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Ninth sitting, 11 June 2021 (cont.), 3 p.m.**Neuvième séance, 11 juin 2021 (suite), 15 heures****Novena sesión, 11 de junio de 2021 (cont.), 15 horas**

Chairperson: Ms Mvondo

Présidente: M^{me} Mvondo

Presidenta: Sra. Mvondo

Discussion of individual cases (cont.)**Discussion des cas individuels (suite)****Discusión de los casos individuales (cont.)****Namibia (ratification: 2001)**

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

Convention (n° 111) concernant la discrimination (emploi et profession), 1958

Convenio sobre la discriminación (empleo y ocupación), 1958 (núm. 111)

Présidente – Nous passons à la discussion du deuxième cas à notre ordre du jour,

à savoir l'application par la Namibie de la convention (n° 111) concernant la discrimination (emploi et profession), 1958.

À la lumière du nombre d'orateurs inscrits pour la discussion de ce cas et comme prévu dans les méthodes de travail, le bureau de la commission a décidé de réduire le temps de parole à deux minutes pour les délégués intervenant à titre individuel.

Je vous rappelle aussi que, en prélude à l'examen de son cas, le gouvernement de la Namibie a envoyé des informations écrites qui sont publiées sur la page Web de notre commission.

J'invite maintenant M. Utoni Nujoma, ministre du Travail, des Relations professionnelles et de la Création d'emplois de la Namibie à bien vouloir prendre la parole.

Government representative (Mr NUJOMA) – I thank the Committee on the Application of Standards (CAS) for this opportunity to present a response to the observations of the Committee of Experts on the Application of Conventions and Recommendations with respect to Namibia's implementation of Convention No. 111, which it ratified on 13 November 2001. This is the first time that Namibia has been asked to appear before CAS.

Before addressing the observations of the Committee of Experts, I want to register my concern with regard to the manner in which the list of individual cases to be considered by CAS was compiled. According to established criteria, the Committee, when compiling its list, is required to endeavour to achieve a balance of different categories of Conventions and geographical balance. It is our view that in applying the set criteria, the Committee did not adequately consider geographical balance. As a result, 3 countries from 16 Member States belonging to the Southern Africa Development Community (SADC) have been asked to appear before the CAS in a single session. This is unprecedented.

At the outset, I must bring to the attention of the CAS the historical background of discrimination in Namibia, which forms the context in which Namibia applies Convention No. 111.

Namibia, with a present population of approximately 2.5 million people, gained independence in 1990 after a century-long struggle against racism, colonialism and apartheid.

The Namibian Constitution reflects our founding fathers' and mothers' determination to eradicate the vestiges of the colonial apartheid system. The Constitution in article 10 contains a strong prohibition against discrimination on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status. It also includes a unique provision on apartheid and affirmative action, which is provided for in article 23, which requires that the practice of discrimination and the practice and ideology of apartheid shall be prohibited by law.

Article 23 also authorizes the enactment of affirmative action legislation, policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of past discriminatory laws and practices. It makes special note of the historically disadvantaged position of Namibian women.

In appraising Namibia's efforts to combat discrimination, the Committee is asked to take note that white Namibians make up 6.4 per cent of Namibia's total population, but that they have disproportionate control over Namibia's private sector and its land. Further, Namibia has the second worst rate of income inequality in the world.

Therefore, pursuant to its constitutional mandate, Namibia has not only adopted a variety of laws designed to eliminate the vestiges of racism and discrimination against women and ethnic minorities that were inherited at independence, but it has oriented its overall national development agenda to empower and advance the economic and

social position of the vast black majority of the population, including women, the youth and ethnic minorities. This agenda cuts across all sectors.

It is therefore difficult to report on Namibia's efforts to combat and eliminate discrimination within the legalistic framework of Convention No. 111 because these efforts span across a wide range of government programmes. We therefore urge the Committee to take note that its observations and the answers to its specific questions regarding a few institutions or laws can only convey a partial picture of Namibia's grand national project to eliminate discrimination.

I will now address the observations from the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in relation to the application of Articles 1, 2 and 5 of Convention No. 111, to which my Government has already submitted a voluntary response to the ILO on 20 May 2021.

Article 1 of Convention No. 111 (Legislation – Additional grounds of discrimination). Namibia was requested to: amend section 33 of the Labour Act to provide for a remedy for the unlawful dismissal of an employee on grounds of HIV and AIDS status (actual or perceived), the degree of physical or mental disability and family responsibilities; adopt measures to ensure that workers who are victims of discrimination on the basis of HIV status (actual or perceived) have effective access to legal remedies; and provide information on the number of cases of discrimination based on HIV status and on their outcome.

Section 5 of the Labour Act 11 of 2007 prohibits discrimination in an employment decision on any of the following grounds, among others: an employee's HIV and AIDS status (actual or perceived); the degree of physical or mental disability; and family responsibility. "Employment decision" includes the termination of employment.

With respect to access to effective legal remedies, section 7 of the Labour Act provides two alternative procedures to aggrieved employees to seek redress concerning employment decisions, including a decision to terminate an employee's employment based on unlawful discrimination: (1) referring a dispute arbitration to the Labour Commissioner for arbitration; and (2) lodging a complaint with the Labour Court. It is our opinion that the current legal remedies are effective and accessible to victims of discrimination on the basis of HIV and AIDS status (actual or perceived). Nevertheless, the tripartite task force on the review of the Labour Act is considering the Committee of Experts' request to include a specific reference to the above-mentioned grounds of discrimination in section 33(3).

I am pleased to inform the Committee that Namibia is considering its readiness to ratify the ILO Workers with Family Responsibilities Convention, 1981 (No. 156). I sent the matter to the Labour Advisory Council (LAC) and, at its March 2021 meeting, the LAC resolved to recommend ratification.

With respect to the request for information on the number of cases of discrimination based on HIV and AIDS status, I bring to the Committee's attention that it is well known in Namibia that discrimination on the ground of HIV or AIDS status is unlawful. This was settled by the High Court in 2000 in the matter between Nanditume and the Minister of Defence. Thereafter a prohibition against discrimination on the ground of HIV or AIDS status was included in the Labour Act, 2004. Since Nanditume, there has not been a court case alleging discrimination against an employee on account of HIV or AIDS status.

I note further that Namibia had previously adopted a National Code on HIV/AIDS and Employment for HIV Prevention and AIDS Management in 1998, which addressed

the prevention of new infections as well as the provision of optimal care and support for the workforce.

One complaint concerning HIV/AIDs was lodged with the ombudsman in 2019, involving the defence forces, but appears to have been abandoned by the complainant. The recent complaint may be an indication that employers and employees are aware of, and have access to, remedies for discrimination on the ground of HIV or AIDS status.

Article 2 and 5, Implementation of the equality national policy and affirmative action. The Committee of Experts has asked the Government to provide information on: the measures taken to implement the National Human Rights Action Plan 2015–19, in particular the review of the legislative and regulatory framework, and research undertaken, obstacles encountered and results achieved in this regard. It further asks the Government to report on its follow-up, No. 1 to the recommendations in the Office of the Ombudsman's Special Report on Racism and Discrimination and the concrete steps taken.

Since independence, I must say Chairperson, Namibia has been pursuing the agenda of eliminating discrimination in respect of employment and occupation and has established various institutions to deliver on this agenda.

With respect to the measures taken to implement the National Human Rights Action Plan of 2015–19, I can report as follows: the Law Reform and Development Commission (LRDC) initiated a project on obsolete laws, which resulted in the Repeal of Obsolete Laws Act, 2018 (Act No. 21 of 2018). Some of the repealed laws were discriminatory in nature. The second phase of the project included research on the existence of other obsolete and discriminatory laws. The research was completed, and the report was referred to the Minister of Justice for further action.

I can also report that the Ombudsman has prepared the Prohibition of Unfair Discrimination, Hate Speech and Harassment Bill. If enacted by Parliament, the Bill will repeal and replace the Racial Discrimination Prohibition Act 1991 (Act No. 26 of 1991). The Ombudsman conducted a consultative meeting with stakeholders on 28 May 2021 to gain their comments and inputs on the Bill.

In respect of research undertaken, the Ombudsman conducted research as to why racism, racial and other forms of discrimination still persist 20 years after Namibia's Independence, and made numerous recommendations in his report on the National Inquiry into Racism, Racial Discrimination and Other Forms of Discrimination and Tribalism, which was submitted to the National Assembly in October 2017. In addition, a white paper on indigenous peoples' rights in Namibia has been finalized with inputs from stakeholders and is due for Cabinet approval.

The Committee of Experts' request that the Namibian Government step up its efforts to promote access to training and employment opportunities for designated groups and to review regularly its affirmative action measures.

The Government takes note of the comment of the Committee of Experts that it welcomed the measures introduced by the Employment Equity Commission towards the workforce transformation and its efforts to deal with the underlying causes of discrimination.

The Affirmative Action (Employment) Act 29 of 1998, as amended, requires relevant employers to take positive measures to further the employment of persons from designated groups. At present, the threshold for "relevant employer" is set at enterprises employing more than 25 employees. Designated groups include persons from racially disadvantaged groups, women and persons with disabilities.

Affirmative action measures may include: giving preferential treatment in employment decisions to suitably qualified persons from designated groups to ensure that such persons are equitably represented in the workforce of a relevant employer; ensuring that existing training programmes contribute to furthering the objectives of the Affirmative Action Act; and establishing new training programmes aimed at furthering the objectives of the Act; and within the aforementioned framework, the Commission addresses the issues of access to training and employment opportunities for designated groups.

The Committee of Experts' request to provide information on the review of the Affirmative Action (Employment) Act and on the activities of the Employment Equity Commission.

The Employment Equity Commission, in consultation with the Ministry, sent to the tripartite Labour Advisory Council an initial set of proposed amendments to the Affirmative Action (Employment) Act. The EEC has established a Task Force to prepare a final draft Amendment Bill. Along with the amendments, the EEC proposes to reduce the current "relevant employer" threshold of 25 employees in order to extend affirmative action to more employers and employees.

With respect to its activities, the EEC has revised its 20-year old standard report guidelines in order to assess annual affirmative reports in accordance with more objective criteria and has introduced a new Integrated Review Scorecard (IRSC). The EEC is also planning to play a key role in the implementation of the Violence and Harassment Convention, 2019 (No.190), which Namibia ratified at the end of last year.

Although the EEC is striving for seamless operation, the collection and analysis of data on affirmative action remains a challenge. A modern information management system is needed.

Finally, Namibia brings to the attention of the Committee that the Government is in need of ILO technical assistance to enable the EEC to develop and implement a comprehensive information management system.

In conclusion, the Government of Namibia underscores that it appreciates the ILO's support and assistance as well as the constructive dialogue with social partners in an effort to eradicate all vestiges of discrimination in employment. Namibia renews its assurances that it is committed to fulfil the obligations it has undertaken under Convention No. 111 and under various other Conventions of the ILO.

Employer members – Today we are discussing the application in law and practice of fundamental Convention No. 111 on discrimination in employment and occupation in Namibia.

This Convention has been ratified by 175 ILO Member States, which makes it one of the highest ratified Conventions. Together with the Equal Remuneration Convention, 1951 (No. 100), Convention No. 111 details the broad and encompassing fundamental principle of the elimination of discrimination in respect of employment and occupation.

With the current social climate against structural racism and discrimination, many employers around the world have strengthened their policies to ensure that discrimination is eliminated from the workplace.

Equality, diversity and inclusion policies help businesses improve productivity, creativity, improved cultural awareness, increased outreach in the quest for talent and the company's reputation. Therefore, all of us – governments, employers and workers – shall aim at achieving the elimination of discrimination in respect of employment and occupation.

Now, with respect to this case, this is the first time that this Committee is discussing Namibia's application in law and practice of Convention No. 111.

The Convention was ratified by Namibia in 2001. The Committee of Experts prepared its observations on this Convention based on the Government's 2019 submission, as well as the negotiations between the ILO and the Government of Namibia of the Decent Work Country Programme for Namibia 2019–23.

Two written submissions were also provided by the Government of Namibia to the CAS with detailed information related to the Committee of Experts' observations. For these, we thank the Government for providing such level of detail.

Now, the issues at stake in this case. The Committee of Experts' observations outline clear elements of inadequacy in Namibia's law and practice with respect to Convention No. 111. The Convention articulates around four elements: (1) the definition and ground for discrimination; (2) ways to implement policy; (3) the elaboration of a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation with a view to eliminating any discrimination; and (4) the exceptions.

This case deals with all four elements. First, on the ground for discrimination.

The Committee of Experts request that the legislation on HIV status, physical or mental disability and family responsibilities, be compliant with Article 1.1(b) of the Convention. This point raised by the Committee of Experts reminds us that Convention No. 111 is not only about the specific causes of discrimination in employment and occupation mentioned in paragraph 1.1(a) which are race, colour, sex, religion, political opinion, national extraction or social origin, but it also includes additional grounds like distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be

determined by the member concerned after consultation with representative employers' and workers' organizations, where such exists, and with other appropriate bodies.

In Namibia, section 5 of the Labour Act defines HIV and aids status, physical or mental disability, and family responsibilities as possible grounds of discrimination. However, the Committee of Experts highlights that section 33 does not include them in the grounds of prohibited reasons for dismissal. Despite the lack of review of section 33 of the Labour Act, the Government explains that the same Act provides for dispute resolution mechanisms either before the Labour Commissioner for Arbitration or before the Labour Court for all disputes concerning fundamental rights and protection, which includes disputes over employment decisions based on the grounds of HIV status.

In this regard however, the Employers are encouraged by the Government's statement here today that Namibia is after all considering amending section 33 of the Labour Act in line with the Committee of Experts' recommendations.

Related to this first issue and also to the implementation of anti-discrimination policies in practice is the access to remedies. The Committee of Experts requested the Government to provide information on the case of discrimination in relation to HIV and AIDs status dealt with by the labour inspectors and labour courts, and ensure that workers who are victims of discrimination on the basis of HIV status, actual or perceived, have effective access to legal remedies.

The Government's reply did not provide any details on this point and the only complaint received by the Office of the Ombudsman seems to confirm the view of the Committee of Experts that few cases may be an indicator of the lack of awareness, lack of access to remedies, or fear of retaliation.

The Employers' group underlines that access to remedy is essential to developing the effectiveness of anti-discrimination policies as required under Article 2 of the

Convention. It is unclear to us whether such labour disputes can be brought before the Labour Commissioner for Arbitration and the Labour Court as indicated in the Labour Act 11 of 2007 or before the Office of the Ombudsman, as mentioned by the Government in its submission.

We request the Government to clarify whether specific measures to ensure that workers who are victims of discrimination on the basis of HIV status, actual or perceived, have effective access to legal remedies. We invite the Government to shed light on the body or bodies in charge of dealing with cases of discrimination.

The third issue concerns the national policy, which is the core of the Convention. On the implementation of the national policy, in line with Article 2 of the Convention, the Committee of Experts requested the Government to provide more information on the two documents developed at the national level namely, the National Human Rights Action Plan of 2015–19 and the Office of the Ombudsman's Special Report on Racism and Discrimination. The former indicates legislative reforms and research on possible discrimination under the previous legislation, while the later presents recommendations for the Government in terms of programmes and strategies and for employers' organizations with respect to their action in the workplace.

The Government explained how a series of obsolete laws have been repealed by the Repeal of Obsolete Law Act No. 21 of 2018 because they were discriminatory in nature, and that further research was conducted on other laws including on disabilities.

The outcome of this research is currently being discussed under the specific Namibian Parliamentary context. Among the activities reported by the Government, we would like to underline the research and recommendations made by the Ombudsman on the reasons why racism, racial and other forms of discrimination still persist after 27 years of Namibian independence.

Since the report was submitted to the National Assembly in October 2017, we would like to ask the Government how that process has been followed up and whether there is a plan of action for implementing the Ombudsman's recommendations.

We would also like to know more about the establishment of the National Human Rights Action Plan for the next period starting in 2020.

The fourth and last issue concerns the specific groups protected under Article 1(b) and 5.2. The Committee of Experts referred to the three designated groups that Government has considered as requiring additional protection under the Affirmative Action Employment Act of 1998 and that the Employment Equity Commission is the body tasked with the publication of a report measuring the impact of the specific protection.

The EEC report for 2016–17 indicated that there was important room for improvement on the inclusion of all workers, not only white employees, into positions of management and for employment of persons with disabilities. To overcome these challenges, the EEC presented a number of proposals, including a legislative reform to the Affirmative Action Employment Act 1998, a review of guidelines for employers and a better case management system.

The Employers' group understands from the Government's submission that the legislative reform took place in 2007 with the Affirmative Action Employment Amendment Act 6 of 2007 and that the LAC provided some inputs and returned the Act for the incorporation.

The Employers' group request the Government of Namibia to provide final legislation once adopted. However, the Employers' group also notes that the 2007 amendments require employers to issue positive steps to further the employment of persons from the designated groups.

Worker members – We are examining the Government of Namibia's application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). According to Namibia's National Human Rights Action Plan, several groups are identified as being exposed to the risk of occupational discrimination. These include women and indigenous people, while others face discrimination based on HIV status, age (both children and the elderly), sexual orientation and disability.

We are concerned that race-based occupational segregation in the labour market prevails. For example, as documented by the report of the Employment Equity Commission for 2015–16 and for 2016–17, employees of African descent constitute 93 per cent of the workforce, but they occupy only 26 per cent of managerial positions. Meanwhile, in 2018, 56 per cent of executive director positions were held by white employees, an improvement of only 3 per cent on the figures for 2010.

Furthermore, sex-based occupational segregation in the labour market persists and the representation of women in managerial positions in the private sector remains very low. This was also raised by the United Nations Country Team in Namibia in its submission at the Universal Periodic Review of Namibia that took place in May 2021.

Disabled workers are almost absent from the labour market, accounting for a mere 0.4 per cent of the workforce and being under-represented at every occupational level, as documented by the 2015–16 report of the Employment Equity Commission.

As Convention No. 111 acknowledges in its preamble, the Declaration of Philadelphia affirms that “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”. In line with this, the scope of Convention No. 111 includes the elimination of any discrimination in respect of all aspects of employment and occupation, including in the form of sexual

harassment, through the development of concrete measures that ensure that there is equality of opportunity in both law and practice.

The Labour Act of 2007 generally prohibits discrimination in employment and occupation, based on numerous grounds, but, for some reason, it fails to include several groups – otherwise referenced and protected in different contexts, in its chapter protecting against unfair, discriminatory dismissal. Because of this, the law does not explicitly prohibit dismissal based on HIV status, physical or mental disability or family responsibilities. We recall that the Committee of Experts has been raising this issue since 2011, with no effect so far. This gap in protection must be closed as soon as possible.

Cases of discrimination in employment and occupation should be dealt with by labour inspectors and labour courts, and their records are one valuable source of information on progress. However, the Government was not able to identify any new case law dealing with victims of occupational discrimination on the basis of actual or perceived HIV status. The last known court case dates back 20 years. Ensuring non-discrimination in employment and occupation of people with positive (either real or perceived) status is of crucial importance for a fair and inclusive labour market. This is even more important in the case of Namibia, given that, although the country has made tremendous progress in the fight against HIV/AIDS, it still ranks fifth highest in the world in terms of its HIV burden, with an estimated 12.1 per cent of adults aged 15–49 living with HIV. While the Government, in its additional information regarding the observations of the Committee of Experts, presents the absence of cases as proof of success of changes to the law, the unfortunate truth is that a paucity of cases dealt with by the courts and labour inspectorates often indicates significant barriers to remedy for victims, including lack of awareness about rights and the fear of retaliation. The Government should acknowledge this and improve its actions, including data gathering, in this area.

With respect to the implementation of the national equality policy as prescribed by Article 2 of the Convention, the Government of Namibia adopted the National Human Rights Action Plan for the years 2015–19. The Plan contained commitments to promote equality, including with respect to groups such as women, indigenous people, disabled people and the LGBTI community.

The Plan also referred to research activities and a review of legislation – for example to include race as part of the affirmative action criteria in the Affirmative Action (Employment) Act (Act No. 29 of 1998) and updating the Racial Discrimination Prohibition Act (Act No. 26 of 1991). However, while the Government did initiate several legislative reviews, these initiatives are still at preliminary stages of a legislative process. Accordingly, even though it was designed to be delivered by 2019, the National Human Rights Action Plan has not led so far to concrete results. Likewise, there appear to have been serious delays in implementing the recommendation of the Special Report on Racism and Discrimination, published by the Office of the Ombudsman in 2017. This report included a long list of substantial recommendations, for the Government as well as for the employers' organizations, which, according to the Ombudsman himself, were supposed to be acted on by ministries within six months of the report, while the employers were supposed to undertake a review of recruitment procedures, training to detect discrimination, establishment of procedures to deal with discrimination claims, and other actions. However, when it comes to implementation, the Government indicates that the only action taken so far on these important recommendations was to disseminate them to members of the Namibia Employers' Federation. While these various plans, analyses and research documents are potentially useful tools in support of efforts to eliminate discrimination in employment and occupation, they alone are not enough. To meet the aims of the Convention, concrete, proactive actions, appropriate to national conditions and practice, are required to address the underlying causes of

discrimination and the cycle of inequality resulting from discrimination. Adoption of documents and their dissemination is not sufficient.

As already mentioned, occupational segregation in the labour market prevails and the representation of racially disadvantaged workers, women and disabled workers remains very low at higher occupational levels. The Government reported a number of planned affirmative action measures, such as a review of legislation and including implementation of the provisions of the Affirmative Action Act of 1998, which require employers to institute positive steps to further the employment of people from disadvantaged groups; adoption of the New Equitable Economic Empowerment Framework Bill 2015, and promoting access to training and employment opportunities for disadvantaged groups of workers.

The Employment Equity Commission also has planned a number of actions, including visits to workplaces, prosecution of employers not complying with the law, and maintaining a case management system. However, the Government has not shared any information about the results expected through these initiatives, such as, for example, targets on improved representativity of workforce demographics at workplaces in different sectors.

We recall that affirmative action on behalf of persons belonging to groups that have suffered disadvantage is an important component of a national equality policy. Concrete measures are needed to ensure equality of opportunity in practice, taking into account the diversity of situations of the people concerned, so as to halt discrimination, redress the effects of past discriminatory practices and restore a balance, as observed by the General Survey of 2012.

To conclude, while the Government of Namibia developed many important initiatives with the view of eliminating discrimination, proactive, verifiable

implementation of these initiatives, as well as greater enforcement through labour courts and inspections, are still needed. We call on the Government of Namibia to take action to fully comply with obligations under Convention No. 111.

Government member, Zimbabwe (Mr NGORIMA) – We would like to thank the representative of the Government of the Republic of Namibia for providing this Committee with the positions on the issues raised by the Committee of Experts and the subjects of the discussion in this Committee.

My delegation appreciates the information given to us by Namibia on how HIV and AIDS-related labour complaints are dealt with and the status of the complaints that are launched against the Namibian Defence Forces. Furthermore, my delegation appreciates the measures that Namibia has taken in implementing its National Human Right Action Plan as well as its Affirmative Action Plan, in the context of the world of work and the work of the Employment Equity Commission.

My delegation has taken note of the information and progress on the development of the Equitable Economic Empowerment Framework that resonates with the principles enshrined in the Convention on discrimination in the labour markets.

We also take note of the willingness of the Republic of Namibia to work with the ILO and urge the Office to provide the requested technical assistance.

Miembro gubernamental, República Bolivariana de Venezuela (Sr. CONSTANT ROSALES) — El Gobierno de la República Bolivariana de Venezuela agradece la presentación del honorable Ministro de Trabajo de Namibia, Sr. Utoni Nujoma, con relación al cumplimiento del Convenio núm. 111.

Hemos tomado nota de que el Gobierno de Namibia ha atendido los comentarios de la Comisión de Expertos, ha reafirmado su compromiso con la erradicación del VIH y el sida, y ha destacado el control que mantiene respecto a la transmisión de este virus.

Valoramos que la Ley del Trabajo de Namibia prevé mecanismos eficaces que sirven para las víctimas de discriminación por motivos del estado serológico respecto del VIH y el sida.

En el informe de 2021 de la Comisión de Expertos, consta que el Gobierno de Namibia ha informado de que la Ley del Trabajo está siendo revisada a los fines de ampliar la prohibición del despido de un trabajador por motivo del estado serológico respecto del VIH y el sida, su discapacidad física o mental, y se protegen las responsabilidades familiares.

Asimismo, tenemos presentes los avances logrados con relación al Plan Nacional de Acción de Derechos Humanos, en el que se identifica el derecho a no ser discriminado, en especial con respecto a las mujeres, los pueblos indígenas, las personas con discapacidad y las personas LGTBI.

En este sentido, valoramos que Namibia cuenta también con un consejo consultivo laboral tripartito y con la Comisión de Equidad, que se ocupa de la igualdad en el empleo.

Finalmente, el Gobierno de Venezuela espera que las conclusiones de la Comisión sean objetivas y equilibradas, con la finalidad de que el Gobierno de Namibia siga avanzando en el cumplimiento del Convenio.

Worker member, Zimbabwe (Mr MOYO) – I speak on behalf of the Zimbabwean workers, in solidarity with the workers of Namibia.

We note some worrying issues contained in the Committee of Experts' comments. These relate to persons disadvantaged on the ground of race, in particular women and

persons with disabilities. We note the Government's efforts to address this issue through the establishment of the Employment Equity Commission (EEC). We note the measures taken by the Commission to redress some of the issues.

However, we remain concerned that the EEC is not fully capacitated to undertake its work. The EEC also does not have a comprehensive information management system and reliable data, which includes data on affirmative action.

While we have knowledge of its work over the years, we noted that it has mostly confined its work around issues of race between whites and blacks, while neglecting other forms of discrimination that are among the majority ethnic groups and minority.

Certain black majority ethnic groups predominate employment in ethnic minorities areas, recruiting people of their own and displacing indigenous people in employment and positions of power. The majority ethnic group is highly represented at the top in most occupations, including in Government. Minority ethnic groups are deprived of opportunities as a strategy to keep them in lower positions.

We urge the Government of Namibia to address the above concerns before the 2022 International Labour Conference, and provide their report of progress in this regard. We request the Committee to consider granting technical assistance to the Government to address these concerns.

Interpretation from Arabic: **Government member, Egypt (Ms ABDEL TAWAB)** – We have taken note of the efforts made by the Government of Namibia for the application of Convention No. 111.

This confirms Namibia's intention to work in line with the Convention. The mechanism provided for by the standard provides for a dispute resolution mechanism with regard to all issues relating to discrimination. The Government of Namibia also

commits to take the necessary measures to fight the HIV/AIDS virus, in order to ensure that legal provisions are effective and effectively applied.

Decisions have been taken to put into place a National Human Rights Action Plan. The Government is also carrying out tripartite consultations with those involved in order to come up with a white paper for indigenous peoples in Namibia. It adopted the positive labour right No. 6 from 2007, where the obligation is for employers to take positive measures without discriminating against certain groups. That broadens the possibility of fighting against discrimination and we welcome the efforts taken by the State of Namibia to bring its laws into line with the provisions of Convention No. 111, and we hope very much that its efforts will be taken into account in the conclusions.

Membre travailleuse, France (M^{me} ALEXANDRE) – Les questions liées aux discriminations de toutes sortes sont souvent malheureusement renforcées lorsque le contexte économique est difficile. Les personnes en situation de vulnérabilité sont alors les premières touchées en terme, entre autres, d'accès à la formation et à l'emploi. Ces contextes économiques difficiles favorisent également des formes de discrimination multiples. Le cas de la Namibie est en ce sens illustratif de cet état de fait.

Si le rapport de la commission d'experts fait état d'un certain nombre de cadres réglementaires visant à lutter contre les discriminations de différentes formes dans cet État, force est de constater que le rapport ne donne pas de données et de faits statistiques permettant d'évaluer l'efficacité réelle dans la pratique de ces éléments législatifs ou cadres réglementaires. Ces données sont très difficiles à trouver par ailleurs ou remontent à des époques, pour certaines, relativement lointaines. De même, le rapport manque de mettre en évidence les éventuels facteurs culturels et institutionnels qui contribuent à générer ces discriminations. Il serait donc utile de disposer de données

statistiques fiables et en nombre suffisant pour permettre à la commission d'experts d'étudier comment la Namibie compte mettre fin à ces discriminations dans la pratique.

De même, concernant certains motifs de discrimination, notamment celle liée au VIH/sida, les experts relèvent que les tribunaux n'ont pas étudié de plainte sur ce sujet précis au cours des vingt dernières années. Il conviendrait d'étudier des solutions afin que le système judiciaire puisse mieux prendre en compte les cas de discrimination. Les tribunaux doivent être en mesure d'enquêter, de poursuivre et de sanctionner les entreprises qui usent de pratiques discriminatoires dans l'emploi et la profession. Il est essentiel à cet égard que les victimes puissent le faire en toute sécurité et soient protégées. De même, un soutien juridique et psychologique devrait pouvoir leur être octroyé.

Les employeurs ont également un rôle important à cet égard et la négociation collective libre, consentie et de bonne foi est essentielle afin de négocier des politiques et des programmes visant à éradiquer et prévenir toute forme de discrimination dans l'entreprise, et afin de mettre en œuvre des mesures de réparation à destination des travailleurs victimes de ces discriminations.

Government member, India (Mr ARYAN) – India welcomes the delegation of the Government of Namibia and thanks it for providing the latest update on the issue under consideration.

India appreciates the commitment of the Government of Namibia to fulfil its international labour obligations, including those related to the Convention, through progressive implementation of the relevant recommendations of the ILO and the willingness to constructively work with it.

We take positive note of various concrete steps taken by the Government of Namibia to implement the National Human Rights Action Plan 2015–19. Notable among

these are as follows: (i) the Law Reform and Development Commission's project on obsolete laws which resulted in the repeal of the Obsolete Laws Act, 2018; and (ii) the ongoing deliberations among the stakeholders for repealing and replacement of the Racial Discrimination Prohibition Act, 1991. We also welcome the ongoing round of social dialogue that the Government of Namibia is organizing in order to enact the Equitable Economic Empowerment legislation.

We request the ILO and its constituents to fully support the Government of Namibia and provide all necessary technical assistance enabling the Employment Equity Commission to develop and implement a comprehensive information management system.

We take this opportunity to wish the Government of Namibia all success in its endeavours.

Worker member, Botswana (Mr BUTALE) – The Botswana Federation of Trade Unions notes that discrimination against people living with HIV and with disabilities, though existing, can be defeated.

The Namibian Government has been previously urged, as it is urged now by the Committee of Experts, to take measures that will ensure coherence between section 5 of its Labour Act which defines discrimination, and section 33 on dismissal to prohibit dismissal based on HIV and AIDS status, as well as the degree of physical or mental disability, and family responsibilities.

We also want to urge that the Government take cognizance of both the substance and essence of its National Human Rights Action Plan 2015–19 which identified critical areas of focus, among them “the right not to be discriminated against”. This particularly relates to certain groups including women, indigenous people, people with disabilities and LGBTI persons.

We posit that, among other things, such measures require strong political will and deliberate effort to create an environment that is barrier-free for the equalization of opportunities for all.

There is also a need for the development of integrated occupational health services and a systematic endeavour at eliminating practices that promote stigma in the workplace. Ensuring an increase in access to technology related to assertive devices to enable an environment in which people with disabilities are allowed the much-desired autonomy to guarantee dignity and respect, is equally imperative.

One of the ways in which the above can be achieved is to grow awareness, sensitization through public education and to benchmark against countries that have already made progress in destigmatizing HIV and disability.

Against this background, the Botswana Federation of Trade Unions submits that, in light of initiatives already taken by the Government as epitomized by the NHRAP 2015–19 and the report of the Ombudsman of November 2017, there shows to be ample potential and opportunity for remedying the concerns raised by workers, subject only to collectivism, cooperation, and sound political will.

Government member, Malawi (Mr NYANGULU) – Malawi has taken note of the observations made by the Committee of Experts contained in its 2020 Supplementary Report in respect of Namibia's application of the Convention. At the same time, the Government of Malawi appreciates the information provided by the Government of Namibia on the implementation of the said Convention.

Malawi has taken note that Namibia is appearing before this Committee for the first time. We have also taken note that the current legal remedies are effective to curb discrimination, including on the basis of a real or perceived HIV-positive status. Malawi applauds Namibia for the concrete and constructive steps taken by the Government to

implement the National Human Rights Action Plan 2015–19, including the legislative reforms to ensure that the country's laws are in conformity with the provisions of the Convention, and the repeal of laws that were perceived as discriminatory in nature.

The Government of Malawi commends Namibia for the continued engagement with the social partners and private sector on the legislative reforms, including, the upcoming new Equitable Economic Empowerment Framework Bill of 2015. The Government of Malawi implores the ILO to provide technical assistance as requested by the Government of Namibia.

Membre travailleur, République démocratique du Congo (M. KUKU GEDILA) –

Cette intervention vise à fournir des informations supplémentaires au rapport bien présenté de la commission d'experts sur la Namibie.

En Namibie, comme c'est le cas en Afrique, l'accès, l'insertion et la participation des femmes au marché du travail formel sont faibles, bien qu'ils connaissent une certaine progression. Les actions qui discriminent la participation des femmes rendent les véritables actions positives lentes à porter leurs fruits. Par exemple, l'allaitement maternel, lorsqu'il n'est pas bien géré, peut contribuer à diminuer les chances d'emploi et de progression des femmes.

Au moment où le gouvernement namibien fait la promotion des avantages de l'allaitement maternel, il n'y a pas de mesures de protection juridique et d'assistance correspondantes pour les mères allaitantes. En fait, de nombreuses mères allaitantes préféreraient raccourcir au maximum leur période d'allaitement afin de retourner au travail, étant donné qu'elles subissent des réductions des prestations lorsqu'elles partent en congé de maternité.

En outre, la Commission de la sécurité sociale a un plafond très bas sur l'indemnisation des femmes qui sont en congé de maternité de trois mois. C'est à peine

suffisant pour les mères qui font carrière. Cela oblige la plupart des mères à ne pas prendre de congé de maternité du tout ou, dans certaines circonstances, à l'interrompre par crainte de perdre des revenus.

Ces réalités discriminatoires portent atteinte aux droits de reproduction des femmes et violent leurs droits fondamentaux à un emploi rémunérateur et productif. Pour éviter ces actions, de nombreuses femmes, en particulier les jeunes, ont choisi de reporter la maternité et certaines ne souhaitent pas du tout mettre au monde. Ce sont des choix forcés et évitables. Le gouvernement doit mettre fin au cauchemar des mères en âge de procréation.

Government member, Ghana (Mr ANTWI) – Ghana prioritizes human right issues and as such recognizes any form of discrimination as a serious violation of human rights as enunciated by the Universal Declaration of Human Rights.

The Government of Ghana therefore commends Namibia for bringing its regulations in tune with the provisions of Convention No. 111. Section 5(2) of Namibia's Labour Act, 2007, Act No. 11 explicitly prohibits all forms of discrimination in relation to employment decisions either directly or indirectly and lists all the important sources of discrimination which include HIV/AIDS. The Act also provides alternatives to aggrieved employees to seek redress on unlawful employment decisions.

It is also important to acknowledge the commitment of Namibia in the fight against HIV, making Namibia the first in Africa to have more than three-quarters of its HIV-affected population virally suppressed.

Ghana further notes the concrete measures taken by the Government of Namibia, including the development and implementation of the National Human Rights Action Plan 2015–19 to eliminate all forms of discrimination in employment and occupations.

Through the implementation of the Action Plan, the Government of Namibia has repealed some of the laws that were discriminatory in nature.

The Government of Ghana supports Namibia's request to the ILO for technical assistance to enhance the operations of the Employment Equity Commission (EEC) to develop and implement a comprehensive information management system for case management, accurate data collection and analyses, as well as evidence-based planning and policymaking with respect to affirmative action and discrimination in employment.

Government member, Botswana (Ms MOLOKOMME) – We thank the representative of the Government of Namibia for the detailed response to the issues raised by the Committee of Experts. It is clear that the Government, in collaboration with the social partners, has made a lot of progress on the issues raised by the Committee of Experts. We note with satisfaction that discrimination on the ground of HIV or AIDS status has been declared unlawful in Namibia, as provided for in the Labour Act No. 11 of 2007.

It is also clear that the prohibition of dismissal of employees due to HIV and AIDS status, actual or perceived, the degree of physical or mental disability, and family responsibility is already provided in section 5 of the Labour Act.

Furthermore, we note the commitment of the Government to come up with the Equitable Economic Empowerment legislation, the process of which is still undergoing consultation between the Government and stakeholders. Accordingly, this Committee should urge the Government of Namibia to expedite this process.

We appreciate that Namibia has acknowledged her limitations to collect crucial data relating to discrimination. We therefore commend the Government of Namibia for having taken the critical step to request ILO technical assistance to enable the

Employment Equity Commission (EEC) to develop and implement a comprehensive information management system, which we hope and trust will be provided by the ILO.

Membre gouvernemental, Burkina Faso (M. SAWADOGO) – Le gouvernement du Burkina Faso est très heureux de prendre la parole à l'occasion de l'examen du présent cas individuel, qui implique la République sœur de la Namibie, au sujet de l'application en droit et en pratique de la convention n° 111 de l'OIT.

L'élimination de la discrimination en matière d'emploi et de profession, objet de cette convention, est une des composantes des principes et droits fondamentaux au travail (PDFT) consacrés par l'OIT.

Mon pays encourage fortement la promotion des PDFT en tant que piliers pour la réalisation du travail décent et l'atteinte de l'objectif de justice sociale, cher à notre organisation commune, et ne ménagera aucun effort pour soutenir tout État Membre dans ce sens.

Le gouvernement namibien est interpellé devant la CAN, suite aux observations formulées par la commission d'experts, pour non-conformité de certaines de ses dispositions législatives internes avec certains principes clés contenus dans la convention n° 111, ratifiée le 13 novembre 2001.

Faisant suite à ces observations, le gouvernement namibien a fourni une réponse contenant des informations somme toute pertinentes. En effet, il ressort de cette réponse les actions majeures suivantes: la protection des travailleurs contre la discrimination sous toutes ses formes prohibées à travers les mécanismes administratifs et judiciaires existants; la mise en œuvre du Plan d'action national pour les droits de l'homme 2015-2019; le déclenchement d'un processus de rédaction d'un livre blanc relatif aux droits des peuples autochtones, sur la base du rapport produit par le médiateur et soumis à l'Assemblée nationale; la mise en œuvre progressive des

recommandations issues des travaux de la Commission pour l'équité en matière d'emploi; la conduite du processus d'élaboration du projet de loi-cadre pour l'autonomisation équitable.

Toutes ces actions entamées et en cours, dans un contexte mondial marqué par la pandémie de COVID-19, traduisent les efforts consentis par la Namibie pour donner plein effet à la convention n° 111.

C'est pourquoi le Burkina Faso invite la commission à donner du temps à la Namibie pour la poursuite de ses actions, avec l'accompagnement du BIT si nécessaire.

Government member, Ethiopia (Ms GUADEY) – My delegation would like to commend the Honourable Minister of Labour of Namibia for the comprehensive report on the application of Convention No. 111.

We took note of the information provided by the Government of Namibia that the existing country's legal framework prohibits discrimination on all grounds.

We further noted from the Government's report that the implementation of the National Human Rights Action Plan 2015–19, as requested by the Committee of Experts, is in the right path.

We are also informed that the review of the Affirmative Action (Employment) Act 1998 is already finalized and a task force has been established to prepare the draft Amendment Bill.

As indicated in the Government's report, a proposal for equitable economic empowerment legislation has been under discussion between the Government and stakeholders; and the Government is currently conducting another round of social dialogue with the private sector on a redrafted Bill, and final Bill will be submitted to the Cabinet for consideration before it is tabled to the Assembly.

Finally, the Government of Namibia openly indicated its limited capacity to collect data relating to discrimination, and requested ILO technical assistance to enable the Employment Equity Commission to develop and implement a comprehensive information management system towards addressing electronic affirmative action report submission and case management.

Since the Government of Namibia is demonstrating concrete efforts at its utmost capacity to ensure progressively the conformity of Convention No. 111 with its national laws and practice, we encourage the ILO to avail technical assistance to complement the Government's efforts to full effect the application of the Convention in point.

In conclusion, we hope that the Committee in its conclusions will take into consideration all concrete information provided by the Government of Namibia, as well as the constructive comments and discussion transpired in this august house.

Interprétation de l'arabe: **Membre gouvernemental, Algérie (M. MEKHAZNI)** – Tout d'abord, l'Algérie se réjouit des progrès enregistrés par la République de Namibie, en particulier dans la mise en œuvre des dispositions de la convention (n° 111) concernant la discrimination (emploi et profession), 1958.

Dans ce cadre, la délégation algérienne salue les mesures envisagées par le gouvernement de la Namibie pour s'aligner sur la législation internationale, et les meilleures pratiques relatives à la promotion de l'égalité des droits et des chances au travail.

Dans sa quête d'une plus grande cohérence des politiques publiques, la délégation algérienne encourage la Namibie à poursuivre ses efforts pour consacrer une approche globale et intégrée de non-discrimination, et de prise en compte des besoins particuliers, notamment des personnes handicapées et des victimes du statut VIH/sida.

L'Algérie salue par la même occasion le gouvernement de la Namibie pour les efforts louables et constructifs qu'il a déployé pour l'avancement du processus visant l'adaptation de la législation du travail, afin d'interdire le licenciement des travailleurs fondé sur le statut VIH/sida, le degré de handicap physique ou mental, ou les responsabilités familiales; et l'adoption du projet de loi-cadre pour l'autonomisation économique équitable, ainsi que pour le développement des programmes d'accès à la formation et aux possibilités d'emploi pour les handicapés.

L'Algérie estime en outre, que la République de la Namibie pourrait, en collaboration avec l'OIT, approfondir la réflexion sur l'amélioration du cadre institutionnel et combler ainsi les déficits d'actions antérieures en matière de lutte contre les discriminations à l'égard des groupes vulnérables, et les comportements créant un environnement de travail non décent.

Membre employeur, République démocratique du Congo (M. KALONDA NGOY)

– S'agissant du VIH/sida, comme l'a fait remarquer la commission d'experts dans son rapport, la Namibie est devenue le premier pays d'Afrique dont plus des trois quarts de sa population est touchée par le VIH, situation plus que préoccupante d'un pays frère. Mais il est regrettable que l'alinéa *b*) du paragraphe 1 de l'article 1 de la convention n° 111 ne soit pas suffisamment exploité, en l'occurrence, il s'agit notamment du statut VIH.

Ce faisant, en étroite harmonie de réflexion avec la commission d'experts, nous exhortons le gouvernement à adopter des mesures spécifiques et courageuses pour garantir que les travailleurs victimes de la discrimination fondée sur le statut VIH (avéré ou supposé) ont un accès effectif à des voies de recours.

Concernant l'accès à la formation professionnelle, en appui au paragraphe 3 de l'article 1 de la convention n° 111, les employeurs de la République démocratique du

Congo apprécie les efforts fournis par le gouvernement pour promouvoir l'accès des groupes désignés aux possibilités de formation et d'emploi. Par ailleurs, ils exhortent le gouvernement à examiner régulièrement les mesures d'action positive y relatives, afin d'évaluer leur pertinence et leur impact, et de fournir des informations sur toute mesure prise à cet effet et sur les résultats obtenus.

Toutefois, eu égard aux différentes formes de discrimination en matière d'emploi et de profession, telles que vécues en Namibie et dénoncées, nous exhortons le gouvernement à user de l'approche de concertation avec les partenaires sociaux et à solliciter l'assistance du BIT en vue de faire évoluer positivement le monde du travail dans le respect de la convention n° 111.

Government member, Angola (Ms IZATA) – Angola would like to congratulate the Namibian delegation for submitting its report, as well as for its willingness to request ILO support to provide technical assistance to develop and implement a comprehensive information management system.

It seems that this system will allow the collection and analysis of data and formulate evidence for cases regarding affirmative action and discrimination. In this regard, it should be noted that it is the first time that the Government of Namibia has been asked to present itself to this Committee.

We understand that discrimination on the basis of status is illegal and punishable by law in Namibia. Thus the Government of Namibia has been working with all stakeholders on improving the values of social justice, making the law accessible through constructive engagement with national and regional institutions including the SADC.

In this regard, it is noteworthy that the prohibition of unfair discrimination, hate speech and harassment was circulated in Namibia for comments from the various

stakeholders and a consultative meeting was held on 28 May 2021. In the end, the Racial Discrimination Prohibition Act was repealed.

Taking into account the commitments made, the Angolan delegation congratulates Namibia on results achieved so far and encourages the Government of Namibia to continue with the process of legislative reforms in order to improve labour legislation, conforming it with international instruments enforced in the ILO. The country will therefore need technical assistance.

Observer, International Trade Union Confederation (ITUC) (Mr KAVIHUHA) –

The Government of Namibia has responded that discrimination on the ground of HIV or AIDS status is unlawful, as decided in the matter between Nanditume and the Minister of Defence by the High Court in 2000. However, discrimination on one's HIV status continues to haunt employees in the Namibian labour market in several opaque and hidden ways.

Recruitment into the disciplined forces still comes with a pre-employment health test. The tests are justified presumably to determine the health status of the prospective employees to purportedly render them the necessary assistance once they have been employed. Is it not possible and better to render them such health assistance after they have been recruited?

The next difficulty that arises from the pre-employment testing is the discrimination that follows in its wake with regard to the medical insurance benefits which are literally curtailed together with any further prospects of full employment in the government sectors.

In terms of the pension fund (GIPF) that influences the employment of the staff in government service, once an employee had been boarded for medical or health-related

reasons, they cannot be re-employed in government services on a full-time basis with the retention of their pension and other benefits.

Suppose an employee is boarded at age 28 and re-employed on a part-time basis, less the medical and other benefits at the age of 30. It follows that such an employee will work for 30 years without any medical aid and any other benefit that goes with full employment status in the public services.

It is our submission that employees who have fully recovered from HIV/AIDS complications, or any other ailments for that matter, must not suffer any form of discrimination with their employment.

What has been said in the main concerning HIV status above is true regarding mental and physical disability as well.

What this Conference needs to take note of is the question of compatibility, because it is the very same reason being used to discriminate against the disabled and mentally challenged.

It is our submission that there must be compatibility requirement for people who have been declared by medical doctors as fully recovered to resume employment suited for their health in the circumstances.

Membre gouvernementale, Soudan (M^{me} ELHASSAN) – Au nom du gouvernement du Soudan, je voudrais présenter une déclaration pour soutenir le gouvernement de la Namibie pour ce qui est de la convention n° 111 concernant la discrimination (emploi et profession).

Nous voudrions faire cette déclaration à la suite des informations fournies par le gouvernement namibien. La Namibie a signé la convention en 2001, et c'est la première

fois qu'elle est appelée à comparaître devant votre commission pour l'application de cette convention.

La convention a été incorporée dans la loi du travail, et le pays a amendé les articles mentionnés par la commission d'experts pour les mettre en conformité avec les normes internationales du travail.

Le gouvernement de la Namibie a pris des mesures effectives pour donner aux éventuelles victimes des voies de recours juridiques efficaces. Il a également pris des mesures efficaces en matière d'égalité dans l'emploi dans le cadre de son plan d'action national 2015-2019.

Nous voudrions apporter notre soutien au gouvernement de la Namibie dans les mesures qu'il a prises à cet égard.

Government member, Eswatini (Mr SHABANGU) – Eswatini has the honour to join the discussion of the case of Namibia on Convention No. 111 concerning discrimination in respect of employment and occupation.

My delegation would like to recall that Member States who ratify this Convention undertake to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminate any discrimination in respect thereof.

We would also like to draw the attention of your Committee to the provisions of Article 3 of the Convention, which provides that the promotion of acceptance and observance of the national policy eliminating any discrimination shall be pursued, by methods appropriate to national conditions and practice, with the cooperation of

employers' and workers' organizations and other appropriate bodies. What we wish to underscore here is that this is a shared responsibility.

From the information that has been provided by the Government of Namibia, my delegation has taken note that both through legislative and national policy instruments and action plans, Namibia has endeavoured to implement Convention No. 111 both in law and in practice. Reference in this regard is made to the following policy and legislative instruments and action plans that have been adopted by the Government over the years: (i) the National Code on HIV/AIDS and Employment for HIV Prevention and AIDS Management (1998); (ii) the National Human Rights Action Plan, which identified as one of its main areas of focus "the right not to be discriminated against", in particular with respect to certain groups including women, indigenous people, persons with disabilities and other persons; (iii) the Prohibition of Unfair Discrimination, Hate Speech and Harassment Bill which will repeal the Racial Discrimination Prohibition Act No. 26 of 1991; (iv) the publication in November 2017 of the Office of the Ombudsman's Special Report on Racism and Discrimination, which included recommendations for the Government (being formulation of programmes and strategies, awareness-raising, support to victims) and for the employers' organizations (being the review of recruitment procedures, training to detect discrimination, establishment of procedures to deal with discrimination claims); (v) the development of a White Paper on Indigenous People's Rights which has since been submitted to Cabinet; (vi) the passing into law of the Affirmative Action (Employment) Amendment Act, No. 6 of 2007, which requires employers to take positive steps to further the employment of persons from designated groups; (vii) the establishment of the Employment Equity Commission which delivered its report in 2017.

All this, the cumulative effect of all the forgoing activities should surely accrue in favour of the Government of Namibia as efforts that demonstrate the limitless intentions of the Government to implement this Convention both in law and in practice.

Government member, Uganda (Mr ASIIMWE) – My delegation takes note that this is the first time Namibia is appearing before this Committee and has commenced the data for the detailed response provided.

Allow me to address the issues brought to the attention of Namibia under the Convention. We welcome the efforts undertaken by Namibia and further call on the Office to extend the technical support possible to address the challenges of correction of data and analysis on their affirmative action. We also propose further support from the Office to the tripartite partners facilitates the developing of appropriate training programmes to promote the objective of affirmative action. Once again, my delegation takes note of constant progress, in particular the social dialogue for inclusivity and for arriving at the bill to be submitted to Cabinet. Finally, my delegation is persuaded that Namibia has taken the right steps and calls on the Office to provide technical support to build the capacity in respect to the data collection and other relevant areas.

Government representative (Mr NUJOMA) – I would like to thank all those who have contributed to the discussion of my country case before this Committee.

As stated in my statement, Namibia remains committed to the grand national project to eliminate discrimination from the face of Namibia. The protection provided by the labour law is broader in nature and scope in that it relates to prohibition of discrimination, in any employment decision, in all areas of employment from entry to exit.

The inadequacy in the protection of dismissal based on HIV status, as it is perceived by the Committee of Experts, under consideration by the tripartite task force, the

absence of court cases, it could not be concluded that there is lack of awareness is incorrect.

Also, it can be informed that no existing remedies are available on grounds of HIV in Namibia. The labour court makes provision for the dispute resolution at both the level of the commissioner office and the labour part.

Namibia is proud with its achievements on the elimination of discrimination, and we will continue to make sure that Namibia lives up to its commitments and obligations under the ILO Convention 111.

Worker members – We note the comments of the Government of Namibia. We emphasize that the Government has an obligation to respect international labour standards and the guidance provided by the Committee of Experts in line with their mandate. It also has a responsibility to respond thoroughly to the questions raised by the Committee of Experts. Looking back through the documentation for this case, we see repeated calls from the Committee of Experts for the same information. We remind the Government to treat the Committee of Experts' questions with the utmost seriousness.

The principal objective of Convention No. 111 is to eliminate all discrimination in respect of all aspects of employment and occupation – as defined in the Convention – through the concrete and progressive development of equality of opportunity and treatment in law and in practice. In doing so, it also makes our societies more fair and more equal.

But it is a dynamic Convention, asking Members to keep in mind the goal of eliminating any discrimination in employment and occupation. In pursuit of this, States are required to develop and implement a multifaceted national equality policy and they should keep this under review: policies and practices which have previously had some

success, but which have stalled, need regular revision if progress is to be maintained towards that aim of eliminating any discrimination.

And, of course, the adoption of a national equality policy presupposes the adoption of specific and concrete implementation measures, including the need for a clear and comprehensive legislative framework, to ensure that the right to equality and non-discrimination is effective in practice.

We note the Government of Namibia's own concerns, relayed to journalists in 2019, that innovative ways are required to speed up progress towards employment equity. We trust that this concern will translate into the political will necessary to take the actions needed to match policy and practice with ambition.

With a view to achieving the elimination of any discrimination including in the form of sexual harassment – and this is the challenge Convention No. 111 demands of us – we call on the Government to take proactive measures to address the underlying causes of discrimination, and de facto inequalities resulting from discrimination, in employment and occupation, to keep their effectiveness under review, and in doing so to be responsive to the guidance of the ILO and its Committee of Experts.

We call on the Government of Namibia to extend the prohibition of dismissal to HIV and AIDS status (actual or perceived), physical or mental disability and family responsibilities, and to make this explicit in law. Victims of workplace discrimination should have effective access to judicial remedy. We note the Government's assurance in its supplementary written submission, and its statement here, that these groups are protected, but would also note that if the ILO's foremost Committee of Experts are uncertain of whether a group is fully covered, it is likely that a member of that group facing potential discrimination will also be unsure. This represents a barrier to justice and remedy and should be addressed speedily.

We also call on the Government of Namibia to step up efforts to fully implement its national equality policy. The Government should provide detailed information on the concrete measures taken to implement the actions set out in the National Human Rights Action Plan 2015-19, in particular the review of the legislative and regulatory framework, and report on the results achieved. Further follow-up should be given to the recommendations in the Office of the Ombudsman's Special Report on Racism and Discrimination, now several years old, and the practical steps taken to address such discrimination.

Lastly, we recall the importance of affirmative action, provided for in Convention No. 111, on behalf of workers belonging to groups that have suffered disadvantage, in achieving an effective national equality policy. We call on the Government of Namibia to take action to ensure that disadvantaged groups of workers can enjoy their right to non-discrimination in employment and occupation, including through affirmative action. The Government of Namibia should promote access of disadvantaged workers to employment and to particular occupations, to vocational training and to non-discriminatory terms and conditions of employment. Accordingly, we call on the Government to respond to requests of the Committee of Experts and to provide information about the results of current affirmative action initiatives as well as details of the planned legislative reviews.

The Government must accept an ILO technical mission to provide the necessary assistance to not only develop information management systems, but to support full compliance with all the obligations under the Convention.

Employer members – The Employers' group would like to thank the Government of Namibia for the comprehensive and useful information, especially on the

implementation and practice and law of the Convention, and all the legislative changes that have been adopted or are under way.

We would like to thank also the delegates that took the floor and participated in today's discussion. In light of the debate, the Employers' group invites the Government:

- (1) to adopt specific measures to ensure that workers who are victims of discrimination on the basis of HIV status, actual or perceived, have effective access to legal remedies, and invite the Government to also shed light on the body or bodies in charge of dealing with cases of discrimination in Namibia;
- (2) to report on the follow-up and action plan to the Office of the Ombudsman's Special Report on Racism and Discrimination submitted to the National Assembly in October 2017;
- (3) to report on the follow-up to The National Human Rights Action Plan For the period following 2015 to 2019, if any;
- (4) to report on the final legislative changes to the Affirmative Action Employment Amendment, Act 6 of 2007, following the Tripartite Labour Advisory Council inputs and given the work of the national task force;
- (5) clarify how, in the context of Namibia's redress programme, decisions of the EEC affect employers' ability to fill certain job positions;
- (6) report on the reform to the new Equitable Economic Empowerment Framework Bill of 2015, which is almost ready for Cabinet consideration before it is tabled in the National Assembly in the third or fourth quarter of the 2021 to 2022 financial year; and finally
- (7) to avail itself of any ILO technical assistance required.

Présidente – Je vous informe que la lecture du projet de conclusions concernant ce cas aura lieu, comme pour tous les autres cas individuels, lors de la dernière séance de la commission, le vendredi 18 juin 2021.

Ainsi avons-nous terminé l'examen des deux cas individuels qui étaient inscrits à l'ordre du jour de nos travaux de cet après-midi. La commission remercie tous les orateurs qui ont bien voulu étayer sur ce cas.

Avant de clore nos travaux, quelques informations pratiques:

Les procès-verbaux verbatim concernant l'examen des cas d'hier relatifs au Cambodge, sur la convention n°87, et au Mozambique, sur la convention n° 122, sont maintenant disponibles sur la page Web de la commission. Vous avez jusqu'au lundi 14 juin, 13 heures, pour déposer les amendements que vous souhaiteriez apporter à la transcription de la déclaration que vous avez formulée. L'adresse est connue: CAN2021@ilo.org.

Notre commission poursuivra ses travaux demain samedi, à partir de 13 heures précises, heure de Genève, avec la discussion des cas individuels suivants: le Kazakhstan, pour la convention (n° 87) sur la liberté syndicale et la protection du droit syndical, 1948; et l'Iraq, pour la convention (n° 111) concernant la discrimination (emploi et profession), 1958.

J'invite les membres qui souhaitent participer à ces discussions, s'ils ne l'ont pas encore fait, à bien vouloir s'inscrire sur la liste des orateurs en envoyant un courriel à l'adresse de la commission: CAN2021@ilo.org.

Je vous souhaite à toutes et à tous une bonne continuation, une bonne fin de journée, une bonne fin de soirée et à demain.

La séance est levée.

The sitting closed at 4.40 p.m.

La séance est levée à 16 h 40.

Se levantó la sesión a las 16.40 horas.

DRAFT