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FIFTEENTH ITEM ON THE AGENDA

Report of the Director-General

Sixth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Chile of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), made under article 24 of the ILO Constitution by the College of Teachers of Chile AG

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I. Introduction

1. By a communication dated 30 September 2013, the College of Teachers of Chile AG made a representation to the International Labour Office under article 24 of the ILO Constitution alleging non-observance by Chile of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).
2. Convention No. 187 was ratified by Chile on 27 April 2011 and remains in force for that country.
3. The following provisions of the ILO Constitution relate to representations:

Article 24

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

Article 25

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

4. Representations are examined in accordance with the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution, as revised by the Governing Body at its 291st Session (November 2004).
5. In accordance with articles 1 and 2(1) of the Standing Orders, the Director-General acknowledged receipt of the representation, informed the Government of Chile thereof and brought the representation before the Officers of the Governing Body.
6. At its 320th Session (March 2014), the Governing Body decided that the representation was receivable.
7. At its 321st Session (June 2014), the Governing Body set up a tripartite committee to examine the matter, composed of Mr Carlos Flores (Government member, Bolivarian Republic of Venezuela), Mr Kris de Meester (Employer member, Belgium) and Mr Gerardo Martínez (Worker member, Argentina).
8. The Government of Chile supplied information in reply to the representation, which was received on 26 February 2015 and 24 August 2015.
9. The Committee met on 25 March 2015 and requested additional information from the Government of Chile. It also met on 14 March 2016 to examine the representation and adopt its report.

II. Examination of the representation

A. The complainant's allegations

10. In its communication dated 30 September 2013, the complainant organization (the College of Teachers of Chile AG, hereinafter: "College of Teachers") asserts that Chile has failed to take measures to ensure satisfactory application of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). Specifically, it states that this can be seen in the lack of a national policy on occupational safety and health (OSH) (Article 3), a national system for OSH (Article 4) and a national programme on OSH (Article 5) for addressing issues relating to teachers' work.
11. With regard to the national system, the complainant alleges that the Government has not taken the necessary steps to bring the legislation referred to in the next paragraph of this report into line with the Convention. It adds that this legislation creates the basis for unpaid, out-of-hours work by municipal teachers, which is having an adverse impact on their health. The complainant refers in particular to the excessive working hours connected with the current distribution of teachers' work and to how the process for the appraisal of municipal teachers is designed, which makes the excessive workload even heavier and is extremely damaging to teachers' occupational health.
12. The complainant adds that the current distribution of teachers' work results from the application of an existing set of legal provisions which were not the subject of consultation with the representative organizations in the teaching sector as prescribed by the Convention. The legal provisions in question are as follows: (1) the Teachers' Statute, adopted by Ministry of Education Legislative Decree No. 1, published in the Official Journal of 22 January 1997, establishing the revised and consolidated text of Act No. 19.070 adopting the Education Professionals' Statute, and the laws supplementing or amending it (hereinafter: "the Teachers' Statute"), which applies to municipal teachers; (2) the Regulations implementing the Teachers' Statute, adopted by Decree No. 453, published on 3 September 1992 (hereinafter: "the Regulations of the Teachers' Statute"); (3) Act No. 19.933, published in the Official Journal of 12 February 2004, amending the Teachers' Statute; (4) Ministry of Education Decree No. 192, published in the Official Journal of 11 June 2005; and (5) Act No. 20.501, published in the Official Journal of 26 February 2011, amending the Teachers' Statute.

Legislation concerning activities to be performed during non-teaching (supplementary) hours

13. Regarding the Teachers' Statute, the complainant organization indicates that, under section 69 thereof, weekly classroom teaching may not exceed 33 hours and the remaining time is designated for non-teaching curricular activities. The complainant questions the retention of section 69 without the necessary reforms being made with regard to the increase in activities to be performed during non-teaching (supplementary) hours, and without preventing non-teaching time from being used to "disguise" extra teaching hours.
14. As regards the Regulations of the Teachers' Statute, the complainant indicates that they establish the respective amounts of time designated for classroom teaching, non-teaching curricular activities and rest breaks, and that the table relating to section 69 of the Teachers' Statute shows that municipal teachers are obliged to devote about 75 per cent of their working time to classroom teaching and about 25 per cent of working time to other supplementary (non-teaching) activities. The complainant questions the retention of

section 20 of the Regulations of the Teachers' Statute, according to which supplementary non-teaching activities may comprise as many as 52 possible tasks.

Legislation concerning the teacher appraisal process

15. With regard to Act No. 19.933, the complainant organization declares that the Act amended section 70 of the Teachers' Statute introducing the teacher appraisal process without specifying at what point in the work schedule this obligation should be fulfilled, an obligation that entails about four months' work every four years. The complainant adds that, since the law has nothing to say on this matter, it is the education inspection bodies – such as the Labour Directorate for Municipal Corporations and the Office of the Comptroller-General – dealing with teachers subject to direct municipal administration which have indicated that the discussion and production of documents for the appraisal process should be added to the supplementary non-teaching activities covered by the abovementioned 25 per cent of teachers' working time.
16. The complainant also indicates that Act No. 20.501, amending the Teachers' Statute, made the appraisal process provided for in section 70 of the Teachers' Statute tougher and imposed more stringent demands for retaining employment. The complainant adds that Act No. 20.501 amended section 7bis(2)(a) of the Teachers' Statute in providing that head teachers in the municipal sector can propose each year to terminate the employment of up to 5 per cent of teachers in the establishment concerned if the latter are rated as "poor" in their appraisal.
17. Concerning the administrative interpretation whereby the appraisal process should be included in the 25 per cent of working time designated for supplementary non-teaching activities, the complainant points out that this administrative interpretation is purely theoretical since the 25 per cent of working time designated for supplementary non-teaching activities is – to say the least – insufficient to meet the regular demands imposed by ministerial authorities, direct superiors and the law. Municipal teachers in Chile are obliged to work extra hours at home to meet these multiple demands, on top of which there is the teacher appraisal process, resulting in the gradual deterioration of their health, quality of life and family relationships.
18. The complainant states that Decree No. 192 regulates the teacher appraisal process, which takes at least four months (July, August, September and October). The Ministry of Education starts the process by delivering the "appraisal portfolios" at the start of the school winter break in July – normally a time of rest for teachers – so that teachers can begin to study the voluminous documentation involved. Thousands of municipal teachers in Chile have to be evaluated each year; in 2012, for example, the appraisal process covered 16,428 teachers.
19. The complainant attaches the "appraisal portfolio manual" and states that the appraisal is extremely complicated for teachers, apart from the fact that it entails a four-month process every four years and can result in the loss of the teacher's job for a single "poor" appraisal rating. The complainant emphasizes that the legislator did not indicate at what point in the teachers' work schedule the task of studying and working on the "self-appraisal" and the portfolio should be undertaken but that it involves a process that requires four months' work every four years. According to the complainant, the authority takes it for granted that teachers should undertake that study during their customary winter break in July but it says nothing about the subsequent processes specified in its own calendar. It states that in 2013 the process began on 29 July and was due to be concluded on 18 October. Since the legislator did not indicate at what point the appraisal should be carried out, the education inspection bodies indicated that this task should be added to the 52 other tasks to be accomplished during the 25 per cent of working time designated for non-teaching activities.

20. The complainant alleges that during the nearly four-month appraisal period the thousands of teachers concerned are obliged to take home all or part of the work that the process entails, since it goes beyond contractual hours of work and there is no suitable space for it in the schools. It adds that, since the teacher appraisal process acquired a decidedly punitive slant under Act No. 20.501 of 2011 with the possibility of termination of employment, the levels of tension and anxiety experienced by teachers in their efforts to achieve a reasonable result have increased drastically and their quality of life and health has deteriorated to an alarming degree. According to the complainant, the main problem is the excessive workload that the appraisal entails, resulting in extra hours of work, because the designated 25 per cent of working time is insufficient for teachers to perform all supplementary non-teaching tasks and also because suitable individual space is lacking in the schools. It emphasizes that the hours required for performing this task constitute compulsory but unpaid overtime.
21. According to the complainant, the appraisal provided for in section 70 of the Teachers' Statute, which was originally of a "formative" nature, has become "punitive" in practice as a result of Act No. 20.501. The fifth paragraph of section 70 provides that an appraisal of every teacher shall be conducted every four years and its final result shall correspond to one of the following performance ratings: outstanding, competent, basic or unsatisfactory. Section 7bis(2)(a) of the Teachers' Statute, as amended by Act No. 20.501, provides that head teachers in the municipal sector can ... propose each year to terminate the employment of up to 5 per cent of teachers in the establishment concerned if their appraisal rating is poor. Through Act No. 20.501, a paragraph 8bis was added to section 70, to the effect that "for the purposes of section 7bis(2)(a), an unsatisfactory or basic level of performance shall be rated as poor".
22. Hence, the complainant claims, as a result of the amendments to the Teachers' Statute made by Act No. 20.501, the employment of a teacher whose performance has been rated as unsatisfactory or basic on the basis of a single appraisal may be terminated without any further appraisal being necessary, even if the teacher concerned was rated as "good" in previous appraisals.
23. The complainant states that the main problem with the teacher appraisal process is the way it is designed, since it makes the excessive workload even heavier and more stressful; the performance of these tasks outside contractual working hours constitutes compulsory but unpaid overtime and is extremely damaging to municipal teachers' occupational health, with a consequent gradual decline in their personal health. If, by legal regulation and with the threat of imminent dismissal, further work obligations are imposed at regular intervals, as is the case with the teacher appraisal process, this creates a critical situation for teachers' health. In conclusion, the complainant organization states that there is a nationwide problem of virtually non-existent protection of teachers' health, with no sign of any attempts to find a solution.

Decline in teachers' health

24. The complainant organization states that, according to the first teaching survey in Chile carried out in 2012 by Eduglobal Education Services Network, to which 12,000 teachers replied, 69 per cent of respondents devote between seven and 20 hours per week to teaching-related tasks outside contractual working time for no pay. The unpaid extra hours cover tasks such as planning, lesson preparation, marking of tests, student care and guidance, behaviour management and interaction with colleagues.
25. The complainant attaches a 2005 UNESCO study on occupational health and working conditions for teachers, which includes case studies from Argentina, Chile, Ecuador, Mexico, Peru and Uruguay. It states that, according to this study, 38 per cent of teachers surveyed in Santiago de Chile reported a workload that occupied an extra 20 hours per week

outside working time. The study indicates that the ailments suffered by teaching staff fall into three categories: chronic illness, disorders linked to ergonomic criteria, and impairment of mental health (stress, psychosomatic problems and anxiety). In this situation, teachers have insufficient free time to devise coping strategies to recover from fatigue. The complainant asserts that the ongoing compulsory extra work performed at home outside normal working hours would be damaging to any worker's health.

26. In summary, the complainant organization states that, up to the date of ratification of the Convention, the prevailing legislation and culture led to the acceptance of unpaid teaching work outside contractual working hours. The ratification of the Convention created a legitimate expectation that the Government would implement a national policy on OSH, a national system for OSH and a national programme on OSH. However, the failure to align the legislation in question is clearly at odds with the Convention, since the Government should have taken steps to ensure compliance with that instrument. The Government has merely presented amendments to the draft legislation, as referred to in Bulletin No. 8189-04, in which teaching hours are reduced by 5 per cent. In other words, as from 2016 and 2017, the distribution of working time proposed to the National Congress would be 70 per cent for teaching hours and 30 per cent for non-teaching hours, instead of the current 75/25 per cent distribution. The complainant asserts that this is completely inadequate, unduly delaying implementation and failing to resolve the issue of the time occupied by the teacher appraisal process, and considers that this initiative contravenes the Convention since it has not been the subject of consultations. The complainant claims that the College of Teachers, which is the largest and most representative teachers' union in Chile, has not been contacted or consulted on these issues relating to the health and quality of life of municipal teachers.

B. The Government's reply

27. In its observations the Government states that the representation made by the complainant organization relates to an issue that has been referred to as "excess teaching workload" in the process of social dialogue for 2014–15 and forms part of the context of the discussions on the reform of education which is under way in Chile.
28. The Government adds that the reform of education is one of the fundamental transformations proposed in its current programme, which seeks to make institutional changes regarding the provision of general public education, putting an end to administration at the municipal level since it considers that the municipalities have different functions and face complexities which, barring certain exceptions, make proper management of education difficult. In addition, municipal education is subject to a set of regulations and restrictions concerning its management which affect its performance and, in particular, the management of human resources.
29. The Government states that the approach adopted towards education reform considers that the administration of public education establishments must be in the hands of specialist institutions, and so it is proposed to create a decentralized national public education service and local public education services, which maintain proximity to the education community, being geographically defined according to school districts. The primary function of the national public education service shall be to provide technical, pedagogical, administrative and financial support to public school establishments via local services.
30. The Government adds that, in the context of social dialogue, the College of Teachers made a presentation in April 2014 to the Ministry of Education, which was responsible for the reform, and proposed dealing with five points which had been declared pending by previous government administrations, under the so-called "short agenda". The Government points out

that the College of Teachers considers that these matters must be dealt with by the Government before any reforms of education policy are undertaken.

31. *Agreement between the Government and the College of Teachers.* The Government states that, on 20 November 2014, the Government and the College of Teachers signed an agreement which was forwarded to the ILO by the Government. According to the Government, this agreement settles the five demands made by the College of Teachers.
32. The Government states that three of the five points were of a legal nature and that these three points have been or are about to be resolved. The two pending items will be dealt with in technical round tables with the participation of representatives of both parties. The subject matter of the representation of the College of Teachers would be addressed in the context of the “technical round table on excess teaching work” (hereinafter: “round table”).
33. The Government adds that it was agreed to set up the round table composed of representatives of the Education Supervisory Authority, the General Education Division at the Ministry of Education, and the College of Teachers. The subjects to be addressed would include the following: (a) teacher lesson planning; (b) external advisory councils of schools and their involvement in teaching activity; (c) summer holidays; and (d) pedagogical autonomy of teachers in educational activities. The Government indicates that the round table held meetings in December 2014 and January 2015, and produced a report with outcomes and conclusions on the subject, with the agreement to resolve the issue of teaching and non-teaching time, increasing the number of non-teaching hours in draft legislation establishing a new teaching career path.
34. *Report on outcomes and conclusions of the round table on excess teaching work (hereinafter: “round table report”). Definition of “excess teaching work”.* According to the round table report sent by the Government and adopted by joint agreement with the complainant organization, “excess teaching work” shall be defined as “all tasks which, under the current legal framework, exceed the contractual workload and pedagogical responsibilities that constitute the official duties of the classroom teacher”. The Government adds that the round table addressed the matters that constitute the main sources of overload for classroom teachers.
35. *Round table report and supplementary curricular non-teaching activities.* The Government states that the round table analysed “all tasks which, under the current legal framework, exceed the contractual workload and pedagogical responsibilities that constitute the official duties of the classroom teacher”, concluding that the time currently designated for non-teaching curricular activities was insufficient. The Government adds that, since the issue is regulated by law, the solution to the problems should be incorporated in the draft legislation establishing a new teaching career path, in the context of the education reform and national policy on teaching. The Government also states that the round table adopted joint conclusions which established the following obligations: (i) for employers, to observe the legislation in force relating to the assignment of non-teaching tasks, which must be adjusted to the number of hours established in the teaching appointment or contract; (ii) to publicize the right of teachers with 30 or more years of service to reduce their teaching hours; and (iii) to increase the proportion of non-teaching time in the very near future, as part of the education reform and national policy on teaching.
36. *Round table report and teacher appraisal.* As indicated in the round table report, the representatives of the College of Teachers, by mandate of their national assembly, requested that the teacher appraisal be suspended pending the establishment of the new teaching career path. The Ministry of Education considered that this request should be made within the instances to discuss the teaching profession, in which the College of Teachers and the

Ministry of Education participate with respect to the professional career agenda which is decided upon in accordance with the time frame for education reform.

Additional information from the Government

37. In its additional information the Government sent a copy of Order No. 05/167 of 31 March 2015, whereby the Ministry of Education informed and instructed all regional education ministerial secretaries and heads of provincial education departments to implement the guidelines agreed upon in the round table.
38. The Order contains guidelines on five points, one of which refers to non-teaching time. Point 2 of the Order states: “Consensus has been reached in the country that the number of contractual working hours for teachers that is currently designated for non-teaching curricular activities is insufficient. Establishing a new distribution of teaching and non-teaching time to improve teachers’ working conditions forms part of the national policy on teaching as part of the education reform that is under way”. The Order adds that it should be noted that non-teaching activities are always to be performed within contractual working hours, being adjusted to the number of hours specified in the teaching appointment or contract and in conformity with Ministry of Education Supreme Decree No. 453 of 1991. If these duties go beyond contractual hours of work, they are to be limited to what is laid down by administrative precedent. It also recalls that teachers with 30 or more years of service may request a reduction in teaching time to give a maximum total of 24 hours, and recommends that the provisions of section 69, final paragraph, of the Teachers’ Statute and its Regulations be revised.

III. The Committee’s conclusions

39. The Committee has based its conclusions on the examination of the allegations made by the complainant organization, and the observations and additional information sent by the Government. It has also taken account of the previous information supplied by the Government in the context of its report on the application of Convention No. 187 under article 22 of the ILO Constitution, the comments made in this regard by the Committee of Experts on the Application of Conventions and Recommendations (CEACR), and the Committee of Experts’ General Survey on occupational safety and health (2009).

A. Preliminary observations

40. The Committee notes the complainant’s allegation that the Government has failed to promote the development of a national policy, system and programme for occupational safety and health (OSH) that addresses the issues relating to teachers’ work. As regards the national system, the complainant alleges that the Government has not amended its legislation with a view to protecting teachers’ health, and in particular that the current distribution of municipal teachers’ workload between teaching and supplementary non-teaching activities, including the national teacher appraisal process implemented outside contractual working hours, has been extremely damaging to teachers’ health.

B. Applicable provisions of relevant ILO instruments

41. Firstly, the Committee wishes to recall that the objective of Convention No. 187 is defined in Article 2 of the Convention. In particular, Article 2(1) provides as follows:

Each Member which ratifies this Convention shall promote continuous improvement of occupational safety and health to prevent occupational injuries, diseases and deaths, by the development, in consultation with the most representative organizations of employers and workers, of a national policy, national system and national programme.

Article 2(2) provides as follows:

Each Member shall take active steps towards achieving progressively a safe and healthy working environment through a national system and national programmes on occupational safety and health by taking into account the principles set out in instruments of the International Labour Organization (ILO) relevant to the promotional framework for occupational safety and health.

42. In this regard, the Committee recalls that the list of relevant ILO instruments is set out in the Annex to the Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197), and this list includes the Occupational Safety and Health Convention, 1981 (No. 155), and the Occupational Safety and Health Recommendation, 1981 (No. 164).
43. The national policy on OSH, the national system for OSH and the national programme on OSH are provided for in Articles 3, 4 and 5, respectively, of Convention No. 187. In view of the above, the Committee will examine the complainant's allegations primarily in the light of the following provisions of the Convention:

Article 3

1. Each Member shall promote a safe and healthy working environment by formulating a national policy.
2. Each Member shall promote and advance, at all relevant levels, the right of workers to a safe and healthy working environment.
3. In formulating its national policy, each Member, in light of national conditions and practice and in consultation with the most representative organizations of employers and workers, shall promote basic principles such as assessing occupational risks or hazards; combating occupational risks or hazards at source; and developing a national preventative safety and health culture that includes information, consultation and training.

Article 4

1. Each Member shall establish, maintain, progressively develop and periodically review a national system for occupational safety and health, in consultation with the most representative organizations of employers and workers.
2. The national system for occupational safety and health shall include among others:
 - (a) laws and regulations, collective agreements where appropriate, and any other relevant instruments on occupational safety and health;

...

Article 5

1. Each Member shall formulate, implement, monitor, evaluate and periodically review a national programme on occupational safety and health in consultation with the most representative organizations of employers and workers.
2. The national programme shall:
 - (b) contribute to the protection of workers by eliminating or minimizing, so far as is reasonably practicable, work-related hazards and risks, in accordance with national law and practice, in order to prevent occupational injuries, diseases and deaths and promote safety and health in the workplace;

...

- (c) be formulated and reviewed on the basis of analysis of the national situation regarding occupational safety and health, including analysis of the national system for occupational safety and health;
- (d) include objectives, targets and indicators of progress; and
- ...

44. Furthermore, the Committee notes that, according to Article 1(a) of Convention No. 187, “the term national policy refers to the national policy on occupational safety and health and the working environment developed in accordance with the principles of Article 4 of the Occupational Safety and Health Convention, 1981 (No. 155)”. In turn, Article 4 of Convention No. 155 provides that:

1. Each Member shall, in the light of national conditions and practice, and in consultation with the most representative organizations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment.
2. The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment.

45. In addition, Paragraph 4 of Recommendation No. 164 provides as follows:

4. With a view to giving effect to the policy referred to in Article 4 of the Convention, and taking account of the technical fields of action listed in Paragraph 3 of this Recommendation, the competent authority or authorities in each country should:
 - (a) issue or approve regulations, codes of practice or other suitable provisions on occupational safety and health and the working environment, account being taken of *the links existing between safety and health, on the one hand, and hours of work and rest breaks, on the other* (emphasis added).
- ...

C. Examination of the conformity of adopted measures with Article 3 of the Convention – National policy on OSH

46. The Committee notes the complainant’s allegation that there is no national policy on OSH that, among other things, addresses the specific problems faced by teachers. According to the complainant, as of the time of submission of the representation, there had been no consultations in this regard. The Committee notes the Government’s statement that, since November 2014, the Government and the College of Teachers have been holding consultations within a number of round tables, in particular the “technical round table on excess teaching work”.
47. First, the Committee recalls that, according to Article 1 of Convention No. 187, the national policy must be developed in accordance with the principles of Article 4 of the Occupational Safety and Health Convention, 1981 (No. 155). The Committee recalls that both Article 3 of Convention No. 187 and Article 4 of Convention No. 155 prescribe consultations with the social partners with regard to the formulation of a national policy on OSH and the working environment.
48. Furthermore, the Committee notes that the CEACR, in its direct request of 2013 on the application of the Convention in Chile, took note of the following: although the Government had still not formally adopted a national policy on OSH, it was holding consultations on the matter; in April 2012, the Government organized a course on the formulation of the national policy, with technical assistance from the Office; drafts of a national policy were prepared

and by October/November 2013 the third draft of the national policy would be ready for submission to the most representative employers' and workers' organizations to seek their views; and this draft could be adopted in the form of a presidential decree in January 2014. The Committee notes that in the 2013 direct request the CEACR asked the Government to provide information on the consultations held and the results thereof.

49. Moreover, the Committee recalls that, as reflected in the 2009 CEACR General Survey on OSH, national OSH policy constitutes a cyclical and dynamic process of continuous improvement, and the identification of problems and the search for solutions in consultation with the most representative employers' and workers' organizations is central to national policy. It emphasizes in particular that, in accordance with Article 3(3) of Convention No. 187, the Government must assess occupational risks and combat them at source. It also recalls that, in accordance with Article 1(a) of the Convention, the Government must develop its national policy in accordance with the principles of Article 4(2) of Convention No. 155, which provides that the aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment.
50. *Consequently, while observing that the Government is taking steps to examine the problems of the teaching sector and to find solutions in consultation with the College of Teachers, the Committee trusts that, in the context of the formulation of the national policy on OSH which is under discussion, in consultation with the most representative organizations, any national policy formulated will address the issues identified in the social dialogue under way, taking account of the principles indicated in the previous paragraph.*

D. Examination of the conformity of adopted measures with Article 4 of the Convention – national system for OSH

51. The Committee recalls that legislation is the first of the four components of the national system for OSH set out in Article 4(2) of Convention No. 187. The Government's obligations with respect to the components of the OSH system are laid down in Article 4(1) of the Convention, which reads as follows: "Each Member shall establish, maintain, progressively develop and periodically review a national system for occupational safety and health, in consultation with the most representative organizations of employers and workers". The key role of legal obligations as a component of the OSH system is expressed in the duty established in Article 2(1) to "promote continuous improvement of occupational safety and health to prevent occupational injuries, diseases and deaths".
52. *The national legislation concerned.* The Committee notes the complainant's allegation that, despite ratification of Convention No. 187, the Teachers' Statute, its implementing Regulations, Act No. 19.933, Act No. 20.501 and other relevant legislation have not been brought into line with the Convention with a view to resolving the OSH-related issues for teachers arising from the aforementioned legislation. It also notes the claim that the main OSH-related problems are those arising from the excessive workload in teaching (referred to as "excess teaching work"), as a result of the current distribution of work between teaching and supplementary non-teaching time, including the appraisal process. The Committee notes in particular the complainant's allegation that the extra tasks that teachers are obliged to perform during the 25 per cent of working hours designated by the legislation for supplementary non-teaching activities (including the appraisal process) require in practice much more than that percentage of contractual working hours.
53. The Committee notes that, according to the information supplied by the Government, there are visible results from the dialogue between the Government and the complainant

organization on: firstly, the general issue of the excessive workload (“excess teaching work”); secondly, the time designated for supplementary non-teaching activities; and, thirdly, the appraisal process. The Committee proposes to make a separate examination of the complainant’s allegations concerning these three issues.

- 54.** *General issue of the excessive workload. Excess teaching work.* The Committee notes the information supplied by the Government to the effect that the representation made by the College of Teachers is concerned with a matter referred to as “excess teaching work” in the social dialogue process for 2014–15. The Committee notes that the “technical round table on excess teaching work” produced an outcome report on 20 November 2014, which stated that “excess teaching work” would be defined as “all tasks which, under the current legal framework, exceed the contractual workload and pedagogical responsibilities that constitute the official duties of the classroom teacher”. The Committee also notes the Government’s indication that it was agreed by the Government and the College of Teachers that the time designated for supplementary non-teaching activities was insufficient, that this was a matter of law, and that the solutions to the problems should therefore be incorporated in the draft legislation establishing a new teaching career path, as part of the education reform and national policy on teaching.
- 55.** *In the light of the above, the Committee considers that, since 2014, the Government has been taking steps to give effect to Article 4(1) and (2) of Convention No. 187, and that it should continue to establish, maintain, progressively develop and periodically review a legislative framework that is relevant to OSH for teachers, including the legislation referred to above, and to promote continuous improvement of occupational safety and health to prevent occupational injuries, diseases and deaths, in consultation with the College of Teachers, account being taken of the links existing between safety and health, on the one hand, and hours of work and rest breaks, on the other.*
- 56.** *Follow-up to the discussions on the legislative framework relating to supplementary non-teaching activities.* The Committee notes that, according to the information supplied by the Government, the round table, composed of representatives of the Government and the College of Teachers, adopted the following joint conclusions: (i) for employers, to observe the legislation in force relating to the assignment of non-teaching tasks, which must be adjusted to the number of hours established in the teaching appointment or contract; (ii) to publicize the right of teachers with 30 or more years of service to reduce their teaching hours; and (iii) to increase the proportion of non-teaching time in the very near future, as part of the education reform and national policy on teaching.
- 57.** Furthermore, the Committee notes that the Government, in its additional information, sent the Office a copy of Order No. 05/167 of 31 March 2015, which reproduces the joint guidelines adopted by the Government and the College of Teachers as a result of the round table. The Committee notes with interest that this measure was adopted in consultation with the complainant organization and so the consultations prescribed by Convention No. 187 were indeed held. Moreover, the Committee notes that this Order contains the recommendation that the provisions of section 69, final paragraph, of the Teachers’ Statute and its implementing Regulations concerning the proportion of hours designated for supplementary non-teaching activities should be amended.
- 58.** The Committee observes that, as a result of these consultations, there are the beginnings of an interim solution in the abovementioned Order, pending the adoption of the basic legislation, to ensure that supplementary non-teaching tasks assigned to municipal teachers do not exceed the hours of work specified in the teaching appointment or contract and that the proportion of time designated for such tasks is increased in the very near future.

- 59.** *The Committee therefore considers that, with the joint conclusions adopted in consultation with the College of Teachers and the issuing of Order No. 05/167 containing them, the Government is taking steps to give effect to Article 4(2)(a) of Convention No. 187 and also considers that it should continue to take appropriate measures, in consultation with the representative organizations in the sector, towards achieving progressively a safe and healthy working environment, in accordance with Article 2(2) of the Convention. In this context, the Committee trusts that the Government will amend section 69 of the Teachers' Statute and its related Regulations.*
- 60.** *Follow-up to the discussions on the legislative framework relating to the teacher appraisal process.* The Committee notes the complainant's allegation that the teacher appraisal process, in its current format, is having a harmful impact on OSH for municipal teachers. According to the complainant, the appraisal process entails four months' work every four years, and since the legislation did not specify at what point during the work timetable the appraisal was to be undertaken, it has to be performed through extra hours which are compulsory but unpaid, generally at the teacher's home. In addition, as a result of the latest reform in Act No. 20.501 of 2011, up to 5 per cent of teachers can be dismissed as a result of a single "poor" appraisal rating, even if they had previously been rated as "good". The result, according to the complainant, is a critical situation where protection of teachers' health is virtually non-existent.
- 61.** It is the Committee's understanding that the complainant does not question the appraisal process itself but simply the way in which it is implemented and impacts OSH for municipal teachers.
- 62.** The Committee notes that the round table report does not contain any joint conclusions on the legislation relating to the teacher appraisal process and merely sets out the difference in positions between the Government and the complainant organization. It also notes that the College of Teachers asked for the teacher appraisal process to be suspended pending the establishment of the new teaching career path. In addition, the Ministry of Education considered that this request should be made within the instances to discuss the teaching profession, in which the College of Teachers and the Ministry of Education participate with respect to the professional career agenda which is decided upon in accordance with the time frame for education reform.
- 63.** The Committee observes that the Government, in its additional information, does not provide any information on the follow-up to this subject, in other words it does not specify whether the dialogue has continued in the instances to discuss the teaching profession, as proposed by the Ministry of Education, and does not indicate the results achieved. The Committee recalls that this issue arises from the following legislation: section 70 of the Teachers' Statute as amended by Act No. 19.933 of 2004, Ministry of Education Decree No. 192 of 2005, and Act No. 20.501 of 2011.
- 64.** *In the light of the above, the Committee trusts that the Government will take the necessary steps in the very near future, in consultation with the College of Teachers, to review the legislation relating to the time required for the teacher appraisal process, and also the locations assigned for carrying it out, giving effect to the obligation in Article 2(1) of the Convention to "promote continuous improvement of occupational safety and health to prevent occupational injuries, diseases and deaths".*

E. Examination of the conformity of adopted measures with Article 5 of the Convention – National programme on OSH

65. The Committee notes the complainant's allegation that there is no national programme on OSH, especially with regard to teachers. The Committee also notes that the allegations are of a general nature and that the Government does not argue this point.
66. The Committee recalls that a national OSH programme may be more specific than a national OSH policy and that, according to Article 5(2)(b), (c) and (d) of the Convention, it must contribute to the protection of workers by eliminating or minimizing work-related hazards and risks, requires an analysis of the national situation regarding OSH, and must include objectives, targets and indicators of progress.
67. *Referring to Article 5(2)(b), (c) and (d) of Convention No. 187, the Committee therefore encourages the Government to establish a national programme on OSH which takes account of the specific features of teaching work and includes objectives, targets and indicators of progress.*

IV. The Committee's recommendations

68. *In the light of its foregoing conclusions, the Committee recommends that the Governing Body:*
- (a) approve the present report;*
 - (b) request the Government, in the light of paragraphs 50, 55, 59, 64 and 67, to take the necessary steps to ensure the full application of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187);*
 - (c) entrust the Committee of Experts on the Application of Conventions and Recommendations with following up the matters raised in this report with respect to the application of Convention No. 187;*
 - (d) make this report publicly available and close the procedure initiated by the representation made by the College of Teachers of Chile AG alleging non-observance by Chile of Convention No. 187.*

Geneva, 14 March 2016

(Signed) C. Flores
Chairperson

K. de Meester

G. Martínez

Point for decision: Paragraph 68