by the Committee of Experts, failure to supply the reports due for the past five years on unratified Conventions and Recommendations, failure to submit the instruments adopted for at least seven sessions to the competent authorities, and failure during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23(2) of the Constitution, copies of reports and information supplied to the Office under articles 19 and 22 have been communicated. The Chairperson explained the working methods of the Committee for the discussion of these cases.

**115.** The Employer members recalled that non-observance by member States of their constitutional obligations constituted a serious failure. The timely submission of reports was crucial to the functioning of the ILO supervisory system. The failure of some member States to submit reports prevented the Committee of Experts from reviewing the pertinent issues obtaining in their respective national situations; it also had the effect, unjustly, of penalizing those countries that did fulfil their constitutional obligations, as in so doing these member States voluntarily presented themselves for greater scrutiny. While noting that the percentage of requested reports received by the Office this year was slightly greater than that of the year before, the Employer members maintained that the overall

<sup>5</sup> Detailed information on the examination of these cases is contained in section A of Part Two of this report.

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reporting situation nevertheless remained unsatisfactory. It was important for member States to treat their reporting duties with the utmost seriousness.

**116.** The Worker members expressed concern with regard to the still significant number of reports that had not been received. The situation constituted a major obstacle to the proper operation of the supervisory machinery. The failure of governments to fulfil their reporting obligations and to submit the instruments to the competent authorities was sometimes a result of negligence, sometimes an expression of a refusal to cooperate with the supervisory machinery, and in other cases a consequence of delays. The absence of submission to the competent authorities often reflected a regrettable negligence. The failure to send the requested reports as a demonstration of the refusal by certain governments to cooperate with the supervisory mechanisms was all the more serious as the purpose was often to cover up very serious violations of ratified Conventions. Persistent delays in sending reports also seriously undermined the proper functioning of the supervisory bodies. The slight improvement in the proportion of reports provided was insufficient.

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

**117.** 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.

**118.** 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

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at least seven sessions (from the 94th Session (Maritime, February 2006) to the 101st Session in June 2012), because the Conference did not adopt any Conventions and Recommendations during the 97th (2008), 98th (2009) or 102nd (2013) Sessions. This time frame was deemed long enough to warrant inviting Government delegations to the dedicated sitting of the Committee so that they may explain the delays in submission.

**119.** The Committee took note of the information and explanations provided by the Government representatives who took the floor during the dedicated sitting. It noted the specific difficulties mentioned by certain delegates in complying with this constitutional obligation, and in particular the intention to submit shortly to competent authorities the instruments adopted by the International Labour Conference. Some governments have requested the assistance of the ILO to clarify how to proceed and to complete the process of submission to national parliaments in consultation with the social partners.

**120.** 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.

**121.** The Committee noted that 35 countries were still concerned with this serious failure to submit the instruments adopted by the Conference to the competent authorities, that is, **Angola, Azerbaijan, Bahrain, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, El Salvador, Equatorial Guinea, Guinea, Haiti, Iraq, Jamaica, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Libya, Mali, Mauritania, Mozambique, Pakistan, Papua New Guinea, Rwanda, Saint Lucia, Sierra Leone, Solomon Islands, Somalia, Sudan, Suriname, Syrian Arab Republic, Tajikistan, Uganda and Vanuatu.** The Committee expressed the firm hope that appropriate measures would be taken by the Governments and the social partners to comply with this constitutional obligation, and avoid being invited to provide information to its next session.

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

**122.** The Committee took note of the information and explanations provided by the Government representatives who took the floor during the dedicated sitting. Some governments have requested the assistance of the ILO. The Committee recalled that the transmission of reports on the application of ratified Conventions was a fundamental constitutional obligation and the basis of the system of supervision. The Committee stressed the importance to respect the scheduled deadline. It also reiterated the vital importance of the transmission of first reports on the application of ratified Conventions. Furthermore, it underlined the vital importance, to permit ongoing dialogue, of clear and complete information in response to comments of the Committee of Experts. In this respect, the Committee recalled that the ILO could provide technical assistance to contribute to compliance with these obligations.

**123.** The Committee noted that, by the end of the 2014 meeting of the Committee of Experts, the percentage of reports received (article 22 of the ILO Constitution) was 70.95 per cent (72.52 per cent for the 2013 meeting). Since then, further reports had been received, bringing the figure to 77.25 per cent (as compared with 80.6 per cent in June 2014, and 78.9 per cent in June 2013).

**124.** The Committee noted that no reports on ratified Conventions had been supplied for the past two years or more by the following States: **Burundi, Dominica, France – French Southern and Antarctic Territories, Equatorial Guinea, Gambia, Haiti, San Marino, Somalia and Tajikistan.**

**125.** The Committee also noted that first reports due on ratified Conventions had not been supplied by the following countries for at least two years:

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<b>State</b>	<b>Conventions Nos</b>
Afghanistan	Since 2012: Conventions Nos 138, 144, 159 and 182
Equatorial Guinea	Since 1998: Conventions Nos 68 and 92
Ghana	Since 2013: Conventions Nos 144 and 184

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**126.** The Committee noted from the Committee of Experts' report that **39** governments had not communicated replies to the observations and direct requests relating to Conventions on which reports were due for examination in 2014, involving a total of **397** cases (compared with 476 cases in 2013). 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.

**127.** The Committee noted 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 2014 from the following countries: **Angola, Barbados, Belize, Burundi, Croatia, Democratic Republic of the Congo, Dominica, Equatorial Guinea, France – French Southern and Antarctic Territories, Gambia, Grenada, Guinea, Guinea-Bissau, Haiti, Ireland, Kyrgyzstan, Lebanon, Liberia, Mauritania, Nigeria, Saint Kitts and Nevis, Samoa, Saint Vincent and the Grenadines, Saint Lucia, San Marino, Sierra Leone, Solomon Islands and Tajikistan.**

**128.** The Committee noted the explanations provided by the Governments of the following countries concerning difficulties encountered in discharging their obligations: **Afghanistan, Bahrain, Croatia, Jamaica, Kuwait, Mauritania, Pakistan, Saint Kitts and Nevis, Samoa, Suriname and Zambia.**

### **1.3 Supply of reports on unratified Conventions and Recommendations**

**129.** The Committee noted that **220** of the **404** article 19 reports requested on Conventions Nos 11 and 141, and Recommendation No. 149 had been received at the time of the Committee of Experts' meeting. This represented **54.45** per cent of the reports requested.

**130.** The Committee stressed the importance it attached to the constitutional obligation to transmit reports on unratified Conventions and Recommendations. In effect, these reports permitted a better evaluation of the situation in the context of the General Surveys of the

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Committee of Experts. In this respect, the Committee recalled that the ILO could provide technical assistance to help in complying with this obligation.

**131.** The Committee noted that over the past five years none of the reports on unratified Conventions and Recommendations, requested under article 19 of the Constitution, had been supplied by: **Comoros, Congo, Democratic Republic of the Congo, Grenada, Equatorial Guinea, Guinea, Guinea-Bissau, Guyana, Liberia, Libya, Kiribati, Marshall Islands, Solomon Islands, Saint Kitts and Nevis, Sao Tome and Principe, Sierra Leone, Somalia, Tuvalu, Vanuatu and Zambia.**

#### **1.4 *Communication of copies of reports to employers' and workers' organizations***

**132.** 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”.

#### **1.5 *Specific indications***

**133.** The Government members of **Afghanistan, Angola, Bahrain, Barbados, Comoros, Croatia, Democratic Republic of the Congo, Djibouti, El Salvador, Equatorial Guinea, France – French Southern and Antarctic Territories, Ghana, Guinea, Iraq, Ireland, Jamaica, Jordan, Kuwait, Lebanon, Mali, Mauritania, Mozambique, Nigeria, Pakistan, Papua New Guinea, Saint Kitts and Nevis, Samoa, Sao Tome and Principe, Sudan, Suriname, Uganda and Zambia** have promised to fulfil their reporting and other standards-related obligations as soon as possible.

## **2. Application of ratified Conventions**

**134.** The Committee noted with interest the information provided by the Committee of Experts in paragraph 68 of its report, which listed new cases in which that Committee had

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expressed its satisfaction at the measures taken by governments following comments it had made as to the degree of conformity of national legislation or practice with the provisions of a ratified Convention. There were 34 such cases, relating to 29 countries; thus, the total number of cases where the Committee of Experts was led to express its satisfaction with progress achieved, since it began listing them in 1964, was 2,980. These results were tangible proof of the effectiveness of the supervisory system. In addition, the Committee of Experts had listed in paragraph 71 of its report cases in which measures ensuring better application of ratified Conventions had been noted with interest. It had noted 144 such instances in 82 countries.

135. At its present session, the Committee examined 24 individual cases relating to the application of various Conventions.<sup>6</sup>

## 2.1. *Specific cases*

136. 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.

137. As regards the application by **Kazakhstan 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.

138. The Committee deplored the total absence of a Government representative during the discussion of this case, despite its accreditation and presence at the International Labour Conference.

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



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**139.** The Committee observed that the pending matters raised by the Committee of Experts concerned both restrictions on workers' freedom of association (including the right to organize of judges, firefighters and prison staff, the mandatory affiliation of sector, territorial and local trade unions to a national trade union association, the excessively high minimum membership requirement for higher-level organizations and the ban on receiving financial assistance from an international organization) and on employers' organizations (an excessive minimum membership requirement for employers' organizations and the adoption in 2013 of the Law on the National Chamber of Entrepreneurs which undermined free and independent employers' organizations and gave the Government significant authority over internal matters of the Chamber of Entrepreneurs).

**140.** The Committee noted the actions of the Government that had infringed both the freedom of association rights of workers' and of employers' organizations in violation of the Convention.

**141.** Taking into account the discussion and the failure of the Government to attend before the Committee, the Committee required that the Government:

- amend the provisions of the Law on the National Chamber of Entrepreneurs in a manner that would ensure the full autonomy and independence of the free and independent employers' organizations in Kazakhstan. The Committee requested the Office to offer, and urged the Government to accept, technical assistance in this regard;
- amend the provisions of the Trade Union Law of 2014 consistent with the Convention, including issues concerning excessive limitations on the structure of trade unions found in Articles 10 to 15 which limit the right of workers to form and join trade unions of their own choosing;
- amend the Constitution and appropriate legislation to permit judges, firefighters and prison staff to form and join a trade union; and

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- amend the Constitution and appropriate legislation to lift the ban on financial assistance to national trade unions by an international organization.

**142.** As a result of the Government's failure to attend, the Committee decided to include its conclusions in a special paragraph of the report.

**143.** As regards the application by **Mauritania of the Forced Labour Convention, 1930 (No. 29)**, The Committee took note of the oral information by the Government representative and the discussion that followed.

**144.** The Committee recalled that it had discussed the present case on six previous occasions and that a fact-finding mission had visited Mauritania in 2006, at the request of the Conference Committee.

**145.** The Committee noted that the outstanding issues raised by the Committee of Experts related to the ineffective implementation of Act No. 2007/48 of 9 August 2007 criminalizing and penalizing slave-like practices, including: the difficulty for victims of slavery to be able to assert their rights before the competent law enforcement and judicial authorities as reflected in the low number of judicial proceedings; the need to carry out awareness-raising measures about the illegality and illegitimacy of slavery amongst the population and the authorities responsible for enforcing the Act of 2007; and the need to effectively implement the various recommendations contained in the roadmap for combating the vestiges of slavery which was adopted in March 2014.

**146.** The Committee noted the Government's statement outlining laws and policies put in place to combat all vestiges of slavery. This included constitutional amendments as well as the adoption and implementation of Act No. 2007/48 which defined slavery for the first time and empowered human rights' associations to report violations of the Act of 2007 and to assist victims. The Committee further noted the Government's indication that a Bill was under review which would, amongst other things, provide for the setting up of a special court to deal specifically with offences related to slavery and slave-like practices. The

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Committee also noted the information on the various awareness-raising activities undertaken and programmatic measures targeted at reducing economic and social inequalities by improving means of existence and the conditions for the emancipation of the vulnerable social groups affected by slavery and its vestiges. Finally, the Committee noted the Government's statement that it would continue to avail itself of ILO technical assistance in order to achieve tangible progress in the application of the Convention.

**147.** Taking into account the discussion that took place, the Committee urged the Government to:

- strictly enforce the 2007 Anti-Slavery Act to ensure that those responsible for the practice of slavery be effectively investigated and prosecuted and, receive and serve sentences that are commensurate with the crime;
- amend the 2007 Anti-Slavery Act to grant third parties, including trade unions a locus standi to bring charges and pursue cases on behalf of victims, consider shifting the burden of proof, and increase the prison sentence for the crime of slavery to a period in line with international standards for crimes against humanity;
- implement fully the National Plan to Combat the Vestiges of Slavery (PES) and the roadmap for combatting the vestiges of slavery, including comprehensive victim support and processes. This should include the following:
  - Reinforcement of the capacity of the authorities to prosecute and administer the justice system in relation to slavery.
  - Anti-slavery prevention programmes.
  - Specific programmes enabling victims of slavery to escape.
  - Awareness-raising programmes.

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- provide necessary resources to the National Agency to Fight against the Vestiges of Slavery, for Social Integration and to Fight against Poverty, or “Tadamoun”, and ensure that its programmes include those aimed at addressing and combating slavery;
  - develop and implement public awareness-raising campaigns for the general public, victims of slavery, police, administrative and judicial authorities and religious authorities;
  - facilitate the social and economic integration of those formally subjected to slavery into society, in the short-, medium- and long-term, and ensure that Haratine and other marginalized groups affected by slavery and slavery like practices have access to services and resources;
  - collect detailed data on the nature and incidence of slavery in Mauritania and establish procedures for monitoring and evaluating implementation of efforts to end slavery;
  - avail itself of ILO technical assistance to implement these recommendations; and
  - report in detail on the measures taken to implement these recommendations, in particular on the enforcement of Anti-slavery laws, to the next meeting of the Committee of Experts in November 2015.

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

**149.** As regards the application by **Swaziland 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 and the discussion that followed.

**150.** The Committee noted that the report of the Committee of Experts referred to grave and persisting issues of non-compliance with the Convention in particular in relation to the de-registration of all federations in the country: the Trade Union Congress of Swaziland (TUCOSWA), the Federation of Swaziland Employers and Chambers of Commerce (FSE–

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CC) and the Federation of Swaziland Business Community (FSBC). The Committee of Experts called on the Government to register these organizations without delay and to ensure their right to engage in protest action and peaceful demonstrations in defence of their members' occupational interests and to prevent any interference or reprisal against their leaders and members. The Committee of Experts' comments also referred to the ongoing imprisonment of TUCOSWA's lawyer, Mr Maseko, and a number of laws that needed to be brought into conformity with the provisions of the Convention.

**151.** The Committee took note of the information provided by the Government representative relating to the amendment made to the Industrial Relations Act (IRA) by virtue of which the TUCOSWA, the FSE-CC and the FSBC are now registered. She indicated the Government's full commitment to ensuring the full operationalization of all tripartite structures and stated that the federations have been invited to nominate their members on the various statutory bodies. She emphasized that this development would assist in maintaining a healthy social dialogue in Swaziland. Sections 40(13) and 97 of the IRA had also been amended to respond to the comments of the Committee of Experts. A revised Code of Good Practice on protest and industrial actions had been circulated and the Government was awaiting comments from the social partners, while the revised bill to amend the Suppression of Terrorism Act was referred back to Cabinet to ensure that the amendments would not compromise law and order. Similarly, the Correctional Services (Prison) Bill had been referred back to the Minister for Justice and Constitutional Affairs. As for Mr Maseko, she recalled that he was charged and convicted of contempt of court after publishing an article which constituted a scurrilous attack on the judiciary and was calculated to undermine the rule of law in Swaziland. The issue of the independence of the judiciary was being addressed as a matter of urgency. She concluded by reiterating her Government's request for ILO technical assistance to ensure the completion of the Code of Good Practice and amendments to the Public Order Act, and indicated her desire for training for all parties in this regard.

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**152.** Taking into account the discussion, the Government is urged, without further delay, to:

- release unconditionally Thulani Maseko and all other workers imprisoned for having exercised their right to free speech and expression;
- ensure all workers' and employers' organizations in the country are fully assured their freedom of association rights in relation to the registration issue, in particular, register ATUSWA without any further delay;
- amend section 32 of the IRA to eliminate the discretion of the Commissioner of Labour to register trade unions;
- ensure organizations are given the autonomy and independence they need and fulfil their mandate and represent their constituents. The Government should refrain from all acts of interference in the activities of trade unions;
- investigate arbitrary interference by police in lawful, peaceful and legitimate trade union activities and hold accountable those responsible;
- amend the 1963 Public Order Act following the work of the consultant, and the Suppression of Terrorism Act, in consultation with the social partners, to bring them into line with the Convention;
- adopt the Code of Good Practice without any further delay and ensure its effective application in practice;
- address the outstanding issues in relation to the Public Services Bill and the Correctional Services Bill in consultation with the social partners; and
- accept technical assistance in order to complete the legislative reform outlined above so that Swaziland is in full compliance with the Convention.

**153.** The Committee decided to mention this case in a special paragraph of the report.

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## 2.2. *Continued failure to implement*

154. The Committee recalls that its working methods provide for the listing of cases of continued failure over several years to eliminate serious deficiencies, previously discussed, in the application of ratified Conventions. This year the Committee made no mention in this respect.

## 3. **Participation in the work of the Committee**

155. The Committee wished to express its gratitude to the 55 governments which had collaborated by providing information on the situation in their countries and participating in the discussion of their cases.

156. The Committee regretted that the Governments of the following States failed to take part in the discussions concerning their country and the fulfilment of their reporting and other standards-related obligations: **Azerbaijan, Burundi, Congo, Côte d'Ivoire, Gambia, Haiti, Kazakhstan, Kyrgyzstan, Liberia, Rwanda, San Marino, Sierra Leone, Somalia, Syrian Arab Republic and Tajikistan**. 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 its usual practice.

157. The Committee noted with regret that the Governments of the following States, which were not represented at the Conference, were unable to participate in the discussions concerning their country and the fulfilment of their reporting and other standards-related obligations: **Belize, Dominica, Grenada, Guinea-Bissau, Guyana, Kiribati, Marshall Islands, Saint Lucia, Saint Vincent and the Grenadines, Solomon Islands, Tuvalu and Vanuatu**. It decided to mention these countries in the appropriate paragraphs of this report and to inform them, in accordance with its usual practice.

158. Finally, the Committee regretted that the government of **Kazakhstan** failed to take part in the discussion concerning the application by its country of Convention No. 87. This

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discussion is reflected in section B of Part II of this report and, in keeping with the practice, the case is mentioned in a special paragraph in section D of Part I of this report.

## **E. Adoption of the report and closing remarks**

**159.** The Committee's report was adopted as amended.

**160.** The Worker members.

**161.** The Employer members.

**162.** The Chairperson 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, 12 June 2015

*(Signed)* Ms Gloria Gavia Ramos  
Chairperson

Ms Cecilia Mulindeti  
Reporter



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## Annex 1

INTERNATIONAL LABOUR CONFERENCE  
104th Session, Geneva, June 2015

C.App./D.1

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### Committee on the Application of Standards

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## Work of the Committee

### I. Introduction

This document (D.1) 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.<sup>1</sup> The document reflects the results of the discussions and informal consultations that have taken place, since 2002, on the working methods of the Committee. In this regard, it may be recalled that an informal tripartite Working Group on the Working Methods of the Committee on the Application of Standards (hereinafter, the “Informal Working Group”) met 11 times between 2006 and 2011. Its recommendations have been reflected each year in document D.1 which, upon adoption by the Committee, has constituted the basis on which it has made certain adjustments to its working methods. The recommendations of the Informal Working Group have also been reflected in the Provisional Working Schedule of the Committee (document D.0), as appropriate.

The Informal Working Group has addressed a number of issues over the years including the elaboration of the list of individual cases to be discussed by the Committee, the preparation and adoption of the conclusions relating to these individual cases,<sup>2</sup> time management<sup>3</sup> and respect for parliamentary rules of decorum.<sup>4</sup>

In March 2015, the Informal Working Group was reconvened at the request of the Governing Body, in the context of decisions made concerning the standards initiative.<sup>5</sup> The Informal Working Group considered the issues of the establishment of the list of cases

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

<sup>2</sup> See below Part VI.

<sup>3</sup> See below Parts VI (automatic registration, and supply of information) and IX.

<sup>4</sup> See below Part X.

<sup>5</sup> See GB.322/PV, para. 209(3). The Working Group was composed of: nine Employer representatives, nine Worker representatives and nine Government representatives. The Government representatives were from the following nine countries: Africa: Algeria and Egypt; Americas: Canada and Cuba; Asia and the Pacific: China, Japan and Jordan; Eastern Europe: Republic of Moldova; Western Europe: Austria. The meeting was also attended by a number of observers. The meeting was chaired by Mr Siphon Ndebele (Government representative, South Africa).

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and the adoption of conclusions. It also examined the possible implications on the functioning of the Committee of the two-week session of the Conference. Account was taken during the discussions, of the Joint Statement of the Workers' and Employers' groups and the two statements from the Government group, which are attached to the Outcome of the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level,<sup>6</sup> which contained elements relevant to the work of the Informal Working Group. The Informal Working Group adopted the following recommendations.<sup>7</sup>

**(i) Modalities for the establishment of the list of cases**

The preliminary list of cases should be available no less than 30 days before the opening of the International Labour Conference (i.e. 1 May 2015).

The final list should be agreed upon by the Worker and Employer spokespersons on the Friday before the opening of the International Labour Conference (29 May 2015) and should be adopted no later than the second sitting of the Committee on the Application of Standards (CAS). The discussion of the individual cases would begin with double-footnoted cases.

Explanations will be given to governments immediately following the adoption by the CAS of the final list of cases.

**(ii) Criteria for the determination of the list of cases**

In the establishment of the list of cases, in addition to the criteria outlined in document D.1 (see below), the following should also be considered: balance between fundamental, governance and technical Conventions; geographical balance; balance between developed and developing countries.

**(iii) Preparation and adoption of conclusions**

There was consensus on:

- The importance of adopting conclusions on all cases. Conclusions should be reached within a reasonable time frame and should be short, clear and specify the action expected of governments, including the technical assistance to be provided by the Office, if applicable. The conclusions should reflect consensus recommendations. Divergent views can be reflected in the CAS record of proceedings.
- Conclusions on the cases discussed should be adopted at dedicated sittings.

<sup>6</sup> GB.323/INS/5/Appendix I.

<sup>7</sup> These recommendations are reproduced in document GB.323/INS/5(Add.).

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**(iv) Functioning of the CAS in the context of the two-week session of the International Labour Conference in 2015**<sup>8</sup>

- Meetings should start on time.
- The provisional working schedule should take account of group meetings.
- Evening sittings should end at 9 p.m. and the sitting on the first Saturday of the Conference should end at 1 p.m.; if additional time is needed to complete the examination of the cases, evening sittings could be envisaged during the second week of the Conference.
- Four individual cases should be discussed per day to achieve 24 during the session.
- The report of the Committee should continue to be adopted by the Committee itself.

Finally, the meeting agreed to add the following points to the agenda of a future session of the Working Group:

- Composition of the Working Group, including the proposal made by the group of Latin American and Caribbean countries (GRULAC) that the composition should be a multiple of eight, with 16 Government representatives, eight Employer representatives and eight Worker representatives.
- A date for the next meeting of the Working Group should be set in advance.
- Consideration could be given to holding simultaneous sittings for certain matters (e.g. cases of serious failure by governments to respect their reporting and other standards-related obligations).

The recommendations of the Informal Working Group have been taken into account by the Office in preparing this revised version of document D.1.

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

Under its terms of reference as defined in article 7, paragraph 1, of the Standing Orders of the Conference, the Committee is called upon to consider:

- (a) the measures taken by Members to give effect to the provisions of Conventions to which they are parties and the information furnished by Members concerning the results of inspections;
- (b) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution;

<sup>8</sup> At its 323rd Session (March 2015), the Governing Body requested the Office to prepare for its 325th Session (November 2015) an analysis of the trialled format of a two-week session in June 2015, which would allow the Governing Body to draw the lessons of this experience and take the appropriate decisions as regards the format arrangements for the future sessions of the International Labour Conference.

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(c) the measures taken by Members in accordance with article 35 of the Constitution.

In accordance with article 7, paragraph 2, of the Standing Orders of the Conference, the Committee submits a report to the Conference. Since 2007, in response to the wishes expressed by ILO constituents, the report of the Committee has been published both in the *Record of Proceedings* of the Conference and as a separate publication, to improve the visibility of the Committee's work.

Questions related to the composition of the Committee, the right to participate in its work and the voting procedure are regulated by section H of Part II of the Standing Orders of the Conference.

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

### **III. Working documents**

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

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, and in Part Two, the observations of the Committee of Experts concerning the sending of reports, the application of ratified Conventions and the obligation to submit the Conventions and Recommendations to the competent authorities in member States. At the beginning of the report there is an index of comments by Convention and by country.

In addition to the observations contained in its report, the Committee of Experts has, as in previous years, made direct requests which are communicated to governments by the Office on the Committee's behalf.<sup>9</sup> A list of these direct requests can be found at the end of Volume A (see Appendix VII).

Volume B of the report contains the General Survey by the Committee of Experts, which this year concerns the Right of Association (Agriculture) Convention, 1921 (No. 11), the Rural Workers' Organisations Convention, 1975 (No. 141), and the Rural Workers' Organisations Recommendation, 1975 (No. 149).

#### **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.<sup>10</sup> Requests for consultation or copies of reports may be addressed to the secretariat of the CAS.

<sup>9</sup> See para. 53 of the General Report of the Committee of Experts.

<sup>10</sup> See report of the Committee of Experts, Report III (Part 1A), Appendices I, II, IV, V and VI; and Report III (Part 1B), Appendix II.

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## C. Other information

The secretariat prepares documents (which are referred to, and referenced, as “D documents”) which are distributed during the course of the work of the Committee to provide the following information:

- (i) reports and information which have reached the International Labour Office since the last meeting of the Committee of Experts; based on this information, the list of governments which are invited to supply information to the Conference Committee due to serious failure to respect their reporting and other standards-related obligations is updated;<sup>11</sup>
- (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.<sup>12</sup>

The Information document on ratifications and standards-related activities (Report III (Part 2)), prepared by the Office to accompany the report of the Committee of Experts, provides an overview of recent developments relating to international labour standards, the implementation of special procedures and technical cooperation in relation to international labour standards. It also contains, in the form of tables, information on the ratification of Conventions, together with “country profiles” containing key information on standards for each country.

## IV. General discussion

In accordance with its usual practice, the Committee begins its work with the consideration of its working methods on the basis of this document. The Committee then holds a discussion on general aspects of the application of Conventions and Recommendations and the discharge by member States of standards-related obligations under the ILO Constitution, which is primarily based on the General Report of the Committee of Experts.

It also holds a discussion on the General Survey prepared by the Committee of Experts on a group of Conventions and Recommendations decided upon by the Governing Body. The Committee’s discussion of this year’s General Survey, together with the outcome of this discussion and the General Survey itself, will feed into the preparation of the recurrent item report and discussion on fundamental principles and rights at work which will take place during the 106th Session (June 2017) of the Conference.<sup>13</sup>

<sup>11</sup> See below Part V.

<sup>12</sup> See below Part VI (supply of information).

<sup>13</sup> It should be recalled that the subjects of General Surveys have been aligned with the strategic objectives that are examined in the context of the recurrent discussions under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization (2008).

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## V. Cases of serious failure by member States to respect their reporting and other standards-related obligations<sup>14</sup>

Governments are invited to supply information on cases of serious failure to respect reporting or other standards-related obligations for stated periods. These cases are considered in a dedicated sitting of the Committee. Governments that submit the required information before the sitting will not be called before the Committee. The discussion of the Committee, including any explanations of difficulties that may have been provided by the governments concerned, and the conclusions adopted by the Committee under each criterion are reflected in its report.

The Committee identifies the cases on the basis of criteria which are as follows:<sup>15</sup>

- None of the reports on ratified Conventions has been supplied during the past two years or more.
- First reports on ratified Conventions have not been supplied for at least two years.
- None of the reports on unratified Conventions and Recommendations requested under article 19, paragraphs 5, 6 and 7, of the Constitution 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.<sup>16</sup>
- No information has been received as regards all or most of the observations and direct requests of the Committee of Experts to which a reply was requested for the period under consideration.
- The government has failed during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23, paragraph 2, of the Constitution, copies of reports and information supplied to the Office under articles 19 and 22 have been communicated.

## VI. Individual cases

The Committee considers cases relating to the application of ratified Conventions. These cases are selected on the basis of the observations published in the report of the Committee of Experts. The methods of work applied by the Committee are described below. They reflect, where appropriate, the recommendations made by the Informal Working Group at its March 2015 meeting.

<sup>14</sup> Formerly known as “automatic” cases (see *Provisional Record* No. 22, International Labour Conference, 93rd Session, June 2005, para. 69).

<sup>15</sup> These criteria were last examined by the Committee in 1980 (see *Provisional Record* No. 37, International Labour Conference, 66th Session, 1980, para. 30).

<sup>16</sup> This year the sessions involved would be the 94th (February 2006, Maritime) to 101st (2012).

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*Preliminary list.* Since 2006, an early communication to governments of a preliminary list of individual cases for possible discussion by the Committee concerning the application of ratified Conventions has been instituted. In March 2015, the Informal Working Group recommended, on the basis of the Joint Statement of the Workers' and Employers' groups of February 2015,<sup>17</sup> that the preliminary list of cases should be published no less than 30 days before the opening of the International Labour Conference (i.e. 1 May 2015). The preliminary list is a response to the requests from governments for early notification, so that they may better prepare themselves for a possible intervention before the Committee. It may not in any way be considered definitive, as the adoption of a final list is a function that only the Committee itself can assume.

*Establishment of the list of cases.* The list of cases regarding which countries will be invited to supply information to the Committee is established by the Committee's Officers. The list of individual cases is then submitted to the Committee for adoption at the beginning of its work.<sup>18</sup> At its March 2015 meeting, the Informal Working Group made recommendations regarding the need for balance between fundamental, governance and technical Conventions, as well as geographical balance and balance between developed and developing countries.<sup>19</sup> Therefore, the criteria for the selection of cases should reflect the following elements:

- the nature of the comments of the Committee of Experts, in particular the existence of a footnote;<sup>20</sup>
- the quality and scope of responses provided by the government or the absence of a response on its part;
- the seriousness and persistence of shortcomings in the application of the Convention;
- the urgency of a specific situation;
- comments received by employers' and workers' organizations;
- the nature of a specific situation (if it raises a hitherto undiscussed question, or if the case presents an interesting approach to solving questions of application);
- the discussions and conclusions of the Conference Committee of previous sessions and, in particular, the existence of a special paragraph;
- the likelihood that discussing the case would have a tangible impact;
- balance between fundamental, governance and technical Conventions;
- geographical balance; and
- balance between developed and developing countries.

There is also the possibility of examining one case of progress as was done in 2006, 2007, 2008 and 2013.<sup>21</sup>

<sup>17</sup> See Part I above.

<sup>18</sup> In March 2015, the Informal Working Group recommended that, in 2015, the list should be adopted no later than the second sitting of the Committee.

<sup>19</sup> These elements were included in the Joint Statement of the Workers' and Employers' groups of February 2015 referred to above.

<sup>20</sup> See paras 57–64 of the General Report of the Committee of Experts. The criteria developed by the Committee of Experts for footnotes are also reproduced in Appendix I.

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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.

*Automatic registration.* Since 2010, cases included in the final list have been automatically registered and scheduled by the Office, on the basis of a rotating alphabetical system, following the French alphabetical order; the “A+5” model has been chosen to ensure a genuine rotation of countries on the list. This year, the registration will begin with countries with the letter “Z”. Cases will be divided into two groups: the first group of countries to be registered following the above alphabetical order will consist of those cases in which the Committee of Experts requested governments to submit full particulars to the Conference (“double-footnoted cases”).<sup>22</sup> At its March 2015 meeting, the Informal Working Group has recommended that, as has been the practice since 2012, the Committee begins its discussion with these cases. The other cases on the final list are then registered by the Office also following the abovementioned alphabetical order.

Information on the agenda of the Committee and the date on which cases may be heard is available:

- (a) through the *Daily Bulletin*;
- (b) by means of letters sent to the representatives of the countries concerned by the Chairperson of the Committee;
- (c) by means of a D document containing the list of individual cases and the working schedule for the examination of these cases, which is made available to the Committee as soon as possible after the adoption of the list of cases.<sup>23</sup>

*Supply of information.* Prior to their oral intervention before the Conference Committee, governments may submit written information that will be summarized by the Office and made available to the Committee.<sup>24</sup> These written replies are to be provided to the Office at least **two days** before the discussion of the case. They serve to complement the oral reply that will be provided by the government. They may not duplicate the oral reply nor any other information already provided by the government. 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. As recommended by the Informal Working Group, the conclusions should be short, clear and specify the action expected of governments, including the technical assistance to be provided by the Office, if applicable. The conclusions should reflect consensus recommendations. Divergent views can be reflected in the CAS record of

<sup>21</sup> See paras 65–71 of the General Report of the Committee of Experts. The criteria developed by the Committee of Experts for identifying cases of progress are also reproduced in Appendix II.

<sup>22</sup> See para. 62 of the General Report of the Committee of Experts.

<sup>23</sup> Since 2010, this document is appended to the General Report of the Committee.

<sup>24</sup> See above Part III(C)(ii).



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proceedings. Conclusions on the cases discussed will be adopted at dedicated sittings. The governments concerned will be informed of the adoption of conclusions by the secretariat including through the *Daily Bulletin*.

As per the Committee's decision in 1980,<sup>25</sup> Part One of its report will contain a section entitled "Application of ratified Conventions", in which the Committee draws the attention of the Conference to: (i) cases of progress, where governments have introduced changes in their law and practice in order to eliminate divergences previously discussed by the Committee; (ii) certain special cases, which are mentioned in special paragraphs of the report; and (iii) cases of continued failure over several years to eliminate serious deficiencies in the application of ratified Conventions which it had previously discussed.

## VII. Participation in the work of the Committee

As regards failure by a government to take part in the discussion concerning its country, despite repeated invitations by the Committee, the following measures will be applied, in conformity with the decision taken by the Committee at the 73rd Session of the Conference (1987), as amended at the 97th Session of the Conference (2008),<sup>26</sup> and mention will be made in the relevant part of the Committee's report:

- In accordance with the usual practice, after having established the list of cases regarding which Government delegates might be invited to supply information to the Committee, the Committee shall invite the governments of the countries concerned in writing, and the *Daily Bulletin* shall regularly mention these countries.
- Three days before the end of the discussion of individual cases, the Chairperson of the Committee shall request the Clerk of the Conference to announce every day the names of the countries whose representatives have not yet responded to the Committee's invitation, urging them to do so as soon as possible.
- On the last day of the discussion of individual cases, the Committee shall deal with the cases in which governments have not responded to the invitation. Given the importance of the Committee's mandate, assigned to it in 1926, to provide a tripartite forum for dialogue on outstanding issues relating to the application of ratified international labour Conventions, a refusal by a government to participate in the work of the Committee is a significant obstacle to the attainment of the core objectives of the International Labour Organization. For this reason, the Committee may discuss the substance of the cases concerning governments which are registered and present at the Conference, but which have chosen not to be present before the Committee. The debate which ensues in such cases will be reflected in the appropriate part of the report, concerning both individual cases and participation in the work of the Committee. In the case of governments that are not present at the Conference, the Committee will not discuss the substance of the case, but will draw attention in its report to the importance of the questions raised.<sup>27</sup> In both situations, a particular emphasis will be put on steps to be taken to resume the dialogue.

<sup>25</sup> See footnote 15 above.

<sup>26</sup> See *Provisional Record* No. 24, International Labour Conference, 73rd Session, 1987, para. 33; and *Provisional Record* No. 19, International Labour Conference, 97th Session, 2008, para. 174.

<sup>27</sup> In November 2010, the Informal 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

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## VIII. 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. The time available to delegates to submit amendments to the draft minutes will be clearly indicated by the Chairperson when the draft minutes are made available to the Committee. 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.

## IX. 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.

the importance of the questions raised. The Informal Working Group considered that no country should use inclusion on the preliminary list of individual cases as a reason for failing to ensure that it was accredited to the Conference. If a country on the preliminary list registered after the final list was approved, it should be asked to provide explanations (see *Provisional Record* No. 18, International Labour Conference, 100th Session, 2011, Part I/54).

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- In view of the above limits on speaking time, a government whose case is to be discussed are invited to complete the information provided, where appropriate, by a written document, not longer than five pages, to be submitted to the Office at least two days before the discussion of the case.<sup>28</sup>

## **X. 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.

<sup>28</sup> See Part VI above.



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## Appendix I

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

#### *Excerpts of the General Report of the Committee of Experts (104 III(1A))*

57. As in the past, the Committee has indicated by special notes (traditionally known as “footnotes”) at the end of its comments the cases in which, because of the nature of the problems encountered in the application of the Conventions concerned, it has seemed appropriate to ask the government to supply a report earlier than would otherwise have been the case and, in some instances, to supply full particulars to the Conference at its next session in June 2015.

58. 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.

59. 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.

60. 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.

61. 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 Convention

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## Appendix II

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

#### *Excerpts of the General Report of the Committee of Experts (104 III(1A))*

66. 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 relates to the adoption of legislation, the Committee may also consider appropriate follow-up measures for its practical application.
- (6) In identifying cases of progress, the Committee takes into account both the information provided by governments in their reports and the comments of employers' and workers' organizations.

67. 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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70. Within cases of progress, the distinction between cases of satisfaction and cases of **interest** was formalized in 1979. In general, cases of interest **cover measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners.** The Committee's practice has developed to such an extent that cases in which it expresses interest may encompass a variety of measures. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention. This may include:

- draft legislation that is before parliament, or other proposed legislative changes forwarded or available to the Committee;
- consultations within the government and with the social partners;
- new policies;
- the development and implementation of activities within the framework of a technical cooperation project or following technical assistance or advice from the Office;

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- 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.

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**Annex 2**

INTERNATIONAL LABOUR CONFERENCE

C.App./D.5

104th Session, Geneva, June 2015

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**Committee on the Application of Standards**

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**Cases 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 document.

The text of the corresponding observations concerning these cases will be  
found in document C.App./D.5/Add.1.



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

Report of the Committee of Experts  
(Report III (Part 1(A), ILC, 104th Session, 2015))

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<b>Country</b>	<b>Convention number</b> (The page numbers in parentheses refer to the English version of the Report of the Committee of Experts)
Albania	182 (page 177)
Algeria	87 (page 46)
Bangladesh	87 (page 49)
Belarus	87 (page 51)
Plurinational State of Bolivia	138 (page 192)
Cambodia	182 (page 198)
Cameroon	182 (page 200)
El Salvador	87 (page 72)
Eritrea	29 (page 160)
Guatemala	87 (page 88)
Honduras	81 (page 333)
India	81 (page 335)
Italy	122 (page 377)
Kazakhstan	87 (page 104)
Republic of Korea	111 (page 267)
Mauritania	29 (page 166)
Mauritius	98 (page 118)
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Philippines	176 (page 430)
Qatar	29 (page 167)
Spain	122 (page 385)
Swaziland	87 (page 129)
Turkey	155 (page 440)
Bolivarian Republic of Venezuela	87 (page 132)

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