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Part Two

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

Report of the Committee on the Application of Standards

Part Two

Discussion on the General Survey, on the report of the Joint ILO–UNESCO Committee of Experts and on the situation concerning particular countries

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I. Discussion on the General Survey
Securing decent work for nursing personnel and domestic workers, key actors in the care economy

The Chairperson – We now turn to the second item on the agenda, which is the discussion of the General Survey of the Committee of Experts, *Securing decent work for nursing personnel and domestic workers, key actors in the care economy*.

As a follow-up to the informal tripartite consultations held in 2021 and 2022, it is proposed to structure the discussion of the General Survey around three overarching questions, on the understanding that this would not restrict speakers' interventions to just these questions which are addressed in the General Survey. These generic points are as follows: progress in the implementation of the instruments under consideration and difficulties in their application; measures to be taken to promote the conventions and their ratification in light of the best practices and obstacles encountered; and, lastly, the approaches that the ILO could follow in future with regard to its standard-setting activities and the provision of technical assistance.

I remind you that, in accordance with document D.1 on the working methods of the Committee, speaking time during the discussion of the General Survey is limited as follows: 30 minutes for the opening remarks by the spokespersons of the Employers' and Workers' groups; 15 minutes for the Government group; 5 minutes for other members; and 10 minutes for the closing remarks of the spokespersons of the Employers' and Workers' groups.

Worker members – In 2018, when the ILO Governing Body decided on the subject of the General Survey for this session of the Conference, no one realized how very appropriate it would be. Indeed, the pandemic that afflicted the world has shown the extent to which the workers covered by the instruments under examination are of vital importance for our societies. This General Survey and our discussion are a form of tribute to nursing personnel and domestic workers.

First, some thoughts concerning nursing personnel.

As indicated in the General Survey, the instruments do not provide a definition of the notions of "care" or "nursing services". That is perfectly understandable insofar as there was a desire to adopt the broadest and most encompassing approach possible. However, it can be seen that the absence of guidance in the instruments sometimes leads to definitions that are too restrictive and which differ in national legislation. The absence of a universal definition of the notion of "nurse" can have various harmful consequences, as indicated in the General Survey, such as the difficulty of undertaking comparisons between countries and the issue of the scope of application of the instruments.

It would undoubtedly be useful for the Office, in cooperation with the World Health Organization (WHO), as appropriate, to prepare a guide based on best practice so as to develop a common approach to the concepts. This aspect is all the more important as the sector is facing a major issue that is liable to worsen over the coming years: shortages. This is a phenomenon with multiple facets that gives rise to difficult problems.

One of the consequences is the slippage of tasks between functions. Procedures that were previously undertaken by doctors are entrusted to nurses, who are themselves divested of them by carers. If such transformations were to gather pace, they would made it necessary for us to rethink the various categories and the associated definitions.

Another transformation that is seen more commonly in the countries of the North is related to the fact that nurses are being entrusted with an increasing number of tasks that are not directly linked to care and which are more of an administrative nature. That often leads to a sort of suffering at work insofar as the women and men workers who are dedicated to this work do so principally to provide care, and not to devote a significant part of their time to work that they consider to be bureaucratic and of which they do not always see the utility. Decent work should above all be work that has meaning.

Another cause of shortages lies in the migratory flows of nursing personnel, who mainly move from the South to the North. This migration is quite clearly an opportunity for the workers concerned but is a catastrophe for the countries of the South, where their system is made more fragile. And yet, the Nursing Personnel Recommendation, 1977 (No. 157), in Paragraph 67, specifies that the recruitment of foreign nursing personnel should be authorized only on two conditions, one of which is that there is no shortage of nursing personnel in the country of origin. It would be necessary to address the deep-rooted causes of this imbalance. If there is a shortage in the countries of the North, that is because working conditions in the sector have become worse. Combating the shortage therefore implies the countries of the North investing massively in improving working and employment conditions. It is also necessary to ensure that the countries of origin are able to retain their life forces and participate in the construction of robust healthcare systems.

The General Survey rightly places emphasis on the importance of social dialogue, particularly in the planning of nursing services and personnel. We must nevertheless note that such dialogue is very often inadequate, or even non-existent, due to the non-existence in several countries of representative unions. It is therefore a priority to focus on reinforcing the capacities of organizations so that they can contribution to discussions on planning. The planning involved in this respect includes, in accordance with the Nursing Personnel Convention, 1977 (No. 149), education and training. The importance of this aspect cannot be over-emphasized, particularly in a sector that is developing very rapidly and where the principal mission is to improve health levels in the population.

Unfortunately, the sad reality is that in many countries it is not possible to train personnel, quite simply because training is not available. It is clear that it is the responsibility of the governments of the countries concerned to find solutions, although there are certain solutions to be developed at the international level to address this challenge.

With regard to the need to improve employment and working conditions to combat shortages, it should be emphasized that we are speaking of a sector, in the same way as that of domestic workers, which is highly feminized. Improving working conditions in these sectors is also promoting equality between women and men and achieving one of the other fundamental objectives of our Organization. This is also a sector characterized by arduous work and too frequently the only solution is to offer financial compensation. However, as noted by the General Survey, the health of women and men workers is not for sale. This issue therefore goes beyond the sectors covered here and it is high time that every effort was made to preserve the health of workers in the workplace.

Many other problems would deserve our attention, but we will confine ourselves to referring to the fundamental issue of working time. This is an essential issue for nursing personnel insofar as the underlying reason for limitations is also to protect the health of those receiving care. Excessive hours of work are often due to budgetary restrictions,

which uncontestably harm the quality of care. We also suggest that an evaluation could be undertaken of the tangible consequences of these restrictions and the deterioration of working conditions. Such an evaluation could, as appropriate, be undertaken in cooperation with the WHO.

We would also like to make three observations concerning domestic workers.

First, the General Survey dwells on the scope of application of the domestic workers Convention and Recommendation. It refers to the issue of its application to so-called self-employed workers and refers in this regard to the Employment Relationship Recommendation, 2006 (No. 198), to outline the necessary distinctions. But we should not lose sight of the fact that we are referring to a particularly vulnerable group of workers. Do we need to recall that the underlying purpose of labour law is to try and re-establish through the law and collective bargaining a type of balance between the parties? The eruption of digitalization and the accompanying gadgets must not serve as a smoke screen. They must not act as a pretext in trying to take us back to the situation that prevailed in the nineteenth century.

We would also have appreciated it if, as has happened in the past, the Committee of Experts could enter into dialogue with national jurisdictions on the relationship between competition law and the right to collective bargaining. We also support the observations contained in the General Survey on the importance of recognizing and promoting freedom of association and the right to collective bargaining for all domestic workers without distinction.

Our second remark relates to the recognition in the General Survey of the link between domestic work and informality. The General Survey observes that a great majority of domestic workers work in an informal context. This is a real challenge insofar as informality is a major obstacle to the implementation of rights, so much so that action to combat informality in the sector must be given priority. Similarly, the great shortcomings noted in respect for freedom of association also call for a priority response as freedom of association is an indispensable requirement for the achievement of other rights.

The third point concerns the importance of inspection, through which it can be ensured that recognized rights are effectively implemented. One of the major difficulties for domestic workers is that they carry out their work in households. There is accordingly a risk that the organization of inspections may prejudice the right to privacy. As noted by the General Survey, this difficulty is not in any way insurmountable as, although the instruments have left this issue fairly open, in view of the reticence expressed on the subject, it is clear that in several countries it has been possible to reconcile the various concerns. This is particularly the case, for example, where the prior authorization of a magistrate is required.

Finally, a few words on the ratification of the instruments. It should first be recalled that ratification is a sovereign act. It is not an end in itself, and it can be seen that in many non-ratifying countries, the legislation is largely in conformity with the Convention. This shows the influence of instruments, irrespective of ratification. But it has to be noted that no Government is contesting the relevance and importance of the Conventions under examination, which shows the importance of intensifying ratification efforts.

In conclusion, we thank the Committee of Experts for the quality of the General Survey, and its detailed content, and we hope that it will contribute to a better understanding and application of the instruments examined.

Another Worker member, speaking on behalf of the Worker members – In a large majority of countries, domestic workers still do not enjoy the same legal rights as other workers. This has devastating consequences for them in practice, as they face precarious employment and poor working conditions.

In the Netherlands there is a special regulation that applies to domestic workers and domestic work in the so-called "Regeling dienstverlening aan huis", which basically consists of a number of exceptions to the public law and civil law obligations that apply to employers, and which is not in accordance with the Domestic Workers Convention, 2011 (No. 189). These exceptions are only applicable to workers performing exclusively or almost exclusively domestic or personal services for a natural person less than four days a week. The trade unions stress that this is also not in line with the Part-Time Work Convention, 1994 (No. 175). For example, based on article 655, paragraph 4, of the Civil Code, Book 7, employers of domestic workers are excluded from the obligation of providing the domestic employee with a written statement of items such as the agreed wage and usual working hours. For domestic workers, this statement only has to be provided by the employer when the employee explicitly requests it. Another example is found in article 628, paragraph 2(a), of the Civil Code, Book 7, according to which domestic workers are entitled to 70 per cent of their salary for a period of 6 weeks in case of illness or pregnancy, whereas other workers in the Netherlands are generally entitled to a period of 104 weeks.

Regarding social security, domestic workers are exempt from mandatory employee insurance. Instead, domestic workers can have voluntary insurance coverage at their own initiative. However, this is very expensive and, in most cases, the general aid "Algemene Bijstand" is the only social security available for domestic workers, provided that they have residence status.

Regarding dismissal protections, the employer does not need to apply for a redundancy authorization for domestic workers working less than four days a week because of a legal exception under BBA article 2.1. However, even this light legislation is not enforced in practice. Employers are responsible, but most of them are unaware of their obligations.

The feminist organization Bureau Clara Wichmann won a case on behalf of a domestic care worker for access to unemployment benefits. The Court stated in its decision that the "Regeling dienstverlening aan huis" is discriminatory against women, because almost all workers in this sector are female. The case was won, but the Government has yet to act on it. Trade unions in the Netherlands strongly oppose the fact that domestic workers are exempted from mandatory employee social insurance and pensions and therefore urge the Dutch Government to ratify ILO Convention No. 189 and to improve the social security and labour market position of domestic workers.

During the COVID-19 crisis, domestic workers have been especially vulnerable, having no access to social security, or to the emergency measures that the Dutch Government had taken, such as the "NOW" or "TOZO" scheme.

As domestic work is largely informal work, there is no possibility for collective bargaining agreements, because domestic work is not formalized, and access to effective remedies as mentioned in the Violence and Harassment Convention, 2019 (No. 190), is not granted. Therefore, domestic workers do not enjoy effective protections from abuse, harassment and violence. They remain vulnerable.

The Social and Economic Council (SER), which consists of employers' and workers' organizations, as well as independent members, has recommended that the Government research formalizing the market for household services. The Government had not yet reacted to this report. This unequal and unfair treatment of domestic workers in the Netherlands unfortunately reflects a generalized situation of exclusion of domestic workers in the rest of the world.

In Germany, over 80 per cent of domestic workers, who are primarily migrant live-in domestic workers, providing 24-hour care, are hired as bogus self-employed workers, taking them outside the scope of labour and social law. In Brazil, domestic workers who provide services up to two days a week for one person or family are classified as daily workers. These workers are considered autonomous workers and are excluded from the protection afforded under the law. The prevalence of disguised employment, dependent self-employment and multiparty employment in the sector, as well as the increasing use of digital platforms to mediate domestic work, lead to a heightened risk of misclassification of domestic workers, excluding one of the most vulnerable categories of workers from labour protections.

In addition, domestic workers are too often deprived of their fundamental right to freedom of association and to bargain collectively. On top of their exclusion from the national laws of many countries, they face practical hurdles to organizing, such as isolation, language barriers and a general lack of access to information. We recall that Convention No. 189 and the Domestic Workers Recommendation, 2011 (No. 201), lay out the principle of equal treatment of domestic workers with other workers and that freedom of association and collective bargaining are fundamental rights guaranteed to all workers.

Eleven years after the adoption of Convention No. 189, it is high time to make good on our commitments and to ensure labour protections to all domestic workers, irrespective of their nationality or employment status. In this regard, we want to stress the pivotal role that governments must play in improving the employment, working and living conditions of domestic workers through strong, legal and institutional frameworks ensuring labour protections, concrete corrective measures, effective monitoring and accessible remedies to domestic workers. It is also important to foster organizing efforts among domestic workers and to promote collective bargaining in the sector.

Another Worker member, speaking on behalf of the Worker members – For years, we have been denouncing the underfunding of the public health system and, following the outbreak of the COVID-19 health crisis, it has been evident that health systems are weakened, have many limitations and lack both material and personal resources.

The COVID-19 pandemic has had a devastating impact on certain working conditions, which were already so stretched. The example of Spain speaks for itself. We have had to suffer a pandemic to become aware of the deficiencies characterizing health systems. Preventive management was not a priority, because prevention has always been considered a cost and not a necessary expense.

The workforce in health systems had been depleted since the economic crisis and has not been increased since. We were arriving with health systems that were not prepared for a pandemic. And the result was thousands of infections in all health sectors.

We need to advocate strategies that strengthen the public health system so that nursing and other health personnel can work under optimal conditions. For that, it is necessary to:

- increase financing by reversing the cuts that were imposed following the economic crisis with a view to recuperating the quality of care and improving working conditions and pay in the sector;
- increase recruitment by 10 per cent for specialized care and 20 per cent for primary care, as well as a reduction of temporary contracts;
- promote and reinforce primary care;
- improve occupational safety and health with psychosocial risk assessments for personnel;
- inspect and carry out constant quality audits in health centres;
- define responsible criteria in the conditions for subcontracted services;

Furthermore:

- social dialogue is a tool that is essential in any country to address and agree on solutions and the decisions that are taken. Dialogue with governments needs to be flexible;
- a determined focus on research in the public sector with a significant increase in financing.

With regard to the care sector, which includes residential care homes, home care, day centres and remote assistance, it is a sector which, following the crisis, has shown the importance of care work in the society of today and the precarious conditions under which these services are provided in many cases. It is also a highly feminized sector which has historically not been recognized at its true value.

COVID-19 has shown up the fragility of the system of care for the elderly and dependent persons. It is therefore necessary to: improve the quality of the system and the adequacy of care; unblock negotiation of the State Dependent Care Collective Agreement, which has now been extended for four years; and increase recruitment to reduce workload by around 20 per cent; increase wages; and advocate for the professionalization of the sector and social recognition.

Nursing personnel in Spain has been and continues to be under high levels of stress, as are other health personnel, both in the health and social care sectors.

It is clear that there have been and continue to be shortages of nursing personnel, which have become chronic due to the lack of investment. We therefore believe that it is necessary to:

- approve a State standard to adapt nurse-patient ratios to the European average. There is currently a rate of 5.2 professional nurses for each 1,000 inhabitants, while the European rate is around 8.4;
- develop nursing specialization through the creation of specific posts to increase the value of the profession;
- professional reclassification in the national health system by granting nursing personnel a higher level with the corresponding increases in capacities and wages;
- greater health and safety at the workplace;
- wage increases. If the profession is not made attractive, we will not have sufficient personnel to care for the users;

- reduce workload by increasing recruitment;
- continuous vocational development.

We consider that these improvements in the public–private health system, and in the system of care for dependent persons, need to be negotiated and agreed upon through social dialogue and collective bargaining with unions, which are the legitimate bodies to defend the rights of the working class.

The example of Spain is not at all an isolated case and the solutions that we are proposing in this discussion can be applied in other national contexts.

The crisis is not yet behind us, and we have to rebuild and consolidate our health systems, and to do so we need to improve the employment and working conditions of nurses and other healthcare personnel. The highest priority needs to be given to ensuring the safety, health and welfare of nursing personnel through the development and implementation of a strategic health policy and crisis planning in all countries.

Governments need to take action, in collaboration with trade unions, to address without delay the many decent work deficits affecting nursing personnel and to improve their employment and working conditions, including through: the reduction of hours of work and the provision of adequate rest periods; adequate and equitable remuneration; better measures to protect their health and safety; access to social security and benefits adapted to their specific needs, especially in light of differences in coverage between nationals and non-nationals, employees and self-employed workers, and those working under different contractual arrangements, and between employees in the public and private sectors.

Employer members – The Employer members wish to begin by thanking the Committee of Experts and the Office for preparing this General Survey on four ILO instruments relating to workers in the care economy, namely, Convention No. 149, Convention No. 189, as well as Recommendation No. 157 and Recommendation No. 201. Nursing personnel and domestic workers are very specific categories of workers that, alongside other categories, include plantation workers, tenants and sharecroppers, hotel and restaurant workers or home workers, categories that have been addressed in particular ILO standards. The Employer members welcome the focus in this General Survey on these four instruments, two Conventions and two Recommendations which enable a more in-depth review of the national law and practice of Member States regarding the elements covered by them, including the obstacles to ratification and implementation. The Employer members agree with the Worker members that the selection of the standards on nursing personnel and domestic workers for this General Survey is very timely, especially against the backdrop of the COVID-19 pandemic, which has in particular placed nurses in the spotlight. Since the outbreak of COVID-19, healthcare and medical services have remained one of the most essential services in the world. Nurses, especially those working in hospitals, have been on the front line fighting against the virus. In recognition of this fact, the recently adopted International Labour Conference Global Call to Action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient, points out that healthcare workers have a higher risk of exposure to COVID-19 and recommends that they should have access to vaccines, personal protective equipment, training, testing and psychosocial support and that they should be adequately renumerated and protected at work, including against excessive workloads.

The focus on nursing personnel and domestic workers is also timely in view of other developments which present major challenges for future workforce planning, the skills

needs and working conditions of these two groups. These concern, in particular, demographic changes and the ageing of the population, which significantly increases the need for the services of care workers such as nurses and domestic workers. For instance, functioning nursing care services for the elderly are increasingly important to relieve the burden on families and to enable, in particular, women to start or maintain work, especially against the backdrop of a growing shortage of skilled workers in many countries. Also, considering the divergency of existing definitions in Member States, while nursing personnel and domestic workers are categories of workers that play a crucial role in the functioning of the care economy, it needs to be recognized that the care economy also comprises professional groups not covered by Convention No. 149 and Recommendation No. 157, such as social workers and childcare workers. Domestic workers are not always involved in care work. The issues concerning nurses and domestic workers therefore do not fully reflect the situation of the care economy as a whole. Whilst the wider context of the care economy should be kept in mind, it should be recognized that our discussion in the Committee is specifically about the law and practice regarding four particular ILO instruments in both ratifying and non-ratifying countries. A discussion of the overall situation of the care economy and care economy workers in general would go beyond the scope of the present examination and would require much wider input and consultation than just the reports on these four instruments. Taking into account these general remarks, we would now like to provide more specific comments on the individual chapters of the General Survey.

First, on Convention No. 149 and Recommendation No. 157, we note that to date Convention No. 149 has been ratified by 41 Member States. Recommendation No. 157 complements the Convention, providing non-binding practical guidance for developing national law and policies on nursing personnel. In 2002, following the Cartier Working Party's recommendation, the ILO Governing Body classified both instruments as up-to-date technical instruments. The two instruments recognize the vital role of nursing personnel and other healthcare workers for the health and well-being of populations and cover problems affecting their employment conditions. They set minimum labour standards specifically designed to highlight the special conditions in which nursing work is carried out. These instruments were widely welcomed at the time of adoption in 1977. Whilst the majority of employers voted in favour of Convention No. 149 and Recommendation No. 157, the Employers' group expressed some reservations at the time of their adoption which are still valid today. With regard to Convention No. 149, the Employers' group considers that, in principle, the ILO should avoid drawing up conventions for specific occupational groups of workers, such as for nursing personnel, as this would weaken attempts to have general standards for all workers and lead instead to a proliferation of instruments which, in our view, would undermine the effectiveness of ILO standard setting. With regard to Recommendation No. 157, the Employer members feel that the Recommendation, which has 71 Paragraphs and an Annex on policy concerning nursing services and nursing personnel consisting of another 30 Paragraphs, is much too long and much too detailed, particularly in the parts relating to renumeration, working time and rest periods. In the Employers' group's view, flexibility in these areas, especially in the arrangement of working time, is important for employers to operate both productively and competitively and for workers' ability to balance their working and personal lives. Overly prescriptive provisions, even in a Recommendation, can make implementation unnecessarily difficult and as a result may discourage it. Regarding the conscience clause in Paragraph 18 of the Recommendation, which allows nursing personnel to claim exemption from performing specific duties without being penalized, where performance would conflict with their religious, moral

or ethical convictions, the Employer members note that this should be interpreted in such a way that a negative impact on the health of patients and/or discriminatory treatment of patients is avoided. Notwithstanding these comments, the Employer members are of the view that Convention No. 149 and Recommendation No. 157 provide relevant guidance that enables Member States to design policies and regulations on nursing personnel in a manner appropriate to their national conditions and in consultation with the most representative employers' and workers' organizations. A particularly relevant provision, for instance, is Article 2(2) of Convention No. 149 concerning the necessary measures that nursing personnel should be provided to make the profession attractive. For example, education and training appropriate to the exercise of their functions and employment and working conditions, including career prospects and renumeration. In terms of education and training for nursing personnel, the Employers' group would stress the importance of training on the use of digital devices and techniques. This is not only necessary to ensure high quality services, but also efficiency and productivity and to achieve cost containment in the care sector. Regarding employment and working conditions for nursing personnel, the Employers noted that, while there is a big difference amongst Member States, nursing personnel in certain countries have received above average wage increases in the past ten years, including during the COVID-19 crisis. Of course, more needs to be done to ensure fair working conditions for nursing personnel on a permanent basis so that it is likely to attract persons to the profession and retain them.

Turning to the Convention No. 189 and Recommendation No. 201, these lay down basic principles and measures regarding the promotion of decent work for domestic workers. They are classified as up-to-date technical instruments. To date, Convention No. 189 has been ratified by 35 Member States and is in force in 33 of them. In contrast to the instruments relating to nursing personal, Convention No. 189 and Recommendation No. 201 are seen more critically by the Employers' group. One particular concern is the issue of the treatment of working time under Article 10 of Convention No. 189, which requires that each ratifying country shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work and overtime compensation. The Employers' group notes that this is a very difficult issue as working time lies at the very heart of employment and is linked closely with remuneration, rest and leave. The Employer members would disagree with the assumption that ordinary hours of work and overtime arrangements that apply, for example, in factories or other commercial undertakings, could be imported into domestic employment. Applying the notion of overtime to work within family homes is highly problematic, particularly when the employee lives in the home and does not make a clear daily exit from the workplace. Another problematic issue is standby and on-call time under Article 10(3). In the Employers' view, the wording of the provision does not provide the necessary flexibility for Member States. The treatment of standby time as hours worked, as referred to in this provision, would likely cause practical problems in many national systems. For example, detailed time measurements for standby and on-call hours could be impossible to apply in most homes, as it is impractical for household employers to manage, monitor, administer and record such hours. The concepts of standby and on-call come from general industrial and commercial employment for very specific reasons and cannot be assumed to apply in domestic work.

The Employer members also see practical problems with treating specific periods during which domestic workers are not actively working, but remain at the disposal of the household, as working time. Such standby times, which can be significant, should be treated differently from periods of active work. If both are considered working time on

an equal basis, it could have large implications, especially when domestic workers are paid on an hourly basis. Furthermore, the Employer members do not find Paragraph 9 of Recommendation No. 201 helpful. This Paragraph complements Article 10(3) and provides various suggestions which governments may consider in regard to on-call and standby hours. Paragraph 9(1) of Recommendation No. 201 suggests regulating maximum hours, compensatory rest and the rate of remuneration of standby hours. The Employers' group considers that regulating these matters is unlikely to provide clarification for householders and offers little benefit to domestic workers. In addition, Article 2 of Convention No. 189 significantly limits opportunities for Member States to make exclusions from the scope of the Convention.

While Article 2(2) ensures that governments can exclude defined categories of workers after consultations with the most representative Employer and Worker representatives, Article 2(3) dictates that the exclusions must be accurately and comprehensively addressed during the first 12 months of operation of the Convention once ratified. This limited time frame means that there is no effective opportunity for governments to correct errors or to adapt to unforeseen approaches that could arise from judicial interpretation.

A final provision that the Employer members wish to highlight is Article 7 of Convention No. 189, which requires ratifying countries to ensure that domestic workers are informed of the various specific terms and conditions of their employment. The provision lists not less than 11 items, including basic information, such as the name and address of the employer and worker. Paragraph 6 of Recommendation No. 201 contains a further list of seven matters that should be addressed in the terms and conditions of employment, in addition to those listed in Article 7. We note that the cumulative effect of these obligations needs careful consideration, as the mandatory list under Article 7 of Convention No. 189 is quite extensive on its own.

Moving to the subject of freedom of association and collective bargaining, the Employer members note the provisions in the four instruments providing for freedom of association and the effective recognition of the right to collective bargaining for nursing personnel and domestic workers, as well as the efforts made by Member States to implement them that are set out in the General Survey. In this context, the Employer members note that the Committee of Experts stresses the importance of the establishment and growth of free independent and representative organizations of domestic employers and workers for the effective recognition of the right to collective bargaining. The Committee of Experts also considers that, beyond the mere removal of legal obstacles, active measures need to be taken to encourage and support the establishment of such organizations. While the Employer members can agree in principle with this concept, we must nevertheless point out that the initiative to set up or not an organization of domestic employers lies solely with the domestic employers at the national level. There should not be pressure or undue interference by authorities of the Member State in relation to this process. More than that, it is for domestic employers' organizations, in our view, to define their own mandate, which may or may not include collective bargaining.

The Employer members also note that various difficulties in collective bargaining exist in the domestic work sector in practice. While we agree that it is appropriate to encourage and facilitate collective bargaining, the Employers' group warns against mandatory collective bargaining. The Employer members have expressed strong concerns in the context of the Right to Organise and Collective Bargaining Convention,

1949 (No. 98), where the Committee of Experts has accepted the establishment of a legal obligation to bargain collectively as a possible measure of promoting it.

We also caution against extending collective agreements for domestic workers to the whole sector. This should only be done if the respective collective agreement already has a significant scope of coverage and thus is likely to contain rules and standards that are realistically applicable across the sector. The Employers' group suggests that in the absence of an applicable collective agreement, domestic workers are not without protection according to the Convention. It is for governments, in consultation with the most representative employers' and workers' organizations, to ensure through law, regulation or other measures that domestic workers benefit from the protection that exists in the Convention that addresses their particular situation.

The Employer members note that, while the present ratification numbers for Convention Nos 149 and 189 are about average among ILO Conventions, the prospects for future ratification seem limited. In the case of Convention No. 149, one reason for this may be that the instrument was adopted 45 years ago and has fallen out of focus in recent years among the many other Conventions adopted in the meantime.

While Convention No. 189 is a more recent instrument and therefore at present has a greater ratification dynamic, the situation does not seem to be much different than that of Convention No. 149. According to the government feedback received, the potential for further ratifications also appears limited with respect to this instrument.

While a number of countries refer to concrete ratification obstacles in law or practice, it seems that overall lack of interest hinders further ratification. This is reflected in the General Survey, where reports reflect that ratification is currently not envisaged or is not necessary, or national legislation is already largely compliant with the provisions of the Convention. This may be ratification fatigue setting in. While the need to provide for adequate labour protection for nursing personnel and for domestic workers is not questioned by the Employers' group, there does appear to be hesitation to undergo the procedures and administration on the part of Member States related to the ratification of these instruments.

More generally it appears that there is limited interest by Member States in ratifying Conventions that address the working conditions of specific categories of workers, and further reflection on this is necessary. In order to get more clarity regarding the concrete reasons for non-ratification, the Employers suggest that the Office conduct research on this question and report the results to the ILO Governing Body, so that the necessary measures for future ILO standards policy can be considered.

The Employers' group would in this context also like to recall the importance of proper consultation on any possible ratification and implementation of Conventions with free, representative and independent employers' and workers' organizations. The value of ratifications by countries where freedom of association is restricted, and therefore no such independent workers' or employers' organizations exist, is significantly reduced.

In conclusion, the Employer members highlight the increasing importance of the care economy within the overall global economy and the important role that nursing personnel and domestic workers play in the care economy. With respect to nursing personnel, the Employers' group is of the view that there is a clear need for policies and measures that help attract competent nursing personnel and, in particular, a focus on lifelong training and fair employment conditions, while at the same time taking into account technological advances and cost containment. While visible progress in this

regard has been achieved during the pandemic in some countries, more needs to be done in other Member States.

In respect of domestic workers, greater efforts need to be made to make their situation more transparent and to ensure that they can enjoy adequate and protective working conditions. Regardless of the fact that, in the Employers' view, standards for specific categories of workers lead to fragmentation of the body of international labour standards, and should be avoided in the future, we do recognize that in this situation all the four instruments overall contain relevant guidance for Member States.

The Employers' group notes in closing that Convention No. 149 contains flexibility clauses for Member States that take into account the needs of workers and employers. This is in principle also true for Convention No. 189, even though the Employer members restate that it contains some ambiguous provisions which may hinder ratification and implementation in Member States.

The Employer members' view is that consultation and social dialogue with the most representative social partners should be taking place to take into account the needs of these workers within their national realities and that this is key for effective implementation. We look forward to the debate this afternoon and tomorrow which will hopefully provide a more meaningful picture of the current state of law and practice related to the four instruments in Member States.

Government member, France – I am speaking on behalf of the **European Union (EU) and its Member States**. The candidate countries **Montenegro, Albania** and **Serbia** and the European Free Trade Association country **Norway**, Member of the European Economic Area, as well as **Georgia** and **Ukraine** align themselves with this statement.

At the outset, we would like to thank the Committee of Experts for the very well drafted General Survey. It not only provides a sound background for our discussions in this Committee, but also highlights the fundamental role this sector plays in our response to the COVID-19 pandemic and draws attention to the challenges encountered. This has been reconfirmed by the WHO designating 2020 as International Year of the Nurse and the Midwife, and 2021 as International Year of Health and Care Workers, in recognition of the millions of health and care workers at the frontlines of the COVID-19 pandemic.

We would also like to commend the input of constituents into this General Survey, which underlines their commitment to promoting decent work for workers that we all rely on.

The ILO estimates that care workers amount to approximately 381 million globally (11.5 per cent of total global employment), of whom 70 per cent are women. Accordingly, this highly feminized sector presents challenges that women workers face more generally, such as suffering gender segregation, low remuneration and poor working conditions.

Moreover, many care workers are migrant workers, who often face cross-sectional discrimination and are among the most vulnerable on the labour market.

In addition, the General Survey clearly recognizes that increasing investment in the care economy to achieve the Sustainable Development Goals (SDGs) will result in a total of 475 million jobs by 2030, or 117 million new jobs.

Similarly, the *State of the World's Nursing* report notes that nurses are critical to the global effort to achieve the SDGs, not only SDG 3 on ensuring healthy lives and

promoting well-being or SDG 4 on education, but also SDG 5 on gender equality and SDG 8 on full and productive employment and decent work.

The General Survey highlights that the pandemic has exacerbated the difficult working conditions of care workers, leading many to leave the sector. The COVID-19 pandemic aggravated the situation of many categories of care workers, such as community health workers and workers engaged in providing personal care and long-term care, including domestic workers, who are not only understaffed but often work undeclared, suffering intense workloads, poor remuneration, precarious employment and heightened exposure to health risks.

Even before the pandemic, the sector faced many uncertainties and pressures. Access, affordability and quality were among the key challenges in relation to the care sector, and an adequate workforce is vital not only to meet the rising demand for high-quality services, but above all to address the current general labour shortage which continues to intensify.

We must all commend care workers for their unmatched engagement and dedication, and we must ensure that these vital workers can perform their jobs under decent working conditions. We must not only raise awareness of the issues faced by care workers, but we must also increase investment in the care economy, reform the sector to address its structural weaknesses and to make it more resilient to future external shocks.

These premises are reflected in our COVID-19 recovery plan, NextGenerationEU. The forthcoming European Care Strategy will set a framework for policy reforms to guide the development of sustainable long-term care that ensures better and more affordable access to quality services for all, including by addressing workforce challenges.

Furthermore, we support these efforts globally as well, through the Team Europe Initiative. EU Member States coordinate their economic and employment policies through the European Semester. The Annual Sustainable Growth Strategy sets out sustainability, productivity, fairness and macroeconomic stability as the guiding principles underpinning national recovery and resilience plans.

The ILO plays a unique normative role in promoting decent work in the care economy, which the EU and its Member States continue to stand ready to support. The full realization of fundamental principles and rights at work in the context of the care sector is essential to ensuring decent work for these key workers. A few issues stand out in particular:

First, we need to meet the rising demand for care workers. This can support job growth and provide an opportunity for quality jobs, as well as help retain care workers. The provision of quality education and training are also important to provide stable career prospects. Increasingly complex skills requirements make finding staff increasingly difficult but may also make the profession more attractive.

Second, the predominance of undeclared work in the care sector in many countries often comes with neglected costs and decent work deficits. For example, due to their informal status, many workers are often excluded from coverage by national OSH legislation, aggravating their already precarious and vulnerable situation. Moreover, the COVID-19 pandemic has exacerbated their situation, as they have too often not received any form of social protection.

Third, many undeclared care workers are also migrant workers. They tend to be employed in a wide range of care jobs, such as nurses, midwives and domestic workers.

The Employers Sanctions Directive provides a European legal framework to prevent and respond specifically to challenges of illegal employment of irregular migrants, who are often in a more precarious and vulnerable situation. It also sets out measures to protect the rights of irregular migrants, establishing mechanisms to claim outstanding wages, facilitate complaints that can reveal situations of illegal employment and issue temporary residence permits to victims of particularly abusive employers to take part in criminal proceedings.

Fourth, migrant care workers who work in the formal economy often face other barriers, such as restrictions on their freedom of movement, in particular due to a lack of harmonization of qualification standards and recognition of credentials. In the EU, Directive 2005/36/EC on the recognition of professional qualifications has consolidated a system of mutual recognition that provides for automatic recognition of a number of professions based on harmonized minimum training requirements.

Fifth, effective evidence-based policies should be firmly rooted in relevant good quality data. Although progress is being made in developing many common indicators in the care sector, important data gaps remain. The ILO needs to assist constituents in exploring the availability of comparable data on all key dimensions of the care sector. This is important not only for the identification of challenges and monitoring of trends, but most importantly for the elaboration of solutions and effective policies.

Finally, and very importantly, the EU and its Member States reiterate that social dialogue, freedom of association and collective bargaining are the cornerstone of decent work for care economy workers.

The pandemic has accelerated the already emerging profound changes in the world of work and in the care sector in particular. The EU and its Member States will continue to place decent work in the care economy among its priorities. We will continue to support the ILO and other States in their endeavours.

Government member, Denmark – I am speaking on behalf of the **Nordic Governments**. We align with the EU statement. The Nordic Governments welcome the General Survey presented for this years' Conference. It is an informative and thorough presentation of two important topics. We would like to complement the Office for bringing up this relevant and timely topic. The pandemic unfortunately has put the spotlight on already existing challenges that nursing personnel are facing, including stigmatization, harassment and discrimination.

We reiterate the importance of focusing on this group of workers and we urge Member States to address these challenges, especially during the pandemic, which has made us even more acutely aware of the dedication of health workers and their crucial role in our societies.

As with many other countries, the Nordic countries also have challenges due to the shortage of nursing personnel. The need to ensure sufficient numbers of nursing personnel and to invest in the care economy is greater than ever. Investing in the care economy is not only critical for ensuring decent working conditions for nursing personnel and the health and well-being of populations. It can also contribute to building back better and to a more gender equal world of work.

In the Nordic countries, comprehensive care policies and social infrastructure, in particular accessible and affordable childcare and elderly care of good quality, has increased women's labour force participation. When childcare and elderly care is insufficient, women's labour force participation suffers.

The Nordic Governments would also like to use this occasion to focus on the fundamental need for protection of domestic workers. Domestic workers are a particularly vulnerable group. The report shows that they are more exposed to becoming victims of forced labour and trafficking and also often lack the protection given to other workers. We also know that child labour often takes the form of domestic work. Many are denied the right to freedom of association and protection from abuse. The Nordic Governments would strongly encourage all Member States to address these important issues and to ensure fundamental rights for the many thousands of domestic workers living under unacceptable conditions today.

Convention No. 189 is an important instrument to help ensure domestic workers fundamental rights and a path to decent work for this group of workers. The various challenges facing nursing personnel and domestic workers require resolute action by governments and social partners.

Government member, Türkiye – I would like to thank the Committee of Experts for their comprehensive and updated General Survey. First of all, please let me express my pleasure to see you all safe and sound and in this meeting. I would like to emphasize that the ILO plays a vital role in overcoming the problems and alleviating the burdens brought by the COVID-19 pandemic to all aspects of working life. As we know, the COVID-19 pandemic has taken a heavy toll on nursing personnel and other health workers, as well as domestic workers. We are all aware that many significant challenges, such as the lack of standardization, the changing nature of work and employment relationships, as well as a growing incidence of verbal and physical harassment and abuse during the pandemic, all affect care services in a negative manner. Moreover, the ageing of populations, climate change and globalization have profound and transformative impacts on the world of work. Under these circumstances, governments have the responsibility of developing and actively implementing occupational health and safety programmes for health workers. In this respect, we note that such programmes are a core element for effective management of occupational safety and health, as provided for under the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). They provide an opportunity for coordinated action by all stakeholders through social dialogue towards common objectives for promoting decent work in the health sector and increasing the resilience of health institutions.

Türkiye is fully committed to the rights and principles established in the Declaration on Fundamental Principles and Rights, 1998, and the Declaration on Social Justice for a Fair Globalization, 2008, and has ratified all eight fundamental Conventions. In this context, in the strategic plan of the Turkish Ministry of Health, a document reflecting national health policy strategic objectives has been developed to strengthen the nursing profession and increase the quality of nursing services. The national policy on nursing services is coordinated with other aspects of healthcare services and with relevant policies and programmes within the scope of the mandate and responsibilities of other auxiliary healthcare personnel.

With respect to domestic work, there is no discrimination against migrant domestic workers in the Turkish legal system. In the social security system in Türkiye, there is no discrimination on the basis of nationality and sex. All workers are equal in terms of labour and social security rights and obligations. The statutory social insurance programme covers all the working population, including domestic workers. The National Employment Strategy was prepared and put into practice based on the Employment Policy Convention, 1964 (No. 122), and the European Employment Strategy, and aims to

provide working opportunities to everyone, minimize unemployment and change the structure and quality of employment in a positive way.

We reaffirm our commitment to continue encouraging the promotion of fundamental principles and rights at work and decent work for care workers. We hope that coordinated action in collaboration with the social partners and consultation with other relevant stakeholders will be intensified and serve to promote social dialogue and decent work conditions for all. We believe that extensive cooperation with the social partners based on good governance on a country basis and their invaluable and diligent work and the multifaceted approach has a key role to play in promoting decent work for all care economy workers.

Employer member, United States of America – Throughout the pandemic, we have witnessed first-hand the critical role that healthcare and medical services staff have played on the frontline of the response to COVID-19. Demographic changes, such as ageing populations and shortages of qualified nursing staff, also add to the timeliness of this General Survey.

I would like to draw attention to key examples of innovation and inclusion in the General Survey.

The health-necessitated lockdown has required fresh thinking and innovation to enable the safe delivery of critical nursing and midwifery education and training. As the General Survey notes, such programmes must recognize and take advantage of new information communication technology and fresh ways of reaching the students and professionals who need training, especially those living in rural and underserved areas.

One example cited from the United States is the Nurse Education, Practice, Quality and Retention Simulation Education Training Program, which is managed by the US Health Resources and Services Administration. This programme aims to enhance nurse education and strengthen the nursing workforce through the use of simulation-based technology to advance the health of patients, families and communities in rural and medically underserved areas experiencing diseases and conditions that affect public health.

Another innovative programme is the Nursing Workforce Diversity Program, also managed by the US Health Resources and Services Administration. This grant programme aims to increase nursing education opportunities for individuals who are from disadvantaged backgrounds, including racial and ethnic minorities who are under-represented among registered nurses.

The General Survey also draws attention to the risks faced by healthcare workers of exposure to violence and harassment, and the report highlights examples of innovative efforts in the United States aimed at supporting nurses and care providers in this regard. One example is an eLearning platform course, hosted by the US Center for Disease Control and Prevention (CDC), which aims to support nurses in developing comprehensive workplace violence prevention programmes. Another example comes from the US Trafficking Victims Protection Act, which requires United States embassies and consulates worldwide to provide a “Know your rights” pamphlet to applicants for temporary work and exchange visitor visas, including visas for domestic workers employed by diplomats or officials of international organizations.

In an example of cross-cutting collaboration, the example in the report from the United States of the Emergency Nurses Association and the American College of Emergency Physicians is an important one. Together, they jointly launched the “No

Silence on ED Violence Campaign" in 2019 to raise awareness of the dangers faced in hospital emergency departments.

In conclusion, as the ILO continues to study the application and impacts of ILO instruments like the ones under discussion today, we reiterate the importance of inclusive social dialogue, best practice exchanges and recognition of the critical role of national employer organizations and sustainable enterprises in advancing our shared goals.

Worker member, Sweden – I am speaking on behalf of the Nordic trade unions. The past two years have reminded us, if proof were needed, that the care sector plays a central role in the organization of our societies and their capacity to survive in the face of global phenomena, like the COVID-19 pandemic. Across the globe, the care sector is growing continuously, and its importance cannot be overstated. Care economy workers provide direct care like nursing services, childcare and personal care for ill persons, those with disabilities and the elderly, or indirect care including things like cooking and cleaning. Current and future global factors of change, such as an ageing global population, climate change, migration and technological advances, have and will continue to have a significant impact on societies' needs for healthcare and on public sector policies in response to these changes.

At present, the global nursing workforce totals 27.9 million, but the lack of qualified nurses is huge and demand for health workers is expected to almost double by 2030, leading to a shortfall of 13 million nurses. Similarly, the demand for domestic workers has continued to increase in recent decades due to the growing participation of women in the labour force and international migration, as well as inadequate policies to enable workers to combine paid work with family responsibilities. We need to be ready to meet these challenges. Care workers have faced severe hardships during the pandemic, but their difficulties are long-standing. Care workers are overworked, underpaid and unprotected. We are witnessing a systematic devaluation of work performed mainly by women. We must address nurses' poorly remunerated and challenging work and employment conditions, which lead to low job satisfaction and persistent shortages of nurses. We also have a duty to significantly improve the employment, working and living conditions of domestic workers, one of the most unregulated and undervalued professions.

We note with deep concern the increased risk of violence and harassment for nurses and domestic workers. It is therefore important to rectify and implement the Violence and Harassment Convention (No. 190) and the Violence and Harassment Recommendation, 2019 (No. 206).

The care sector has considerable potential as a major source of decent work and employment, especially for women workers, who constitute the majority of the sectors' workforce. Adequate public investment in the care economy would stimulate economic development. Research shows how investing 2 per cent of GDP in public care services can create millions of quality jobs, narrow the gender pay gap, reduce overall inequality, help redress the exclusion of women from decent jobs and contribute to inclusive economic development.

Within the ILO, we have made repeated commitments to promote and invest in the care economy, most recently in the 2019 Global Commission on the Future of Work, the 2019 Centenary Declaration for the Future of Work, the 2021 ILO Global Call to Action for a human-centred recovery from the COVID-19 crisis, and the conclusions concerning the

second recurrent discussion on social protection, adopted by the International Labour Conference in June 2021. Now it is time to act together on these commitments.

Government member, Morocco – I have the honour to take the floor on behalf of the Government of Morocco to thank the Governing Body for having decided to schedule the discussion on the application of two Conventions (Convention No. 149 and Convention No. 189) and their two Recommendations (Recommendation No. 157 and Recommendation No. 201), in tribute to the millions of health and care workers who found themselves on the front line of the fight against the COVID-19 pandemic. I would also like to commend the Committee of Experts for the quality of the General Survey, which focusses, among other things, on the following issues.

Firstly, the importance of care work and services to individuals, which are also crucial to ensuring the health, education and well-being of the current and future workforce, and adequate care for the growing numbers of older people in many countries.

Secondly, the importance of care work for women, given that women undertake the majority of unpaid care work in the home and that paid care work offers them opportunities to enter, progress and remain in the active population.

Thirdly, the need for an adequate supply of qualified nurses, especially in the context of the pandemic.

And, fourthly, the fact that most domestic workers are women who are often in informal employment and a number of them are also migrants, often in informal and precarious employment, which increases their risk of exploitation and abuse.

As for the national context, it should be noted that Morocco has a specific legal framework for nurses and midwives and a health plan to be implemented by 2025 based on three essential pillars: the first pillar concerns the organization and development of healthcare provision to improve access to health services; the second pillar concerns the strengthening of national health programmes and disease control programmes; and the third pillar concerns the development of governance, the rationalization of resource use, the expansion of basic health coverage, and the reduction of human resource shortages.

Furthermore, this year the Moroccan Government has concluded an agreement with all the trade unions representing the health sector following several sessions of sectoral social dialogue, which culminated in compromises on a number of priority demands, chief among them the improvement of the situation of nursing personnel.

In 2016, the Kingdom of Morocco adopted a specific legal framework for domestic workers under Act No. 19-12. Since the entry into force of this Act in 2018, domestic workers have benefited from the same rights as other employees in terms of wages, working hours, rest, severance pay and social and medical coverage.

It should also be noted that this category of workers was the focus of the round of social dialogue held this year between the Government and the social partners, which resulted in the signature of a three-year social agreement committing the Government to cover the social contributions for families employing domestic workers.

In conclusion, aware that it is only through adequate investment that universal health coverage can be achieved and that strengthened health systems can be guaranteed to meet current and future health challenges, Morocco has embarked on a policy of generalized social protection and the reform of its health system.

Employer member, Argentina – In Chapter 12 on freedom of association and collective bargaining for care economy workers, in its analysis of the articulation between the various sources and levels of regulation, the Committee of Experts comments on the application of the "most favourable rule" principle in the Argentine Act on labour contracts. In this regard, Argentine employers believe that it is important to clarify that the favourability rule is not absolute in our legislative framework, and we therefore believe it appropriate to make certain clarifications.

The principle established in the Act on labour contracts adopts the "institutional overview" interpretation, under which, among others, the favourability of standards must not be compared either abstractly or individually, but rather within the framework regulating each labour law institution taking into account the dynamic aspect of collective agreements, which can include part of the law by which they are governed. In any case, there is a certain arbitrary aspect to the scope and definition of labour law institutions, depending on the case law in each instance.

It is important to highlight that the positive assessment made in the General Survey of the effects of this principle in national case law is not universally accepted, resulting in the failure to recognize the validity of certain agreed standards.

It is important to recall that a collective predisposition is part of the freedom to negotiate recognized in Convention No. 98. Such collective predisposition includes the freedom to negotiate and works in both directions, encompassing the scope of the bargaining autonomy of both employers and workers' organizations.

The restrictions adopted to address the health crisis have had repercussions on the organization of work, resulting in a reconfiguration of both the health sector and the care economy, for example accelerating the adoption of new technologies. Some of these changes not only avoided greater job losses but have also led to relevant developments to guarantee safe and healthy working spaces in these activities, by helping to limit the exposure of staff to risks.

The Employers agree with the Committee of Experts that "the importance of freedom of association and collective bargaining cannot be overstated as the cornerstone of decent work for care economy workers". We agree with this statement because free and voluntary collective bargaining is an appropriate tool for dealing with these new realities in a different and balanced way, directly including workers and employers in decision-making about the regulation of a specific activity, branch of activity or workplace.

From an employer's perspective, a misguided interpretation of the favourability rule could be prejudicial to collective bargaining, for example if the collective autonomy of the parties is disregarded. Such an approach would obstruct the adaptation of labour standards and the updating of legislative frameworks to the rapid changes occurring in the labour market as a result of the implementation of new technologies and the restructuring of production.

In brief, we would like to emphasize that a national legislative framework should not, in any event, obstruct free and voluntary collective bargaining. In any case, whenever necessary and in accordance with fundamental Convention No. 98, measures should be adopted to encourage and promote the full development and utilization of machinery for voluntary negotiation with a view to the regulation of terms and conditions of employment by means of collective agreements. It is our understanding that a reading that goes against what we are suggesting, far from defending fundamental principles and values, would tend to enshrine a rigid structure that would

not therefore be consistent with the underlying dynamic of adaptation to new realities that is facilitated, not prevented, by collective bargaining.

Worker member, Ghana – The care economy is all about human welfare and we all know the important role of nursing personnel and domestic workers in the provision of quality healthcare. There is no doubt that COVID-19 has highlighted a number of strengths and weaknesses in our healthcare system.

While there has been a general improvement in the health workforce as a result of various interventions, including national legislation and programmes, we are still faced with an unequal distribution of health personnel leading to unfavourable differences in health status between urban and rural populations. We are also faced with the phenomena of the brain drain and migration. Every year thousands of healthcare workers leave their country because of a lack of professional opportunities, low income or the pressures of armed conflict, in search of favourable working conditions in other countries.

Considering the potential of the care economy as a major source of decent work and employment, especially for women, there is a need to urgently address without delay the many decent work deficits affecting nursing personnel and domestic workers.

There are good examples that we can learn from. In Ghana, for instance, there are incentives to promote the education and employment of nursing personnel in rural and remote communities. For example, nursing personnel working in rural communities are eligible for promotion after three years' service, compared with five years for their counterparts in urban areas. There are also various educational support programmes to foster skills development, including doctoral programmes in nursing and scholarships.

Domestic workers have not been left out. We have the Labour (Domestic Workers) Regulations 2020, with the purpose of protecting the rights of domestic workers, which provide for a defined employment relationship between domestic workers and employers.

I would like to stress the important role of trade unions in organizing and collective bargaining for the attainment of decent work in the care economy. In line with this, the Trades Union Congress of Ghana organizes both nurses and domestic workers.

We therefore call for more efforts towards the formalization of the informal economy, which employs most domestic workers and other caregivers in Ghana. We also call for more public investment in the health sector, in accordance with the call made in the Abuja Declaration to allocate at least 15 per cent of the Government's annual budget to the health sector.

Government member, Algeria – The Algerian delegation considers that the General Survey covers one of the most important issues to be examined during this session, because of the vital role played by nursing personnel and domestic workers, which assumes crucial importance in light of the particular context of the COVID-19 health crisis.

This is shown by the WHO designating 2021 as the International Year of Health and Care Workers, in recognition of the sacrifices made by these professions during the pandemic, despite the difficult conditions.

Furthermore, Algeria pays tribute to the Committee of Experts for its excellent work in helping to develop the capacity of all Member States to share equally policies to promote decent work for nursing personnel and domestic workers, and consequently to share the future of the personal care and services sector and the provision of health

services. The Algerian delegation is convinced that the recommendations made by the Committee of Experts will receive broad support among Member States.

Our country is committed to regulating domestic work, with the aim of developing the labour market for such jobs as child-care workers, assistants for the elderly and paramedical staff, making them more attractive and protective to become an important segment of the employment market, with the objectives of reinforcing social security financing and combating informal work.

In the context of fulfilling the social role of the State by guaranteeing of overall health protection for all citizens under all circumstances, Algeria has also long been committed to ensuring social protection for its citizens, without any discrimination, by guaranteeing medical services and social assistance, and adapting and promoting medical care through the legislative reform adopted in 2018.

Nurses are covered by a specific status which governs their professional career in terms of categories and grades, their conditions of recruitment, their remuneration, and also the bonuses and allowances allocated to them and the regulatory provisions governing them. It should be noted that, in recognition of their selflessness in their work during the pandemic, nurses in Algeria have been accorded a salary increase in addition to the readjustment of their wage system, by decision of the President of the Republic.

Moreover, Algeria has several training centres across the country for paramedics specializing in various disciplines or types of care, and they receive training and further training during their professional career.

With regard to social dialogue, it should be noted that a number of trade union organizations cover this professional health category and participate at various levels in social dialogue in the health sector.

The Algerian delegation welcomes the recommendations of the Committee of Experts, which it supports unreservedly. It notes in particular the recommendations on regulatory matters, in particular to achieve decent working and living conditions for nursing personnel and domestic workers, especially women, in terms of employment relationships and conditions of work which link them to their employer(s) in order to ensure their fundamental rights, as set forth in Conventions Nos 149 and 189.

Before concluding, I would like to emphasize that this is a period when, in view of the vital importance of these professions in shaping major areas of employment policies, the ILO is being asked to do more and more. This is on account of the speed of technical progress, which, in our view, requires particular attention to be given to the future of work for these categories of workers, which will be reflected in various ways in the ILO Programme and Budget.

Finally, I would like to pay resounding tribute to care workers, and particularly nurses, as well as to domestic workers.

Employer member, Germany – Since the COVID-19 outbreak in early 2020, healthcare and medical services have been at the forefront of pandemic response, making them the global central services. This is also reflected in the fact that the remuneration situation for nursing personnel in Germany has improved significantly in recent years, without the intervention of the State. However, with the Act on the further development of healthcare of 11 July 2021, authorized care establishments have been obliged to pay their employees a wage at least equal to the collective wage agreement as of 1 September 2022.

This is a minority collective agreement which was created with considerable political interference, was imposed by law on an entire extremely heterogeneous sector, and therefore interferes with the collective bargaining autonomy of the social partners.

The Confederation of German Employers' Associations has therefore opposed a compulsory pay rate for the nursing sector introduced via the Act, in particular, because of constitutional objections. These objections still persist. The linking of supply contracts for care facilities through a collectively paid wage is an encroachment on freedom of association and the freedom to exercise one's profession.

Skilled workers in old people's and nursing homes earn more on average than skilled workers in the national economy. The salaries of skilled workers in the nursing sector have risen more than in all other sectors.

In the discussion concerning plans to improve remuneration in long-term care, it should be taken into consideration that the wage policy evaluation of certain activities is not the task of politics. The setting of wages in care for the elderly should be left exclusively to the competent counterparts in the care sector. With the Care Commission, there is already a body that has been successfully and conscientiously shaping a minimum wage for care workers for years. Elderly care does not need political activism, but rather an honest and sustainable reform with a future-oriented financing concept.

Instead of strangling the care market with more and more regulation and collective bargaining constraints, it would be better to provide incentives for investment in the urgently needed development of the care infrastructure. If good management is possible in care services, this will continue to have a positive impact on wages in the whole sector.

Worker member, France – As we speak, emergency hospital services are being forced to close at night and on weekends: at least 120 emergency units are facing serious "difficulties" before the summer, "unheard of" according to the headline of the major French daily newspaper *Le Monde* on 20 May. With a shortage of doctors, nurses, nurses' aides and beds, these units represent almost 20 percent of the emergency services in France. No area is spared, with 60 departments affected in all regions.

Despite multiple attempts to encourage people to join the nursing profession, 60,000 jobs remain vacant. Why is there such a lack of interest? COVID-19 is cited as one of the reasons, but it is not the root cause. Problems relating to recruitment and resignation were already there. The hospital, health and social sectors had already been hit by many strikes in 2018 and 2019. In an article in the newspaper *Le Monde*, an intensive care anaesthetist denounced a management of public hospitals focused solely on financial profitability as the primary cause of their poor organization and staffing tensions. In addition, a 2018 survey by the Federation of Health and Social Services of the French Democratic Confederation of Labour (CFDT), "Let's talk about staff" *(Parlons effectifs)*, highlights the shortcomings suffered by staff in terms of working conditions. There are a shockingly high number of corroborating reports that specifically demonstrate non-compliance with Article 2 of Convention No. 149.

Too many patients assigned to each staff member, a permanent race against the clock that gives rise to frustration, dissatisfaction and a risk of involuntary mistreatment. The inordinate mental load on these personnel causes exhaustion, burnout and work stoppages that are not covered in an increasingly vicious circle. The required versatility exhausts and devalues the profession.

Last-minute changes to schedules to make up for absences do not respect prior notice requirements. How, then, can personal and professional life be reconciled? Carers, although aware of their mission in relation to human who are suffering, also have families and their health to preserve. In this respect, trade unions note that night work has the disastrous consequence of reducing life expectancy. So, caring for others means jeopardizing one's own health? This is what happened in France at the beginning of the pandemic, 80 per cent of which was managed by public hospitals.

While the *Ségur de la santé* consultations in 2020 led to a resumption of social dialogue, France still has a long way to go to move up in the rankings of the Organisation for Economic Co-operation and Development (OECD) health survey, which ranks France near the bottom in terms of the salaries of paramedical staff.

Despite the alarming situation in these sectors, the French Government continues to reduce the number of beds per capita on the grounds that the problems are due to a lack of organization. In the name of its accounting policy, the hospital in Nancy even removed beds in the midst of a pandemic.

Reviewing and even reforming training, reinforcing a feeling of recognition, reducing physical pressure (which results in musculoskeletal disorders) and psychological pressure, which leads to burnout, are all challenges to be addressed in order to rekindle interest in these professions, which are all essential. This is the road map! Rekindle interest.

The Declaration of Philadelphia reminds us that work is not a commodity, and it must be emphasized that a hospital is not a business and cannot be organized as such. Care is not a consumer product that can be exchanged between the private and public sectors. And what this General Survey reveals, as the pandemic has demonstrated in practice, as if that were necessary, is that global public health is at stake. It would be blind not to appreciate its importance, and the consequences would be unforgivable.

The French Government has tasked the General Inspectorate of Social Affairs (IGAS) with the mission of reflecting on tangible ways of making the nursing profession more attractive. The trade unions have been heavily involved in this mission. They have expressed numerous demands in this regard that need to be taken into account urgently and in full.

Government member, Belgium – Belgium aligns itself with the EU Declaration. As one of the Member States that has ratified both Convention No. 149 and Convention No. 189, Belgium welcomes, with great appreciation, the General Survey.

As the COVID-19 pandemic clearly demonstrated, care economy workers play a crucial role in all societies and labour markets. Nevertheless, we must acknowledge that this vital category of workers finds itself too often in a vulnerable position, and that in many places they carry out their work in ungrateful circumstances and under unsatisfactory working conditions. This is particularly the case of migrant live-in domestic workers.

The General Survey is a vital piece of work outlining in great detail the current state of affairs in which care economy workers perform their duties. It offers a unique overview of the problems these workers are confronted with, and it is therefore a very valuable tool for policymakers, both nationally and internationally. Of particular importance is the observation that the demand for care workers and health professionals will almost double by 2030, significantly exacerbating already existing shortages of qualified personnel. However, care work throughout the world is

categorized by a range of decent work deficits largely attributable to gender bias, undervaluation and discrimination. If we want to be able to meet the enormous challenges that lie ahead of us, we will have to ensure that enough people are attracted and motivated to do this kind of work. To achieve this, it is necessary to improve the situation of nursing personal and domestic workers and other care economy workers, to promote respect for their labour rights and ensure their access to decent work in line with the ILO standards. It is also important to ensure optimal education and training of care economy workers by expanding opportunities for access to quality education and lifelong learning for all categories of staff in this sector.

All of us will need care at different times in our lives. Care work is also crucial to ensure the health, education and well-being of the current and future workforce in many countries. Investment in the care economy should therefore be recognized as a driving force for economic growth, rather than as a drain on national economies. To ensure resilient and sustainable health systems, it is essential to make appropriate public and private investments in all health systems so that they can recruit, deploy and retain sufficient numbers of well-trained, supported and motivated staff.

From this perspective, Belgium fully supports the content of the General Survey and the recommendations made by the Committee of Experts. Together with the Committee of Experts, Belgium expresses the hope that this General Survey will contribute to the development and effective implementation of measures to guarantee decent work for all workers in the care sector and that the General Survey will thus encourage ILO Member States to ratify Conventions Nos 149 and 189 as widely as possible.

Government Member, Senegal – The Government of Senegal would like to begin by congratulating the Chairperson and the distinguished members of the Committee of Experts on the quality of the General Survey, which deals with the care economy, a sector that is constantly growing and is a major source of employment. This is the first time that a General Survey has addressed instruments related to nursing and decent work for domestic workers.

Senegal wishes to reiterate its firm commitment to guaranteeing decent work for all workers, irrespective of the sector in which they work. This guarantee is assured to workers in the care economy as well as in other sectors.

It is with this in mind that a number of measures have been taken to guarantee equality in employment and occupation in order to combat discrimination at work more effectively. These measures relating to non-discrimination at work, on the one hand, and harassment and violence in the workplace, on the other, have been incorporated into the national inter-occupational collective agreement, which was updated in 2019. These issues are now taken explicitly into account in our legislation.

In addition, two laws were adopted in April 2022, one on the protection of pregnant women and the other on non-discrimination at work, which supplement certain provisions of the Labour Code. Under the latter law, the National Observatory on Discrimination at Work has been established within the Ministry of Labour.

Women have a strong presence in the care economy sector, hence the importance of recalling that Senegal has also ratified the Maternity Protection Convention, 2000 (No. 183).

In addition, a national policy on nursing services and personnel has been formulated and measures have been taken and implemented. These include: increased recruitment; the adoption of a national programme based on competency-based

approach to the exercise of the profession; and the inclusion of programme standards and protocols into training curricula.

Some measures have been taken to promote the education and training of nurses in rural areas. The most successful example is the establishment of seven regional training centres in remote areas to encourage trained personnel to remain in their regions of origin. The impact of this initiative has been the availability of State nurses in remote areas.

In addition to increasing the hierarchical status of cohorts of State nurses and midwives, the adoption of a decree in 2019 should be noted establishing the Care Administrator Corps, enabling State nurses to access master's degrees. These measures have led to a substantial increase in incomes for State nurses following their reclassification into the civil service.

In addition, the Ministry of Health and Social Action organized a workshop in 2019 to reflect on the occupational hygiene, safety and health conditions of all health and social action personnel. The conclusions of this workshop have been integrated into the national plan for the development of human resources in the health sector.

Despite this progress, it should be noted that the care economy sector in Senegal is experiencing a number of difficulties. Indeed, private sector nurses are not yet covered by sector-specific agreements.

Domestic workers are governed by a decree dating back to 1968, which it is planned to update as part of the ongoing reform of the Labour Code to better in order to respond to the expectations of those involved. Senegal has not yet ratified the two relevant Conventions, which are intended to promote access to decent and productive work in the care economy. However, in order to better guarantee decent work in this sector, the Government of Senegal is counting not only on the help and assistance of the ILO, but also on the collaboration of the social partners. Through a dynamic partnership, this ILO assistance will undoubtedly enable our country to fill the gap in order to better guarantee decent work for nurses and care economy workers. Accordingly, following this collaboration, care work will be carried out under better working and employment conditions. In addition, workers in the care economy, especially domestic workers, will have better access to social protection.

Employer member, Mexico – I endorse the statements made yesterday by the Employer members. As an industry, we recognize the important work contained in the General Survey of the Committee of Experts. With regard to the references made to our country in certain paragraphs of the General Survey, we consider it necessary to make some comments in the interests of transparency. Paragraph 737 of the report on the burden of proof indicates that the lack of a written contract means that the burden of proving the existence of an employment relationship rests on the domestic worker. We therefore consider it opportune to clarify that a written employment contract is not required to formalize the employment relationship; and that not having one is to the detriment of the employer, since, although the burden of proving the employment relationship effectively rests on the worker, the employer bears the burden of attesting to all the working conditions that must be included in that document. In addition, the law establishes a presumption of employment between a person who provides a service and the person who receives it.

In addition, paragraph 1024 indicates that in Mexico, a proposal is under consideration to amend Part IV, section 64, of the General Health Act to provide training to strengthen the technical competencies of traditional midwives, who only participate

in the event of childbirth, which calls for them to receive a decent wage in recognition of their work. It would undoubtedly be a fair demand to be recognized with a decent wage if they were bound by an employment relationship.

However, the National Minimum Wage Commission is the tripartite constitutional body that analyses whether the minimum wage of persons exercising this profession should be protected, and it has not issued an opinion on this matter. In addition, in our country, there is a process by which the general minimum wage has been adjusted annually and progressively since 2017, with the goal of ensuring that those who receive such a wage can cover the food and non-food needs of their families.

Paragraph 1054 indicates that the Government of Mexico has declared its intention to ratify Convention No. 149. In this respect, we would like to point out that to date there has been no tripartite dialogue in which the representative organizations of employers and workers have been invited to meetings or discussions on this subject, which would allow effective consultation and, where appropriate, provide the basis for deciding the measures that could be taken to promote its implementation. This social dialogue is the tool through which we can decide whether or not to promote the ratification of this Convention.

Worker member, Australia – On behalf of the Australian Council of Trade Unions (ACTU), I would like to thank the Committee of Experts for preparing the General Survey and stress the pivotal role that governments must play in securing decent work for nursing personnel.

The Committee of Experts observes that the COVID-19 pandemic has exacerbated the existing shortage of health workers, including nursing personnel, and notes that there will be an estimated global shortfall of 13 million nurses by 2030. This makes the objectives of Convention No. 149 – for Member States to provide education and training, and employment and working conditions to attract and retain nursing personnel – more relevant than ever.

The report notes that Australia is among the top OECD destination countries for foreign-trained migrant nurses, along with New Zealand, Switzerland, the United Kingdom of Great Britain and Northern Ireland, Canada, Germany and the United States. The number of migrant nurses and doctors within the OECD has grown by 60 per cent since 2004, with Australia registering among the highest proportion of foreign-born nurses in the OECD at more than 30 per cent. Australia has a long-term reliance on international nurses, who make an enormous contribution to our care economy – but migration should not be a substitute for proper domestic workforce planning.

The over-reliance on an international workforce for the care economy, the Committee of Experts notes, may exacerbate already acute shortages of nurses in some countries, particularly low-income countries. The WHO notes that nursing shortages are mainly concentrated in low- and lower-middle income countries. The goal should be for countries to develop a sustainable care workforce – and central to that is domestic workforce planning, education and training, and attraction and retention strategies that will reduce the need to rely systematically on other countries to meet the need for domestic nursing personnel. Cross-border dialogue between destination and sending countries is also critical to ensure labour supply in all countries and it is critical that measures are implemented to protect migrant workers from exploitation.

Governments must invest in training more nurses domestically and support their transition into the care sector and retain them in the sector by ensuring decent pay and working conditions, secure jobs, and career progression. Governments must also do

much more to increase women's participation, including through the provision of accessible and affordable childcare.

Finally, I want to elaborate on a point made in the General Survey regarding aged care. The Committee of Experts notes that the work of carers providing institutional care, such as in aged care facilities, has been acutely affected by the pandemic, with a high proportion of infections and fatalities and the work is seriously undervalued. Governments must address the systemic undervaluation of nursing and care work which is closely linked to the high proportion of women in the sector. The Committee of Experts also refers to the Australian Royal Commission into Aged Care Quality and Safety, which was established in 2018 to inquire into the quality and safety of aged care and submitted its report in 2021. The Commission found that aged care in Australia is understaffed and the workforce is undervalued. Its recommendations include increased training and professional development for the workforce, and improved wages and labour standards for aged care workers.

Unions had been urging the last Australian Government to act on these recommendations and implement a plan to fix the systemic issues in the sector through mandating minimum staffing levels; a required mix of skills and qualifications; mandated training requirements; and decent work, including increased pay to value the important work of aged care workers.

I am pleased to say that, on 21 May, Australians elected a new Government, which is committed to ensuring there are more carers who have more time to care, ensuring a skills mix, including registered nurses to be on site 24/7 at aged care facilities, and support for a pay rise for aged care workers. We expect that these measures, once implemented, will be a significant step towards meeting the objectives set out in Convention No. 149 to provide appropriate education, training, employment and working conditions to attract and retain nursing personnel.

Government member, Côte d'Ivoire – Côte d'Ivoire would like to praise the quality of the General Survey presented by the ILO and welcome the theme addressed by the General Survey at this Conference.

Côte d'Ivoire would also like to welcome the efforts made by all constituents to promote social justice through decent work. The right to decent work stems from Goal 8 of the Sustainable Development Goals, which invites States to review and reorganize their economic and social policies with a view to contributing to the complete elimination of poverty.

In this regard, the Ivorian Government is working on the basis of mature and dynamic tripartism to develop social dialogue, which is key to the consolidation of social democracy. As a result, social dialogue mechanisms are now functional and allow the in-depth discussion of urgent matters related to the world of work, such as those covered by this session.

In its awareness of the difficulties faced daily by care workers in general and nursing personnel in particular, as key actors in the care economy, and of the importance for nursing personnel to have decent work, the Government of Côte d'Ivoire has established two cycles of the National Health Development Plan (2021–2025) which aims, among other objectives, to strengthen the quality of institutions and good governance, and to accelerate the development of human capital and social well-being.

This plan, building upon the progress made though the first plan in 2011, has resulted in the massive recruitment of healthcare personnel to make up for the human

resources shortfall. In this way, the ratio of nurses to population has risen from 1 nurse per 6,467 population in 2011 to 1 nurse per 2,202 population in 2019, which meets the standards set by WHO of 1 nurse for every 5,000 population.

The wages of nursing personnel have been improved and, even better, the regulatory bodies have been strengthened through the creation of the Côte d'Ivoire National Order of Nursing Personnel.

Moreover, the Government has adopted Act No. 2019-677 of 23 July 2019 setting out the direction of public health policy in Côte d'Ivoire, based on the principles of equity, equality, social justice, ethics, national solidarity, rigour, transparency and innovation.

The national health policy guarantees every citizen the right to health. It provides guidance on prevention and health promotion, as well as measures to offer the community on a permanent basis quality healthcare that is universally acceptable and accessible by all.

The Act on hospital reform in Côte d'Ivoire has also been adopted, in the framework of the implementation of new hospital governance system.

Finally, several health facilities have been repaired, building on the momentum of the roll-out of universal health coverage.

With regard to domestic workers, it is admittedly true that such work, instead of being a means of personal development, in certain situations, appears to be a vector for the resurgence of practices that may appear similar to "modern slavery", but the Government of Côte d'Ivoire is sparing no effort to include their concerns in its action. This renewed willingness, especially during the period of recovery from the COVID-19 crisis, has taken the form of: the implementation of the Government social programme known as PSGOUV, with priorities 3, 4 and 5 in the second cycle; the development of human capital by including each citizen as an actor in their personal development and contributing to creating the wealth of national development through their work and an effective quality system; and basing the sector's programmes and policies on the ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), which has resulted in the implementation of an integrated national strategy for the transition from the informal to the formal economy through the acceleration of the process of updating the legislative and regulatory framework relating to the world of work.

There are many challenges to overcome. They range from strengthening the capacity of our administrations to taking these issues into account in our national systems in light of the national situation. The synergy of action recommended in the General Survey of the Committee of Experts offers an opportunity to be seized, and Côte d'Ivoire is determined to take it.

Finally, for African countries, and for Côte d'Ivoire in particular, there will be no economic development without improved productivity, but there can be no improved productivity without decent jobs and better social protection for all, without distinction on the basis of their jobs.

Employer member, Belgium – This General Survey provides tremendous leverage for the massive ratification by States of Conventions Nos 149 and 189, and the implementation of the related Recommendations. The ratification rates for both these Conventions remain particularly low. In the meantime, COVID-19 has demonstrated the key role of the nursing and domestic work professions in providing care for others, and even, on a wider scale, for maintaining economic activity throughout society.

Belgium is 1 of 13 countries which have already ratified these two Conventions, and where the national legislation is in line with them. With reference to Belgium, the General Survey highlights a number of good practices.

Firstly, the service voucher system, which exists in the three regions of the country. The work of domestic assistants who take care of the needs of households is governed by a set of sectoral collective agreements, as explained in the General Survey. Funding takes two forms: firstly, subsidies from the regional public authorities and, secondly, a contribution of €9 an hour from beneficiary households. This system is widespread and highly appreciated: it helps beneficiaries to organize better their professional and family lives, and it has put an end to informal work, creating over 150,000 regular jobs. However, many challenges remain, as it is a subsidized and strictly regulated sector.

The General Survey goes on to emphasize that other types of domestic workers are protected by law and that their conditions of work are governed by collective agreements, concluded in three joint commissions other than the one concerned with service vouchers. These commissions are advisory, quasi-regulatory bodies composed of representatives of employers and unions (there are 170 joint commissions in Belgium, but here the Committee of Experts identifies those with specific competence for activities such as gardening, concierge services and caring for the sick).

We emphasize the fact that nursing personnel in Belgium enjoy very broad protection from a series of laws and sectoral collective agreements. The challenges highlighted by the General Survey concerning nursing personnel also apply in our country.

In particular, we underline the following challenges: the doubling of healthcare needs by 2030, in just eight years; the shortage of skills, already an insoluble problem, which runs the risk of jeopardizing the quality of care in the short term; the attraction of a distant foreign workforce, while bearing in mind that migration is not a miracle solution as it creates shortages in the country of origin; and the improvement of working conditions, which remains a crucial challenge, including in industrialized countries, where both public and private hospitals are facing rising fixed costs.

In our ageing societies, the prevention of illness must become a political priority, while personal care must be valued and seen as an investment in society, rather than a mere cost that places a strain on the public budget.

As the Employers' group has already emphasized during the general discussion, it is crucial for national social partners to be able to make use of the flexibility clause in Article 4 of Convention No. 98, which allows employers and workers, in sectors and enterprises, to find the means to apply standards that are adapted to national conditions, practices and industrial relations traditions.

Government member, Colombia – For Colombia, the care economy is vitally important. In our country, 30 million people carry out care work of children, young persons, adults, older persons and persons with disabilities. For this reason, care work is established as a priority in the National Development Plan.

It is important to note that, as indicated in the General Survey, women domestic workers play a fundamental role in the care economy. Hence, in our country, we have adopted significant measures in law and practice to ensure decent work, as called for by Convention No. 189, ratified by Colombia.

We have a dialogue round table on the implementation of the Convention and have also provided training for mobile inspection units, in a programme implemented by the

Ministry of Labour over the whole of the national territory. Its objective is to achieve the dissemination of labour guarantees and provide information to the various social actors on fundamental rights. We have thus encouraged full compliance by the social partners by training workers, employers and the community in general. Through this approach, over 726 domestic workers have been trained through various events held in 22 departments and 29 municipalities, including broad coverage through various municipal media directly covering domestic workers.

What domestic workers lacked in order to enjoy equal conditions with other workers was the service bonus, which has been granted to these workers since 2016.

In view of the vulnerability of migrant workers in our country in this context, significant efforts have been made for their protection. Temporary protection regulations were issued, granting special authorization to access work under equal conditions as nationals, and we also have a socio-economic integration strategy. Labour inspectors have also been trained in this area.

With regard to nursing personnel, we wish to emphasize the importance of this group of workers. The pandemic highlighted the need to guarantee that healthcare workers enjoy working conditions that continue to improve. In Colombia, Act No. 2-66 of 1996 governs the exercise of the nursing profession, defines the nature and purpose of the profession, determines the scope of the exercise of the profession, sets out the principles governing the activity, and determines the bodies responsible for the management, organization, accreditation and monitoring of professional activity, and the related obligations and rights.

The conditions related to working hours, weekly rest, paid annual leave, maternity leave and sick leave are regulated by the Colombian Substantive Labour Code and are guaranteed through the inspection, monitoring and supervisory functions of the Ministry of Labour, as established in sections 485 and 486 of the Substantive Labour Code. In light of all these considerations, our country has decided to ratify Convention No. 149, and we believe that this will continue to ensure decent work for nursing personnel.

In addition, and before concluding, I wish to share with you that the national State agreement, concluded in Colombia in August 2021, agreed on the submission of a Bill, agreed by the signatory organizations, proposing a new administrative career regime for the health sector, from which nursing personnel will benefit, which seeks to ensure the stability of these professionals in the health sector in Colombia, as we are all aware of their essential work.

Worker member, Republic of Korea – As the Committee of Experts points out, the care economy has potential as a major source of employment and decent work opportunities, especially for women. The outbreak of the COVID-19 pandemic provided an opportunity to revisit the social perception of care work, which has been undervalued. The health and social crises, managed thanks to the immense sacrifice of care workers, brought to light various problems in the care economy.

I would like to highlight some issues examined by the Committee of Experts, based on the situation in the Republic of Korea.

First, the Committee of Experts suggests a strong and complex correlation between the poor working conditions of nursing personnel, low job satisfaction and the persistent shortages of nurses. This is exactly what happens in the Republic of Korea. The problem is not an absolute shortage of nurse licence holders, but low activity rates among them.

According to the statistics of the Ministry of Health and Welfare, only 51.9 per cent of nurse licence holders are active in hospitals and medical institutions. This ratio is even lower for nursing assistants, at 26 per cent, and only 8 per cent for midwives. The resignation rates of nurses stand at 15.2 per cent, three times higher than the average for all occupations. According to the Korean Health and Medical Workers' Union (KHMU) and the Korean Public Service and Transport Workers' Union (KPTU) the proportion of those with less than three years of career among all nurses who resigned in 2009 was 67 per cent. It is believed that the reasons for the resignation of nursing personnel are poor working conditions, low wages and high work intensity. Among other factors, unpredictable schedules and frequent night work also explain the high resignation rates of nursing professionals. In this situation, trade unions and civil society organisations are jointly campaigning to improve the healthcare services, as well as the working conditions of nursing personnel, by setting legal obligations to meet a certain nurse-to-patient ratio. The introduction of such a legal framework is a role that the Government must play.

Second, as the Committee of Experts emphasizes, the increase in non-standard forms of employment in the care economy causes decent work deficits. In the Republic of Korea, due to precarious employment, care workers who are working for various institutions or in individual homes face insecurity and low wages, discrimination, weak protection from occupational safety and health risks and violence and harassment at work. New legislation on the improvement and protection of domestic workers was adopted in May 2021 and will come into force soon. However, it only covers domestic workers employed by an enterprise certified by the Government and provides for a lower level of rights and protection compared to other workers. Domestic workers working with individual contracts, through unincorporated institutions or online platforms, etc. are still excluded from the new legislation, as well as from the existing Labour Standards Act. Recalling that Conventions Nos 149 and No. 189 and their related Recommendations provide for the equal treatment of domestic workers and nursing personnel compared to other workers. I would like to emphasize that labour protections, including social security, must be provided for all nursing personnel and domestic workers as defined in the Conventions, irrespective of their employment status and working arrangements.

Lastly, both Conventions Nos 149 and 189 highlight the importance of freedom of association and collective bargaining as a cornerstone of decent work for care economy workers, and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Convention No. 98 also apply to all domestic workers and nursing personnel. In the Republic of Korea, the latter two Conventions took effect on 20 April 2022. However, there are still legal and practical obstacles to the full enjoyment of these rights by nursing personnel and domestic workers. For example, with the broad definition of "essential public businesses", which include private and public hospitals and the "maintenance of essential services" system, which is unfairly operated, the current law puts excessive restrictions on the constitutional right to collective action of nursing personnel. The new legislation on domestic workers does not clearly mention the right to join and form unions and to collective bargaining and most domestic workers are still excluded from this new law, making it impossible for these workers to exercise their rights. Once again, the right to freedom of association and the right to collective bargaining are enabling rights. To address the prevailing decent work deficit in the care economy, these rights should be guaranteed for all domestic workers and nursing personnel without any distinction, including on the basis of employment status.

Government member, Argentina – I commend the Committee of Experts for the General Survey under discussion, which undoubtedly provides an exhaustive analysis of

the situation with regard to the law and practice for workers in the care economy, with reference to the Nursing Personnel Convention (No. 149) and Recommendation (No. 157), 1977, and the Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011.

The pandemic has highlighted the essential nature of this necessary work for life to even continue, thereby clearly demonstrating our interdependence as persons who need care and to provide care so that society can exist, with all the effort that this implies. This work, which has long been invisible, has taken its place in the centre of public awareness, and the General Survey has arrived at an opportune moment.

The COVID-19 pandemic highlighted at the global level the important function fulfilled by nursing personnel and other workers in the health sector. With regard to nursing personnel, emphasis has been placed on: the essential role played by nursing personnel and midwives in the provision of community health services; the crucial need to resolve the persistent shortage of nursing personnel throughout the world; and the need to ensure the availability of sufficient numbers of qualified nursing personnel.

Nursing personnel are the most numerous occupational group in the health sector, representing around 59 per cent of the workforce in the sector. Women account for 89 per cent of nursing personnel throughout the world. Women are more exposed to the risk of infection, stress and other hazards due to their greater presence in health occupations in the first line of care provision: nurses, nursing auxiliaries, technicians, assistants, gerontologists. It is estimated that the demand for workers in the health sector will practically double by 2030, which will significantly aggravate existing deficits of qualified nursing personnel. The General Survey observes that the fact that high-income countries are excessively dependent on migrant nursing personnel is detrimental to the supply of nursing personnel in lower-income countries, which could undermine healthcare systems in the latter, resulting in a serious shortage of personnel and worse health outcomes. Health and healthcare systems throughout the world are experiencing a rapid turnover of nursing personnel and other health workers leading to common problems and concerns arising out of these changes.

With regard to women and men domestic workers, the COVID-19 pandemic has highlighted the vulnerability of the over 75 million domestic workers throughout the world. The majority of domestic workers are women, and 76.2 per cent are in informal work. Many domestic workers are also migrants, frequently in precarious informal work, which increases the risk of exploitation and abuse. Moreover, migrant domestic workers, who often originate from underprivileged populations, are much more likely to be victims of discrimination, thereby increasing their vulnerability. It has been seen that domestic workers have been particularly vulnerable to exposure to COVID-19 and have often not had adequate access to personal protective equipment or health services, nor to social protection in the event of infection. During the pandemic, many domestic workers in households who were migrants were dismissed without notice by their employers out of fear of infection, and many of them were left abandoned to their own ends in the street, frequently without the means to be able to return to their countries of origin. In contrast, other workers in the same situation were forbidden to leave their employers' households, resulting in them often having to work an excessive number of hours without breaks or being able to dispose freely of their time off. In general, domestic workers, both nationals and migrants, have been acutely affected by the pandemic, which has aggravated existing problems, such as the conditions of poor workers, violence and abuse.

The percentage of women with protective equipment is lower than that of men. In this situation, as rapidly summarized, emphasis should be placed on the central role that Governments must play in improving the employment, working and living conditions of men and women nurses and domestic workers through: solid legislative and institutional frameworks applying tangible corrective measures, including in relation to gender inequality; effective monitoring of the application of laws and policies; and accessible and effective remedies for all workers.

Special attention needs to be paid to the gender dimension, as well as the nature and impact of changes in the structure and organization of work in the care economy. The percentage of informality is higher for women than for men, which implies lower access to essential protection measures (occupational accidents and diseases). The State has the responsibility to ensure equality of opportunity and rights for everyone. It is therefore essential to promote public policies addressing key equality issues.

The problems of violence and inequality in the sector must never be seen as individual issues but are and must be of public and political interest for society as a whole. All the ILO instruments under examination establish the principle of equality of treatment for domestic workers and nurses with other workers. Labour protection must therefore apply to all domestic workers and all nurses, irrespective of their nationality, status or labour regime.

Argentina protects the right to establish and join unions, as well as the right to collective bargaining, which it understands must be guaranteed to all workers without distinction and irrespective of their labour situation or nationality. Consequently, as soon as it took office, the Government decided to place care work at the centre of its public policies.

In accordance with the various national provisions, women and men nurses are able to participate in the various policy areas. I wish to emphasize that Argentina, at the beginning of the pandemic, was facing a difficult situation, with a very difficult economic structure. Active policies were adopted to protect workers in domestic service and the health service. The value of health has been preserved by taking care of people.

The Government has adopted active policies and the necessary measures to contribute to guaranteeing decent work for nursing personnel and domestic workers. Argentina welcomes the work of the Committee of Experts and hopes that the General Survey will contribute to improving the situation of key actors in the personal care economy.

Government member, Cuba – The Government of Cuba welcomes the decision to include these instruments in the General Survey of the Committee of Experts, fundamentally because it is our duty to extol the role of these workers in confronting the COVID-19 pandemic, in spite of the risks to which they were exposed. The General Survey is a working tool.

Cuba is in compliance with the provisions of Convention Nos 149 and 189 and has the legislation to implement both instruments. Cuba's health system is universal, free and accessible to all citizens. The organization of public health is the responsibility of the State, through the Ministry of Public Health and other institutions.

We have a National Department of Nursing, which is an organizational unit that carries out standardization, methodological and monitoring functions, as well as nursing practice regulations at all levels of the National Health System. In my country, nursing

staff benefit from labour and salary protections, including when they work at night and under special working conditions, as well as social security coverage.

Domestic workers in the non-state sector are also protected. Their labour relations are formalized by an employment contract or equivalent document, which specifies the clauses and conditions that have been agreed. Their fundamental labour rights are guaranteed and the minimum rights are established that employers have to guarantee, such as a daily 8-hour working day and a limit of 44 hours per week that must not be exceeded. Remuneration cannot be lower than the minimum wage, with 1 day of rest a week and a minimum of 7 calendar days of paid annual leave a year. Occupational safety and health conditions are also guaranteed, as laid down in the Cuban Labour Code.

As part of the objectives of the National Economic and Social Development Plan for 2030, progress is being made in the decent work programme and the unpaid work project, which includes establishing the basis for a national comprehensive lifelong care system.

Cuba is committed to continue complying with the text of Conventions Nos 149 and 189, even though our country is not a party to them.

Worker member, Argentina – Labour standards, and social protection in general, are the result of a need arising from the prejudicial situation of the weaker party to the contractual relationship. Labour law is not a laboratory science. It is very difficult to foresee an outcome and devise a provision before a dispute arises that requires a legal remedy. The problem always comes first, followed by the struggle, because power never grants rights without a struggle, with the right being won to repair the damage and establish justice. In 2018, in this Committee, we analysed the General Survey *Ensuring decent working time for the future*, and despite the warning by the Committee of Experts of the imminence of serious labour disputes because of the impact of digitalization, we did not take the time to make proposals on the needs for the regulation of telework.

At the time, it did not seem to be a problem that called for a specific solution. But only a few months later, we were caught up in an emergency which obliged us to engage in teleworking on a massive scale, under the worst conditions and without any respect for labour rights.

We failed. We cannot repeat that experience in this discussion. This time we cannot plead a degree of ignorance which hampers us from taking decisions in real time. Today we are examining a General Survey which sets out a need that was already known to us before the pandemic, but which has without any doubt been magnified by the health crisis.

We are faced with an urgent current conflict which has blown up in our faces. Those who were and are on the front line caring for us in the hospitals and in our homes, those who will take care of us in the event of imminent new problems, are working under horrible conditions, are over-exploited, with gruelling working days and low wages. We cannot wait, we have to do something now, we need to adopt agreements and active policies. The General Survey inspires us to ensure decent work for nursing personnel, domestic workers and carers.

Let's do it. We must not be bogged down in documents and speeches or lost in bureaucracy. We have to adopt decisions and activate the standard-setting role of the ILO in all its vigour, driven by tripartite consensus. Let us care for those who care for us. Let us give back a little of what we received during the pandemic. Let the nightly

applause of gratitude for care workers in capitals across the world be turned into a protective blanket that keeps them warm and cares for them.

The General Survey is clear: (1) working conditions are bad in the nursing and care sector; (2) there is a clear need for public investment in the sector. Both statements by the Committee of Experts are categorical and leave no room for reflective discussions; (3) on a positive note this time, the Committee of Experts assures us that if we do things right we will have enormous potential for employment, especially for working women – I stress, if we do things well.

Proposals: we must revise the ILO instruments quickly to bring them up to date and provide additional protection for this group of workers. Governments must make binding commitments within these walls in order to make significant changes that improve the employment, working and living conditions of nursing personnel, care workers and domestic workers. With appropriate technical cooperation and institutionalized social dialogue processes, we need to design robust legal and institutional frameworks and specific remedial measures at the national level. We need to consider the particular characteristics of a sector with a high incidence of work by migrants, involving high levels of informality and a majority of women, in which all the variables of gender inequality are at play. And, of course, we must ensure the right to establish and join trade unions, as well as the right to collective bargaining and the exercise of the right to strike.

Through the conclusions of this discussion, we must encourage the Governing Body to turn this important and comprehensive General Survey by the Committee of Experts into a guide for setting priorities on the ILO agenda and we must make significant progress in caring for those who care for us.

Government member, Kenya – The examination of Convention No. 149 and its Recommendation No. 157, and Convention No. 189 and its Recommendation No. 201, in the General Survey is very timely. It offers us an opportunity to examine the status of Member States' application, in both law and in practice, of the two Conventions, at a time when there is an increasing demand for care services arising from multiple challenges in the world of work and the pressure from the COVID-19 pandemic.

We note that, despite the important contribution of care workers to the economy, in general, they are faced with various decent work deficits, ranging from inadequate labour rights protections, discrimination, gender pay gaps, sexual harassment, psychological pressure from overwork, lack of representation and collective bargaining, among others.

The discussion will help us to examine why the instruments have received relatively low ratification from Member States despite being in force for quite some time now. There are 41 ratifications for Convention No. 149 and 35 ratifications for Convention No. 189. This is concerning when taking into account the large and growing number of workers in the care economy and the difficult role they have continued to play as frontline workers in the fight against the COVID-19 pandemic.

While many Member States appreciate the critical contribution of these workers to their national economies and are taking measures to improve their working conditions, not many have expressed a desire to ratify the two instruments. It behoves us as an organization to examine the provisions of the instruments within the framework of the Standards Review Mechanism with a view of taking the necessary action to promote their ratification.

Kenya proposes the provision of technical corporation assistance to Member States willing to consider ratification, as well as an increase in the Organization's programme and budget targeting promotional and awareness-raising campaigns.

In conclusion, and as a way of addressing the identified gaps in the instruments and taking into account the low ratifications in the context of rapidly increasing migration flows, Kenya calls for the Organization to be ready to provide guidance and technical assistance to Member States wishing to enter into bilateral and multilateral frameworks aimed at addressing decent work deficits facing migrant workers, domestic workers and nursing personnel during the migration cycle.

Worker member, South Africa – Over ten years have now passed since the adoption of Convention No. 189 and Recommendation No. 201. The General Survey allows us to take stock of the progress made in implementing their provisions. Unfortunately, the situation for many domestic workers in the world remains bleak. Domestic work is generally undervalued and poorly regulated, resulting in millions of domestic workers being overworked, underpaid and unprotected.

In practice, most national legislations are failing domestic workers:

- Almost half of all domestic workers globally are not covered by legal limits on normal hours of work and the countries in which domestic workers are excluded from weekly rest are also those with the largest number of domestic workers.
- Globally, only 35 per cent of domestic workers are entitled to a minimum wage that is at least equal to that of other workers. More generally, remuneration in the domestic work sector is substantially lower than in any other sector. An undervaluation of domestic work and the gendered perception of women's roles in society contribute to this situation.
- While in most countries domestic workers are covered by the general OSH legislation, the mere application of general legislation is not sufficient and measures must be adapted to the specific characteristics of domestic work and domestic workplaces.
- Effective social protection coverage of domestic workers is still rare. All social security branches cover only 6 per cent of domestic work. Domestic workers are often excluded from coverage because they do not meet the minimum number of hours or earnings threshold that is established.

So, informality is one of the main causes of these decent work deficits. As the Committee of Experts rightly recalls in this General Survey, 81.2 per cent of all domestic workers are in informal employment, that is almost twice the share of informal employment of other employees.

As long as domestic work is depreciated, undervalued and concealed in the informal sector, domestic workers will suffer from poor employment, working and living conditions.

In South Africa, our affiliates have fought for efforts to ensure legal protection and to raise the visibility of domestic workers to improve their working conditions:

- And, for example in South Africa, the 1997 Sectoral Determination on the Domestic Worker Sector provides that an employer must supply a domestic worker, when the worker starts work, with certain particulars in writing and that if the domestic worker "is not able to understand the written particulars, the employer must ensure that they are explained to the domestic worker in a language and in a manner that the domestic worker understands".

- The same Sectoral Determination lays out working time limits.
- Another important area of progress worth mentioning is that domestic workers now have access to unemployment insurance benefits and efforts are being made to ensure they are also covered in the event of employment injuries.

So, we recall that the objective of Convention No. 189 and Recommendation No. 201 is to ensure that domestic workers, one of the most vulnerable categories of workers, enjoy the same labour rights and working conditions as those of other workers.

Now corrective measures are long overdue to ensure that their rights are fully recognized and protected. Governments should therefore adopt legislative provisions guaranteeing equal rights and protections to domestic workers and, given the gaps in practice, ensure the application of this principle through stronger enforcement measures.

So, in this regard, formalization is both a means of, and a necessary condition for, achieving decent work and living conditions for domestic workers. We call on governments to take the necessary measures, in collaboration with the social partners, to address informality, its negative consequences and its root causes, in line with Recommendation No. 204.

Finally, we want to emphasize the crucial role of collective bargaining to improve working conditions in the domestic work sector and the need to increase efforts to ensure that domestic workers can exercise their rights to form and join unions and to collective bargaining.

Worker member, Greece – Recalling our comments to the Committee of Experts, the Greek General Confederation of Labour (GSEE) reiterates its concern regarding persistent gaps in the protection and rights of long-term care workers, including nursing personnel, and paid and unpaid (family) care providers.

The care sector in Greece faces major challenges, mainly staff shortages, low pay, arduous working conditions and underfunding, largely due to social and health budget cuts during the economic crisis. Greece remains at the bottom of European Union rankings in terms of public funding and health coverage and benefits, with poor access to long-term care, as noted in the 2020 report of the EU Social Protection Committee.

Citizens in need of health practitioners often resort to informal/illegal payments (known as “little envelopes”) that represent over a quarter of out-of-pocket payments, severely compromising equitable access to healthcare, financial protection and professional standards. Exacerbated by the pandemic, such problems will not go away, but will only deteriorate further due to the impact of the war in Ukraine and the energy crisis. We therefore recall that investment in the care economy and infrastructure is crucial to ensure a transformative approach to addressing persistent care gaps and decent work deficits through innovative care policies that ensure access for all and enhance gender equality and women’s access to labour markets. Greece direly needs such a transformative shift, as women remain the principal caregivers in both formal and informal settings.

Regrettably, however, the Greek Government has failed to respect its obligations under Convention No. 149, which it has ratified. This has adversely affected nursing personnel.

While the Convention mandates collective bargaining and the full participation of workers with their representatives, no sectoral collective agreements have been concluded in the private sector since 2016.

Public healthcare workers since 2009 have suffered degradation in terms of pay and working conditions, with unilaterally imposed pay and pension cuts. Meanwhile, employers in the sector are failing to guarantee an adequate nurse-to-patient ratio and often impose minimum wage pay rates. The situation can only worsen with the recent transformation of the Labour Inspectorate into an independent entity, free from any accountability or social control.

Excessive hours, shift rotation, low pay, harsh working conditions, as well as recruitment and training deficits are placing a heavy personal and professional burden on nursing personnel generally and on female nurses in particular.

Under the current legislation, for example, we have three consecutive eight-hour shifts, with two to four nurses on the morning shift and only one on the afternoon and night shifts. Previously, morning shifts at public hospitals deployed four to six nurses, afternoon shifts three–four and night shifts two-three nurses. As shown by studies and evidence we have already provided, such conditions have caused numerous chronic cognitive and bodily ailments and disorders, including job stress, anxiety and ultimately burnout.

To our utmost concern, Greece lacks a universal statutory scheme for long-term care, implying heavy reliance on informal care administered as atypical or unpaid family care. Over 30 per cent of the total adult population provides informal care at least once a week. Mostly undeclared, unskilled female domestic workers provide live-in care. They are from migrant groups or mobile citizen categories and are hired by families on the basis of oral agreements.

We reiterate our strong objection to the "exclusive" nurse practice. These are mostly female migrant workers employed in a quasi-nursing capacity. We have also noted that patients' families providing informal hospital services are increasingly tolerated in public facilities. During the pandemic, such unacceptable practices gained traction, rather than diminishing.

These grey areas require a cohesive policy approach, with due attention to skills certification, regularization, and/or resident permit procedures. We reiterate the need for Greece to ratify and implement Convention No. 189, alongside a comprehensive nursing personnel policy and national care strategy.

Worker member, Brazil – I would like to begin by recalling that the first person to die as a result of COVID-19 in Brazil, Cleonice Gonçalves, was a domestic worker who caught the virus from her employers, who were returning from a trip to Europe.

In Brazil, during the pandemic, workers' average income fell by 8 per cent. In the last few years, the Brazilian currency has lost more than 30 per cent of its purchasing power. The increase in the cost of the basic food basket has been even greater: in São Paulo it was almost 50 per cent. The price of gas for cooking, another basic commodity, is the highest it has been this century and accounts for nearly 10 per cent of the minimum wage, which stands at around US$220 today.

Brazil is a rare case of a country with high rates of inflation, interest and unemployment. The unemployment rate stands at over 11 per cent. Informal work is at record levels and involves nearly 50 per cent of the active population.

In Brazil, the number of men and women domestic workers fell from 6.4 million in 2019 to 4.9 million last year. It is important to note that women represent over 90 per cent of domestic workers and over 60 per cent of them are Black. These are important factors to underscore since they relate to a totally unequal situation without historical precedent or social justice.

Data from the Brazilian Institute of Geography and Statistics (IBGE) show that the national average wage for men and women domestic workers decreased from 924 to 876 Brazilian reais, less than US$200, and less than the minimum wage. It is important to emphasize that informal domestic workers, both women and men, earn around 40 per cent less than formal domestic workers, and Black domestic workers, both women and men, earn on average up to 15 per cent less.

Average weekly working time for domestic workers is 52 hours. In addition, in 2022, around 30 per cent of women domestic workers had been working for less than a year and in most regions of Brazil there was an increase in the number of women domestic workers who are heads of households.

In addition to the economic disaster, the political project of the current Government is the destruction of all the social and labour rights won through the struggles of the Brazilian working class. The Government has also pushed for cuts in spending on education and health; a pension reform that conflicts with the right to a decent pension; privatizations, historic retrograde steps in the fight against child labour and slave labour; attacks on social movements and trade unions and the fomenting of anti-union practices; a lack of political coordination and a policy of denial during the pandemic, resulting in over 666,000 deaths to date.

The trademark of the present Government is the flexibilization of environmental legislation; the closure of councils for social participation; initiatives to promote the use of arms and police violence; disparagement of policies aimed at reducing racial and gender inequalities; a prejudiced narrative against the LGBTQIA+ population; and, above all, systematic attacks on democracy, human rights and the democratic rule of law.

Worker member, Indonesia – Indonesia has one of the largest migrant workforces across the globe, of which migrant domestic workers represent the largest group. About 4.5 million Indonesian domestic workers work abroad, that is over a third of all Indonesian migrant workers. An overwhelming majority of them are women.

In search of better paying jobs to create a better life for themselves and their families, they obtain employment in South-East Asia, the Gulf countries or Europe. Sadly, for many of them, the working and living conditions they find in their country of destination is far from what they were promised.

Some migrant domestic workers experience abuse right from the beginning of their journey, when employment agencies engage in unethical practices, including: providing false information regarding the type of employment and the conditions to be expected in the destination country; imposing illegal recruitment fees, which often lead migrants to incur large debts; confiscation of identity documents; and threats, intimidation and the withholding of wages.

Upon arrival in the country of destination, migrant domestic workers are particularly vulnerable to unacceptable practices by employers, such as debt bondage and forced labour, especially in countries where their migration status is linked to the employer; the withholding of wages, the late payment or underpayment of wages and

benefits; the confiscation of identity documents and labour contracts; and the threat of denunciation to national authorities.

Their plight is further compounded by the persistence of the most atrocious forms of abuse and exploitation. Deprivation of food and sleep, physical, psychological and sexual harassment, forced labour, repeated beatings and violence, rape, murder – there is no shortage of examples.

How long can we turn a blind eye to the ordeals of migrant domestic workers? Countries must scale up measures at the national level and cooperate at the regional and global levels to ensure safe migration paths from the moment of departure from the country of origin, during transit through other countries and arrival in the country of destination, as well as in relation to repatriation.

Measures must be adopted to provide migrant domestic workers with the necessary protections under national labour and social protection laws and ensure equal treatment with nationals, in particular with regard to wages, safety and health measures, social protection and other conditions of work.

Concrete steps must be taken to detect, identify and address abusive practices against migrant workers, especially forced labour and child labour, and to detect and address unethical and abusive practices by private employment agencies.

Finally, targeted measures should be implemented to ensure that the legal, administrative and practical obstacles to the full enjoyment of the right to freedom of association and the right to collective bargaining by domestic workers, especially migrant domestic workers, are removed.

ILO instruments, including Convention No. 189, the ILO migration instruments, that is, the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), Convention No. 190 and the Private Employment Agencies Convention, 1997 (No. 181), must guide these efforts to achieve decent work for domestic workers, regardless of their nationality or country of origin.

Observer, World Health Organization (WHO) – The WHO welcomes the General Survey of the Committee of Experts. As recognized by the United Nations High-level Commission on Health Employment and Economic Growth in 2016, the health and care sector is a key economic sector that provides an increasing number of decent work opportunities. For nursing, which is the largest professional occupational category of health workers globally, the creation of decent jobs particularly benefits women, who make up nine out of ten nurses globally. Indeed, the health and care sector is particularly important for women's economic empowerment and labour market participation.

However, the COVID-19 pandemic has greatly impacted the sector. We note demanding and deteriorating working conditions. We estimate that 115,000 health and care workers lost their lives to COVID-19 between January 2020 and May 2021, and there are increasing reports of stress, burnout, mental health conditions and violence in the workplace. The WHO will continue to monitor these trends. There is a risk that the gains made by the sector over the past decade may be reversed and this must be acted upon. We stress that we need to improve the capacity of health workforce information systems to collect, analyse and monitor employment and working conditions and their impact in terms of workers' health, well-being and equity.

Ministers of Health and national delegates were in Geneva last week to attend the Seventy-fifth World Health Assembly. National delegates passed a resolution which calls

on Member States to make the best use of the WHO's Global health and care worker compact to inform national reviews, action and implementation to protect and support health and care workers.

This Compact, developed with inputs from the ILO and Public Services International (PSI), consolidates legal instruments and policies to protect and safeguard health and care workers in a single tool. Ministers and national delegates also adopted the Working for Health Action Plan as a platform for accelerating investment in health and care workers education, skills and jobs, as well as safeguarding and protecting those workers who do so much to care for us and our economies.

This Action Plan will serve as a mechanism to advance progress within and across Member States, especially for countries on the WHO Health Workforce Support and Safeguards List, which comprises the 47 countries facing the most pressing health workforce challenges.

Both the Compact and the Action Plan need to be rooted in multisectoral partnership and coordination with governments, workers, employers and United Nations bodies. The WHO values its strong collaboration with the ILO in this multisectoral partnership and we look forward to continued collaboration through the UN Common Agenda, the Global Accelerator for Jobs and Social Protection, the Working for Health Action Plan and our shared inter-agency data exchange and technical reports, such as the forthcoming ILO and WHO report on gender pay gaps in the health and care sector.

Multisectoral collaboration at the national, regional and international levels needs to be at the core of securing decent work for nurses and all healthcare workers, as well as for the entirety of the care economy.

Observer, Public Services International (PSI) – PSI welcomes the General Survey prepared by the Committee of Experts. As the only workers' organization in official relations with the WHO, PSI was pleased to draw attention to the work of the Committee of Experts at the Steering Committee of the International Year of Health and Care Workers and in the development of the Global health and care worker compact.

As a global union representing workers in health and social care, we will confine our comments to workers classified as nursing personnel, who for this purpose include social care workers and community health workers. We thank the Committee of Experts for reflecting our concerns at the growing precariousness in health and social care work and the brutal conditions that health and care workers have faced during the COVID-19 pandemic, such as extreme under-staffing, violations of the right to unionize and bargain, wide-scale occupational safety and health deficits, and a large gender pay gap in the sector which derives from, but also ring-fences the undervalued nature of care work.

We appreciate the specific reference to the conditions faced by community health workers (CHWs), in particular, those who have been denied the right to be recognized as workers or to receive a wage, as well as the recognition that social care workers providing long-term care have been neglected and under-valued for too long.

We support the recommendation of the Committee of Experts that all countries should assess the nursing workforce and develop a strategic workforce plan together with the social partners. Staff shortages are more likely to occur without accurate and regular workforce assessment.

We also agree with the recommendation of the Committee of Experts to ensure optimal education and training for nursing personnel by expanding opportunities for access to high-quality education and lifelong learning across all categories of nursing. However, we stress the critical need for this to be public education developed in collaboration with nurses' unions. In too many countries, privatized nursing education is leading to unscrupulous practices, resulting in poor quality education. This is further exacerbated when nursing education is targeted at migrant workers.

The principal objective of Convention No. 149 is to ensure the availability of sufficient numbers of adequately trained and motivated nurses when and where they are needed. However, the world is facing another health crisis – a health worker shortage crisis. It is projected that 13 million nurses will be needed by 2030, a figure likely to be a large underestimate given the large number of nurses who have left the profession as a result of the pandemic. The only way to recruit more workers and retain them in the profession is to dramatically improve wages and decent working conditions, ensure that nurses have job security, safety at work, legislate nurse–to–patient ratios, end the gender pay gap and, most importantly, ensure they have a collective voice in relation to both working conditions and health policy.

As the Committee of Experts notes, undue discrimination is particularly the case in the nursing sector, where precarious forms of employment are prevalent and where reprisals frequently take the form of the non-renewal of fixed-term contracts. We also remain concerned that Convention No. 149 and Recommendation No. 157 do not adequately protect health and social care workers from systemic and serious violations of their labour rights and that, despite the sacrifices they have made to keep the public safe over the past three years, Governments are failing to respect their rights. At the present time, the instruments are not sufficiently fit for purpose and further work needs to be undertaken to stop the proliferation of precarious work.

We would also like to propose in this regard that a review is undertaken of the 2002 *Framework guidelines for addressing workplace violence in the health sector*, jointly developed by the International Council of Nurses (ICN), WHO, PSI and the ILO; and a review of the extent of the implementation of the recommendations made by the ILO Tripartite Meeting on Improving Employment and Working Conditions in Health Services, held in April of 2017.

Employer members – The Employer members have made comprehensive submissions on the General Survey. We have agreed with the Committee of Experts on many points, and in certain areas have expressed our disagreement with some of the views and findings. We have listened very carefully to all of the submissions today and appreciate the contributions that the various speakers have made to our understanding of the instruments reviewed in the General Survey. In doing so, we have come to the table in the spirit of contributing to a broader debate and we thank those who have done so as well.

We continue to emphasize from our perspective that it is important to provide proper attention to, and clearly articulate, the needs of sustainable enterprises, including in the discussion of the General Survey. The main messages of the Employers' group with respect to the General Survey can be summarized as follows:

Throughout the pandemic, we have witnessed the critical role that nursing personnel have played on the front lines of the response to COVID-19. Today's discussion was therefore of timely relevance. Demographic changes also, such as ageing populations and the shortages of qualified nursing personnel, add to the General

Survey's timeliness. The Employer members are of the view that Convention No. 149 and Recommendation No. 157 provide relevant and important guidance that enables Member States to design policies and approaches on nursing personnel in a manner appropriate to their national conditions and in consultation with the most representative employers' and workers' organizations.

In respect of nursing personnel, Convention No. 149 provides for a wide definition, which is a necessary element of flexibility in view of the very different nursing care and care economy concepts existing in ILO Member States. While the Convention covers nursing personnel, whatever the category of employment is, in our view, it does not apply to sole entrepreneurs, self-employed and independent contractors in this sector.

There is a need for policies and measures that help attract competent nursing personnel, in particular, lifelong training and fair employment conditions. Digitalization is of key importance here and also of key importance is ensuring the efficiency and quality of nursing services, as well as dealing with the ever-rising costs in this sector. While visible progress in this regard has been achieved during the pandemic in some countries, more work needs to be done in other Member States.

In summary, in respect of the issues surrounding domestic workers addressed in the General Survey, the Employer members note that greater efforts need to be made to make their situation more transparent and to ensure that domestic workers can enjoy fair working conditions.

Worker members – I would like to thank all those who have taken the floor during the discussion. The discussion that has just been held has offered an opportunity to provide clarifications which can supplement the General Survey. I would first like to come back to certain elements raised during the debate.

The Employers' group maintained, among other views, that it is not necessary to have specific instruments for specific categories of workers. In the view of the Workers' group, that is a rather surprising claim. On the one hand, instruments dedicated to specific categories of workers have been in existence for as long as the ILO itself. To our knowledge, that has never been considered to be a problem. Moreover, these instruments contain specific provisions that are not found anywhere else. For example, Convention No. 149 contains provisions on the planning of nursing services and personnel, which are not found in any other ILO standard.

We have also heard it said that the section of the General Survey covering working conditions is too long and the provisions on working time must take into account the need for flexibility and enable productivity objectives to be achieved.

It seems to us that some of these terms are ill-suited when referring to a sector where the objective is to improve the health of the population. Is it reasonable to speak of flexibility and productivity in a care unit? This regrettable vocabulary maintains a type of confusion and leads to the logic of profit and returns being applied completely inappropriately. It is necessary to emphasize strongly that there are sectors which fortunately escape this logic and follow a different rationale. The health sector is the best example.

The issue of working time for domestic workers also merits additional comments. In contrast with the views expressed, it is not because workers provide services in a household that a distinction cannot be drawn as to what is and is not working time. This is particularly the case for on-call time when workers are not able to dispose freely of

their time. Looking carefully, rules on working time are even more important in this sector in light of the difficulties reported in the General Survey.

We also wish to come back to what has been said concerning the ratification of the Conventions under examination. We do not share the interpretations made concerning the supposed low number of ratifications. In addition to what we said in our introductory remarks, it seems to us to be risky to link the lack of ratification solely to subjective factors in each country.

Let us confine ourselves to a specific example. The Minimum Age Convention, 1973 (No. 138), had only received 69 ratifications in 2001. They now number 174. It is certainly not possible to believe that that is due to some law of nature which suddenly accelerated the process. No, it was in particular broad and intense international mobilization that led to this result.

To draw all the conclusions from our discussion, the Worker members would like to see the Office establish a specific plan of action with priority measures to be taken for each of the categories of workers concerned.

For nursing personnel, our proposals are as follows. Work needs to be undertaken for the development of a universal definition of the concept of "nurse", possibly in cooperation with the WHO. It would also be useful to coordinate efforts with the WHO with a view to combating the causes and consequences of the shortages that are likely to become worse over the coming years. The ILO has a very important, relevant and legitimate role to play in this respect.

An evaluation of the links between working conditions and the consequences for the quality of health systems would be particularly edifying. A detailed analysis should also be undertaken of obstacles to freedom of association, with suggestions on the manner in which they are to be overcome. Reflection should also be pursued on the specific means of ensuring that the supply of training matches the specific needs of countries suffering from a chronic lack of training supply. Specific measures should also be developed and suggested to prevent at source the effects of arduous work, including long hours of work. All of this action should clearly be the subject of social dialogue with all the representatives of the sector.

Finally, with reference to the domestic work sector, we have identified many areas to work on, but I will confine myself to coming back to three aspects. The promotion of freedom of association is an absolute priority and is a prerequisite for the defence of other rights.

It is therefore essential to further explore the avenues suggested in the General Survey to overcome the current difficulties.

The issue of informality is also a problem in itself and is covered by its own instrument. However, in view of the extent of the phenomenon in the domestic work sector, the levers that can be used to formalize the work relationship need to be identified and promoted in the various countries.

The third element is that the effective application of rights depends on the capacity to control their sound implementation. In addition to reinforcing the capacities of inspection services, it is essential to identify good practices which allow respect for privacy to be reconciled with effective compliance with workers' rights.

The Chairperson – The Government of Brazil has requested to exercise its right of reply.

Government member, Brazil – The Worker member from Brazil has referred to a long series of issues that are not related to any individual case related to Brazil before the Committee because there are no cases concerning Brazil after two years of pandemic.

Brazil believes that constituents should engage in technical discussions rather than in the politics of political interests. I should recall as per the instructions in document D.1 that the discussion of the General Survey should be structured around three generic questions:

(1) progress and challenges in the implementation of the instruments under examination;

(2) measures to be taken to promote Conventions and their ratification in the light of the good practices and obstacles identified;

(3) pathways for future ILO standards action and technical assistance.

None of these issues have been addressed by Ms Batista.

I will restrain myself to reminding the Committee that Brazil has been recovering at a faster pace than the majority of countries of the world. The Government measures taken during the pandemic were exceptional and were adopted under exceptional circumstances. Actually, they were similar to the policies adopted by many other countries around the world. The pandemic and its dire consequences should not be used for political reasons. Brazil has been able to preserve thousands of jobs due to the economic policy adopted during the sanitary crisis: 10 million workers were supported by the income support programme, and over 60 million informal workers were supported by the emergency cash transfer programme. Many other protective measures concerning the labour realm have been taken by the Government. Brazil strongly believes that the Committee should remain a forum for technical discussions.

The Chairperson – We have completed the discussion of the General Survey. The outcome of the discussion will be adopted on the afternoon of Thursday 9 June.

II. Discussion of cases of serious failure by Member States to respect their reporting and other standards-related obligations

A. Update based on the information received since the last session of the CEACR

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

Countries mentioned in paragraph 72 of the General Report – page 57

Afghanistan, Antigua and Barbuda, Botswana, Chad, Congo, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Haiti, Lebanon, Madagascar, Saint Lucia, South Sudan, Syrian Arab Republic, Tuvalu, Uganda, Vanuatu and **Yemen.**

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

Botswana. The Government has sent all reports due.

Congo. The Government has sent a report due.

Democratic Republic of the Congo. The Government has sent some reports due.

Madagascar. The Government has sent some reports due.

South Sudan. The Government has sent some reports due.

In addition, written information was received from the Governments of **Antigua and Barbuda** and **Lebanon**

See below under Part B.

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

Afghanistan, Antigua and Barbuda, Chad, Dominica, Equatorial Guinea, Haiti, Lebanon, Saint Lucia, Syrian Arab Republic, Tuvalu, Uganda, Vanuatu and **Yemen.**

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

Countries mentioned in paragraph 75 of the General Report – page 58

States	Conventions Nos
Albania	– Since 2018: MLC, 2006
Congo	– Since 2015: Convention No. 185, – Since 2016: MLC, 2006, and – Since 2018: Convention No. 188
Equatorial Guinea	– Since 1998: Conventions Nos 68 et 92
Gabon	– Since 2016: MLC, 2006
Guinea	– Since 2019: Convention No. 167
Sao Tome and Principe	– Since 2019: Convention No. 183
Tunisia	– Since 2019: MLC, 2006

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

Sao Tome and Principe. The Government has sent the first report on the application of the Convention No. 183.

Tunisia. The Government has sent the first report on the application of the MLC, 2006.

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

See below under Part B.

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

Albania, Congo, Equatorial Guinea, Gabon and **Guinea.**

3. "Urgent appeals" – Failure to supply reports on the application of ratified Conventions for at least three years and failure to supply first reports on the application of ratified Conventions for at least three years

Countries mentioned in paragraph 73 of the General Report – page 57

Congo, Dominica, Equatorial Guinea, Lebanon, Madagascar, Saint Lucia and **Vanuatu.**

Countries mentioned in paragraph 77 of the General Report – page 59

Albania, Guinea, Sao Tome and Principe and **Tunisia.**

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

Madagascar, Sao Tome and Principe and **Tunisia.**

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

See below under Part B.

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

Albania, Congo, Dominica, Equatorial Guinea, Guinea, Lebanon, Saint Lucia and **Vanuatu.**

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

Countries mentioned in paragraph 80 of the General Report – page 60

Afghanistan, Antigua and Barbuda, Bahamas, Barbados, Belize, Plurinational State of Bolivia, Botswana, Chad, Comoros, Congo, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Guinea, Haiti, Hungary, India, Jamaica, Jordan, Kenya, Kiribati, Lebanon, Madagascar, Morocco, Netherlands (Sint Maarten), North Macedonia, Papua New Guinea, Romania, Saint Lucia, Samoa, San Marino, Sao Tome and Principe, Serbia, Singapore, Slovenia, Somalia, South Sudan, Sri Lanka, Sudan, Suriname, Syrian Arab Republic, Tajikistan, Timor-Leste, Tunisia, Tuvalu,

Uganda, United Kingdom of Great Britain and Northern Ireland (British Virgin Islands), United Republic of Tanzania, Vanuatu and **Yemen.**

Since the last session of the Committee of Experts, replies to all or most of the comments of the Committee of Experts have been received from the following countries:

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

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

Democratic Republic of the Congo. The Government has sent replies to the majority of the Committee's comments.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sri Lanka. The Government has sent replies to the majority of the Committee's comments.

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

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

In addition, written information was received from the Governments of **Antigua and Barbuda, Gambia, Lebanon** and **United Kingdom (British Virgin Islands)**

See below under Part B.

Therefore, the list of countries invited to supply information to the Committee on the Application of Standards concerning this failure is as follows:

Afghanistan, Antigua and Barbuda, Bahamas, Barbados, Plurinational State of Bolivia, Chad, Comoros, Congo, Dominica, Equatorial Guinea, Eritrea, Gabon, Gambia, Guinea, Haiti, Kiribati, Lebanon, Madagascar, North Macedonia, Papua New Guinea, Saint Lucia, San Marino, Singapore, Slovenia, Somalia, South Sudan, Sudan, Syrian Arab Republic, Tajikistan, Timor-Leste, Tuvalu, Uganda, United Kingdom (British Virgin Islands), United Republic of Tanzania, Vanuatu and **Yemen.**

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

Countries mentioned in paragraph 127 of the General Report – page 75

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

Since the last session of the Committee of Experts, **Angola**, **Grenada**, **Maldives**, **Somalia** and **South Sudan** have sent reports on unratified Conventions and Recommendations

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

See below under Part B.

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

Belize, Brunei Darussalam, Chad, Congo, Djibouti, Dominica, Guyana, Haiti, Lesotho, Liberia, Marshall Islands, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Sierra Leone, Timor-Leste, Tuvalu and **Yemen.**

6. Failure to submit instruments to the competent authorities

Countries mentioned in paragraph 147 of the General Report – page 80

Albania, Angola, Bahamas, Bahrain, Belize, Plurinational State of Bolivia, Brunei Darussalam, Central African Republic, Chad, Comoros, Congo, Democratic Republic of the Congo, Dominica, El Salvador, Equatorial Guinea, Eswatini, Gabon, Gambia, Grenada, Guinea, Guinea-Bissau, Haiti, Hungary, Kazakhstan, Kuwait, Lebanon, Liberia, Libya, Malaysia, Maldives, Marshall Islands, North Macedonia, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Solomon Islands, Syrian Arab Republic, Timor-Leste, Tuvalu, Vanuatu, Yemen and **Zambia.**

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

Albania. On 6 May 2022, Albania submitted the Violence and Harassment Convention, 2019 (No. 190). According to the criteria established by the Committee of Experts, Albania is now no longer in serious failure to submit.

Plurinational State of Bolivia. On 21 August 2012, the Plurinational State of Bolivia ratified the Domestic Work Convention, 2011 (No. 189). According to the criteria established by the Committee of Experts, the Plurinational State of Bolivia is not in serious failure to submit; however, due to the substantial number of pending submissions, it remains in failure to submit status.

El Salvador. On 2 May 2022, the Government of El Salvador submitted the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, to the Legislative Assembly. According to the criteria established by the Committee of Experts, with this submission, El Salvador is no longer in serious failure to submit.

Guinea. On 25 April 2017, Guinea ratified the Domestic Work Convention, 2011 (No. 189). According to the criteria established by the Committee of Experts, Guinea is not in serious failure to submit; however, due to the substantial number of pending submissions, it remains in failure to submit status.

Guinea-Bissau. On 13 April 2019, Guinea-Bissau submitted the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205). According to the criteria established by the Committee of Experts, Guinea-Bissau is not in serious failure to submit; however, due to the substantial number of pending submissions, it remains in failure to submit status.

Kuwait. On 2 August 2021, Kuwait submitted 22 instruments to Parliament adopted at the 77th, 80th, 86th, 89th, 92nd, 94th, 95th, 96th, 99th, 100th, 101st and 103rd Sessions of the Conference. According to the criteria established by the Committee of Experts, with these submissions, Kuwait is no longer in serious failure to submit.

Malaysia. On 21 March 2022, Malaysia submitted the Protocol of 2014 to the Forced Labour Convention, 1930. According to the criteria established by the Committee of Experts, Malaysia is not in serious failure to submit; however, due to the substantial number of pending submissions, it remains in failure to submit status.

In addition, written information was received from the Governments of **Angola, Bahamas, Gambia, Grenada, Hungary** and **Lebanon**

See below under Part B.

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

Angola, Bahamas, Bahrain, Belize, Brunei Darussalam, Central African Republic, Chad, Comoros, Congo, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Eswatini, Gabon, Gambia, Grenada, Haiti, Hungary, Kazakhstan, Lebanon, Liberia, Libya, Maldives, Marshall Islands, North Macedonia, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Solomon Islands, Syrian Arab Republic, Timor-Leste, Tuvalu, Vanuatu, Yemen and **Zambia.**

B. Written information received from Governments concerned by serious failure

Albania

The Albanian Government, pursuant to article 22 of the Constitution of the ILO has taken measures to implement the Maritime Labour Convention, 2006 (MLC, 2006). According to the requirements and observations by the Committee of Experts, one of the reasons for the delay of the MLC, 2006 regards the lack of a legal framework. Another training course for "Reporting on the MLC, 2006" was provided by the International Training Centre of the ILO to the Maritime Expert in the Ministry of Infrastructure and Energy of the Republic of Albania. We are aware that the MLC, 2006, has shortcomings, but we are at the end of our work process, to provide a final report. Also, the Albanian Government will provide information for most of the reports due for 2022. The reports will be sent according to the established deadline, between 1 June and 1 September 2022.

Angola

As you are aware, Angola is a full Member of the International Labour Organization (ILO), exercising its rights and respecting the obligations arising from the Constitution of this United Nations agency. It is required to submit annual reports to the International Labour Standards Department indicating the measures it has taken for the application of ratified Conventions.

We therefore inform you of the following: regarding the submission to the competent authorities of instruments adopted by the International Labour Conference, under article 19 of the ILO Constitution, please be advised that the instruments adopted between the 79th and 109th Sessions of the Conference have been submitted to the Ministry of Foreign Affairs, which has competence for producing the sworn translations of international instruments and consequently for sending these instruments to the competent authorities (National Assembly).

As regards the submission of reports on unratified Conventions and Recommendations under article 19 of the ILO Constitution (Conventions Nos 111, 156 and 183 and Recommendations Nos 111, 165 and 191), we hereby inform you that the reports are being prepared.

The delay in the submission of these reports to the ILO is due to the delay in the dispatch of information from other competent bodies. However, please be advised that the respective reports will be sent to the International Labour Standards Department before the start of the 110th Session of the International Labour Conference.

Concerning the observations published on pages 321 and 388 of the Committee of Experts' report regarding the application of the Abolition of Forced Labour Convention, 1957 (No. 105), and the Worst Forms of Child Labour Convention, 1999 (No. 182), the Government has taken note of these observations and emphasizes that the respective observations have been incorporated into the reports sent to the Department of Justice.

Lastly, regarding the submission of reports under article 22 of the ILO Constitution, please be advised that the reports on Conventions Nos 81, 100, 107, 111 and 144, and the replies to the direct requests and observations relating to them, are being prepared and that these reports will be submitted by September 2022, within the deadlines set by the ILO.

Antigua and Barbuda

The Government of Antigua and Barbuda acknowledges its failure to meet its reporting obligations for the past few years. This has been due to the sudden resignation on 8 May 2020 of the Officer who performed the reporting function on behalf of the Government.

As a consequence, and with the kind assistance of the ILO through the International Training Centre, two labour officers are now trained to assume reporting duties. It is also our intention to have a third officer trained in ILO reporting.

Further, the International Labour Standards Specialist in the ILO Office for the Caribbean has graciously offered guidance to ensure that we meet our reporting obligations for the year 2022.

Bahamas

During the 106th Session of the International Labour Conference, Geneva, June 2017, the Bahamas acknowledged its serious failure to submit at the Committee. At the time, the Bahamas advised the Committee that it would rectify its position and further advised that it was in need of technical assistance from the ILO in order to do so.

While there was minor dialogue after the Conference, and then the onset of the COVID-19 pandemic, the Bahamas did not obtain assistance until late 2021 through the Caribbean ILO technical secretariat. Gratefully, with this technical assistance presently afforded, the Bahamas anticipates beginning the submission process to the competent authority by the end of 2022 or sooner.

At this time, gratitude is extended to the ILO for its continued understanding and support.

Gambia

The Government of Gambia acknowledges its failure to meet its reporting obligations in 2021. The lack of reporting was due to the fact that the Tripartite Reporting Committee (TRC) was unable to meet in 2021 due to the sanitary situation related to COVID-19. However, previously, Gambia complied with all its reporting obligations under ratified Conventions.

At this time, through ILO technical assistance from the Decent Work Team/Country Office (DWT/CO), the Government is currently working with a consultant to fulfil its reporting obligations under ratified Conventions. Moreover, the DWT/CO is providing financial and technical assistance for the organization of a meeting of the TRC to discuss and finalize the reports to be submitted in 2022. We would like to thank the Office for the assistance provided in this regard.

With regard to submission of instruments adopted by the International Labour Conference between 2010 and 2019, Gambia acknowledges that the following instruments still need to be brought to the attention of the National Assembly:

- the HIV and AIDS Recommendation, 2010 (No. 200);
- the Domestic Workers Convention, 2011 (No. 189);
- the Domestic Workers Recommendation, 2011 (No. 201);
- the Social Protection Floors Recommendation, 2012 (No. 202);
- the Protocol of 2014 to the Forced Labour Convention, 1930;
- the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203);
- the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204);
- the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205);
- the Violence and Harassment Convention, 2019 (No. 190);
- the Violence and Harassment Recommendation, 2019 (No. 206).

ILO technical assistance to facilitate the adoption of these instruments would help Gambia to fulfil our obligations as well as submission to the national authorities.

Grenada

The Government is committed to addressing the reporting failure with respect to the submission of instruments to the competent authority. The Ministry of Labour is currently working with the International Labour Standards Specialist in the ILO Office for the Caribbean to address the backlog and prepare the submissions of pending instruments to the Cabinet and subsequently to Parliament.

The Government has made significant progress in the last year with respect to reporting overall, with a focus on submitting the requested article 22 reports and the article 19 report form. We are committed to continuing this progress and hope to provide further information on developments in this respect in due course.

Hungary

The paragraphs below contain details relating to the presentation of Conventions and Recommendations adopted by the International Labour Conference between 2010 and 2019:

- The examination of the ratifiability of the Domestic Workers Convention (No. 189) and the related Recommendation (No. 201), 2011 was analysed in detail by the national ILO Council. At present, Convention No. 189 is not included in the list of Conventions proposed for ratification by the national ILO Council, but this does not mean that Hungary is against the ratification.
- The HIV and AIDS Recommendation, 2010 (No. 200), adopted at the 99th Session of the Conference, and the Social Protection Floors Recommendation, 2012 (No. 202), adopted at the 101st Session of the Conference, were jointly presented to Parliament in September 2014.
- A government submission on the presentation to Parliament of the 2014 Protocol to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation (No. 203), adopted at the 103rd Session of the Conference, was made in January 2016.
- The report on the implementation of Convention No. 29 and the above-mentioned submission were debated in Parliament.
- The Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) and the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), have been discussed by the Government with the social partners in the National ILO Council meetings.
- The presentation of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, could not be presented due to the ongoing EU decision-making process. The European Commission presented a proposal for a Council Decision in January 2020 to authorize the ratification of the Convention in the interest of the European Union. The Council negotiation process stalled at the Committee of Permanent Representatives (COREPER) level in December 2020.

Lebanon

Our country is among the cases identified by the Committee of Experts as cases of serious breaches of reporting obligations or other obligations related to the standards.

For the preparation of this reply, we contacted the ILO, and more specifically the Standards Department of the International Labour Organization and the Decent Work Technical Support Team that covers our country, to provide us the necessary technical assistance with some clarifications, which was useful.

In this regard, we would like to describe the national situation of Lebanon regarding these shortcomings during the period from mid-2019 to 2021:

"For nearly two years now, Lebanon has been assailed by compounded crises, specifically, an economic and financial crisis, followed by COVID-19 and, lastly, the explosion at the Port of Beirut on August 4, 2020. Of the three, the economic crisis has had by far the largest (and most persistent) negative impact" [1] (written in 2021).

"In August 2019, due to various financial hardships, especially the growing probability that the Lebanese Government will default on maturing debt obligations, the black-market exchange rate started diverging from the official exchange rate." [2]

"The Lebanese Government's decision to impose new taxes in October 2019 sparked nation-wide protests by a population exhausted by poor public services, worried about increasing national debt and frustrated by widespread corruption. Since then, the black-market exchange rate started diverging from the official exchange rate and Lebanese politics have been marked by political deadlock that has prevented successive governments from implementing urgent reforms. The devastating explosion in the port of Beirut on 4 August 2020 only exacerbated the situation. Since 2021, the country had sunk deeply into a financial and economic crisis. Lebanon's severe and prolonged economic depression is, according to the World Bank, likely to rank in the top ten, possibly top three, most severe crisis episodes globally since the mid-nineteenth century. Poverty in Lebanon has spread dramatically over the past year and now affects about 74 per cent of the population. Lebanon is host to approximately 1.5 million Syrian refugees, 90 per cent of whom live in extreme poverty. There are also over 210,000 other refugees. The Lebanese pound has lost 90 per cent of its value in the past two years, most people have only two hours of electricity per day, and the healthcare sector is at breaking point. The middle class has been decimated, with many leaving the country or planning to do so." [3]

"Before the crisis, most civil servants earned salaries worth around $1,000 and up; today, most are earning around a tenth of that after a currency crisis led the Lebanese pound to lose more than 90 per cent of its value.

Some public sector workers have, since the beginning of November 2021, been staging an open-ended strike over better pay and living conditions. Others simply cannot make it into work: A full tank of gas can eat up more than half of their monthly wage and benefits." [4]

The head of the International Affairs Department at the Ministry of Labour, Lebanese Republic, responsible for international labour standards reporting, in addition to other functions, was affected, by all the crises mentioned above, directly and indirectly:

- The department head was injured in the Beirut blast in 2020.
- After the department head's sick leave in 2021, the staff of the department started striking, to denounce Lebanon's declining socio-economic conditions and to demand salary increases. The department officials were present in their offices for only one day per week as they could not afford the transportation fees and have not received any salary rise as civil servants since then.

[1] https://www.worldbank.org/en/country/lebanon/overview#1.

[2] https://en.wikipedia.org/wiki/Lebanese_liquidity_crisis.

[3] https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2022)729369.

[4] https://today.lorientlejour.com/article/1284233/refile-lebanons-public-sector-falls-further-into-chaos-and-corruption-.html.

- At the beginning of this year, 2022, the Government pledged to give financial aid (1.5 million Lebanese pounds) as an additional half salary, which is approximately US$50, as incentive to work three days per week. Since then, officials have been compensated only twice.

Consequently, the head of department was working, as a priority, on urgent files. It was challenging preparing "online or from home", the international labour standards reports, as they are complicated files which demand a lot of administrative data and archive research, official correspondences as well as collaboration with other relevant ministries and institutions and colleagues. In addition, it becomes unfeasible with electricity shortages and during strikes because these disrupt operations at government offices and could prompt public office closures.

However, despite all these poor and difficult working conditions, the head of department never gave up her role to promote fundamental principles and rights at work, and to move forward to achieve some results, during this dark situation in our country.

Last but not least, every effort will be made to submit the rest of the reports by the deadline, September 2022.

United Kingdom of Great Britain and Northern Ireland – British Virgin Islands

The Government is dedicated to meeting its reporting obligations on ILO Conventions. Significant effort was put into submitting the article 22 Report on the Maritime Labour Convention, 2006 (MLC, 2006) in 2021. Unfortunately, due to various challenges and turnovers in the Ministry in 2021, the other report, the Seafarers' Identity Documents Convention, 1958 (No. 108), requested was not submitted. We are however committed to ensuring the timely submission of all ILO reports due and are currently taking measures in that respect.

C. General comments of the Employer and Worker spokespersons

General comments of the Worker spokesperson

For the second year in a row, our Committee has, on an exceptional basis, adapted the format of the special sitting, held usually on cases of serious failure to report and other standards-related obligations, to meet the time constraints we are once again faced with.

Our Committee cannot, however, afford to evade this fundamental issue. It is indeed essential that the Member States concerned by serious failure of their constitutional obligations to report put everything in place to ensure conformity with their obligations, as soon as possible.

These Member States do not face these obligations alone. They can rely on the ILO Office, which has always stood ready to assist Member States in meeting their obligations. We therefore invite the Office to continue to provide the necessary assistance to these Member States. In this regard, the Workers' group would like to once again welcome the Office's recent initiatives to launch brand new educational tools that can provide valuable assistance to Member States to guide them in complying with their constitutional obligations. These are, respectively, a website specifically on the reporting obligations entitled *Managing international labour standards reporting* and another website that consists of a guide on the established practices of the ILO supervisory system, which clearly sets out the essential role of these reporting obligations for the ILO supervisory system. We invite Member States to familiarize themselves with these new tools and invite the Office and experts to ensure they are given as much visibility as possible.

However, we must also firmly remind Member States that it is their primary responsibility to fulfil their obligations to the ILO. Their credibility and the effectiveness of the various ILO bodies are at stake.

The ILO, for its part, must firmly demand the replies and reports that States must provide under their obligations, and set in motion the necessary dynamic for dialogue between the ILO supervisory bodies and the Member States.

This dialogue is fundamental for the promotion of the ratification, effective application and dissemination of the international labour standards.

We noted with regret, in last year's report, that the crisis that we are still facing today had a strong impact on Member States' compliance with these constitutional obligations.

Now, after more than two years of the pandemic, we would not have been able to tolerate such a situation. Fortunately, with the strong support through the considerable efforts of the Bureau to assist them, and also through their own efforts, Member States have been able to significantly reverse this trend this year. This is commendable, even if considerable efforts must still be made in the future to further improve compliance with Member States' constitutional obligations.

Last year we highlighted the worrying trend of increasing serious violations of fundamental rights in the context of the COVID-19 crisis, whether in the area of occupational safety and health, or in the exercise of the fundamental freedoms of association and collective bargaining, and we can only reiterate this bleak assessment today. All this makes dialogue between the ILO and the Member States more fundamental than ever, as it allows us to better understand the difficulties that Member States face in implementing ILO instruments and to therefore provide adequate responses to these difficulties.

Without Member States' compliance with these fundamental obligations, the ILO cannot entirely fulfil its role, either within the framework of the ILO supervisory system or that of its other areas of action. It is therefore the Member States themselves which are the victims of the failure to comply with their constitutional obligations, as the ILO is undermined in its capacity to provide adequate responses to these difficulties.

With regard to the reporting obligations on ratified Conventions, we must note a clear improvement in the number of reports received compared to last year. The proportion of the number of reports received during the last session of the Committee of Experts (1,357) compared to the number of reports requested by the Committee of Experts (2,006) was 67.6 per cent compared to 42.9 per cent for the previous sessions, that is to say 24.7 per cent more.

The experts' report also shows that of all the reports requested from governments, 41.9 per cent were received on time, that is to say before 1 September. We can thus commend an improvement compared to last year, as only 26.5 per cent of reports were received on time last year. This is therefore an encouraging sign. We hope, nonetheless, that this positive dynamic will continue in the coming years because it remains the case that less than half of reports were sent in time. It is thus essential that governments send their reports in time so as not to disrupt the smooth functioning of the ILO supervisory system and thereby enable it to be fully informed of the difficulties and stakes faced by the Member States in order to initiate a post-COVID-19 recovery.

Eighteen countries have not provided reports for two years or more and seven countries have not provided a first report for two years or more. First reports are those which are due

following ratification of a Convention by a Member State. These first reports are of crucial importance as they allow for an initial examination of the effective implementation of the Conventions in question in the Member States.

Our Organization's Constitution also imposes the obligation on Member States to indicate the representative employers' and workers' organizations to which copies of the reports on ratified Conventions are communicated. Like last year, the experts' report shows that all Member States complied with this obligation, which is positive.

Tripartism is indeed the foundation of the ILO. It is therefore essential that the social partners be involved in the supervision of the application of international labour standards in their country. Communicating the reports provided to the ILO to these organizations enables them to contribute to the work of examining the conformity of national law and practices with international labour Conventions. It is also essential that a genuine tripartite dynamic be effectively put in place behind the exercise of this formality. Convention No. 144 is, in this regard, an excellent tool for implementing this tripartite dialogue. We can but encourage the Member States which have ratified it to fully implement it and those which have not yet ratified it, to do so.

Each year, the Committee of Experts formulates observations and direct requests to which countries are invited to respond. This year, 55 countries did not respond (compared to 47 last year). As emphasized by the Committee of Experts, the number of comments that have not received a reply remains very high and we note that this number has been increasing for at least three sessions. This negligence has a negative impact on the work of the supervisory bodies. We join with the Committee of Experts in inviting Governments which have failed to do so to provide all the information requested.

While recalling that the main responsibility regarding compliance with reporting obligations rests with Member States, we ask the ILO Office to be particularly attentive to the difficulties faced by Member States and to adapt and strengthen the initiatives already taken in the past. This is to ensure more effective monitoring of countries that are seriously failing in their constitutional obligations and to reassure us that these Member States are put back on track as quickly as possible to comply with their reporting obligations.

In this regard, the Workers' group wishes to once again commend the urgent appeals procedure set up by the Committee of Experts, in collaboration with the Office. This is an initiative that can unquestionably contribute to improving compliance with Member States' reporting obligations.

This year, this procedure has enabled the Committee of Experts to examine the substance of the cases of 16 Member States on the basis of publicly available information further to an urgent appeal launched at the previous session which unfortunately remained without response. This year, seven Member States are subject to an urgent appeal due to a lack of reporting for more than three years, the substance of the cases of which will be examined at the next session of the Committee of Experts if no report is submitted.

Four Member States are also subject to an urgent appeal procedure due to the failure to submit a first report for more than three years. Further to the urgent appeals launched last year to five Member States, two of them have sent their first report, which confirms the success rate of the procedure already recorded the previous year (seven first reports received following 14 urgent appeals).

We join the Committee of Experts in inviting the Member States concerned to submit without delay the reports requested by the Committee of Experts, availing themselves, where necessary, of the assistance of the Office.

The compilation of the General Surveys relies mainly on the submission of reports from Member States. It is therefore vitally important that Member States send their reports as part of the preparation of the General Surveys so that we can gain an overview of the application in law and practice of ILO instruments, even – and especially – in countries that have not ratified the Conventions under examination. Failure to transmit these reports undermines the thoroughness of these General Surveys which cannot reflect the diversity of the good practices that could inspire international, regional or national actions for the implementation of the international recommendations and standards under examination.

We must regret that 23 countries have not supplied any information for five years to contribute to the last five General Surveys drafted by the Committee of Experts. This is regrettable since these States would have made a valuable input to the overview the General Surveys provide.

Cases of serious failure to submit are cases in which governments have not submitted the instruments adopted by the Conference to the competent authorities for at least seven sessions. This obligation is essential in order to ensure, at the national level, official communication of the ILO standards initiatives to the competent authorities which can then envisage possible ratification by the Member State. This year 45 countries are once again in a situation of serious failure to submit, compared with 48 last year. This amounts to as many missed opportunities for promoting international labour standards adopted by the ILO.

The Workers' group calls on the Member States concerned to comply with their constitutional obligations and, if needed, to turn to the Office to receive its technical assistance.

General comments of the Employer spokesperson

I. Introduction

We note that the Experts once again expressed concerns in their Report at the low number of government reports received by the 1 September deadline. We fully understand that some governments were still primarily concerned with managing the pandemic, but we nonetheless count on them to continue complying with their reporting obligations under articles 19, 22 and 35 of the ILO Constitution in a timely manner and to do so in consultation with the most representative employers' and workers' organizations. This is important – and it cannot be stressed often enough – because it is government reports that provide the core basis for our supervisory work.

The high number of Experts' comments – there are 525 observations and 1,031 direct requests this year – suggests that ratification is often not taken sufficiently seriously. It seems that ratification is often considered more as a political statement or a declaration of intent, but not as what it really is, namely the conclusion of a treaty under international law containing legal obligations all of which have to be complied with.

In promoting ratification, the Office needs to better advise Member States of the need for thorough pre-ratification assessments and close consultations with the social partners, including the Employers. These pre-ratification assessments must include, not least, an assessment of the country's reporting capacity for the Convention being envisaged for ratification to avoid cases of serious failure to report, as much as possible.

II. Governments' compliance with reporting obligations

We observe with interest that there has been an increase in the number of reports received by the end of the session from last year 42.9 per cent to this year 67.6 per cent which seems to reflect the fading of the pandemic and the normalization of administrative activities. However, we also note that 25.7 per cent of the report received were submitted after the 1 September deadline. While we commend governments for meeting their reporting obligations, we encourage them to meet them in a timely manner so that the Committee of Experts can perform its work efficiently.

However, what we note with real concern is that according to paragraph 72 of the Committee of Experts' Report, [5] none of the reports due have been sent for the past two or more years from the following 18 countries: *Afghanistan, Antigua and Barbuda, Botswana, Chad, Congo, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Haiti, Lebanon, Madagascar, Saint Lucia, South Sudan, Syrian Arab Republic, Tuvalu, Uganda, Vanuatu* and *Yemen.* This is totally unacceptable, and the Committee rightly urges the Governments concerned to make every effort to supply the reports requested on ratified Conventions. Where necessary, they may request ILO technical assistance.

In terms of first reports, according to paragraph 75, seven Members States have failed to supply a first report for two or more years, namely *Albania, Congo, Equatorial Guinea, Gabon, Guinea, Sao Tome and Principe* and *Tunisia.*

Out of these seven Member States, we are particularly concerned about the serious failure of the following countries which have not provided a first report for more than three years, namely:

1. Albania – Maritime Labour Convention, 2006 (MLC, 2006);
2. Guinea – Safety and Health in Construction Convention, 1988 (No. 167);
3. Sao Tome and Principe – Maternity Protection Convention, 2000 (No. 183);
4. Tunisia – MLC, 2006.

First reports are vital as they ideally provide evidence that all provisions of the ratified Convention have been complied with as of the date of entry into force of the Convention for the ratifying country. First reports are thus the indispensable baseline for the further regular supervision. We strongly encourage the Governments of these four countries to make a real effort to provide the Experts the overdue first reports without further delay. If necessary, they may request ILO technical assistance.

In paragraph 80, we note with concern that the number of comments by the Experts to which replies have not been received remains significantly high. There have not been any responses to comments by no less than 56 Member States this year. We would like to understand from the Governments concerned for what reasons they are not responding to the Experts' comments: Is it a lack of understanding of or disagreement with the content of the observation or direct request? Or is it for other reasons?

The absence of government responses to such a high degree is an indication that something in the system is not functioning well and needs to be reviewed. However, any remedial action depends on clarity about the reasons for not responding.

[5] ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, ILC.110/III(A), 2022.

Also, we note with regret from paragraph 127 that the following 23 countries have not provided reports on unratified Conventions and Recommendations requested under article 19 of the Constitution for the past five years: *Angola, Belize, Brunei Darussalam, Chad, Congo, Djibouti, Dominica, Grenada, Guyana, Haiti, Lesotho, Liberia, Maldives, Marshall Islands, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Sierra Leone, Somalia, South Sudan, Timor-Leste, Tuvalu* and *Yemen.*

As the great majority of cases of failure to report are either developing or small island states we suggest that the Office give appropriate attention to this fact to better prioritize and focus its assistance so that these States can meet their reporting obligations under article 19 of the ILO Constitution.

We welcome the decision taken by the Committee of Experts to take up the Employers' proposal to institute a new practice of "urgent appeals" for cases meeting certain criteria of serious reporting failure that require the Committee on the Application of Standards attention on these cases. This makes it possible to have in the CAN a direct and serious dialogue on this point with the governments concerned and point out to them that the Committee of Experts will examine the substance of the matter at its next session even in the absence of a government report. We noted that two out of five first reports on which urgent appeals were issued have been received, with technical assistance provided by the Office.

III. Social partners' participation

Finally, regarding the social partners' role and participation in the regular supervisory system, under article 23(2) of the ILO Constitution, governments of Member States have an obligation to communicate copies of their reports to representative employers' and workers' organizations. Compliance with this obligation is necessary to ensure proper involvement of the social partners in standards implementation at the national level.

In paragraph 120, we observe that social partners submitted 1,280 observations to the Experts this year (compared to 757 last year), 356 of which (compared to 230 last year) were communicated by employers' organizations and 924 (compared to 527 last year) by workers' organizations. We welcome the increase in submissions, and we trust the Office will continue to provide technical assistance, including capacity-building, also to social partners, where needed, to enable them to send comments to the CEACR.

From our side, the International Organisation of Employers (IOE) together with the ILO Bureau for Employers' Activities (ACT/EMP), are supporting employers' organizations to contribute to the supervisory system in a more effective manner. We are doing this by helping employers' organizations submit up-to-date and relevant information to the Experts on how Member States are applying ratified Conventions in law and practice. Employers' organizations in this way communicate both shortcomings and progress achieved in the application, as well as proposals made by them for alternative ways to implement ILO instruments taking better into account employers' needs.

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

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

IV. Final remarks

To conclude, in order to be effective, the regular ILO supervisory system relies on government reports that contain relevant information and are sent regularly and on time, as well as additional comments by the social partners where needed to clarify the situation. Without these inputs, the Experts and the CAN cannot properly supervise the implementation of ILO standards.

We are pleased to see an increase in the number of reports from governments and the number of comments from social partners from last year. We appreciate all the efforts made to enable the supervisory system to continue to do its work.

We hope our further joint efforts to streamline reporting and extending the possibilities for e-reporting will help facilitate government reporting and increase the number of reports and social partners comments in the future.

In our view, these efforts need to be complemented by a significant consolidation and simplification of ILO standards. Consolidation and simplification of the standards system could not only lead to better implementation of ILO standards, but also focus the reporting on the things that really matter. In that regard, we hope that the work of Standards Review Mechanism will help us move forward.

Finally, we would like to stress once more that reporting on ratified Conventions is a key obligation for governments. It is therefore important for governments, before ratifying ILO Conventions, to make sure that they not only have in place the capacity to implement the respective Conventions but also the capacity to meet their regular reporting obligations.

D. Discussion by the Committee

The Chairperson – Before beginning the discussion of the cases of serious failure by Member States to respect their reporting or other standards-related obligations, I would like to call the Committee's attention to document CAN/D/SF, prepared by the Office, which was published yesterday on the Committee's website. This document, as noted in part V of document D.1, compiles the information received from the governments on such failures, as well as the comments of the Employer and Worker spokespersons. The first part of the document contains updates to the information published in the report of the Committee of Experts regarding reports that have been submitted by Member States since the last session of the Committee of Experts. During this session, the governments can provide information on any new developments and the Employer and Worker spokespersons will present their concluding remarks. The discussion of the Committee, including any explanations given and difficulties encountered by the governments concerned, and the conclusions adopted by the Committee under each criterion are reflected in its report. It should be recalled that the Committee identifies the cases on the basis of the following criteria:

- none of the reports on ratified Conventions have been supplied during the past two years or more;
- first reports on ratified Conventions have not been supplied for at least two years;
- none of the reports on unratified Conventions and Recommendations requested under article 19, paragraphs 5, 6 and 7, of the Constitution have been supplied during the past five years;
- urgent appeals: failure to send reports on ratified Conventions for three years or more and failure to send first reports for three years or more;

- no indication is available on whether steps have been taken to submit the instruments adopted during the last seven sessions of the Conference to the competent authorities, in accordance with article 19 of the Constitution;
- no information has been received as regards all or most of the direct requests of the Committee of Experts to which a reply was requested for the period under consideration;
- and lastly, the government has failed during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23, paragraph 2, of the Constitution, copies of reports and information supplied to the Office have been communicated.

We have three speakers on the list for this discussion.

Government member, Eswatini – In not so many words, and further to the information that was supplied to this Committee during the 109th Session of the International Labour Conference, we are happy to confirm that all international labour standards which were adopted by the Conference during its 99th up to and including its 108th Sessions, where the Violence and Harassment Convention, 2019 (No. 190), as supplemented by Recommendation No. 206 were adopted, have since been successfully submitted to the national authorities in whose competence the matter lies to enact legislation.

We are now in the process of compiling the requisite documentation for purposes of officially informing the Office about this development, in the context of the Memorandum concerning the Obligation to Submit Conventions and Recommendations to the Competent Authorities adopted by the Governing Body in 2005.

As stated in our previous statement, we avail ourselves of the ILO's continued technical assistance to conduct sensitization workshops on some of the standards, particularly those that are open for ratification, and a comprehensive gap analysis, in order to assist in prioritizing those up-to-date standards whose consideration for ratification may be most recommended. This would position the country well to keep pace with the recommendations of the Standards Review Mechanism Tripartite Working Group (SRM TWG), whose decision to submit four outdated Conventions for abrogation to the Conference in 2024 has a bearing on some of the standards that were ratified and are still in force in the country.

We fully accredit this positive development to the technical assistance we have received from the Office in order to ensure compliance in this regard as well as other standards-related obligations. The Office's technical support, coupled with the exceptional tripartite cooperation from the social partners at a national level, remains the key driving force behind the successful execution of all the decent work programmes currently being pursued in the Kingdom in various sectors, including in the area of social security, major legislative and policy reforms, occupational safety and health, and finalizing the drafting of the second-generation Decent Work Country Programme, to mention a few.

Government member, Lesotho – The Government of Lesotho regrets the failure to present before the competent authorities instruments that were adopted at the 99th and 106th Sessions of the International Labour Conference. The presentation of the instruments was erroneously left out when all outstanding instruments were presented in 2019. However, the Government is pleased to inform the Committee that all outstanding instruments, as well as the instruments adopted at the 108th Session in 2019, have since been presented before the competent authorities on 30 May 2022, before the Senate, and this morning on 31 May 2022, before the National Assembly.

Formal communication by letter will accordingly be made to the Director of the International Labour Standards Department.

Government member, Kuwait – We would like to point out that the instruments adopted at Sessions 77, 80, 86, 89, 92, 94, 95, 96, 99, 100, 101 and 103 and in 2021, were presented to the competent authorities and a letter was issued on 29 August 2021 in this regard.

Employer members – At the outset of this important discussion, I want to note on behalf of the Employers that the Committee of Experts once again expresses concerns in its report at the low number of government reports received by the 1 September deadline. We fully understand that some governments were still primarily concerned with managing the COVID-19 pandemic but nonetheless, the Employers' group counts on them to continue complying with their reporting obligations under articles 19, 22 and 35 of the ILO Constitution in a timely manner and to do so in consultation with the most representative employers' and workers' organizations. This is important and it cannot be stressed often enough because it is the government reports that provide the core basis for our supervisory work.

The high number of Committee of Experts' comments suggest that ratification is often not taken seriously enough by Member States. It seems that ratification is sometimes considered a statement or a declaration of intent without a full consideration of the obligations of a treaty under international law containing legal obligations, all of which have to be complied with.

In promoting ratification, in the Employers' group view, the Office must advise Member States of the need for pre-ratification assessments in close consultations with the social partners, including employers and workers. These pre-ratification assessments should involve an assessment of the country's reporting capacity for the Convention being envisaged for ratification to avoid the circumstances of cases of serious failures to report.

The Employers' group observes with interest that there has been an increase in the number of reports received by the end of the session from last year; moving from 42.9 per cent to 67.6 per cent this year, which seems to reflect the fading of the pandemic and the normalization of administration activities. However, the Employers' group also notes that 25.7 per cent of the reports were received after the 1 September deadline. While we encourage governments and commend governments for sending their reports in, we must also note that the deadline must be met in a timely manner so that the Committee of Experts in its important work can perform these functions efficiently. We note, with concern, that according to paragraph 72 of the Committee of Experts' report, none of the reports due have been sent for the past two or more years from the following 18 countries: Afghanistan, Antigua and Barbuda, Botswana, Chad, Congo, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Haiti, Lebanon, Madagascar, Saint Lucia, South Sudan, Syrian Arab Republic, Tuvalu, Uganda, Vanuatu and Yemen. This is unacceptable and the Committee encourages the governments concerned to make every effort to supply the reports requested on ratified Conventions without delay. The Employers' group welcomes the written submissions made last week on the reasons for the failure to report. In certain cases, we invite the ILO Member States concerned, where necessary, as noted by the Government of Eswatini, to request ILO technical assistance in this regard.

In terms of first reports, according to paragraph 75, seven Member States have failed to supply a first report for two or more years, namely Albania, Congo, Equatorial Guinea, Gabon, Guinea, Sao Tome and Principe, and Tunisia. Out of these seven Member States, we are particularly concerned about the serious failure of the following countries which have not provided a first report for more than three years, namely Albania (regarding the MLC, 2006), Guinea (regarding Convention No. 167), Sao Tome and Principe (Convention No. 183), and

Tunisia (MLC, 2006). First reports are vital, as they provide evidence that the provisions of the ratified Convention have been complied with as of the date of entry into force of the Convention for the ratifying country. First reports are therefore an indispensable baseline for further regular supervision. We strongly encourage the Governments of these four countries to make a real effort to provide the Experts with the overdue first reports without any further delay. If necessary, we encourage those Member States to request ILO technical assistance.

In paragraph 80 of the report, we note with concern, that the number of comments by the Committee of Experts for which replies have not been received remains also significantly high. There have not been any responses to comments by no less than 56 Member States this year. We would like to understand from the Governments concerned, what are the reasons for not responding to the Experts' comments. For example, is it a lack of understanding of the content of the observation or direct request? Is it a lack of capacity to provide a response? Or some other reason? The absence of government responses to such a high degree is a concern that needs to be reviewed and monitored. In our view, remedial action depends in part on clarity about the reason for the Member State not responding. Therefore, this information to the question posed is vital.

We also note with regret, in respect of paragraph 127 of the Committee of Experts' report, that the following 23 countries have not provided reports on Conventions and Recommendations requested under article 19 of the Constitution for the past five years: Angola, Belize, Brunei Darussalam, Chad, Congo, Djibouti, Dominica, Grenada, Guyana, Haiti, Lesotho, Liberia, Maldives, Marshall Islands, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Sierra Leone, Somalia, South Sudan, Timor-Leste, Tuvalu and Yemen. As the great majority of cases of failure to report are either developing or small island countries, we would recommend that the Office may wish to give appropriate attention to prioritize and focus its assistance so that these Member States can meet their reporting obligations under article 19 of the ILO Constitution.

We welcome the decision taken by the Committee of Experts to take up the proposal to institute a new practice of urgent appeals for cases meeting certain criteria of serious reporting failure that require the Committee's attention. This makes it possible to have in the Committee a direct and serious dialogue on this point with the governments concerned and to use the opportunity to point that the Committee of Experts will examine the substance of the matter at its next session even in the absence of a government report. Therefore, the failure to report will not consistently shield the Member State from examination. We note that two out of five first reports on which urgent appeals were issued have been received with technical assistance provided by the Office and we note this as a positive development.

Regarding the social partners' role and participation in the regular supervisory system, the Employer members note that under article 23, paragraph 2, of the Constitution, governments of Member States have an obligation to communicate copies of their reports to the representative employers' and workers' organizations. Compliance with this obligation is necessary to ensure the proper involvement of the social partners in standards implementation at the national level.

In paragraph 120, we observe that social partners submitted 1,280 observations to the Committee of Experts this year compared to 757 last year, 356 of which were communicated by employers' organizations and 924 of which by workers' organizations. We welcome the increase in submissions and we trust that the Office will continue to provide technical assistance, including capacity-building, also to social partners, where needed, to enable the social partners to send meaningful comments to the Committee of Experts to facilitate its work.

The Employer members note that the International Organisation of Employers (IOE), together with the ILO ACT/EMP team, are supporting employers' organizations in increasing efforts to contribute to the supervisory system in a more effective manner by submitting up-to-date and relevant information to the Experts on how Member States are applying ratified Conventions in law and practice. Employers' organizations, in this way, can communicate both shortcomings and progress achieved in the application of Conventions as well as proposals made by them for alternative ways to implement ILO standards, taking better into account national employers' needs. Comments from employers' organizations are of particular importance to inform the Committee of Experts about the needs and realities of sustainable enterprises in a Member State with regard to a particular ratified Convention. We trust that the Committee of Experts will fully consider these comments as well as any additional comments in the discussion of the Conference Committee in their observations on a regular basis.

We would like to conclude by highlighting that, in order to be effective, the regular ILO supervisory system relies on government reports that contain relevant information and are sent regularly and on time as well as on those additional comments provided by the social partners, where needed, to clarify the situation and help provide additional information. Without this input, the Committee Experts and the Conference Committee cannot properly supervise the implementation and application of ILO standards. We are pleased to see an increase in the number of reports from governments and the number of comments from social partners from last year. We take this opportunity to note specifically in the Committee that we appreciate all of the efforts made to enable the supervisory system to perform its work efficiently with the submission of the reports on a timely basis.

We further hope that our joint efforts to streamline reporting and extend the possibilities for e-reporting will continue to help facilitate government reporting and increase the number of reports and comments in the future. These efforts should be complemented by a significant consolidation and simplification of ILO standards. Consolidation and simplification of the standards system could lead, in the Employers' view, to better implementation of those standards and also focus the reporting obligations on the priority areas. In that regard, we hope the work of the Standards Review Mechanism and discussions by the Governing Body, in this regard, will help us move forward.

Finally, we would like to stress, once more, that there is absolutely no question that reporting on ratified Conventions is a key obligation for Member States. It is therefore important for governments ratifying ILO Conventions to make sure that they have the capacity to implement the respective Conventions, including the reporting obligation and, if that does not exist, to request appropriate technical assistance to allow the government to meet those key and necessary obligations.

Worker members – We have already placed emphasis in our written observations on the fundamental nature of the dialogue that needs to be developed between Member States and the ILO, particularly in terms of scrupulous compliance with standards-related obligations. We are bound to strongly insist once again on this point. It is all the more important to insist on it when we see that no fewer than 63 Member States have been invited to provide written explanations concerning serious failings in their reporting and other standards-related obligations. This significant number places emphasis on all the work that still needs to be done to increase compliance with their standards-related obligations.

Once again, this year, Member States have been given the opportunity to provide written information on the serious failings identified. Only nine of them have taken up this opportunity. We thank the latter, but we regret that so few took this opportunity. Based on the

compilation of information provided by the Secretariat, it should be noted that, between the time when the serious failings of Member States were indicated in the report of the Committee of Experts and the holding of this special sitting of the Conference Committee, many Member States have responded to all their reporting obligations or responded in part to the serious failings identified. We encourage these Member States to continue their efforts to fulfil their reporting obligations in full. There are nevertheless many Member States that have not yet taken tangible action in this respect.

More Member States have come forward to provide information during the present sitting, which is also appreciated. It is nevertheless the case that the failings of these Member States have perturbed the smooth operation of the supervisory system, which must absolutely be avoided in future.

On the basis of the written information provided by Governments and the explanations provided during this sitting, we have taken due note of the difficulties faced by certain Member States and emphasize with satisfaction that these Member States generally call for ILO assistance. The ILO systematically responds to them favourably and very effectively. This ILO support must be maintained and reinforced so as to guarantee sustainably the capacity of these Member States to comply with their reporting and other standards-related obligations.

In this regard, it appears to us that the Office needs to pay particular attention to this issue. In the framework of the activities to promote international labour standards, additional resources could still be allocated to technical assistance and support activities for Member States and the social partners so as to enable them to comply with their standards-related obligations and engage them actively in ILO tripartite dialogue.

It could be useful to devote a specific chapter of the report which, on the one hand, would provide full relevant information to constituents on the nature of the ILO assistance and support that can be mobilized for this purpose and, on the other, would inform our Committee of the use that has been made of it by Member States and the social partners, and the progress achieved. These Member States must however be aware that it is fundamental for them to also allocate the necessary resources to comply with these obligations and that they cannot rely totally on ILO assistance.

The written information provided and the interventions by certain governments also show that there is a clear need for training. Member States must not hesitate to take the opportunity of the training programmes provided by the ILO, and particularly those intended for the representatives of these Member States. The training programmes of the International Training Centre designed for ILO constituents offer valuable assistance in this regard. We note in this respect with great satisfaction that Antigua and Barbuda and other Member States have trained officials in the reporting obligations through the training programme provided by the International Training Centre and envisage training others in future. We can only encourage these Member States to continue along this path.

Reference should also be made to the many very useful resources developed by the ILO which are available to Member States, and particularly the technical assistance provided by the many standards specialists in the field, the website *Managing ILS Reporting* and the many other means already developed in the context of the ILO Programme and Budget. Just last year, the Representative of the Secretary-General of the Conference announced that the first version of the *Guide on established practices across the ILO supervisory system* had been put online.

This is a new tool which has now been completed, and takes the form of an informative website, accessible in the three working languages of the ILO, and which, among other

subjects, allows a better understanding of standards-related obligations. These obligations are placed in the broader context of the supervisory mechanisms and standard-setting procedures on which they are based, which allows Member States to fully understand the underlying objectives of these obligations. The Office should clearly give the broadest possible publicity to these valuable tools so that constituents can take full advantage of them.

We call on Member States that have not provided any information to the Committee, despite the invitation to do so, to be mentioned in the report of this discussion. The absence of dialogue on these matters is prejudicial to the discussions that we can have during the present special sitting and means that we are not able to identify difficulties, needs or indeed the intentions of the governments concerned, unless they come and provide explanations during the sitting. We deplore the low number of governments which have come before the Committee to provide explanations and, at the same time, thank the governments that have come forward today in the Committee.

We have taken due note of the commitments made by certain governments in their written information and hope that these commitments will be followed up by tangible action to ensure full and complete compliance with their obligations. We also call on all these governments, and particularly those which have not provided the Committee with any information, to bring an end as soon as possible to the serious failings identified.

Over and above purely formal compliance with these obligations, it is necessary for Member States to ensure the effective implementation of processes of tripartite social dialogue and compliance with and the promotion of the international labour standards which form the basis for all these obligations.

From this viewpoint, it would be appropriate to actively promote the ratification of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and the proper implementation of the Convention. Proactive support through ILO technical assistance is essential to enable Member States to apply the Convention correctly and promote its ratification.

Allow me, finally, to react to certain of the comments made by the Employer spokesperson. The Worker members are open to discussions which are intended to facilitate greater compliance by Member States with their constitutional standards-related obligations. However, it does not seem to us that this objective can be fulfilled through an approach of the consolidation or simplification of standards, but rather through the reinforcement of technical assistance capacities for Member States.

Moreover, the ratification of international labour standards must be guided by the will of Member States to give effect to the principles, rights and freedoms that they contain. Fears related to the capacity to comply with reporting obligations must never be an obstacle to ratification. For that, Member States can count on ILO technical assistance and tripartite social dialogue.

Finally, it seems to us to be important to conclude by recalling, based on the mandate of the Committee of Experts as set out in paragraph 23 of its report, that while taking into account the comments of workers and employers contributes to the broad recognition of the technical role and moral authority of the Committee of Experts, it can in no event influence the independent and impartial examination by the Committee of Experts of the legal scope, content and meaning of the provisions of Conventions. We therefore firmly reject the observations of the Employer spokesperson, which call into question the independence of the

Committee of Experts and which, moreover, bear no relation to the purpose of the present discussion.

Conclusions of the Committee

The Chairperson – As announced earlier, I will now read out the draft conclusions regarding the cases of serious failure to submit reports.

The Committee takes note of the information and explanations provided during this session by the Government representatives of Eswatini, Kuwait and Lesotho, who made statements, as well as the written communications provided by the Governments of Albania, Angola, Antigua and Barbuda, Bahamas, Gambia, Grenada, Hungary, Lebanon and the United Kingdom of Great Britain and Northern Ireland – British Virgin Islands.

However, the Committee regrets that the Governments of Afghanistan, Bahrain, Barbados, Belize, Plurinational State of Bolivia, Brunei Darussalam, Central African Republic, Chad, Comoros, Congo, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Eritrea, Gabon, Guinea, Haiti, Kazakhstan, Kiribati, Liberia, Libya, Madagascar, Maldives, Marshall Islands, North Macedonia, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Sao Tome and Principe, Seychelles, Sierra Leone, Singapore, Slovenia, Solomon Islands, Somalia, South Sudan, Sudan, Syrian Arab Republic, Tajikistan, Timor-Leste, Tuvalu, Uganda, United Republic of Tanzania, Vanuatu, Yemen and Zambia did not make statements or provide any written communication.

The Committee notes in particular the specific difficulties mentioned by some governments in complying with their constitutional obligations related to reporting and the submission of the instruments adopted by the International Labour Conference to the competent national authorities. It also takes note of the promises made by some governments to comply with these obligations in the near future. The Committee recalls that the governments can avail themselves of ILO technical assistance to comply with their reporting obligations.

Concerning the failure to supply reports for the past two or more years on the application of ratified Conventions, the Committee recalls that reporting on the application of ratified Conventions is a fundamental constitutional obligation and the basis of the supervisory system. The Committee also stresses the importance of respecting the deadlines for such reporting. The Committee expresses the firm hope that the Governments of Afghanistan, Antigua and Barbuda, Chad, Dominica, Equatorial Guinea, Haiti, Lebanon, Saint Lucia, Syrian Arab Republic, Tuvalu, Uganda, Vanuatu and Yemen will supply the reports due as soon as possible, and decides to note these cases in the corresponding paragraph of its General Report.

Concerning the failure to supply first reports for two or more years on the application of ratified Conventions, the Committee recalls the particular importance of this submission of first reports on the application of ratified Conventions. The Committee expresses the firm hope that the Governments of Albania, Congo, Equatorial Guinea, Gabon and Guinea will supply the first reports due as soon as possible, and decides to note these cases in the corresponding paragraph of its General Report.

Concerning the urgent appeals (failure to supply reports on the application of ratified Conventions for at least three years and failure to supply first reports on the application of ratified Conventions for at least three years), the Committee underlines

the fundamental importance of sending the reports and the detailed information requested in the first reports on the application of ratified Conventions. With particular reference to the first reports and the detailed information requested, the Committee stresses the importance of this information to set out the baseline for continued regular supervision by the Committee of Experts. The Committee expresses the firm hope that the Governments of Albania, Congo, Dominica, Equatorial Guinea, Guinea, Lebanon, Saint Lucia and Vanuatu will send the reports due as soon as possible, and decides to note these cases in the corresponding paragraph of its General Report.

The Committee brings to the attention of these Governments that the Committee of Experts could examine in substance at its next session the application of the Conventions concerned on the basis of publicly available information, even if the Governments mentioned have not sent the reports due. The Committee reminds governments that they can request technical assistance from the Office to overcome their difficulties in this respect.

Concerning the failure to supply information in response to comments made by the Committee of Experts, the Committee underlines the fundamental importance of clear and complete information in response to the comments of the Committee of Experts in order to permit continued dialogue with the Governments concerned. The Committee expresses the firm hope that the Governments of Afghanistan, Antigua and Barbuda, Bahamas, Barbados, Plurinational State of Bolivia, Chad, Comoros, Congo, Dominica, Equatorial Guinea, Eritrea, Gabon, Gambia, Guinea, Haiti, Kiribati, Lebanon, Madagascar, North Macedonia, Papua New Guinea, Saint Lucia, San Marino, Singapore, Slovenia, Somalia, South Sudan, Sudan, Syrian Arab Republic, Tajikistan, Timor-Leste, Tuvalu, Uganda, United Kingdom of Great Britain and Northern Ireland – British Virgin Islands, United Republic of Tanzania, Vanuatu and Yemen will supply the requested information in the future, and decides to note these cases in the corresponding paragraph of its General Report.

Concerning the failure to supply reports for the past five years on unratified Conventions and Recommendations, the Committee stresses the importance it attaches to the constitutional obligation to supply reports on non-ratified Conventions and Recommendations. The Committee expresses the firm hope that the Governments of Belize, Brunei Darussalam, Chad, Congo, Djibouti, Dominica, Haiti, Lesotho, Liberia, Marshall Islands, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Sierra Leone, Timor-Leste, Tuvalu and Yemen will comply with their obligation to supply reports on non-ratified Conventions and Recommendations in the future. The Committee decides to note these cases in the corresponding paragraph of its General Report.

Concerning the failure to submit instruments to the competent authorities, the Committee recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to competent national authorities is a requirement of the highest importance to ensure the effectiveness of the Organization's standards-related activities. The Committee expresses the firm hope that the Governments of Angola, Bahamas, Bahrain, Belize, Brunei Darussalam, Central African Republic, Chad, Comoros, Congo, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Eswatini, Gabon, Gambia, Grenada, Haiti, Hungary, Kazakhstan, Kuwait, Lebanon, Liberia, Libya, Maldives, Marshall Islands, North Macedonia, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Solomon Islands, Syrian Arab Republic, Timor-Leste, Tuvalu, Vanuatu, Yemen and Zambia will comply with their obligation to submit Conventions, Recommendations and Protocols to

the competent authorities in the future. The Committee decides to note these cases in the corresponding paragraph of its General Report.

In relation to the failure to indicate during the past three years the representative organizations of employers and workers to which copies of the report and information supplied to the Office have been communicated, the Committee stresses the importance it attaches to the constitutional obligation, under article 23, paragraph 2, of the Constitution, of governments to communicate copies of the reports and information supplied to the Office to employers' and workers' organizations. The Committee recalls that the contribution of employers' and workers' organizations is essential for the evaluation of the application of Conventions in national legislation and in practice for their participation in ILO supervisory mechanisms. The Committee welcomes the fact that no Member State has failed to indicate during the past three years the representative organizations of employers and workers to which copies of the reports and information supplied to the Office have been communicated. The Committee expresses the firm hope that this is a sign that genuine tripartite social dialogue has been established in all ILO Member States. The Committee decides to note this positive development and to encourage Member States to continue in that direction in the corresponding paragraph of the General Report.

(The conclusions are adopted.)

III. Discussion of the report of the Joint ILO–UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART)

Representative of the Secretary-General, Director of the Sectoral Policies Department – It is my pleasure to introduce to you the report of the 14th Session of the ILO–UNESCO Joint Committee of Experts on the Application of the Recommendations concerning Teaching Personnel. This is called the CEART and the meeting of the CEART was held virtually from 4 to 8 October 2021 and this time it was hosted by UNESCO.

As you will recall, the CEART was established in 1967 following the adoption by the ILO and UNESCO of the Recommendation Concerning the Status of Teachers (1966) and the CEART meets every three years, alternating between Geneva and Paris and its purpose is to review major trends in education and teaching and to make relevant recommendations.

It also reviews allegations brought by teachers' unions regarding non-respect of the principles of the 1966 Recommendation referred to earlier, as well as the 1997 UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel.

The report of the 14th Session of the Joint Committee examined a number of issues affecting teaching personnel. The Joint Committee furthermore adopted a statement on recognizing teacher professionalism in the post-pandemic recovery.

The report also contains recommendations regarding allegations brought by teachers' organizations regarding non-respect of the principles of the 1966 and 1997 Recommendations from Argentina, Fiji and the United Kingdom of Great Britain and Northern Ireland. It also considered follow-up recommendations to previous cases from Cambodia, Japan and Portugal.

The Joint Committee report was submitted to the 344th Session of the ILO Governing Body in March 2022 with a request that it be transmitted to the Conference Committee on the Application of Standards of the International Labour Conference. It will be transmitted to the Committee on Conventions and Recommendations of the 215th Session of the Executive Board of UNESCO in October 2022 and then also for transmission to the UNESCO General Conference.

The next meeting of the Joint Committee will take place in 2024. In accordance with its mandate, the Joint Committee may issue interim reports on allegations received between regular sessions.

The pandemic highlighted numerous old and new challenges for decent work for teachers. Teachers have been on the front line of the pandemic to ensure learning continuity when schools were closed and to provide socio-emotional support to their students, especially the most vulnerable ones.

They have had to rapidly adapt to remote learning and manage digital tools, often without any form of training. Today, they must assess and address learning losses among their students, cope with issues of health and safety in the classroom and leverage remote, hybrid and in-person methods to minimize disruption.

In this respect, the CEART examined three emerging issues which relate to those Recommendations that are mentioned before: (i) teacher education in the twenty-first century; (ii) teaching as a collaborative profession; and (iii) teacher professionalism from an intercultural perspective.

In this respect, the Joint Committee made a number of recommendations which include promoting participatory social dialogue at the national, regional and international levels, taking special care to include teachers voices from all cultures in defining ideals, indicators and standards for the professionalization of teaching. Another of those recommendations was respecting, trusting and valuing the agency and autonomy of teachers. A further recommendation was equipping teachers with the digital and pedagogical skills to navigate today's digital landscape and critically and effectively use digital technologies. A further Recommendation was protecting teachers' safety, health and well-being as well as promoting a collaborative teaching culture and leadership style and also sheltering teachers from any effort to curtail their autonomy and academic freedom. These Recommendations are explored in greater detail in the report and they are especially relevant as the ILO is currently very actively supporting the preparation of the United Nations Transforming Education Summit, to be held during the UN General Assembly in New York in September of this year. The Summit is aimed at mobilizing action, ambition, solidarity and solutions with a view to transforming education between now and 2030 and accelerating progress towards the achievement of the sustainable development cause. The Summit is organized around focused, intensive and inclusive preparatory processes, including national consultations, thematic action tracks and public engagement and mobilization. The ILO, together with UNESCO, is leading the action track on teachers, teaching and the teaching profession which addresses the following key issues: teacher shortages; improving working and professional conditions for teachers; improving teacher preparation and training; and fostering teacher leadership. The action track aims to identify successful policy interventions, compile a catalogue of good practices to inspire and to mobilize the global education community to make concrete commitments and to take action, building where possible on existing initiatives, partnerships and coalitions. Global consultations on this topic are being organized and have been communicated to ILO Members. The next round of global consultations will be held on 14 June 2022 from 3 p.m. to 5 p.m. and I again would like to take this opportunity to cordially invite you to participate in this global consultation session and, as I indicated, details have been sent to the Regional Coordinators and hopefully will reach ILO Member States and also the Bureaux of Workers' and Employers' activities.

National consultations are also being held, convened by UNESCO and UNICEF. The Office has communicated to field offices to also inform social partners and encourage their participation in the consultations.

Finally, the report of the Joint Committee recommends that the Governing Body of the ILO and the Executive Board of UNESCO request their respective secretariats to prepare an analysis of the ILO–UNESCO Recommendation concerning the Status of Teachers, 1966 as well as the UNESCO Recommendation concerning the Status of Higher Education Personnel, 1997, and this analysis aims to identify new areas related to teachers and teaching which could serve as the basis for a possible revision of these instruments. Such an analysis should also set out procedural possibilities for revising the instruments for possible future consideration by the Governing Body of the ILO and the Executive Board of UNESCO. There is no doubt that the 1966 ILO–UNESCO Recommendation is a highly relevant instrument that, despite its age, still addresses many important principles concerning the teaching profession but as ILO constituents discussed during the Technical Meeting on the Future of Work in the Education Sector, in the Context of Lifelong Learning for All, Skills and the Decent Work Agenda, which took place from 17 to 21 May 2021, not only the world of work but also the world of education has changed dramatically in past decades. A look at possibly strengthening this instrument in the future in light of important changes in education and work may indeed be of interest and we, of course, look forward to your guidance on this matter.

Employer members – The Employer members give thanks for the report of the Joint Committee and the information provided by the Director of the ILO Sectoral Policies Department. We would like to begin our comments by placing emphasis on the role that teachers and education systems played during the COVID-19 crisis. The interruption of education processes can give rise to serious consequences in social terms and for production, especially in the lives of children, young persons and persons in the most vulnerable sectors. And, as emphasized in the report under examination, the last triennium has shown the importance of teachers as front-line workers in times of crisis.

Teachers have been and continue to be essential, not only for the continued education of students, but also for the sustainability of local and global communities and economies, especially in the context of the recovery from the COVID-19 pandemic.

As a preliminary methodological consideration, the Employers consider it necessary to insist on our recommendation concerning the inclusion of the views of the productive sector when preparing the discussions of the Joint Committee. The inclusion of consultations with Employers before issuing the report could make the work of the Joint Committee more effective and improve the outreach of its recommendations. The 2021 report of the Joint Committee examines various issues that affected teaching personnel during the COVID-19 pandemic and up to the present day. It is important to take into account the nature of the recommendations that the Joint Committee is making to the ILO Governing Body, the Executive Council of UNESCO and, through them, to the governments and employers' and workers' organizations in Member States. These recommendations are not legally binding and the report has always been read in conjunction with any discussion of its content by the Committee on the Application of Standards.

When considering the issue of the education of teachers in the twenty-first century, the Joint Committee notes that the education and training of teachers are changing rapidly, which is occurring in response to an increasingly varied, multicultural and multilingual classroom context, with the increasing presence of digital technologies in teaching and learning processes. The Employers' group considers that this is a very important trend and that it is in line with the conclusions of the working party of the 109th Session of the International Labour Conference concerning skills and lifelong learning, which indicate in point 12(s) that skills development and lifelong learning policies should be drawn up in consultation with the social partners and should include capacity-building support for teachers, trainers and education support personnel. The Employers consider that, in order to be able to address more effectively the development of teaching tools and the relevant updating of curricula, it is of great importance for teaching personnel to be in contact with updated production processes and the latest technology. For this purpose, it is necessary to promote cooperation projects with the private sector and with enterprises as they have a specific understanding of relevant skills for the needs of the labour market and new employment opportunities. The Employers also wish to emphasize the importance of the recommendation set out in paragraph 36(e) on the need to introduce registration and certification of teachers along their career path, including mechanisms for the recognition, validation and accreditation of prior learning and experience so as to encourage lifelong learning. In our view, these tools require flexible and appropriate methods to validate new skills, following the pace of the development of new forms of production and the skills gaps that are emerging on the labour market.

With regard to the issue of whether teaching is to be considered a collaborative profession, the Employers welcome the reflections of the Joint Committee in relation to the fact that teachers do not act in isolation and educational outcomes are the results of complex interactions with the various actors with whom teachers work closely on a daily basis, including

other professionals, families and members of the community. In this regard, we emphasize that the various actors should include actors from the productive system and private enterprises. With this clarification, we agree with the recommendation made to governments on the promotion of innovations in curricula, teaching and teaching personnel and support for collaborative activities. In this regard, we would like to add, and we regret that further reference is not made to this in the report, the recommendation to promote integration through ecosystems that link the world of education and the world of work. It is necessary to recognize the achievements of the Member States of the ILO which, though the implementation of dual education, have seen a positive convergence between education, training and employability.

We refer once again to the conclusions of the working party of the 109th Session of the International Labour Conference concerning skills and lifelong learning, as well as the current work during this session of the Conference in the Standard-Setting Committee on quality apprenticeships, to place further emphasis on the importance of learning mechanisms based on work, education and technical and vocational training in reducing the skills gap and the shortage of skills and facilitate labour market transitions. The Employers' group recognizes the role played by teachers as professionals and their functions in the design of curricula and teaching innovations. In this respect, we wish to emphasize that employers can supplement these efforts if they are consulted in good time and an appropriate manner through transparent and institutionalized mechanisms that promote exchanges with teaching personnel and public officials, and through specific public–private cooperation projects.

With reference to the professionalism of teaching personnel, from an intercultural perspective, the Employers' group particularly supports the indications of the Joint Committee on the need to identify relevant skills in close interaction with the national and regional contexts of students. We understand that both curriculum design and the determination of occupational profiles are more appropriate when they are undertaken in dialogue with the needs of local production and in support of regional economic development. This allows students to gain the necessary skills to be included in innovative projects and creates opportunities for investment and the creation of quality productive employment. We therefore also support the recommendation in paragraph 50(c) on the importance that has to be given to the enhancement of teachers' pedagogical and technical competences to help learners develop discernment skills to navigate today's digital landscape and interact with technology in meaningful ways.

With reference to the section of the report relating to allegations made by teaching personnel unions and the follow-up of previous allegations, the Employers' group takes note of the allegations made by teaching personnel unions from Argentina, Fiji and the United Kingdom, and the responses of the Joint Committee noting the persistence of situations that are not in line with the recommendations, as well as the considerations concerning the follow-up to the allegations made by unions from Japan, Cambodia and Portugal. In this regard, we note that the Joint Committee refers on certain occasions to the unreceivability of an allegation. In light of the procedures for the submission of allegations to the Joint Committee, and as one of the criteria of receivability is that the allegation does not lie within the competence of other ILO and UNESCO bodies established to supervise the application of Conventions and other international instruments, we suggest that the receivability criteria taken into account should be made available, especially in cases that appear to lie within the competing competence of other bodies for the supervision of international labour standards, such as those referring to allegations of violations of freedom of association, which would make it possible to improve the transparency and effectiveness of the work of the Joint Committee.

Last but not least, the Employers' group commends the Joint Committee for the adoption of the statement recognizing teacher professionalism in the post-pandemic recovery. The Employers consider that this statement captures the value of the work carried out by teaching personnel, both during the COVID-19 crisis and the post-pandemic recovery, and places emphasis on solid principles that need to be taken into account by the social partners.

We also take note of the request made to the ILO Governing Body and the Executive Board of UNESCO for their respective secretariats to prepare an analysis of the status of teaching personnel to identify new areas related to teachers and teaching, which could serve as the basis for a possible revision of these instruments.

In this regard, we recall that it is necessary to follow the procedures of the Governing Body so that suggestions can be considered following an exhaustive debate with the objective of deciding whether it is appropriate to go ahead with the requested study and, if so, to determine its scope and objectives.

We would like to close our remarks by emphasizing the role of education as the cornerstone of development with the potential to improve the economic, social and cultural conditions of nations.

Education can improve the well-being of society by promoting improvements in productivity, competitiveness, social mobility, poverty reduction and social cohesion. And we also recognize that teaching personnel play a fundamental role in the transmission of democratic values and the strengthening of civil liberties by providing students with fundamental elements to build citizenship and prepare the young for adult life and the world of work.

With these considerations, we close our intervention and trust that the Joint Committee will continue to fulfil its mandate with the commitment to improve conditions of work for teachers the world over.

Worker members – The Committee is called upon to examine the report of the Joint ILO–UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel which convened in October 2021 for its 14th Session.

This report and our examination thereof could not be more timely. The COVID-19 pandemic has profoundly disrupted the provision of education and has had an enormous impact on the education community. It highlighted the vital role of teachers in ensuring education continuity and the centrality of issues relating to the status and working conditions of teachers to ensure quality education.

Although public perception of teachers has improved since the pandemic began, there has been little change in their material conditions, and system-wide conditions are failing to attract a new generation of educators to the profession.

Teaching is simply not seen as an attractive profession. As highlighted by the Joint Committee, the ability to teach effectively is adversely affected by overcrowded classrooms, top–down or centralized curriculum that inhibit autonomy or creativity, rapidly shifting pedagogical environments, a lack of adequate materials, bureaucratization, poor compensation and symbolic recognition, and the recent impact of the pandemic. Rapid urbanization around the world and rural–urban migration has also generated abrupt changes in family and social relations, and these shifts have put an extra burden on schools and teachers.

Teachers' pay is still too low. Working conditions are deteriorating and infrastructure to support teaching and learning is now a priority for government investment. Too often, in a misguided attempt at reducing deficits, governments slash education budgets through pay cuts and wage freezes. In this respect, we recall that the 1966 and 1997 Recommendations state that salaries should compare favourably with salaries paid in other occupations requiring similar or equivalent qualifications and should be adequate to ensure a reasonable standard of living for themselves and their families.

In addition, stress levels among teaching personnel have increased due to excessive workload and a lack of adequate support. Work demands have increased and for many in the teaching sector have become unmanageable. Teachers' work has also become more complex, including additional administrative tasks and accountability measures. During the pandemic, in most countries a teacher's workplace was their home. This confusion between work and private spheres added stress and health and safety risks to an already deteriorating situation.

Dealing with childcare and other care needs while working added to difficulties to balance work and family responsibilities. Needless to say, this situation disproportionally affected women workers in the sector.

In its report, the Joint Committee also highlighted that teachers are expected to take on extensive additional roles, including: roles that might have previously been performed by parents, grandparents and local communities or other agencies; learning new approaches and skills for leading and supporting learning; and fostering a sense of belonging to support the personal and social development of students, when teachers themselves may be experiencing trauma, or other disruptions to their practice.

Furthermore, teachers still suffer from the implementation of previous education reforms which led to de-professionalization, the new major realism with its control of the work of teachers through tests, performances and outputs, and emphasis on competitive accountabilities, their values, the social and collaborative aspects of teachers' work and often denies teachers' agencies and professional autonomy and their ability to respond effectively. The continuing application of this method has deleterious effect on teachers, significantly increases their stress levels and has long-lasting effects on the health of teaching personnel. Another factor of change and stress for teaching personnel is technological change which has transformed the worlds of education and work but has not adequately considered equity, inclusion and democratic participation.

New technologies should be harnessed to support a human-centred future. We recall the call of the Joint Committee which states that: "in the integration of digital technologies in education, and particularly in teacher education, the improvement of infrastructure and coverage should be matched with the enhancement of teachers' pedagogical and technical competences to help learners develop discernment skills to navigate today's digital landscape and interact with technology in meaningful ways". More broadly, there is a clear lack of inclusion of teaching personnel and their representatives in the development of education policies and strategies.

According to the survey conducted by Educational International in 2021, most teaching personnel have the right to collective bargaining on pay, working and employment conditions. However, the principle of free and voluntary negotiation, including on the subject covered by collective bargaining, is still not guaranteed in all countries. The study also revealed that more than 64 per cent of responding unions have seen their collective agreements unilaterally altered or cancelled in the last three years, while almost 40 per cent of their members do not have the right to strike. These are serious violations of the fundamental rights of teaching

personnel to collectively defend their interests. Colleagues in this room can testify to the suppression of teachers' union rights in Argentina, Fiji and Japan, for example. The absence of freedom of association, limitation on the scope of bargaining, strike bans and other restrictions often make it difficult for education workers and support personnel to participate in the development of their profession and influence education policy.

The recommendation of the Joint Committee provides guarantees for teachers and their representative organizations to be consulted, not only on working conditions but also on education reforms, school organization and curricula. The Committee particularly highlighted that the presence of active, strong and independent democratic teacher unions and organizations at all levels, institutional, local, national and regional, is highly encouraged and encouraging. Experience shows that teacher unions act as support networks for teachers and as catalysts of change and social dialogue. Unions and associations must be independent, autonomous and inclusive, helping to identify issues affecting teachers, ensure teacher participation in key educational matters, and develop strategies to address problems and improve education collectively.

The Workers' group calls on Member States to ensure that the principles and rights enshrined in ILO Conventions Nos 87 and 98 are fully guaranteed in law and practice to teaching personnel.

Increased public appreciation of teachers has also translated into structural improvements such as investment support and better working conditions for professional educators. In fact, education budgets have fallen by 65 per cent in low- and middle-income countries and 33 per cent in upper-middle and high-income countries. Many teachers also became unemployed during the COVID-19 pandemic. In Australia, for example, 40,000 educators and staff in higher education lost their jobs. To face the current socio-economic crisis caused by the pandemic, many countries have implemented austerity measures, which imposed targeted pressure, including from international monetary agencies, to cut or freeze salaries in the public sector, including in education.

Furthermore, non-standard employment is growing with an increasing use of casual and short-term contracts to employ teachers and academics, often in substandard working conditions. In some regions, including sub-Saharan Africa and South-West Asia, many contract teachers have reported receiving less pay than permanent teachers and inadequate professional support, as well as experiencing poor working conditions. This situation not only leads to severe decent work deficits for teaching personnel but also negatively impacts the provision of education.

The Worker members echo the 2021 conclusions of the ILO Technical Meeting on the Future of Work in the Education Sector, which reaffirmed that education is not a commodity. Public investment in education must be a priority. In this respect, the Worker members underline that before the pandemic, UNESCO projected that 69 million teachers would be needed if the 2030 Sustainable Development Goals were to be met.

The COVID-19 crisis has wiped out 20 years of progress in education, and further exacerbated the attrition rate among teaching personnel.

In conclusion, the Workers' group would like to commend and thank teaching personnel for their continued dedication during these challenging times of extreme hardship and for supporting our societies and communities.

Teachers' responses to challenges demonstrate their capacity to act as agents of change and ensure continuity of student learning and provide for learners' needs, including emotional support.

In its 2021 session, the Joint Committee focused on three key issues for the education sector: teacher education in the twenty-first century; teaching as a collaborative profession; and teacher professionalism from an intercultural perspective. These issues must be addressed by governments, in consultation with their social partners especially teaching personnel unions, as a matter of priority.

In moving forward, it is essential to invest in the teaching profession by ensuring the material conditions of teachers, the regular payment of salaries, and the provision of continuous professional development. A focus on pay rises, working conditions, particularly workload, health and safety at work and the use of technologies, would be valuable elements. There is a need to build trust in the profession and the professional expertise of the workforce and to establish social dialogue.

The Worker members reaffirm the right to quality education, including the right to lifelong learning. If we are to build a future for all our children we must invest in quality education, which can only be achieved by ensuring decent work for teaching personnel so as to attract and retain them in the profession.

Public investment in the education sector should also include the hiring of adequate numbers of teacher trainers and education support personnel and ensure sufficient resources are available to education systems in order to guarantee high-quality education.

Worker member, Uruguay – It would appear that the report and what has just been said by the Worker spokesperson confront us with a significant contradiction.

The world has increased the value and social consideration of the work of teachers, and I would include the technical, administrative and service staff, who maintained education systems during the pandemic.

Nevertheless, their material conditions, working conditions, budgets, jobs and wages have not been in line with these expectations, and the social recognition that education workers in general are receiving, particularly due to their ethical and political commitment during the pandemic.

Second, we believe that there are enormous pressures that are exerting strong pressure on the professional roles of teachers and their conditions of work.

We particularly wish to draw attention to the aspects referred to in the report in relation to the limitations on the professional independence of teachers, often as a result of curriculum reforms that limit their autonomy, even in technical teaching aspects.

The increase in bureaucratic, administrative and supervisory work which is undermining the educational and pedagogical role of teachers and the deregulation of their conditions of work, in which the constant certification of their skills and practices is a means of generating conditions to bring an end to the employment stability of teachers, which is a central and determining aspect of the profession.

Third, although the Committee is examining progress and cases of non-compliance with the recommendations of the ILO–UNESCO Joint Committee, we draw attention to the emergence today of actors who, from outside the ILO and UNESCO, outside the education system, are defining public education policies, including training, the characteristics of teachers and their role and conditions of work. These actors are the World Bank, the OECD,

which in many countries are imposing reforms that do not even comply with the requirement of tripartite social dialogue or the right of collective bargaining to determine aspects of conditions of work, among other matters.

If it is necessary to reconsider or revise the recommendations, there is no better mechanism than the ILO itself within the framework of tripartite social dialogue, but not the imposition of economic agents from outside the education system.

Government member, Japan – Let me thank the CEART members who participated in the examination of the allegations concerning Japan.

The Japanese Government has always administered its education policy in a manner that conforms to Japan's circumstances and legal system, while respecting the spirit of the Recommendation on the Status of Teachers. We have worked to ensure the propriety and fairness of the system that was the subject of the allegations.

The Japanese Government has properly explained its position and opinions regarding the Japan-related allegations submitted by the two organizations concerned, and our basic opinion on the 13th report was explained at the 108th Session of the International Labour Conference.

The Japanese Government will place top priority on what is good for children, who will be responsible for the future. While respecting the spirit of the Recommendation on the Status of Teachers, we will continue to administer our policies in a manner that conforms to Japan's circumstances and legal system.

Worker member, Argentina – As on other occasions, we are taking the floor at this stage of the examination by the Committee to draw attention to a deep-rooted injustice that continues to not be resolved in the ILO and UNESCO.

The instruments examined by the Joint Committee of Experts on the Application of the Recommendations concerning Teaching Personnel, namely the 1966 and 1997 Recommendations, do not take into account the employment relations of education support staff, non-teaching staff, administrative officials and technical personnel at the various levels of education, and particularly higher education, whom I represent. They perform their work in the same labour environment and under similar conditions of work as teaching personnel.

On the occasion of the Global Dialogue Forum on Employment Terms and Conditions in Tertiary Education, held by the ILO in Geneva from 18 to 20 September 2018, we submitted a complaint concerning workers who perform their work in the same school or university, but do not have the same legal protection or complaint mechanisms in cases of non-compliance by employers and the State.

As an outcome of the discussions in the high-level Global Dialogue Forum, it was indicated in the consensus points agreed by Governments and the social partners that the Office should undertake and disseminate research on the terms and conditions of employment of education support personnel and that the purpose of the research was to inform possible future action, which could include a tripartite meeting.

Notwithstanding the agreement reached and the discussions in subsequent meetings promoted by Public Services International and the Confederation of Workers of Universities of the Americas, this study has not been undertaken since 2018. The pandemic gave rise to a delay and we hope to be able to take up the work as soon as possible.

Only two weeks ago, in Barcelona, Spain, the UNESCO Third World Higher Education Conference was held, where non-teaching, technical and administrative staff placed emphasis on our claims based on the current discrimination and the need to develop international

instruments which include this group of workers, who are not currently covered by the instruments in force.

We received broad support during the discussion and we raised the awareness of UNESCO officials of the need to make progress in putting in place a process that leads to the creation of conditions of equity between teaching and support personnel in terms of the protection set out in standards.

We need to make progress jointly with the ILO, UNESCO, governments and the social partners in order to generate the conditions for constructive dialogue that can take us to the right port.

We are therefore hoping to reactivate the pending work in the ILO, combine forces with UNESCO and advance proactively in building a process of participatory dialogue.

Observer, Education International (EI) – Education International is the global federation of teacher unions. We represent 32 million teachers in early childhood education through to higher education. It is our great pleasure to welcome the report from the Committee and I am going to reflect upon some of the recommendations made this time because it comes at a time when the world needs an additional 69 million teachers.

This is a matter of recruitment; governments must ensure sufficient numbers of teachers, but it is also a matter of retention. We have alarmingly large numbers of teachers leaving the profession. To cite an example, in the United Kingdom, 40 per cent of teachers leave within ten years of qualifying as a teacher. This is a status issue and takes us straight to the heart of the 1966 and 1997 Recommendations.

Teaching is not an attractive career option for young people today. Much has been said about COVID-19 and its impact. What it did was deepen, exacerbate an already ongoing crisis in the profession: a crisis in terms of salaries, in terms of workload, in terms of trust and autonomy. The EI's 2021 status survey showed that 55 per cent of teachers found the workload unmanageable, 66 per cent attribute this directly to administrative tasks related to different accountability measures. We are pleased to welcome the Recommendations by the CEART Committee related to the impact of managerialism in schools and the direct undermining impact that it has on teacher collaboration and autonomy.

We also welcome the observations around casual and short-term contracts, something that is on the increase. We particularly welcome the observation on the United Kingdom case and the impact of casualized contracts on academic freedom.

To give you the context, in the United Kingdom there are currently 75,000 academics on insecure contracts; 18 per cent of institutions employ staff using zero-hour contracts.

I also want to say a couple of words about financing because, in 2022, 159 countries are expected to face austerity and austerity policies are a direct threat to the rights and status of education workers and to the provision of quality education.

We have done some research around public sector wage bill constraints and the fact that a large number of low-income countries continue to be advised to cut and/or freeze public sector salaries. We looked at 15 countries where the recommended IMF cuts would add up to nearly US$10 billion; this is the equivalent of cutting over 3 million frontline public sector workers.

So, we need to protect education budgets, we need to invest in the profession and here we particularly welcome the Committee's recommendation to the Government of Argentina to

convene a dialogue with teachers' organizations concerning the financing of higher education, and this is a recommendation that I would happily extend to other governments in the room.

Another important recommendation in that case was about higher-education teaching personnel enjoying the right to freedom of association, and the importance of promoting these rights and ensuring that collective bargaining or equivalent procedures are in place.

So, to wrap up, we urgently need to invest in the teaching profession. We need to recruit teachers but we also need to protect those who are already in the profession, supporting them through continuous professional developments, making sure that they have salaries that they can live on, salaries that are paid regularly and that we protect their well-being.

We need to trust the profession, trust their expertise and finally we need to use this expertise as we further develop our education systems and ensure that social dialogue is in place.

Employer members – The Employers' group once again welcomes the report of the Joint Committee of Experts on the Application of the Recommendations concerning Teaching Personnel, as well as the considerations put forward by the spokesperson of the Workers' group and previous speakers.

In light of the discussion, we would like to take this opportunity to reiterate the importance that the Employers accord to the education sector and teaching personnel, not only for the continuing education of students, but also for the sustainability of local and global communities and economies, and particularly in the recovery from the COVID-19 crisis.

In particular, we take the opportunity to emphasize:

- the importance of teaching personnel being in contact with updated production processes and the latest technology, as part of teacher training;
- cooperation and social dialogue initiatives with the private sector so that education keeps up with developments in the world of production;
- the need to introduce the registration and certification of teachers throughout their professional career, in particular through recognition, validation and accreditation mechanisms for prior learning and experience, with a view to promoting lifelong learning;
- the strategic importance of promoting innovations in relation to the curriculum, teaching and teachers in consultation with employers' and workers' organizations, and to strengthen ecosystems that link the world of education with the world of work;
- the benefits of identifying relevant skills and close interaction with the national and regional contexts of students to ensure that young persons have the necessary skills to enter innovative projects and promote investment and the creation of quality productive employment;
- the potential to promote improvements in the pedagogical and technical skills of teachers to help students develop the skills of discernment that will allow them to navigate the current digital universe and interact effectively with technology.

The Employers wish to reiterate the significance of the statement recognizing the professionalism of teaching personnel in the post-pandemic recovery.

And finally, we must insist on the potential of education systems and teaching personnel to improve the economic, social and cultural conditions of nations, and to strengthen

democratic values, as well as providing essential elements to build citizenship, prepare the young for adult life and facilitate transition into and within the world of work.

Worker members – With regard to the Employers' comment on the status of the Recommendation made by the Joint Committee, we recall that, while non-binding, the Recommendations are presented to the Governing Body of the ILO and to the Executive Board of UNESCO and, through them, to governments, employers' and workers' organizations, on how to improve the conditions of the teaching profession within their respective mandates, using the two Recommendations as guidelines.

In response to the market-driven and skills-oriented views expressed by the Employer members in relation to education, we wish to reaffirm strongly that education and lifelong learning should, first and foremost, contribute to the development of the individuals and not of economic agents responding to labour market needs.

In conclusion, we would like to state the continued relevance of the two Recommendations of 1966 and 1997 on the Status of the Teaching Profession. They provide, among other things, useful guidance for the union rights of education workers. They insist on the values of social dialogue, not only to improve conditions of service but also to give teachers and their unions a say in education policy: a say in education funding, professional development and curriculum development, among other issues. Wide public perception of teachers has improved since the pandemic began. Teaching is still not attractive because of the poor status and working conditions prevailing in the profession. Wages, safety and health and the lack of agency and professional autonomy in the education sector are worsening, while the workload continues to increase. It is essential to invest in the teaching profession by ensuring the material conditions of teachers and the provision of continuous professional development.

We call on governments, in consultation with the social partners, and particularly teaching personnel unions to: (1) engage in social dialogue with the education authorities at all levels, particularly to advocate for funding of public education – because we believe public education is a public good – that must be supported by the State; (2) improve the status of the teaching profession and make teaching and learning attractive; (3) strengthen the professional autonomy of teachers and academics; and (4) focus education on the development of the whole person and instil competencies for life around the principles of inclusion, democracy, citizenship, critical-thinking, collaboration and respect.

IV. Information and discussion on the application of ratified Conventions (individual cases)

The Committee has adopted short, clear and straightforward conclusions. Conclusions identify what is expected from governments to apply ratified Conventions in a clear and unambiguous way. Conclusions reflect concrete steps to address compliance issues. Conclusions should be read with the full minutes of the discussion of an individual case. Conclusions do not repeat elements of the discussion or reiterate government declarations which can be found in the opening and closing of the discussion set out in the Record of Proceedings. The Committee has adopted conclusions on the basis of consensus. The Committee has only reached conclusions that fall within the scope of the Convention being examined. If the Workers, Employers and/or Governments had divergent views, this has been reflected in the Committee Record of Proceedings, not in the conclusions.

Azerbaijan (ratification: 2000)

Abolition of Forced Labour Convention, 1957 (No. 105)

Written information provided by the Government

1. Regarding the comment on the "broad wording" of articles 147, 169.1, 233 and 283.1 of the Criminal Code

It should be noted that this wording is based on general norm-setting techniques and principles and is commonly used in Azerbaijan for drafting various laws. It is in line with the Constitution and other laws of the country guaranteeing human rights and freedoms.

Article 147 (defamation)

In accordance with article 57 of the Constitution, the citizens have the right to criticize the activity or activities of state bodies. Under the legislation, the prosecution for criticism is prohibited, while insult and defamation cannot be considered criticism.

Article 147 of the Criminal Code does not diverge from similar articles of the Criminal Codes of some ILO Member States, such as Canada (article 298), Germany (article 187), Slovenia (article 160), Sweden (Chapter 5, section 1).

Article 169.1 (violation of the assembly rules)

The purpose of this article is to establish criminal liability for organizing or participating in assemblies, which cause significant violation of civil rights. It should be noted that violation of the rules on holding assemblies is also recognized as a crime in other countries (for example, in Canada).

According to article 49 of the Constitution, everyone, together with others, has the right to assemble peacefully with prior notice to the relevant government authorities, provided that public order is not disturbed. However, a gross violation of public order shall invoke criminal liability.

Article 283.1 (incitement of national, racial, social or religious hatred and hostility)

The criminal elements of the acts under this article are similar to the corresponding articles in the criminal laws of other countries, and the sanctions provided for these acts include fines, community service, restriction of freedom and imprisonment.

The incitement of national, racial, social or religious hatred and hostility is a criminal offense in Germany (article 130), Kazakhstan (article 174), the Republic of Moldova (article 346) and others.

Application of articles 147, 169.1, 233 and 283.1 of the Criminal Code

Articles 147, 169.1, 233 and 283.1 of the Criminal Code are not widely used in practice *(according to the statistics of the Supreme Court of Azerbaijan)*:

- under article 169.1: in 2018–21 there were no cases;
- under article 147: in 2018 – 41; in 2019 – 37; in 2020–21 – approximately 32 court cases. Penalty in the form of correctional work applied in 5 cases out of 110 (only in 4.5 per cent of cases);
- under article 233: in 2018 – 8; in 2019 – 4; in 2020 – 2; in 2021 – 2 cases. Correctional work applied in 0 cases out of 16;
- under article 283.1: in 2018 – 5; in 2019 – 3; and in 2020–21 – 2 cases. Correctional work applied in 0 cases out of 10.

The information on the acts that gave rise to criminal prosecutions and court decisions will be provided at the next stage.

Legislative regulation of correctional work and its application in practice

It should be noted that the correctional work provided for as a punishment under a number of articles of the Criminal Code is not contradictory to Article 1 of the Convention due to the following reasons.

Under criminal law, correctional work is carried out at the place of work. It is defined as a deduction of 5 to 20 per cent of the convicted person's earnings in favour of the State.

Obviously, correctional work is not provided for as bringing a person to forced or compulsory labour, but as a transfer of money from his earnings in favour of the State while he participates in socially useful work at his workplace.

Fines under articles 169.1, 233 and 283.1, as a rule, are quite high and not paid by convicts within the time period established by law.

Therefore, pursuant to article 44.3 of the Criminal Code in the case of wilful evasion of the payment of a fine, the punishment is replaced with penalties such as community service, correctional work, restriction of freedom or imprisonment.

Given that correctional work is applied in some articles of the Criminal Code as an alternative to the sanctions, without isolation from society, some criminal law experts argue that "correctional work" is a lighter punishment than a fine or imprisonment.

In accordance with Article 1.1 of the UN Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules), these rules provide a set of basic principles to promote the use of non-custodial measures and alternatives to imprisonment.

Also, the acts under article 169.1 of the Criminal Code presume significant damage to public interest, gross violation of public order and other criminal elements reflecting the gravity of the violation.

If these acts do not result in substantial harm to the rights and legitimate interests of citizens, they are not considered crimes and lead to penalties under article 513 of the Code of Administrative Offences.

Given the above, restricting to only fines the punishments imposed under certain articles of the Criminal Code for public danger, serious harm to the public interest, gross violation of coexistence rules, etc. is not considered acceptable based on the principles of justice, humanity, the Constitution and criminal and criminal procedural legislation.

- As shown below, the use of correctional labour is minimal and has been declining in recent years (according to the statistics of the Attorney-General's Office):
  - In 2019, 876 (7.6 per cent) of the 11,484 people convicted by the courts were sentenced to correctional work and 157 (1.4 per cent) to community service;
  - In 2020, 572 (6.2 per cent) of 9,282 individuals were punished with correctional work and 3 (0.2 per cent) individuals with community service;
  - In 2021, 512 (3.5 per cent) of 14,751 individuals were sentenced to correctional work and 73 (0.5 per cent) individuals to community service.

2. Regarding the comment on the use of articles 148, 179, 192, 213, 274, 308, 323 of the Criminal Code for prosecuting journalists, bloggers, human rights defenders and other individuals who express critical views

It should be noted that the Criminal Code does not provide for prosecution and punishment for political views, convictions or other circumstances, but for cases when a person is found guilty of committing a socially dangerous act.

Under article 25 of the Constitution, the State guarantees equality of rights and freedoms to everyone, regardless of race, ethnicity, religion, language, gender, origin, property status, occupation, etc.

Under article 71 of the Constitution, the legislative, executive and judicial branches of Government are obliged to observe and protect human and civil rights and freedoms.

Since these articles of the Criminal Code are applied without prejudice to the profession or status of the accused, no relevant statistics on professions are compiled and, thus, cannot be provided.

The following statistics show that the use of the above articles of the Criminal Code is minimal and has decreased in recent years *(according to the Supreme Court's statistics)*:

Articles of the Criminal Code	Number of cases over the years		
	2018	2019	2020
Article 323 * (Defamation or humiliation of the honour and dignity of the President of Azerbaijan)	0	0	0
Article 308 (Abusing official powers)	81	84	56

Articles of the Criminal Code	Number of cases over the years		
	2018	2019	2020
Article 274 (High treason)	8	11	6
Article 213 (Evasion from payment of taxes)	65	57	53
Article 192 (Illegal business)	15	17	12
Article 179 (Misappropriation)	69	65	42
Article 148 (Insult)	25	22	25

* Note: According to the "Note" part of article 323, this article does not apply to public statements about the activities of the President of the Republic of Azerbaijan, as well as to critical remarks about the policies pursued under his leadership.

In addition, in order to ensure transparency and public access to court decisions, a link can be accessed to obtain information on the application of the above-mentioned articles of the Criminal Code (https://sc.supremecourt.gov.az/decision/).

3. Legislative guarantees of non-prosecution for political and ideological views

According to the Constitution, the State guarantees the equality of rights and freedoms to all, irrespective of their occupation, beliefs, affiliation with political parties, trade unions and other public associations.

The law also prohibits the restriction of human and civil rights and freedoms on the basis of beliefs or political or social affiliation. No one may be harmed or denied privileges or advantages on the grounds listed above (article 25).

Also, pursuant to the law:

- everyone has freedom of thought and speech;
- agitation and propaganda inciting hatred and enmity on racial, national, religious, social or other grounds shall not be permitted;
- everyone shall have the freedom to seek, receive, transmit, prepare and disseminate information lawfully;
- freedom of the media is guaranteed.

Under the Law on the Freedom of Assembly, the State ensures the exercise of freedom of assembly and takes appropriate measures to hold peaceful and unarmed assemblies.

Under article 6.1 of the Criminal Code, offenders are equal before the law and are prosecuted regardless of their beliefs, membership in political parties, trade unions or other public associations or other circumstances.

Article 154 of the Criminal Code establishes liability for violation of the right to equality.

4. Measures to improve the legislation

In order to humanize the sanctions provided under the Criminal Code and limit their scope, the following reforms and measures to improve the legislation were implemented.

4.1. Law No. 816-VCD of 20 October 2017 "On Amendments to the Criminal Code" was adopted.

As a result of the introduction of about 300 amendments to the Criminal Code, a number of criminal offences were decriminalized, and some acts were transferred from the category of criminal offences to administrative ones.

The amendments also improved the institute of exemption from criminal liability through reconciliation with the victim and established new norms providing for exemption from criminal liability for crimes against property and those related to economic activity.

In addition, in order to reduce cases of imposing a prison sentence:

- a new type of punishment was introduced which is not related to deprivation of liberty – restriction of freedom (articles 147.2, 192.1, 192.2, 221.2, 233 and 314 of the Criminal Code);
- the term of imprisonment for certain crimes was reduced (articles 308.2 and 221.2 of the Criminal Code).

4.2. Law No. 68-VIQD of 1 May 2020 "On Amendments to the Criminal Code" was adopted.

The Law introduced alternatives to deprivation of liberty (fines and restriction of freedom) in sanctions of several articles (articles 192.1, 221.2, 221.3 and 308.1 of the Criminal Code) and also provided for reduction of fines or mitigation of imprisonment sentence for certain crimes.

In addition, the Law decriminalized certain acts, including illegal entrepreneurship (article 192 of the Criminal Code) and tax evasion (article 213), by increasing the threshold of liability from 20,000 to 50,000 Azerbaijani manat.

4.3. The decision of the Milli Majlis of the Republic of Azerbaijan of 5 November 2021 "On declaring an amnesty on the occasion of 8 November – Victory Day" was adopted.

It was established that the Amnesty Act applied to 17,267 persons. This decision is the largest amnesty ever granted in terms of the number of persons covered. According to the Amnesty Act, all persons sentenced to correctional work and community service were discharged from punishment.

5. Steps taken and envisaged

Steps taken

The Ministry of Labour and Social Protection of Azerbaijan (the Ministry), as a leading state body responsible for cooperation with the ILO, has undertaken the following steps:

- Upon receipt of the ILO letter dated 7 February 2022, the Ministry urgently mobilized all relevant state bodies to thoroughly review the issues raised in the observation and direct request of the Committee of Experts.

- An inter-agency Working Group (National Task Force) comprised of respective state bodies and non-state institutions has been set up:
  1. Supreme Court
  2. Ministry of Justice
  3. Attorney General's Office
  4. Ministry of Internal Affairs
  5. Presidential Administration
  6. Ministry of Foreign Affairs
  7. Ministry of Labour and Social Protection of Population
  8. Ministry of Economy
  9. National Confederation of Employers' Organizations
  10. Azerbaijani Trade Unions Confederation
- The Minister of Labour and Social Protection of Population of Azerbaijan convened and chaired the first meeting of the Working Group on 23 February 2022.
- The Azerbaijani side has engaged in intensive consultations and discussions via its diplomatic mission in Geneva as well as the Ministry and Working Group in Azerbaijan.
- The Azerbaijani diplomatic mission in Geneva has held several meetings with ILO representatives in 2022, including:
  - Ms Corinne Vargha, Director of the International Labour Standards Department;
  - Ms Deepa Rishikesh, Head of Unit;
  - Mr Horacio Guido, Chief of Branch;
  - Mr Heinz Koller, Director, Regional Office for Europe and Central Asia.
- The Deputy Minister of Labour and Social Protection addressed a letter to the Director of the International Labour Standards Department on 25 February 2022.
- The Azerbaijani side is currently working on the ratification of the Occupational Safety and Health Convention, 1981 (No. 155), in addition to 58 previously ratified ILO Conventions.
- The Azerbaijani side requested and received a Technical Note on Article 1(a) of ILO Convention No. 105 and its application by Azerbaijan.
- The Working Group prepared a comprehensive report in response to the 2022 report of the Committee of Experts on the Application of Conventions and Recommendations.
- The draft of this report was discussed with the ILO Regional Office and National Coordinator. The Regional Office provided its valuable comments and recommendations on 25 April 2022.
- The Deputy Minister of Labour and Social Protection held a Zoom meeting with representatives of the International Labour Standards Department, ILO, on 11 May 2022.

Steps envisaged

- During the report preparation process, the Working Group members have expressed diverging opinions and approaches on the criminal law amendments. Hence, the ILO experts

are required to be engaged for the purpose of formulating and discussing the common ground and framework on further criminal law reforms in Azerbaijan.

- The Ministry is preparing a formal request for ILO technical assistance to the ILO Moscow Office in order to engage ILO expertise and additional resources to address the matters raised in the observation and direct request.
- The technical assistance agreement and its scope will be discussed with the Working Group members in order to fully cover the extent of required resources.
- Initial assessment of the needs has identified that not only cases and penalties statistics should be presented to the ILO but also information on the acts that gave rise to the criminal prosecutions, the summary of the court deliberations and decisions delivered under these articles are to be presented to the ILO.
- Also, this assessment showed that in order to fully respond to the observation and direct request, the respective information is large in volume and should be translated into English. This submission requires more time and additional resources.
- Additional information collected from the Working Group members is being submitted to the ILO in addition to the response report initially submitted in April 2022.

6. Conclusion

The fulfilment of all obligations under ILO Conventions ratified by the Republic of Azerbaijan is of particular importance. The Government will continue to make its best efforts to comply with the requirements of all ILO Conventions that it has ratified.

Discussion by the Committee

Government representative, Deputy Minister of Labour and Social Protection of Population – Since the Government has already submitted written information in the form of a report, I will avoid repeating the submission. Instead, I will concentrate on the issues of particular importance that may require the kind attention of the esteemed Committee members and meeting participants. In addition, I will also clarify some aspects of the information provided given the limits imposed on the length of the submitted report.

Since we received the direct request and the observation of the Committee of Experts earlier this year, the Ministry has taken the matter very seriously. The Ministry is a major state agency, responsible for cooperation with the ILO, and here I should emphasize that the ILO is very important to Azerbaijan, which has a track record of 30 years' productive cooperation with the ILO and one of the highest ratification rates of ILO Conventions in the region. To date, 58 Conventions, including all 8 fundamental Conventions and 45 technical ones, have been ratified and integrated into national legislation. Currently there are plans to ratify another Convention, the Occupational Safety and Health Convention, 1981 (No. 155).

The ILO is a reliable social partner that has supported the Government in the preparation of numerous strategic development documents. For instance, with its support, the National Employment Strategy for the period up to 2030 was developed and adopted. It enabled better management of the labour force and employment in Azerbaijan.

Azerbaijan was also one of the first countries to engage with the United Nations Sustainable Development Group Mainstreaming, Acceleration and Policy Support platform, which focuses, among other matters, on inclusive labour markets.

Promoting decent work opportunities and quality jobs, improving working conditions and enhancing social dialogue mechanisms have been identified as country priorities. These priorities were reflected in the ILO's Decent Work Country Programme for 2016–20 and in a new programme for 2022–26 which is currently under discussion.

There are several priorities under this new programme that are aligned with the Sustainable Development Goals (SDGs) and the UN Sustainable Development Cooperation Framework and that include international labour standards, mainstreamed in policy and practice through social dialogue, inclusive growth that reduces vulnerability and builds resilience, and stronger institutions for better delivery of public and social services.

Therefore, upon receipt of the observation and the direct request of the Committee of Experts, the Labour Ministry carefully studied those documents. The Ministry swiftly mobilized all relevant bodies, and a National Task Force was set up, consisting of ten state bodies and public institutions. Since the comments were related to the use of the Criminal Code, the Ministry met with the relevant ministries, such as the Ministry of Justice, the Ministry of Internal Affairs, the Supreme Court and the Attorney-General's Office. Also, due to the importance of the matter, representatives from the Presidential Administration have joined the working group.

In addition to state bodies, this National Task Force comprises representatives of the National Confederation of Employers' Organizations, which represents employers, and trade union confederations, which represent employees. The participation of employers' organizations and trade union confederations was necessary since social dialogue on labour relations is conducted through a tripartite commission on social and economic issues. This tripartite commission has operated as a permanent body with a secretariat since 2016 and was established as an ILO initiative to create a new institutional framework for the social partners.

The three parties involved in the dialogue are the Labour Ministry, the National Confederation of Employers' Organizations and the Azerbaijani Trade Unions Confederation. It is a major platform for the discussion and coordination of joint actions on important labour-related matters, including, for example, amendments to the Labour Code, issues related to unemployment, minimum wages and others.

I would like to touch upon the application of Article 1(a) of the Convention in Azerbaijan. The Convention guarantees that compulsory labour is not used as a means of punishment for the expression of views. Meanwhile, the Convention does not prohibit punishment by penalties involving compulsory labour, including work in the community or correctional work by persons who use violence or incite to violence. In this regard, I would like to inform the esteemed Committee members of the penalties involving labour currently available under the Criminal Code.

These two types of penalty are also common in the legislation and practice of other ILO Member States. The Criminal Code, in article 42, provides for, among other penalties, two types of penalties involving labour: correctional work and work in the community. In this respect, I must mention an important aspect: in the Criminal Code, penalties are categorized as main penalties or additional penalties. Correctional work and work in the community are considered main penalties.

Why is that important? Because they cannot be applied in addition to other penalties, such as imprisonment, the limitation of freedom and others. A person cannot be imprisoned or placed in detention and at the same time be subject to penalties involving labour. Convicted persons in Azerbaijan are either imprisoned or sentenced to correctional work or work in the

community, it is either of the two. Therefore, correctional work is classified as a separate category of penalty whose terms of application are clearly set out. It is regulated in detail under another law, separate from the Criminal Code, which is the Code on the Execution of Penalties. The same applies to work in the community, which is another type of penalty involving labour. This is a common type of penalty since it is carried out in the free time of the convicted person when the person is not working or studying. These two types of punishments do not fall under the definition of "forced labour" under the ILO Conventions since correctional work and work in the community are carried out based on a court decision and under the supervision of the public authorities. Furthermore, this is normal practice in many countries including, for example, Ukraine, Kazakhstan, Georgia, Uzbekistan and others, where both types of punishments are used and do not contradict ILO norms and their requirements.

I would like to clarify the regulation of correctional work and how it is applied, because it was highlighted in the observation presented by the Committee of Experts. Under criminal law, correctional work is carried out at the place of work, not in a prison – I would like to repeat, at the place of work, not prison. It is executed as a deduction of 5–20 per cent of the convicted person's earnings in favour of the State, so this form of penalty does not impose forced labour upon a person but is a transfer of money from his or her earnings to the State while the convicted person participates in socially useful work at his or her workplace, not in prison. There is no isolation for persons subject to this type of penalty. Fines often are relatively high and not paid by convicted persons within the time period established by law. Therefore, under the Criminal Code, in the case of wilful evasion of the payment of a fine, the punishment is replaced by penalties such as work in the community, correctional work, the restriction of freedom or imprisonment. Correctional work is applied under some articles of the Criminal Code as an alternative sanction without isolation from society. Therefore, it may be argued that work in the community is often an even lighter punishment than a fine or imprisonment. Moreover, in some cases, we have to take into consideration the UN Standard Minimum Rules for Non-Custodial Measures, also called the Tokyo Rules, which also promote the use of non-custodial measures as alternatives to imprisonment.

I would like to draw your kind attention to two very important aspects. If acts under certain articles of the Criminal Code, for example article 169 which is mentioned in the observation, do not result in particular harm to public entities, they are not considered a crime and lead to a penalty under the Code of Administrative Offences, as recommended by the ILO and the Committee of Experts.

I would like also to bring to your kind attention some statistics indicating that the use of correctional labour is minimal and has been declining in recent years. In 2019, correctional work was imposed in 7 per cent of cases and work in the community in only 1.4 per cent of cases. In 2021, it came down to even less than 6 per cent and 3 per cent, respectively. We have provided more information in the report, so I will not take too much of your time regarding these statistics, but I would like also to mention that the observation of the Committee of Experts draws particular attention to four sections of the Criminal Code, that is, the article regarding defamation, the article regarding violations of the rules on assembly, the article regarding violations of public order, and the article on the incitement of national, racial, social or religious enmity. These articles are not widely used in practice. In the last two years, there have been no cases under three of those four articles. For example, under article 147, during the last two years there have been only around 35 cases, so around 15 cases per year, and penalties were applied in only 5 of those cases, meaning that in around 4 per cent of cases some kind of penalty was applied.

So, dear Committee, what should we expect? What should be our way forward? What does Azerbaijan plan to do? Of course, the Government understands that the comments and recommendations of the Committee of Experts are intended to increase the effective implementation of ILO standards in Member States, including Azerbaijan. They also serve, for us, as an assessment of the current situation and for future reforms and improvements to national legislation and practice. Therefore, due to the importance of these recommendations and comments, the Labour Minister met with his high-level counterparts from different ministries and chaired the first meeting of the National Task Force. The Azerbaijani Working Group has been engaging in intensive consultations and discussions with the ILO diplomatic mission in Geneva as well as the capital of Azerbaijan, Baku, and the Azerbaijani diplomatic mission in Geneva has held several meetings with ILO representatives. I personally had Zoom meetings with the ILO experts, who were also requested to provide a Technical Note; that was a comprehensive, detailed document that addressed very sophisticated aspects of the recommendations and comments of the Committee of Experts and also the possible solutions, which we found very valuable. The Working Group also prepared and presented a comprehensive report, and an additional report was submitted. These reports were discussed with the National Coordinator here in Azerbaijan. Also, we discussed it with the ILO Regional Office.

Just a couple of weeks ago, on 19 May, a workshop on the application of the Convention was organized. Representatives of the Ministry, the National Confederation of Employers' Organizations, trade unions and ILO experts attended this important workshop, and during the report preparation process, and during the workshop, we identified that there are diverging opinions and approaches as to how the criminal laws in Azerbaijan should be amended, so we believe that ILO experts must be engaged for the purpose of formulating and discussing the common ground and framework for further criminal law reforms in Azerbaijan. Also, we identified that the initial assessment of needs showed us that not only should reform be undertaken, but also that statistics on cases and penalties should be presented to the ILO. They are, of course, quite large in volume, so they should be translated from the national language into English, which will require more time and additional resources.

In this regard, the Minister, several weeks ago in May, despatched a formal request for ILO technical assistance to the ILO Regional Office in order to engage ILO expertise and additional resources to address matters raised in the observation and the direct request. Discussion of the technical assistance is planned during the upcoming visit of the Director of the ILO Office for Europe and Central Asia to Azerbaijan which is expected to take place in mid-June. During her visit, we plan to organize a conference on the new Decent Work Country Programme for the next five years, and we also believe that this joint effort will strengthen and support the Government's activities to comply with the requirements of all ILO Conventions, as the Government undertakes, from time to time, reforms and measures to improve legislation. For example, in October 2017 we had amendments to the Criminal Code, and approximately 300 amendments to the Criminal Code were introduced, a number of criminal offences were decriminalized, and some criminal offences were changed to administrative ones. In May 2020, we had another package of amendments to the Criminal Code, and the last amendments and the amnesty took place just several days ago, on 28 May 2022, when we were celebrating Independence Day and 213 persons were released from criminal punishment. We believe that this is in line with the social reform programme that is currently being implemented in Azerbaijan gradually, in stages, and this reform has already covered approximately 4 million persons in Azerbaijan, or 40 per cent of the population. The last package of reforms entered into force just this January, in 2022, and the budget share of the

costs of the reforms has reached 46 per cent, which is a record number for the last three to four years.

Therefore, lastly, I would like to reiterate in particular that the fulfilment of ILO norms and standards is of particular importance, as the Government will continue its best efforts in this direction with the ILO's productive collaboration, valuable support and constructive dialogue.

Worker members – The abolition of forced labour is a fundamental objective of the ILO. There can be no social justice where there is forced labour. The adoption of the Convention in 1957 was a vital step towards meeting that objective, reinforcing as it did the normative framework created by the Forced Labour Convention, 1930 (No. 29). Both Conventions, of course, rightly take their place among the ILO's fundamental Conventions. Azerbaijan ratified Convention No. 105 in 2000. The country's implementation of this Convention has been the subject of recurrent direct requests from the Committee of Experts since 2004.

The issue we discuss today has been the subject of these observations since 2015, and yet – despite repeated opportunities, including its report for this year – the Government has never provided a complete response to these observations.

While we thank the Government for the written information provided to the Committee on 16 May, we regret that Azerbaijan waited until it had its back to the wall before responding to the observations of the Committee of Experts. The persistent lack of response over an issue covered by the fundamental Convention has led directly to the Committee of Experts issuing a double footnote on Azerbaijan in its observations this year – which we can fully understand – and the scrutiny of the Committee now reflects the gravity of the situation.

The observation of the Committee of Experts, repeated a number of times since 2015, relates to several provisions of the Criminal Code that are drafted in such broad terms that they can be used to punish the expression of political opinions or the manifestation of ideological opposition to the established political, social or economic order. These provisions provide for penalties of correctional labour or imprisonment that include an obligation to work for holding or expressing political views or views ideologically opposed to the established political, social or economic system, which is strictly prohibited under the Convention.

Indeed, while the work imposed on an ordinary offender may have the objective of reintegrating the individual in compliance with the guarantees provided for in Convention No. 29, the same cannot be said for persons convicted merely for expressing their opinion. The latter must be given special protection. And this is set out in the Convention.

The provisions in question are articles 147, 169.1, 233 and 283.1 of the Criminal Code, which respectively punish defamation, the organization of, or participation in, a prohibited public gathering, the organization of collective actions that undermine public order, and incitement to national, racial or religious enmity.

The Azerbaijani Government, having responded at last to the concerns of the Committee of Experts, argues that these provisions do not amount to forced labour, as the penalty of corrective labour is simply the confiscation of 5–20 per cent of the remuneration of the work performed by the person concerned. We cannot agree. Forced labour is defined as any work imposed by the State on a private individual, under threat, including the non-payment of wages even if only a part of them. And, in practice, it seems that these criminal provisions have been applied in an attempt to silence dissenting voices.

We appreciate the statistics provided by the Azerbaijani Government on the number of cases in which labour sentences have been imposed. As the report of the Committee of Experts

points out, many European and UN bodies and institutions have observed an increasing tendency to use provisions of the Criminal Code to prosecute journalists, bloggers and human rights defenders, as well as in the punishment of insults, vandalism, state treason and the abuse of power.

The information provided by the Government states that reforms have decriminalized certain offences and made them administrative offences. However, the UN Human Rights Committee has noted that, at the same time, the administrative penalties that can be imposed for minor charges, and which are often mobilized against human rights activists, have increased considerably from 15 days in prison to 90 days.

These criminal provisions and their application in practice are contrary to Article 1(a) of the Convention, and there is an urgent need for Azerbaijan to bring its legislation and practice into line with the Convention. It is clear that the preferred course of action should be the removal of all criminal sanctions for the expression of democratic political views.

In addition, the European Court of Human Rights has, on several occasions, dealt with cases involving the detention and conviction of political opponents. In all the cases mentioned in the report of the Committee of Experts, the European Court of Human Rights concluded that the European Convention on Human Rights had been violated. In 2018, similar findings were made by the UN Working Group on Arbitrary Detention, which also concluded that ordinary criminal law provisions are being used to undermine journalists' freedom of expression. More recently, the report of the Committee of Experts refers to the July 2019 visit of the Council of Europe Commissioner for Human Rights, who came to the stark conclusion that the right to freedom of expression is still under threat in Azerbaijan.

These elements, taken together, point to an environment that is not conducive to the exercise of civil liberties. Yet, it is clear that the free exercise of these public freedoms is an absolute prerequisite for the exercise of other fundamental labour freedoms that Azerbaijan must respect. These include the rights of association and assembly, through which citizens seek to make their views known and accepted and which may be affected by political coercion of the kind we see in Azerbaijan today.

The large number of international institutions making similar findings cannot, and should not, leave the Government unmoved. It is high time to remedy this situation and to restore an environment conducive to the exercise of civil liberties, which is a precondition for full compliance with international core labour standards, including, of course, the Convention.

In particular, and as a matter of urgency, Azerbaijan should ensure that criminal sanctions for the peaceful expression of dissenting political views, especially where such sanctions are accompanied by an obligation to work, are ended in order to bring its legislation and practice into line with the Convention.

Employer members – This Convention is one of the ILO's fundamental Conventions and should therefore be subject to particular attention and priority monitoring. We will begin with some procedural matters.

This is the first time that our Committee is examining this individual case, but it is already the third observation made by the Committee of Experts since 2015. Reading the Committee of Experts' observations, the lack of responses to these observations since 2015 gives the impression that there has not been any substantial progress made in eradicating forced labour as a punishment for certain criminal convictions related to peaceful freedom of expression.

On 28 February 2022, the Government had talks with the Office and, notably, received a Technical Note providing the necessary information to bring its criminal legislation and practices into line with ILO standards. We welcome the decision to request ILO technical assistance, which was announced by the Government during that visit and a few minutes ago.

In the meantime, the Office received written information on 16 May. We have reviewed this information and will come back to that in a moment.

We welcome the fact that the Government has finally taken the observations of the Committee of Experts seriously, because the Convention is, as I said, one of the ILO's fundamental Conventions, and peaceful freedom of expression is also a fundamental human right. Going forward it would be unthinkable for Azerbaijan, in spite of having ratified this Convention in 2000, to continue failing to submit full reports on the application of this fundamental Convention to the ILO in a timely manner.

Moving on to the content of the case. With regard to the law, since its observations in 2015, the Committee of Experts has noted that several provisions of the Criminal Code provide for heavy sanctions, including punishments of compulsory labour, in cases involving the dissemination of false information, including via the internet, or the organization of public assemblies.

According to the United Nations Human Rights Committee, the maximum term of imprisonment for misdemeanours, such as resisting the police during peaceful demonstrations, has been increased from 15 to 90 days.

A new offence was recently added to the Criminal Code to criminalize posting slander or insult on an internet information resource by using fake usernames, profiles or accounts. This offence is punishable by imprisonment for up to one year. And recently, imprisonment for up to three years was added to the Criminal Code for cases involving the use of digital online tools to smear or humiliate the honour and dignity of the President.

In practice, several European and United Nations institutions and bodies confirm that these criminal provisions are interpreted very broadly by the courts. These bodies and the Committee of Experts have therefore been able to note that journalists, bloggers, human rights defenders and others are regularly prosecuted for expressing their opinions in a peaceful manner.

According to the report of the Commissioner for Human Rights of the Council of Europe following her visit to Azerbaijan in July 2019, no progress had been made with regard to protecting freedom of expression in Azerbaijan. The United Nations Working Group on Arbitrary Detention concluded that the deprivation of liberty of a journalist, who had been accused of so-called drug crimes and sentenced to nine years in prison, was as a result of his exercise of the right to freedom of expression. Lastly, the European Court of Human Rights has handed down a number of decisions since 2008 stating that convictions on the basis of article 147 of the Criminal Code, carrying a compulsory labour punishment, constitute a violation of article 10 of the European Convention on Human Rights, which protects freedom of expression. The same Court has continued to hear cases pertaining to Azerbaijan relating to the detention and conviction of political opponents.

All these official sources are in agreement that freedom of expression is still not guaranteed in Azerbaijan.

In its written information of 16 May, the Government explains however, using legal and practical arguments, that freedom of expression is in fact guaranteed in the country and that,

strictly speaking, nobody is forced to carry out any compulsory labour for the benefit of the State in the discharge of a criminal conviction.

In its 2012 General Survey, the Committee of Experts states that "national constitutions and other legislative texts in practically all countries contain provisions recognizing the rights to freedom of thought and expression, freedom of peaceful assembly, freedom of association, as well as freedom from arbitrary arrest and the right to a fair trial in accordance with due process of law". The General Survey continues by specifying that: "in this connection … the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence".

Taking into account all the elements gathered recently in Azerbaijan, the Employer members urge the national authorities to guarantee freedom of expression starting by amending the Criminal Code. Only actions that use violence, incite violence or engage in preparatory acts aimed at violence linked to the expression of an opinion can be liable to criminal sanctions. The criminal law must define the offences in more detail and prevent any broad interpretation by the courts. This is a fundamental democratic principle.

The Employer members call on the Government to take immediate and effective steps to ensure that no person who peacefully expresses political opinions or opposes the established political, social or economic system can be given a sentence involving compulsory labour or imprisonment, either in law or in practice.

We understand that the Government has decided to set up an inter-agency working group (a National Task Force) comprised of public bodies, non-state institutions and social partners to review these issues. We also understand that, in order to have more information to work from, an initial assessment of needs has identified that not only are statistics on cases and penalties needed, but information on the acts that gave rise to the criminal prosecutions, the summary of the court deliberations and the decisions delivered in these cases should also be presented to the ILO. We encourage the Government to make an effort in this regard.

Lastly, we welcome the Government of Azerbaijan's decision to request technical assistance from the Office in order to have guidance on how to bring its legislation and practices into line with the Convention. This is a positive step, which the Employer members strongly encourage. The Government is required to comply with all its reporting obligations from now on and to respond to any questions asked of it by ILO bodies completely and within the required deadlines.

Worker member, Azerbaijan – I would like to give some information on the application of the Convention at the national level. In early February of this year, the Azerbaijani Trade Unions Confederation (AHIK) received information through colleagues from the Bureau for Workers' Activities (ACTRAV) that the Government had not provided a detailed report on the application of the Convention or the documents required by the direct request from the Committee of Experts. AHIK took the information into consideration during its full examination of the Azerbaijan case and held initial meetings with the social partners and the ILO National Coordinator in Baku.

On 23 February 2022, the Ministry of Labour and Social Protection organized an online ad hoc meeting with the participation of the social partners and the relevant public authorities (the Ministry of Justice, the Ministry of Internal Affairs, the Attorney General's Office and the Ministry of the Economy). The participants in the ad hoc meeting agreed to establish a task force working group to address the case relating to the Convention and collect feedback from the relevant agencies.

AHIK has requested the technical support of ACTRAV to conduct awareness-raising and develop the professional skills and knowledge of its members. With that technical support, AHIK held a tripartite workshop on the role of trade unions in the application of the Convention in Baku in May 2022. The workshop was attended by the Chairperson of AHIK, managerial officials of the Ministry of Labour and Social Protection and the National Confederation of Employers' Organizations, as well as Mr Sergeyus Glovackas, ACTRAV Desk Officer for Europe and Central Asia, Mr Gocha Aleksandria, Senior Specialist at the ILO Country Office for Eastern Europe and Central Asia in Moscow, Ms Mélanie Jeanroy, ACTRAV Legal and Labour Law Officer, and the ILO National Coordinator in Baku.

As a trade union, we are strongly committed to improving national legislation and bringing it into line with the Convention while taking account of all the comments raised by the Committee of Experts.

AHIK stands ready to take very seriously any case related to forced labour in its member enterprises and entities. For the time being, no complaints of forced labour have been received by AHIK. All cases related to labour relations and violations of national labour legislation and international labour standards are under AHIK's ongoing supervision.

In line with the Law on Trade Unions, AHIK has contributed to preparing national labour and social protection legislation and economic policy. AHIK is also contributing to developing a criminal code and the relevant national legislation under its competence and capacities. I would also like to inform the Committee about the outcomes of the seminar entitled "The Role of Trade Unions in Meeting the Requirements of ILO Conventions Nos 29 and 105" that was held in Baku this May.

The outcomes are the following. The scope of the legal definition of "forced labour" in Convention No. 29 is interpreted much more broadly than in the Labour Code of the Republic of Azerbaijan (article 17, paragraph 1). Here, the very concept of forced labour applies only to the context of labour relations and labour functions, while in the Convention itself it applies to both labour and service, or civil, contractual relations. A proposal was made to bring this norm of the Labour Code of the Republic of Azerbaijan into line with the ILO Convention.

It would be useful to study the experience of Member States with examples of indicators in the field of the abolition of forced labour, as well as the international experience of mechanisms, or procedures, in limiting the scope of certain provisions of the Criminal Code in accordance with Article 1 of the Convention. In order to prevent forced labour, it is important for the social partners to organize collective bargaining for all workers, regardless of the organizational and legal form of the workplace, and to promote the right to organize in trade unions.

Employer member, Azerbaijan – The Deputy Minister and my colleague from the trade unions gave brief information about our response to the ILO's request as well as about what we have been doing in the past two months in the working group. All partners, including the National Confederation of Employers' Organizations, gave their comments to this working group, and our comments to the working group were reflected in the general document provided by the Government to the Committee. Here we see that the ILO and the Committee of Experts assess forced labour and provide recommendations in relation to the alignment of legislation. I also would like to give some information on the penalties. In our opinion, correctional work and work in the community cannot constitute forced labour. The Worker members said that correctional work can be considered forced labour, but it is actually a monetary sanction, and it is lighter than an ordinary fine. Actually, the penalty of correctional work provided for in the legislation is, in practice, one of the lighter penalties of the Criminal

Code, in comparison to imprisonment or sanctions restricting freedom of liberty. Nevertheless, we can work on the definitions and narrow the scope of our definitions of crimes, and we can undertake an analysis of the act. But, generally, as the Deputy Minister indicated in Azerbaijan in the last four or five years we have made some legal reforms that have decriminalized many acts. There are, perhaps, some aspects that we should accept. However, concluding that our general legislation is not in line with the ILO Conventions or other general human rights conventions is not a fair approach.

Government member, France – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The candidate countries **Montenegro** and **Albania**, the European Free Trade Association countries **Iceland** and **Norway**, Members of the European Economic Area, align themselves with this statement.

The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights. We actively promote the universal ratification and implementation of fundamental international labour standards, including the Convention, and we support the ILO in its indispensable role to develop, promote and supervise the application of ratified international labour standards and of fundamental Conventions, in particular.

Relations between the EU and Azerbaijan are based on the Partnership and Cooperation Agreement in force since 1999 and are guided by the joint partnership priorities in place since 2018, which include among its focus areas cooperation on strengthening institutions and good governance.

We thank the Office and give our full support for its constant engagement in promoting labour rights in Azerbaijan. We thank the Committee for the report on the implementation of the Convention in Azerbaijan.

The EU and its Member States deplore the continued use of the provisions of the Criminal Code to prosecute and convict persons who express their political views or views ideologically opposed to the established political, social or economic system, leading to penalties of correctional work or imprisonment, both of which involve forms of forced or compulsory labour that the Government, under the Convention, is supposed explicitly to suppress and refrain from using.

We fully echo the call of the Committee of Experts and strongly urge the Government to take immediate and effective measures to ensure that, both in law and practice, no one who, in a peaceful manner, expresses political views or opposes the established political, social or economic system can be sentenced to sanctions under which compulsory labour is imposed.

We are also deeply concerned to note that the Committee of Experts has observed no progress with regard to protecting freedom of expression in Azerbaijan and that journalists, social media activists and opposition political activists who express dissent or criticism of the authorities are convicted and imprisoned under various provisions of the Criminal Code and run the risk of forced labour.

We welcome the written information provided by the Government of Azerbaijan. We take note of the initial steps taken, including the establishment of an inter-agency working group to review the issues raised in the observation and direct request of the Committee of Experts. However, these initial steps by the Government should cover all issues raised in the report, without exceptions. We also take note of the steps envisaged that recognize the fundamental role of the ILO in addressing decent work deficits and the relevance of ILO technical assistance.

We would welcome a clear timeline for the abolition of the use of forced and compulsory labour in Azerbaijan, including as a form of political coercion.

The EU and its Member States stand ready to assist Azerbaijan in meeting its obligations and will continue to closely follow the situation in the country.

Government member, Türkiye – We would like to thank the Government for the detailed response that they have provided to the Committee. We take note of Azerbaijan's efforts to work closely with the ILO and we believe that the ILO can, and should, play a key role here in settling the issues by providing technical assistance in order to support the Government's efforts to improve working conditions in the country. The Government of Azerbaijan shows willingness to benefit from the technical assistance of the ILO.

As a Member of the ILO, Azerbaijan has ratified 58 Conventions, including all the fundamental and priority Conventions. We commend the positive and significant developments, such as the declining use of correctional labour, the introduction of about 300 amendments to the Criminal Code and the decriminalization of a number of criminal offences, the reduction of fines and the mitigation of prison sentences for certain crimes.

We welcome the fact that the Azerbaijani Constitution and its national legislation enshrine and protect the exercise of freedom of assembly, and that the Government demonstrates its strong desire to continue engaging in social dialogue with the social partners. We also appreciate that Azerbaijan has established an inter-agency working group to review the issues raised in the observation and direct request of the Committee of Experts.

The intensive consultations and discussions with the social partners, the several meetings with ILO representatives and the work on the ratification of the Convention are significant indications of the Government's strong readiness to strengthen and adapt its current legislative framework to bring it into line with ILO standards. We encourage the Government to continue to undertake the necessary steps in this regard.

We believe that Azerbaijan will continue to work with the ILO and the social partners in the spirit of constructive cooperation regarding the ILO and international labour standards and comply with reporting obligations and the ratified Conventions.

Worker member, Belgium – We are worried by the information contained in the report of the Committee of Experts. We are also concerned that the Government has not complied with its obligation to reply to the various concerns raised regarding failure to comply with the Convention. In particular, the fact that convictions to sentences of compulsory labour are handed down to persons who express their political views or their opposition to the established political, social or economic system is a cause of concern.

In its report, the Committee of Experts notes that several provisions of the Criminal Code establish sanctions of correctional work or imprisonment involving compulsory labour. These criminal provisions are drafted in broad terms and lend themselves to an interpretation that allows criminal sanctions to be imposed for the expression of political views opposed to the established political, social or economic system. The report also notes a growing tendency to apply these provisions of the Criminal Code as a basis for the prosecution of journalists, bloggers and human rights defenders who express opinions.

The criminalization of freedom of expression creates an atmosphere of fear. It dissuades human rights defenders and defenders of workers' rights. It is also seriously prejudicial to freedom of association. We firmly support the call made by the Committee of Experts to the Government to take immediate and effective measures to ensure that in both law and practice

no one who in a peaceful manner expresses political views or opposes the established political, social or economic system can be sentenced to penalties under which compulsory labour is imposed.

We understand that certain measures have already been taken by the Government, as reported to the Conference, including the amnesty for persons sentenced to compulsory labour. We also understand that the Government has approached the ILO and the social partners concerning the review of the legislation in question. We urge the ILO to provide technical assistance for this process in order to ensure that civil liberties are guaranteed in law and practice and that there are no further penalties of forced labour in cases of convictions for having expressed opinions that are ideologically opposed to the established political, social or economic system.

Government member, Belarus – I would like to thank the delegation of Azerbaijan for their complete report. The report before us contains a number of comments reflecting answers to the questions relating to the application of provisions in the Criminal Code and the penalties applied resulting from the infringement of laws applying to individuals, the State and organizations. The application of correctional work is covered in a number of provisions of the Criminal Code of Azerbaijan, and there are also substantive statistics on this issue.

With regard to the complaints raised against the Government concerning the application of such penalties and these provisions to those carrying out strikes, the interpretation of the Committee indicates, regarding the right to carry out strikes, that there can be no direct threat to public order, and they must be carried out in observance of national law. We consider that failure to respect such provisions allows the forces of law and order to impose respect for those laws, so there needs to be a proportionate response in Azerbaijan, and in other countries as well.

We believe that Azerbaijan is not departing from its national laws and that it also fully respects the provisions of the ILO.

Government member, Canada – We thank the Government of Azerbaijan for the recent information provided to address the observations of the Committee of Experts and additional details provided by the Deputy Minister. Protecting the freedom of expression of journalists, social media activists and political protesters is of utmost importance to Canada. Canada believes freedom of expression, both online and offline, is at the core of human individuality and is one of the essential foundations of a safe and prosperous society. We also strongly believe that media freedom remains an important part of democratic societies, and it is essential to the protection of human rights and fundamental freedoms.

We are therefore deeply concerned by persistent reports of provisions of the Azerbaijan Criminal Code being used to prosecute and convict persons who express their political views or views ideologically opposed to the established political, social or economic system, leading to penalties of correctional work or imprisonment involving compulsory labour, in violation of the Convention.

We therefore urge the Government of Azerbaijan to:

- take immediate action to ensure that, both in law and practice, no one who in a peaceful manner expresses political views or opposes the established political, social or economic system can be sentenced to sanctions under which compulsory labour is imposed;

- review all relevant sections of the Criminal Code identified by the Committee of Experts and clearly restrict the scope of these provisions to situations connected with the use of violence or incitement to violence or repeal sanctions involving compulsory labour;
- avail itself of ILO technical assistance towards these goals. We welcome the Government's recent stated intention to cooperate with the ILO on this matter. We sincerely hope that the Government, in its next report to the Committee of Experts, will highlight positive developments.

Government member, Switzerland – Forced labour is a violation of human rights. Switzerland is concerned at the broad application of several provisions of the Criminal Code in Azerbaijan which provide for penalties of correctional work. It is concerned at the use of such provisions to penalize the expression of opinions. Switzerland firmly condemns the application of provisions involving compulsory labour, both to penalize persons who peacefully express political opinions or opposition to the political system, or for any other reason. These provisions and this practice are incompatible with the Convention.

While thanking the Government of Azerbaijan for the information provided in writing, Switzerland calls on the Government to continue taking every measure for the elimination of this practice and to provide all the information requested by the Committee of Experts in its report.

Government representative – I would like to extend my sincere gratitude for the invitation to participate in this honourable platform and for the opportunity to present our case. We have attentively taken note of the valuable comments and recommendations expressed by the Committee of Experts and the delegates.

The exchange of views from diverse perspectives once again demonstrates the good spirit of cooperation and constructive dialogue, as well as the commitment of the Azerbaijani Government to adhere to and implement ILO norms and principles. The comments and recommendations are well noted, they will be conveyed to the National Task Force and certainly will also serve as a basis for the planned technical assistance agreements with the ILO in order to tackle the matters raised in the observation and the direct request of the Committee of Experts.

Certainly, the ILO appreciates the understanding of the esteemed speakers today, as they appreciate the efforts and action already undertaken in recent months. However, of course, the scope of the matters already raised indicates that significant effort should continue to be exerted in the coming months. In the written information that was provided by the Azerbaijani side on 16 May, the Government made its best effort to capture and address the crucial aspects given the current circumstances and capacities. Therefore, in our written information, explanations in relation to the legislative wording and drafting were provided. In addition, statistics on cases and penalties were provided. However, based on the feedback expressed today, we well understand that additional information and explanations should be provided, and we will do so. It seems that there are still certain aspects of legislation and practice in the field of criminal law that require additional elaboration, explanation and clarification. Given that, our probable future steps on the Azerbaijani side can be grouped into two directions.

Our first line of action is to collate and provide all available information on the current situation of legislation and practice from the different line ministries engaged in the application of the Criminal Code, including the Ministry of Justice, the Supreme Court, the Ministry of Internal Affairs and the Attorney General's Office. As I stated in my presentation, since the start of the criminal law reforms over the last three or four years, 300 amendments

have been made to criminal processes, and information about the reforms is still fresh. This is new information, which we have to properly share and present for consideration and review by the Committee of Experts. I believe that we may also have to shed more light on the Criminal Code reform.

Our second line of action will be to prepare and present more detailed information, not only on cases and statistics on penalties, but also information on the acts and the facts that give rise to criminal prosecutions, and probably more detailed information on court deliberations and decisions, indicating why those decisions were delivered under the articles of the Criminal Code. This information is currently not available in English, but it is already publicly available so that all local experts and interested parties may easily familiarize themselves with court decisions and court deliberations via the web page of the Supreme Court and the Azerbaijani judicial authorities. Court deliberations are already open to the public, and the process can easily be accessed. However, the volume of this information is quite large, and it needs to be properly translated into English. This requires more time and additional resources.

Also, we will be able to identify within this process outstanding gaps that have not yet been covered by the current reforms but that may serve as a framework for future reform. For this reason, we believe that technical assistance from the ILO would assist in creating a more concrete framework for those reforms, as that would address the matters raised by the esteemed Committee members today. I would also like to share with you that, based on the statements, comments and recommendations expressed today, we believe that – and all Committee members likely also agree – it is not just a straightforward matter of replacing all correctional work, work in the community and penalties with fines or other forms of penalties; this approach requires study, and we will likely require experts, and we will also need to engage with Azerbaijani line ministries, because they are the major drivers behind the criminal law reforms, in order to explain and to bring it into the context and the platform of ILO cooperation.

Therefore, we will work closely with the ILO through the Geneva Office, through the Regional Office that is coming to Azerbaijan in mid-June, and also through technical assistance.

Worker members – We thank the representative of the Azerbaijani Government for the information he was able to provide during the discussion. We also thank the speakers for their contributions. There are, nevertheless, many consistent reports calling into question whether the free exercise of public freedoms is possible in Azerbaijan.

Those public freedoms are essential to the observance of international labour standards and the rights and freedoms that they enshrine. For this reason, the Convention itself provides, in Article 1(a), that the imposition of labour penalties for the expression of political opinions or the manifestation of ideological opposition to the established political, social or economic order is expressly prohibited.

Sadly, it is apparent that Azerbaijani legislation and practice have been in clear contradiction with this provision for many years.

We can, therefore, only call on the Government to amend its legislation as soon as possible to abolish the criminal sanctions imposed on persons expressing peaceful, dissenting political opinions. In order to comply with Article 1(a) of the Convention, Azerbaijan must ensure that any criminal sanctions involving an obligation to work are abolished for such persons.

We also consider it essential that Azerbaijan cancels all the labour sentences currently being served, or still to be served, that were imposed for the expression of political opinions or the manifestation of ideological opposition to the established political, social or economic order. We acknowledge the positive signal sent by the Amnesty Act passed in November 2021 which cancelled correctional labour sanctions for more than 17,000 people and hope that these sanctions will not be imposed in the future so that such an amnesty law will no longer be necessary.

Furthermore, we call on the Government to restore an environment in which the free exercise of public freedoms is fully guaranteed, without which all fundamental labour rights and freedoms cannot be fully guaranteed. To fully restore this environment for the exercise of civil liberties, we call on the Azerbaijani Government to ensure that victims of labour sentences in contravention of the Convention have access to adequate remedies and redress for the harm suffered.

We welcome, however, the initiatives announced by the Government to remedy the situation and hope that these initiatives will be implemented in practice, in consultation with the social partners.

We encourage the Government of Azerbaijan to continue the dialogue with the ILO on this issue and to provide it with all relevant information for a thorough analysis of the compliance of Azerbaijan's legislation and practice with the Convention. Finally, in order to implement these recommendations, we call on the Government to honour its commitment to avail itself of ILO technical assistance.

Employer members – We thank the various speakers, and particularly the Government of Azerbaijan for the written and oral information that has been provided to the Committee concerning the measures taken to bring national law and practice into conformity with the Convention. On the substance, we insist on the fact that the Convention is a fundamental Convention, and as such it requires particular attention from the ILO, governments and the social partners.

Our position in relation to Azerbaijan is clear: there can be no leeway with regard to peaceful freedom of expression, nor with the related fundamental rights. This is an extremely serious case.

With regard to the Criminal Code and its application to persons who express their opinions, the Employers' group calls on the Government to take immediate and effective measures to ensure that, both in law and practice, no one who peacefully expresses political views or opposition to the established political, social or economic system can be sentenced to penalties involving compulsory labour.

We hope that the request for technical assistance to make the necessary legislative reforms, currently promised by the Government, will reach the ILO very soon. This is a unique opportunity to ensure the application of the Convention. The Employers' group calls on the Government of Azerbaijan to collaborate constructively in carrying out the reform of the Criminal Code and current practices.

Finally, on a point of great importance, we count on the Government to provide the information requested in good time and to comply with the reporting cycle. We insist on the quality and relevance of this information as a basis for assessing the effective progress made in law and practice. We are therefore counting on the positive attitude of the Government so that the case does not come back before the Committee again.

Conclusions of the Committee

The Committee took note of the written and oral information provided by the Government representative and the discussion that followed.

The Committee deplored the continued use of penal sanctions involving compulsory labour as a punishment for the expression of political views or views ideologically opposed to the established political, social or economic system. The Committee also noted with disappointment that various provisions of national legislation that provide for such penalties have not been repealed or amended in order to bring them into conformity with the Convention.

Taking into account the discussion, the Committee urges the Government of Azerbaijan to take effective and time-bound measures to:

- **ensure that the right to hold or express political views or views ideologically opposed to the established political, social or economic system without the threat of penalties involving compulsory labour is fully respected in line with Article 1(a) of the Convention;**
- **repeal or amend relevant provisions of the Criminal Code, including those leading to penalties of correctional work or imprisonment, in consultation with the social partners, in order to bring them into conformity with the Convention;**
- **quash convictions and drop all charges brought against individuals for having expressed political views or views ideologically opposed to the established political, social or economic system;**
- **ensure access to effective judicial remedies for victims of compulsory labour in violation of the Convention; and**
- **develop an action plan, in consultation with the free and independent employers' and workers' organizations, to implement these conclusions without delay.**

The Committee invites the Government to avail itself of ILO technical assistance to effectively implement the Committee's conclusions.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 with information on the application of the Convention in law and practice, in consultation with the social partners.

Government representative – We would like to, once again, thank the Committee members, social partners and governments for their constructive and forward-looking discussion on our case and for the acknowledgment of the developments and the efforts made by the Government relating to the subject matter.

We take good note of the conclusions adopted by the Conference Committee. They will be conveyed to the national task force. They will also serve as cases for detailed consultations with the large team of experts from the ILO's Regional Office coming to Azerbaijan on 20–22 June this year. The discussions are planned to take place during the Conference, followed by a series of bilateral meetings that will result in planned steps to be taken in the coming months.

We would like to reiterate that our country is committed to fully respect and implement its obligations under the ILO Conventions, so we will continue to work with the social partners and the relevant stakeholders within the Government, and with ILO technical assistance on legislation and practice related to the implementation of the Convention in Azerbaijan.

Belarus (ratification: 1956)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Written information provided by the Government

The Government of Belarus has considered the report of the Committee of Experts of 2022 and has to state again with great regret that, as before, the arguments of the Belarusian side regarding compliance with the Convention, the implementation of the recommendations of the Commission of Inquiry and the situation after the presidential elections in 2020 have not taken into account.

The position on the Belarusian case is formed solely on the basis of complaints from the Belarusian Congress of Democratic Trade Unions (BKDP), the International Trade Union Confederation (ITUC), IndustriALL Global Union and other structures. Their assessments and allegations are often conditioned by political motives, and their leaders' views regarding the path of development and the geopolitical choice of Belarus are biased, incorrect and should not be used as a guideline for the formation of an objective perception of the situation in the country.

Today, it is obvious that the sharp negative shift in the assessments of the ILO supervisory bodies in relation to Belarus is associated exclusively with the political events that took place in the country.

The Government insists that such an approach is unfair, counterproductive, absolutely unacceptable and can become a serious obstacle to the further development of constructive interaction on the implementation of recommendations, both within the country and with representatives of the ILO.

Events of a purely political nature, not related to the processes of social dialogue in the field of labour, should not be the basis for assessing the situation with respect to the Convention.

At the same time, complaints received by the ILO testify to the desire of their authors to deliberately and unreasonably draw political issues into the sphere of competence of the ILO in order to ensure pressure on the country through this authoritative international organization.

Taking into account the above information, as well as the recommendations of the Committee of Experts, the Government considers it necessary to submit the following comments.

Implementation of the recommendations of the Commission of Inquiry

The Government notes with deep regret the negative assessments of its ongoing efforts to build constructive interaction with the social partners and the ILO in order to implement the recommendations addressed to the Belarusian side.

The Government pays due attention to the comments and recommendations of the ILO supervisory bodies. At the same time, the ILO bodies should take a more critical approach to the content of incoming complaints and should not build their position on the basis of unconfirmed data. Complaints by trade unions are not always caused by an objective situation and do not always reflect the real state of affairs.

We believe that the open position and readiness of the Government for constructive dialogue with the social partners and the ILO are a good basis for continuing interaction on the implementation of the recommendations of the Commission of Inquiry, the essence of which involves the long-term and systematic work of all those concerned to improve social dialogue with the obligatory consideration of realities and national interests of Belarus.

The Government has already taken a number of specific targeted steps, as a result of which some of the recommendations have been fully implemented, and significant progress has been achieved in the implementation of the rest.

Thus, the recommendations of the Commission of Inquiry have been brought to the attention of the general public. Systematic steps have been taken to inform representatives of the judiciary and prosecution authorities about the need to carefully consider complaints of anti-trade union discrimination. An additional mechanism for the protection of trade union rights has been introduced – the Council for the Improvement of Legislation in the Social and Labour Sphere has been entrusted with the function of a tripartite independent body that enjoys the confidence of all interested parties. Measures have been taken to liberalize the process of the registration of trade unions – the Republican Registration Commission has been abolished, and the requirement for at least 10 per cent of the total number of employees to form a trade union has been cancelled. The Government constantly monitors issues of interaction between the administrations of enterprises and trade unions, clearly delineating its position on the inadmissibility of interference by enterprise managers in the activities of trade union organizations.

It must be emphasized that all this time the Government has clearly followed the agreements reached and the plans developed jointly with the ILO to implement the recommendations.

As a result of the work of the direct contacts mission in the country in 2014, with the support of the ILO, a number of international technical cooperation activities were carried out aimed at implementing specific recommendations of the Commission of Inquiry.

Despite the fact that at the moment the proposals of the direct contacts mission have been successfully implemented, the Government is interested in continuing interaction with the ILO, both on the implementation of the recommendations, and on a wider range of issues that meet the goals and objectives of the Organization.

The Government reaffirms its commitment to fundamental principles and rights at work and expresses its readiness to continue constructive engagement with the social partners and the ILO on issues of concern, as well as on a wider range of social and labour issues, subject to the obligatory condition of taking into account the realities and sovereign interests of the Republic of Belarus.

Commission of Inquiry's recommendation No. 8

Bringing to justice those who break the law

The ILO supervisory bodies refer in their recommendations to the Commission of Inquiry recommendation No. 8, according to which adequate protection or even immunity against administrative detention should be guaranteed to trade union officials in the performance of their duties or when exercising their civil liberties.

It should be noted that this recommendation in no way refers to the release of trade union workers from liability in case they commit unlawful acts. Moreover, the need to respect the

rule of law in the exercise of the rights recognized by the Convention is enshrined in Article 8(1) of the Convention.

In this regard, we consider it necessary to emphasize that any allegations that trade union activists were held accountable solely for participating in peaceful protests and legal strikes are untrue and completely unfounded. There were serious legal grounds for bringing to justice citizens whose actions were unlawful.

Accordingly, any calls to release and drop all charges against trade union activists who, it must be emphasized, were held accountable for specific acts of violation of the law, seem to be absolutely unfounded.

Impartial and independent judiciary, fair trial

The principle of the rule of law is respected in Belarus. The State guarantees the rights and freedoms of citizens, enshrined in the Constitution, laws and stipulated by international obligations.

By virtue of the provisions of article 60 of the Constitution, everyone is guaranteed the protection of his/her rights and freedoms by a competent, independent and impartial court.

Judges in the administration of justice are independent and subject only to the law. Interference in the activities of judges is unacceptable and entails liability under the law.

The trial of cases in all courts is open. Hearing of cases in a closed court session is allowed in cases specified by law, in compliance with all rules of legal proceedings.

Justice is delivered on the basis of an adversarial procedure and the equality of the parties in the process.

Judicial decisions are binding on all citizens and officials.

The parties and persons participating in the process have the right to appeal against decisions, sentences and other judicial decisions.

There are no obstacles for citizens to apply to the court.

Registration of trade unions

Consideration of registration issues within the framework of the Tripartite Council for the Improvement of Legislation in the Social and Labour Sphere

In Belarus, at the level of legislation, everything necessary has been done to ensure that trade unions and their organizational structures successfully pass the procedure of state registration.

Decisions affecting the right of citizens to join trade unions are taken in strict accordance with the current legislation, based on the principle of maximum consideration of the interests and rights of citizens and trade unions.

In order to expand the possibilities of trade unions in terms of obtaining a legal address, they are given the opportunity to be located not only at the address of the employer, but also in any other place.

As practice shows, the need to confirm the presence of a legal address today is not an obstacle to the registration of trade unions.

Denials relating to registration are rare and have objective reasons, in the vast majority of cases not related to the lack of confirmation of a legal address. The main reasons for denials are non-compliance by trade unions with the provisions of the law regarding the procedure for creating trade union organizations and submitting all the necessary information and documents to the registration authorities.

Since, if the procedure for creating a trade union is followed, documents for registration after the elimination of identified shortcomings can be submitted to the registration authorities again, the refusal to register a trade union is not equivalent to a ban on the creation of a trade union (its organizational structure) and is not an insurmountable obstacle to registration.

Issues of registration of trade unions can be considered within the Tripartite Council when this body resumes its work (after the improvement of the epidemiological situation).

At the same time, consideration of any issue within the framework of the Council is expedient only if materials submitted by the parties to the Council really confirm the existence of a problematic issue. Otherwise, the members of the Council will have no reason to consider and discuss the relevant agenda item.

Organization and holding of public mass events

Receiving and using foreign gratuitous aid

The Government notes with regret that its arguments regarding the possible destructive consequences of the implementation of recommendations aimed at weakening state control over funds entering the country from abroad and removing responsibility from trade union structures for violating the law during mass events have not been taken into account.

The procedure established in the country for receiving foreign gratuitous aid is unreasonably linked to Articles 5 and 6 of the Convention. These Articles do not contain provisions on the right of trade unions to freely receive financial or other assistance for political and agitation work among the population.

The legislation of the country does not prohibit the receipt of foreign gratuitous aid by trade unions. At the same time, the legislation defines the conditions (purposes) for the use of foreign gratuitous aid, and also provides that such aid must be registered in the prescribed manner. The registration procedure is simple and can be carried out in a short time.

There are no records of refusals for trade unions to receive foreign gratuitous aid. There were no cases of liquidation of trade unions for violating the procedure for its use.

At the same time, providing external forces with the opportunity to sponsor mass events in the country can be used to destabilize the socio-political and socio-economic situation, which, in turn, will have an extremely negative impact on the life of society and the well-being of the citizens.

The ban on receiving and using foreign gratuitous aid for purposes involving political and agitation work is due to the interests of national security, and the need to exclude opportunities for destructive influence by external forces in order to destabilize the socio-political and socio-economic situation.

The current procedure for organizing and holding mass events in the country does not conflict with the principles of freedom of association and is fully consistent with the provisions of the International Covenant on Civil and Political Rights.

The norms of the legislation providing for punishment for violating the procedure for organizing and holding a mass event, which entailed serious negative consequences, are aimed at preventing socially dangerous illegal acts that pose a real threat to the life and health of citizens.

When holding mass events, trade unions are obliged to observe public order and, a priori, should not allow actions as a result of which the event may lose its peaceful character and cause serious harm to citizens, society and the State.

The punishment provided by law for organizers of mass events for causing significant damage, harm to the rights and interests of citizens and organizations, as well as to the State or public interests, is not and objectively should not be interpreted as a deterrent for citizens and trade unions to exercise their right to freedom of peaceful assembly.

The decision to terminate the activities of a trade union for violating the law on mass events which caused serious damage, significant harm to the rights and interests of citizens, organizations, society and the State, can only be taken in court.

The amendments made to the Law "On Mass Events" do not contain provisions prohibiting citizens from exercising their right to peaceful assembly in order to protect their rights and legitimate interests. The amendment of the Law is directed against organization, preparation and commission of actions encroaching on the independence, territorial integrity, sovereignty of the State, the foundations of the constitutional order and public security through the organization of mass riots, the implementation of acts of vandalism associated with damage or destruction of property, the seizure of buildings and structures, as well as other actions grossly violating public order, or active participation in them.

Taking into account the unprecedented political and economic pressure on Belarus aimed at undermining its economic potential, slowing down development and lowering the living standards of the citizens, we believe that the easing of responsibility for violating the procedure for holding mass events and removing restrictions on the use of foreign financial assistance for political and agitation work will help create the conditions to strengthen external destructive influence on the situation in the country, which does not meet the national interests of Belarus.

Right to strike

The current procedure for organizing and conducting strikes in Belarus does not contradict international labour standards and allows citizens to fully exercise their right to hold a legal strike in order to resolve a collective labour dispute that has arisen.

According to Article 8 of the International Covenant on Economic, Social and Cultural Rights, States are obliged to ensure the right to strike, provided that it is exercised in accordance with the laws of each country.

In Belarus, a strike is a temporary voluntary refusal of employees to perform work duties (in whole or in part) in order to resolve a collective labour dispute (article 388 of the Labour Code).

According to section 22 of the Law on Trade Unions, trade unions have the right to organize and conduct strikes in accordance with the law, while political demands are prohibited during strikes initiated by trade unions.

The ban on putting forward political demands during a strike is also enshrined in the third part of section 388 of the Labour Code of the Republic of Belarus.

The unauthorized protest actions that took place in the Republic and the attempts to organize a strike movement at enterprises without taking into account the requirements of the law have nothing to do with the implementation of trade union rights and freedoms to protect the labour, social and economic interests of citizens and are not at all correlated with the tasks that trade unions are called upon to undertake.

The organizers of illegal protest action in enterprises, pursuing purely political goals far from realizing the rights and freedoms of workers, deliberately mislead workers about the legality of such actions, replacing such legal concepts as a strike and a mass event.

For their part, the authorities have repeatedly appealed to citizens with a request to respond in a balanced and prudent manner to incoming calls for participation in mass events called a strike movement, not to succumb to provocations that push to cause economic damage to enterprises and the State and the violation of the rights and interests of other citizens.

The implementation of proposals to legalize political strikes will not so much contribute to the exercise of the right of trade unions to complete freedom of their activities, as create additional opportunities for abuse by various destructive structures and will be used to undermine the economic potential of the Republic, which does not meet the interests of any of the parties to social dialogue.

The information presented in the trade union complaints about citizens allegedly suffering from discrimination, pressure and repression just for exercising their right to participate in a peaceful strike does not correspond to reality.

There were no legal strikes in the enterprises of the Republic.

The citizens, represented in the complaints as workers who suffered from repressive actions on the part of employers and the State, are justifiably subject to disciplinary and (or) administrative liability for specific violations of labour discipline and other provisions of the law.

In this regard, it seems illogical, incorrect and completely unfounded to talk about the fact that these workers were subjected to repressive measures for the mere fact of participating in allegedly peaceful and legal strikes and, accordingly, must be released, reinstated in work (etc.) with the provision of compensatory payments.

Consultations with workers' and employers' organizations

In the Republic of Belarus, a system of social partnership has been created and is successfully functioning, within the framework of which government bodies, associations of employers and trade unions interact in the development and implementation of the socio-economic policy of the State.

The development of draft normative legal acts regulating social and labour issues is carried out with the direct participation of the social partners.

With regard to the proposals to amend the Regulations of the Council of Ministers of the Republic of Belarus (approved by Ordinance No. 193, of 14 February 2009), we consider it necessary to reiterate that draft resolutions of the Government on issues affecting the labour and socio-economic rights and interests of citizens, in accordance with the above Regulations, are sent for possible comments and (or) proposals to the Federation of Trade Unions of Belarus (FPB), as a national trade union centre – the largest republican voluntary independent

association of trade unions, representing the interests of more than 4 million people, that is, as the most representative organization of workers.

This approach does not contradict any principles or norms and allows the interests of the workers to be taken into account to the maximum extent during consultations and during the development of legislative acts.

Labour dispute settlement

The Government once again confirms its interest in continuing joint work with the social partners and the ILO to improve the system for resolving labour disputes.

The Government highly appreciates the assistance of the ILO in terms of improving the work of the Tripartite Council for the Improvement of Legislation in the Social and Labour Sphere, which was created with the advisory support of the ILO as a body that enjoys the confidence of all parties, to consider the implementation of the recommendations of the Commission of Inquiry and resolve other issues of interaction with the social partners, including consideration of incoming complaints.

Thus, at this stage, it is the Tripartite Council that is the body (outside judicial procedures) that considers issues raised by trade unions. At the same time, the Government is ready to move forward along the path of the further improvement of this function of the Council or through the creation of another structure.

The Government looks forward to continuing an open and constructive dialogue with the ILO in order to ensure the further progressive and harmonious development of the Republic of Belarus, and the well-being and prosperity of its citizens.

At the same time, the Government is extremely concerned at the fact that today a number of countries, foreign structures and organizations, instead of developing mutually beneficial cooperation, strengthening global solidarity and coherence of policies in the economic, social and other spheres, are actively contributing to the destabilization of the situation in the Republic of Belarus.

An aggressive and large-scale information attack has been launched against our country, and steps are being taken to form an extremely negative image of the State in the international arena. The purpose of all these actions is to justify the unprecedented and unreasonable sanctions against Belarusian enterprises, organizations and officials.

Much to the regret of the Government, unfriendly countries and various structures are actively using the platform of the ILO to put forward unfounded accusations against the Republic of Belarus that have nothing to do with the real situation.

Taking into account the current situation, the Government would be grateful to ILO bodies for an unbiased attitude towards the processes taking place in the country and for refusing hasty critical assessments of the actions of national authorities aimed at restoring law and order in the country.

The Government calls for objective and comprehensive consideration of the so-called “Belarusian case”, taking into account all the arguments, comments and information presented by the Government.

Discussion by the Committee

Interpretation from Russian: **Government representative, Minister of Labour and Social Protection** – Thank you for giving me the opportunity to speak in the Committee on Belarus' application of the Convention and the application of the findings of the Commission of Inquiry.

Last year, criticism was levelled at the Government and recommendations were handed down. I hope that we will be in a position to report progress, and I will endeavour to do so. I am sure that everybody will have familiarized themselves with the findings of the Commission of Inquiry and will understand that the situation is contrasting.

Firstly, with regard to the recommendations, the Belarusian Government informed the ILO that the application of the findings would take into account the real situation and the potential harm to national interests. Indeed, among the 12 recommendations, there are some which did not spark any doubt as to their possible application. They were clearly and quickly applied. For example, we disseminated the findings of the Commission of Inquiry rapidly and widely with steps taken to inform the judiciary and the Prosecutor's Office of the need for detailed review of complaints of possible anti-union discrimination and to this end, together with the ILO, a series of seminars were organized.

In terms of the simplification of registration, decisions were taken to amend the legal requirement of 10 per cent of employees to create a trade union. Some, among the 12 recommendations, require actions of a more comprehensive nature across the board. For example, the Government of Belarus intends to review the legal system and the dispute resolution system working with the social partners. It is evident that such recommendations involve systemic liaison with the social partners with no definite time frame for implementation. For many countries, not just Belarus, this is an ongoing area of work.

With regard to the recommendations concerning the legislation on mass events, I would underscore that in Belarus there is no separate set of rules. All are equal before the law and all are equally obliged to observe it. With regard to foreign gratuitous aid, there is no legal prohibition on its reception, but the law clearly defines the purposes of its use and its registration. I would underscore that these rules and regulations apply to all legal persons.

An area of concern levelled by the Committee of Experts relates to the fact that the alleged prohibition of the receipt of foreign gratuitous aid is in violation of the Convention. I would like to note that, although there are currently difficulties with the application of the conclusion of the Committee of Experts, the liquidation of trade unions can only be decided upon by court order. Over the last 20 years, there has been no instance of the liquidation of a trade union for misuse of foreign gratuitous aid.

Turning now to the issue of mass events, the current Belarusian legislation in this area does not in fact pose a hindrance to freedom of assembly. There are certain limitations on the purposes and may have their roots in state and public safety and security and are fully in line with international standards on civil and political rights. The liquidation of trade unions for the organization of mass events is also something that has not happened. As such, the practice of the application of our regulation speaks for itself.

I would like to talk now about strikes. The issue of strikes is not covered by the recommendations. However, for various years, the Committee of Experts has called for various amendments to the Labour Code with regard to the regulation of the organization and holding of strikes. Here, the Government's position is clear-cut and well known. All the necessary guarantees of a citizen's right to strike in Belarus are provided for by constitutional provisions as well as the Labour Code and the Law on trade unions. A strike is an extreme dispute

resolution possibility – a last resort – and there are therefore conditions in place for dispute settlement through talks and conciliation. We believe that the Belarusian legislation in this area does not pose any hindrances to the observance of ILO standards.

Another important issue that I would like to draw your attention to is the following. The issue of the application of the recommendations has always developed in a positive way. In 2009, the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere was set up. Its terms of reference were designed in liaison with the social partners and the ILO. The Council has served as the main forum for discussion of topical issues of application of rights, including freedom of association and the implementation of the recommendations of the Commission of Inquiry, as well as possible legislative changes. These positive steps were noted by the Committee.

In 2009, progress was found in terms of Belarus' implementation of the findings of the Commission of Inquiry. The direct contacts mission to Minsk in 2014 also noted elements of trade union pluralism. These are some of the positive steps taken by the Government to promote tripartism. Another example concerns the fact that, in 2017, Belarus was not on the shortlist for the first time, and the reporting obligations on the Convention were subject to a regular reporting cycle.

There is an understanding within the ILO that the situation with regard to the implementation of the findings of the Commission of Inquiry has taken a positive turn. Belarus has shown goodwill in terms of further cooperation. In 2019, we marked the ILO Centenary; this major event was followed by the ratification of the Holidays with Pay Convention (Revised), 1970 (No. 132), and the Safety and Health in Mines Convention, 1995 (No. 176). These Conventions entered into force in February last year.

Two further major events took place – a tripartite conference on social dialogue and a sitting of the Tripartite Council at the regional and branch levels involving consultation with ILO officials on the issues of tripartism. A great deal has been done to further our work with the ILO and the Government's efforts in this regard have been duly noted by the ILO.

However, unfortunately, in 2020 the ILO supervisory organs changed their tune negatively and it is quite evident that the political events are at the root of this. After the political election in August 2020, the destructive opposition forces attempted to seize power in the country which led to the organization of unlawful street protests. I draw your attention to the fact that such protests had no connection with trade union rights and freedoms and in that situation, the State took all the necessary steps to guarantee law and order and to avoid chaos and the destabilization of the situation in the country.

At the current time, the Republic of Belarus is going through a challenging period. Western countries, first and foremost, members of the European Union (EU) and the United States of America and their representative trade unions, are seeking to impose unilateral coercive measures to cause harm not only to enterprises, but also to ordinary people and to generate tensions in our society.

We are deeply concerned to note that this sort of pressure is being brought to bear on Belarus in the form of the discreditation of our country on an unfounded basis. It is well known that the Belarusian opposition members who are abroad are critically involved in seeking to undermine the efforts of the Belarusian Government by using article 33 of the ILO Constitution to achieve their political objectives.

Such attempts can cause serious harm to the ILO's authoritative position by indicating that countries or groups of countries are able to manipulate the ILO for their own ends. The

Government of Belarus calls upon the Committee to prevent attempts to politicize its work. The Committee should work exclusively within its remit.

The Government of the Republic of Belarus stands ready to engage in constructive partnership that is not just a matter of empty words. The Republic of Belarus is a long-standing Member of the ILO and has been promoting fundamental principles and rights at work. Belarus has ratified all the fundamental Conventions. The country has put in place a comprehensive package of social protection covering all areas of human endeavour and has a very low level of unemployment. It is quite clear that Belarus has been able to achieve significant improvements and developments in terms of upholding the fundamental principles and rights at work.

Worker members – The Government of Belarus continues to violate its obligations under the Convention with impunity. The Committee has already discussed the application of the Convention by Belarus in 2005, 2006, 2007, 2008, 2009, 2010, 2013, 2014, 2015 and 2021, and prior to 2005, our Committee discussed Belarus in respect of this Convention in 1997, 2001, 2002 and 2003, leading to the establishment of a Commission of Inquiry by the Governing Body in 2003, and the adoption of the report of the Commission of Inquiry in 2004. Our Committee is called upon to discuss this case yet again.

During our discussions last year, the representative of the Government of Belarus issued ominous threats to the independent trade unions after having called them the enemies of the State. We condemned the threats and brought them to the attention of the Office and the Director-General.

Today, the situation for independent trade unions, their leaders and members in Belarus has deteriorated dramatically. The Government is engaging in the repression and intentional and systematic destruction of independent trade unions in Belarus.

All independent trade unions, their leaders and members are under relentless attack. On 19 April 2022, more than 20 leaders and activists of the Belarusian Congress of Democratic Trade Unions (BKDP) were detained by the State Security Committee, including Alexander Yaroshuk, the President of the BKDP and a member of the ILO Governing Body, Siarhei Antusevich, Vice-President of the BKDP, and Gennady Fedynich, leader of the Radio and Electronic Industry Workers' Union (REP Union). They and others have been charged under section 342 of Part 1 of the Criminal Code for the organization and preparation of acts seriously disrupting public order or active participation in them, and this charge carries the threat of a prison sentence of up to four years.

On 13 May, the BKDP Council met and appointed the Belarusian Independent Trade Union of Miners and Chemical Workers (BNP) Chairperson, Maxime Pazniakou, as acting President.

On 17 May, Maxime Pazniakou was already arrested by the state authorities. He was sentenced to 15 days of administrative detention on 19 May and that sentence should have expired by today, but he was sentenced to another 15-day period.

On 18 May, the Vice-Chairperson of the REP Union, Zinaida Mikhniuk, was found guilty under section 368 of the Criminal Code of insulting the President of the Republic of Belarus. She was sentenced to two years' imprisonment in a general security penal colony.

On 19 May of this year, prosecutors demanded that the BNP hand over trade union documents, including details of union members; similar requests were sent to other BKDP affiliates, such as the Free Trade Union of Belarus (SPB) and the Free Trade Union of Metal Workers (SPM).

These demands were made, even though all the trade union documents had already been seized by the specialized security forces during searches on 19 April, one month earlier.

On 25 May of this year, security operatives arrived at the office of the BNP located in Soligorsk and Alexander Mishuk, Chairperson of the BNP at JSC "Belaruskali", was taken away with no further information given. Trade union officers were searched, mobile phones and other devices of union office employees were confiscated, and the employees had to sign non-disclosure agreements.

Earlier, in April this year, the regime designated the REP Union as an extremist organization and banned all its activities. When the REP Union leadership questioned the justification for such designation, the state security apparatus intensified its searches and detentions in response.

This extensive list of intentional, systematic, unjustified and unacceptable attacks on the independent trade unions of Belarus dates only from the last two months and we are deeply concerned for the physical integrity and health of our colleagues. We demand the immediate release of all union leaders and officials and the withdrawal of all charges.

As a matter of urgency, the Government must invite the ILO to visit those colleagues in prison and to ascertain their condition. Colleagues who have been convicted must have their convictions quashed. Moreover, the Workers' group wishes to highlight the continuing lack of progress with the implementation of the observations and recommendations of the ILO supervisory bodies. Workers in Belarus are still denied the right to participate in peaceful demonstrations and to organize trade union meetings.

In the Committee's discussion of Belarus last year, we came to the firm conclusion that recent developments indicated a step backwards and of further retreat by the Government from its obligations under the Convention, and we urge the Government to take all necessary steps before this Conference to fully implement all the outstanding recommendations of the Commission of Inquiry, and the Committee decided to include its conclusions in a special paragraph of its report.

In a March 2021 report on Belarus, the Committee on Freedom of Association (CFA) expressed deep regret at the serious retreats on the part of the Government of Belarus from its ILO constitutional obligations and its commitment to implement the Commission of Inquiry recommendations.

We are deeply alarmed that, not only is the Government not implementing the recommendations of the Commission of Inquiry and indeed the observations of the supervisory system, but it is also undertaking trade union elimination with respect to independent trade unions. A leader of an independent trade union is considered an automatic security threat and hounded by security forces to either go into exile or go to prison.

We can give you an example of the impunity of the Government of Belarus in relation to its obligation under international labour standards: while recommendation 8 of the Commission of Inquiry calls for measures to be taken to release all trade unionists who remain in detention and to drop all charges related to participation in peaceful protests and industrial action, the Government has doubled down and is engaging in mass arrests of leaders and members of trade unions.

Further, workers in Belarus still do not enjoy the right to establish unions without previous authorization, which contravenes the Convention, as well as recommendation 2 of the Commission of Inquiry.

The Government is not taking any steps to address previous observations of the Committee of Experts, and the conclusions adopted last year by the Committee.

In relation to obstacles to trade union registration created by the requirement of a legal address, we note that there are new cases of refusals to register primary organizations of the BKDP affiliates since the last sitting of this Committee. The registration of several trade unions was recently revoked. The Government has failed to provide information to the supervisory system, including in its reports to the Committee of Experts on the legislative reforms requested by the Committee last year. There has been no progress at all.

Regressive legislative developments continue to be in place, such as the Presidential Decree that still requires previous authorization for registering gratuitous aid and restricts the use of such aid. The Law on mass activities further restricts the holding of public events and so on. The Criminal Code has been amended with new restrictions and penalties. The Government has done nothing to amend the Labour Code in order to make it compliant with the Convention.

To conclude, 18 years after the Commission of Inquiry, the Workers' group's conclusion is that no progress has been made with respect to the implementation of its recommendations. On the contrary, the situation has deteriorated dramatically in both law and practice. The impunity shown to the supervisory system as a whole, needs to be urgently addressed.

Our discussion of this case today must send a clear signal that the Constitution and the supervisory system of the ILO must be respected, and appropriate measures taken in this regard.

Employer members – I would like to thank the Government representative for her submissions on behalf of the Government of Belarus.

As the Worker members have noted, the Committee of Experts has issued 14 observations on this case since 1997 and the most recent discussion of the case of Belarus and its application of the Convention by the Committee took place in 2021.

In its 2021 conclusions, the Committee expressed its deep concern that 17 years following the Commission of Inquiry's report, Belarus had failed to take measures to address most of the Commission's recommendations. In its 2021 conclusions, the Committee urged the Government to: restore, without delay, full respect for workers' rights and freedoms; implement recommendation 8 of the Commission of Inquiry guaranteeing adequate protection against administrative detention for trade union officials in the performance of their duties and exercising their civil liberties; take measures for the release of all trade unionists who remain in detention and the dropping of charges related to participation in peaceful protest action; refrain from the arrest, detention or engagement in violence, intimidation or harassment, including judicial harassment of trade union leaders and members conducting lawful trade union activities; as well as the requirement to investigate, without delay, alleged instances of intimidation or physical violence, through an independent judicial inquiry.

In addition, the Committee's 2021 conclusions called on the Government to ensure that there remained no obstacles to the registration of trade unions either in law or in practice. Additionally, the Committee's 2021 conclusions also addressed the issue of the demand by the President of Belarus for the creation of trade unions in all private companies by 2020 and the Committee urged – in the strongest terms – that the Government refrain from interference with the establishment of trade unions in private companies and put an immediate stop to interference with the establishment of trade unions and refrain from showing favouritism towards a particular trade union in private companies.

Furthermore, the Committee's 2021 conclusions also addressed the issue of the organization of mass events by trade unions and urged the Government to amend the law on mass activities, to repeal Ordinance No. 49 of the Council of Ministers and to address the concerns raised by trade unions in respect of organizing and holding mass events in practice.

Furthermore, the Committee's 2021 conclusions also included recommendations related to the functioning of the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere. In 2021, the Committee invited the Government to avail itself of ILO technical assistance, requested the Government to provide detailed information on the measures taken in respect of the implementation of the Committee of Inquiry's recommendations as well as the recommendations of the Committee from 2021, from previous years prior to 2021, and to transmit this information to the Committee of Experts before its next session. Also, as the Worker members have mentioned, the Committee's 2021 conclusions placed the discussion of this case in a special paragraph of its report.

This year, the Employer members note that there has been no meaningful progress towards the implementation of either the Commission of Inquiry's recommendations or any meaningful progress towards the implementation of the Committee's 2021 conclusions. The Employers note that this points to a lack of commitment by the Government to ensure respect for its obligations under the Convention, as well as its obligations pursuant to the ILO Constitution. This is a deeply concerning situation to the Employers' group. Furthermore, the Employer members are deeply concerned with the new allegations of criminal prosecutions, arrests and imprisonment of trade unionists, especially the allegations of events within the last two months.

The Employer members recall that full recognition of civil liberties, in particular freedom of opinion and expression, freedom of assembly, freedom from arbitrary arrest and detention and the right to a fair trial by an independent and impartial judiciary, are basic preconditions for any meaningful exercise of freedom of association for workers and employers and is required for full compliance with the Convention. The Employer members note that, according to the available evidence, these freedoms have been grossly violated by the Government of Belarus following the presidential election in August 2020. Therefore, we must take this moment to express our deep concern with respect to the deterioration of the circumstances concerning the promotion and protection of freedom of association.

In respect of the issue of registration, the Employer members note that there is an absence of further explanations with respect to the registration of the BKDP, the SPB, and the REP Union from the Government and this lack of information is concerning. We turn to the concern identified by the Committee of Experts in respect of the televised meeting between the Chairperson of the FPB and President Lukashenko in which the latter urged the setting up of trade unions in all private enterprises by the end of 2020 under the threat of liquidation of those private companies. The Employers note that, in line with Article 2 of the Convention, freedom of association implies and requires that workers and employers must be able to decide freely, without state interference, whether or not to set up their own organizations. Therefore, the Employers call upon the Government to refrain from any interference in the establishment of trade unions in private companies, in particular with respect to the requirement to set up a particular trade union under threat of the liquidation of such company.

Moving to the issue of financial assistance, the Employers note that the acceptance by a national workers' or employers' organization of financial assistance from an international workers' or employers' organization without the need for approval by the Government and without sanctions in case of receipt of such financial assistance is part of the right set out in

Article 5 to affiliate with international organizations of either employers or workers. The right to organize public meetings and demonstrations constitutes an important aspect of the activities of employers' and workers' organizations under Article 3 of the Convention. In view of this, the revised Law on mass activities, along with the accompanying regulation, which limits the use of foreign gratuitous aid for the conduct of mass events, unduly restricts trade unions in the possibility to carry out their public activities. Therefore, the Employers urge the Government to amend the Law on mass activities and the accompanying regulations, in particular, with a view to setting out clear grounds for the denial of requests to hold trade union mass events in conformity with freedom of association principles, to widen, not narrow, the scope of activities for which foreign financial assistance, can be used and to abolish the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation. The Employers also repeat our call on the Government to repeal Ordinance No. 49 of the Council of Ministers, as amended, to enable employers' and workers' organizations to exercise their right to organize mass events in law and practice.

We must take this moment to simply point out that we will not address the Committee of Experts' numerous observations on the right to strike as the Employers' position is this is not in fact covered under this Convention.

Let me close by reiterating our concern about the deteriorating circumstances in the country with respect to its obligations pursuant to the Convention.

Interpretation from Russian: **Worker member, Belarus** – The FPB brings together all areas of the economic sphere and is committed to working with the ILO to develop tripartism and with the social partners on improvements to the legislation and practice and its implementation. We now have the opportunity to observe the real condition of workers and employers in the country and we do not agree with the findings of the Committee of Experts with regard to the failure of Belarus to apply the Convention.

We consider that the negative assessment of the situation is politicized and biased. I should underscore, in addition that other European countries have demonstrated instances of harassment of trade union activities involving, for example, the use of tear gas by the police against trade union demonstrators. In Belgium and Germany, there have been various actions taken against trade union movements.

According to the ITUC, there is a violation of the right to strike in many European countries; 41 per cent of European countries violate the right to freedom of association. We have statistics to show that in Western European countries there is a failure to heed such problems at the ILO and at the Conference. It would appear that our case is being reviewed on the basis of false information. A specific example is as follows.

According to information provided by the Committee of Experts, Belarusian workers are denied the right to strike and may be subject to arrest and detention. This information does not accord with reality. The right to strike is enshrined in our Constitution. There are rules of procedure for the organization of strikes as in other countries and this is defined by legislation in Belarus. The trade union is empowered to decide on a strike in the interests of the labour collective. I should underscore that such provisions exist in other countries, such as Germany.

With regard to practice in recent years, works committees have not taken a single strike decision when people were allegedly being detained for strike actions. This is completely untrue. In addition, trade unions are entirely free to declare a strike as can be seen by the fact that in recent times we have had instances of strikes being called by individual workers, but when considered by professional committees at the regional level, the decision was ultimately

not made to strike. This attests to the entirely open and democratic approach to freedom of association and the right to organize in our country.

With regard to the alleged state intervention and interference in trade union affairs, as well as alleged favouritism, I would like to say the following: currently, trade union organizations under the BKDP represent fewer than one third of workers. The claim that allegedly any criticism by trade unions of the Government leads to potential punishment is entirely untrue. There have been no incidents of such action being taken. In addition, the Government heeds proposals from trade unions, for example on wage setting, employment guarantees and other crucial issues for workers, as can be attested to and documented.

Regrettably, the ILO is being supplied with unreliable claims for consideration by the Committee with regard to our country's application of the Convention. On the other hand, actual incidents of the violation of labour rights are not considered. Unfortunately, certain countries in violation of the United Nations Charter have been imposing unilateral measures against Belarus. This runs counter to the principles of ILO Conventions and the ILO Constitution. We consider that such a situation is entirely negative and should be reversed. Our country is simply seeking to ensure decent working conditions and development for all workers and people.

Interpretation from Russian: **Employer member, Belarus** – We, as Belarusian Employers, cannot agree with the report of the Committee of Experts with regard to the application of the Convention, which is based on unfounded claims stemming from the political events of August 2020 and so-called strike action by a certain part of the population after the presidential elections, which were entirely political in nature. They were not in any way connected with the protection of social and economic interests in labour relations.

There was no calling of strikes by the labour movement as such, and enterprises continue to operate normally. We consider that these events, unconnected with normal labour relations and dialogue, should not serve as the basis for assessing the situation of the country's compliance with the provisions of the Convention under discussion today.

This is unfortunate and counterproductive. We call upon the ILO to take a more critical approach to complaints and not to build a position on the basis of unconfirmed data. There is a need to take an objective stance with regard to the actual situation on the ground.

The Committee of Experts last year called for an amendment to the Belarusian legislation on the right to strike. I would draw your attention to the discussion in past years on the fact that the Convention cannot be necessarily used for the discussion of the right to strike or invoked for that purpose. It must be stressed once again that the right to strike is not directly evoked in the Convention. This is a matter for the internal affairs of any State and is within the State's domestic remit.

Belarusian employers also note that very concrete steps have been taken to follow up on the findings of the Commission of Inquiry in order to ensure the application of the relevant Conventions, and I request the participants in the Committee to take note of what has taken place in previous times, as well as over the last year, when more political considerations came to the fore.

I would like to offer some examples of what has been done in practice and the broad use of social dialogue. A number of union members in the various congresses and federations have continued to promote workers' interests on a tripartite basis. At the same time, employers have endeavoured to honour tripartism to reach collective agreements through tripartite dialogue.

These issues have been evoked in the course of the ILO's missions with the agreements that we reached being put into practice.

Belarus has had to endure unprecedented sanctions from the United States against economic actors, including businesspersons, which has led to a de facto economic war against leaders and their property by hindering the ability to invest and innovate and engage in business with Western partners, leading to reduced revenue, loss of jobs and a worsening of the overall social economic situation.

We, as ever, underscore our commitment to cooperate with the ILO and the Committee in order to secure progress on social issues in a spirit of collective responsibility and respect in order to work on a positive dynamic in the country building on the positive steps taken by the Government with the social partners in order to implement the recommendations of the ILO.

Government member, France – I have the honour of speaking on behalf of the **European Union (EU) and its Member States**. The candidate countries **North Macedonia, Montenegro** and **Albania** and the European Free Trade Association countries **Iceland** and **Norway**, Members of the European Economic Area, as well as **Ukraine** align themselves with this statement.

The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights, such as the fundamental right to organize and freedom of association.

We actively promote the universal ratification and implementation of fundamental international labour standards, including this Convention. We support the ILO in its indispensable role of developing, promoting and supervising the application and implementation of ratified international labour standards and of the fundamental Conventions in particular.

We are deeply concerned at the steep deterioration of the situation of human and labour rights in Belarus in the aftermath of the 2020 presidential elections, which were neither free nor fair. These concerns have worsened further since Belarus' involvement in the Russian Federation's war of aggression against Ukraine.

Freedom of peaceful assembly and association, freedom of opinion, expression and information, as well as freedom of the media, both online and offline, are increasingly heavily curtailed, and the right to organize is actively oppressed instead of being protected.

The EU and its Member States condemn in the strongest terms the violence used by the Belarusian authorities against peaceful protesters and the numerous cases of detention, imprisonment, torture and sexual violence, in a blatant attempt to prevent workers from associating to resist the authorities' repression of fundamental labour rights. We are even more concerned as these attacks on trade union activists and leaders have intensified in seemingly direct retaliation of them having stood up against Belarus' involvement in the Russian Federation's war of aggression against Ukraine.

We fully share the deep concerns expressed by the ILO Director-General at reports of the arrests of trade union leaders, including Alexander Yaroshuk, member of the ILO Governing Body, as well as Siarhei Antusevich, Maksim Pozniakov, Oleg Podolinski and Elena Yeskova. We are also concerned at the reports of searches being conducted by the security forces on the premises of the BKDP and other trade unions, and in the homes of the trade union leaders and employees.

We urge the authorities once again to investigate without delay all human and labour rights violations and abuses, in a truly independent and impartial manner, and to hold accountable all those responsible for these violations. We expect the authorities to ensure full respect for workers' rights and freedoms, protect the right to organize, including the right to strike, and release immediately and unconditionally all arbitrarily detained persons, including political prisoners, trade unionists, workers and members of national minorities. No one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful protest or strike. Moreover, all charges related to participation in peaceful protests should be dropped.

The case of persistent violations of fundamental ILO Conventions by Belarus has been on the agenda of this Committee regularly since 1997. There has been no meaningful progress towards even partial implementation of the 2004 Commission of Inquiry recommendations.

Belarus must step up its efforts without further delay and aim for the full implementation of the recommendations of the Commission of Inquiry, thereby meeting the obligations that it undertook by being a Member of the ILO and in addition by voluntarily and willingly ratifying all eight fundamental ILO Conventions.

We once again strongly urge the Government, in consultation with the social partners, to amend the Law on trade unions, the Labour Code, the Law on mass activities and the accompanying Regulation, as well as Presidential Decree No. 3 of 25 May 2020 concerning the use of foreign gratuitous aid, to bring them into conformity with the Government's obligations regarding freedom of association. We also echo the request by the Committee of Experts to the Government to repeal the provisions introducing additional restrictions and associated penalties under sections 342 and 369 of the Criminal Code.

We stress the importance of treating with impartiality all trade union organizations, and of refraining from showing favouritism, including with regard to consultations, from interference in their establishment and of ensuring and protecting the right of workers to join organizations of their own choosing.

The EU and its Member States stand with the Belarusian people and support their democratic choice and fundamental freedoms and rights. The EU continues to call for fair and free elections and urges the Belarusian authorities to seek a peaceful and democratic solution to the crisis through an inclusive national dialogue with broader society. We expect the Government to fully engage with the social partners and the ILO to address the issues mentioned above. The functioning of the tripartite Council should also be improved.

We note with deep regret the apparent lack of action and commitment from the Government, the absence of progress and also the urgency of this discussion. We support, if called for by the Committee, a request to refer the matter to the November 2022 session of the Governing Body in order to consider all possible measures foreseen in the ILO Constitution with a view to the full implementation of the recommendations of the Commission of Inquiry.

Government representative, Sweden – I am speaking on behalf of the **Nordic and Baltic Governments** (**Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, Norway** and **Sweden)**. We align ourselves with the statement by the EU and its Member States.

Belarus has ratified the core Conventions of the ILO and has thus committed itself to respecting freedom of association, including the right to organize and participate in strikes. However, the country has repeatedly been examined in this Committee for failing to comply with the Conventions it has ratified.

We are deeply concerned at reports of the arrests of trade union leaders in Belarus and reports of searches in trade union offices and their leaders' homes, seizing computers, personal documents, passports, union flags, leaflets and other items.

We draw attention to the fact that among those arrested are Alexander Yaroshuk, President of the BKDP, who is also a Vice-President of the ITUC and a member of the ILO Governing Body. These arrests constitute a grave violation of the principles of freedom of association as protected by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the Convention.

Last year, this Committee took note of the long-standing nature of the case of Belarus and noted with great concern the numerous allegations of extreme violence to repress peaceful protests and strikes. The Committee of Experts also urged the Government in the strongest of terms to investigate without delay all alleged instances of intimidation and physical violence through an independent judicial inquiry and to provide detailed information on the outcome.

We also want to point out that the ILO Director-General has already requested the Government of Belarus to release all trade unionists who remain in detention, drop all charges related to participation in peaceful protests, and refrain from the arrest, detention or engagement in violence, intimidation or harassment, including judicial harassment, of trade union leaders and members conducting lawful trade union activities.

Belarusian authorities have failed to take the above steps. We call on the responsible Belarusian authorities to immediately release the trade union leaders as well as all the political prisoners, and to take all necessary measures to ensure that trade unions can carry out their activities in a climate free from violence, intimidation, or threat of any kind.

Trade unions are key defenders of human rights, nationally and internationally, which includes fundamental labour rights. They are also a key component in building democracy. The defence of workers' rights must be welcomed, not criminalized.

We deplore that the Government of Belarus, 17 years after the Commission of Inquiry's report, has failed to take measures to address the Commission's recommendations. We note with deep regret the apparent lack of action and commitment from the Government, the absence of progress and also the urgency of this discussion. We support, if called for by the Committee, a request to refer the matter to the November 2022 session of the Governing Body in order to consider all possible measures foreseen, including those envisaged in article 33 of the ILO Constitution aimed at the full implementation of the recommendations of the Commission of Inquiry.

Worker member, Germany – I am speaking on behalf of workers in Germany, Belgium, Netherlands, Canada, France, Italy, the Nordic countries, Ukraine and Switzerland. The seriousness of the violation of the Convention by Belarus is quantitatively evident in the report of the Committee of Experts. The assessment covers 11 pages of the report and identifies violations – in law and practice – of almost every Article of the Convention.

Eighteen years after the report of the Commission of Inquiry, we see none of its recommendations being implemented. On the contrary, we see a politically motivated, systematic and targeted suppression of the work of independent trade unions, which deprives any critical trade union work of its basis. This was also noted in the report of the Committee on Freedom of Association (CFA) of March 2022, the United Nations Special Rapporteur's report of 4 May 2022 and the European Parliament's resolution of 19 May 2022.

The situation in Belarus is contrary to the fundamental principles that the country has committed to uphold as a Member of the ILO. There is no independent judiciary to review the detentions and physical and psychological repression of trade union representatives. The same applies to the searches of trade union offices, the confiscation of documents, the obstruction of legitimate trade union activity, and includes strikes and public demonstrations. It is precisely a sign that speaks against respect for the principle of a fair and transparent process that the Government cannot provide the underlying court rulings for these measures.

With the recently introduced extension of the death penalty to an unclear offence of "attempted terrorism", developments in Belarus are particularly troubling.

The situation in Belarus illustrates in a very sad way the importance of ensuring basic civil and political rights for the exercise of the rights set out in the Convention.

We therefore demand an immediate end to anti-union repression and the immediate release of our Belarusian colleagues, who are working for freedom, democracy and peace in the country.

Government member, Cuba – My delegation thanks the delegation of Belarus for the information provided, which is an indication of the Government's good will to cooperate with the ILO supervisory bodies. We consider that they have to examine impartially, setting aside any prejudice or politicization, the progress achieved in social dialogue in the country. As part of the process of the implementation of the recommendations made within the framework of this Organization, cooperation through technical assistance must offer support for the Government.

The information provided by the delegation of Belarus contains updated elements on various matters and demonstrates the will of this Government to continue making progress in tripartite social dialogue in the country and in its work with the ILO.

It is of the greatest importance to grant governments the necessary time and space to work with the relevant actors within the framework of their national legislation and in compliance with their obligations and undertakings deriving from ILO instruments.

This forum has always been characterized by solutions agreed through broad and inclusive dialogue, in which the views and consent of the countries concerned are essential.

My delegation hopes that the Committee's conclusions will be objective, technical and balanced on the basis of the information provided by the Government of Belarus.

Interpretation from Russian: **Worker member, Georgia** – I am speaking on behalf of Georgia and also the President of the Pan-European Regional Council (PERC). The situation in Belarus is the worst in the whole PERC region for trade unions and freedom of association. This is a case that has been ongoing for 20 years and the situation has become worse very recently.

The Government clearly does not wish to implement the ILO's recommendations and is undermining basic freedoms and any collective action and the voice of the people.

We are shocked at the fact that Alexander Yaroshuk, a member of the ILO Governing Body, as well as Siarhei Antusevich, a leader of the BKDP, who have given evidence before the Committee, are currently being detained, along with ten other trade union leaders. They are denied contact with their relatives. They find themselves under psychological pressure. The Government has failed to heed the numerous notes and efforts from the ILO to secure their release.

Trade unions are declared to be destructive and extremist organizations. It is evident that there has been an order to liquidate the BKDP and its organizations. The Prosecutor's Office is demanding lists of trade union members and is demanding that members leave unions. The contracts of members of the trade union, and even their relatives, are not being renewed. Certain independent trade unions have already been declared illegal. This is a slap in the face for the ILO. The Government simply does not want to comply with the recommendations of the Commission of Inquiry and this Committee should give a robust assessment of this very negative situation in Belarus as has been done this year by the CFA.

Government member, Bolivarian Republic of Venezuela – My Government gives thanks for the presentation made by the distinguished delegation of the Government of Belarus on compliance with the Convention. We have noted the Government's indication that the reasons why this case is once again before the Committee are based on strictly political considerations that are unrelated to social dialogue and should not therefore provide a basis for assessing compliance with the Convention, as they have their origins in the national political climate following the presidential elections held in 2020.

We value the good will of the Government in continuing to make progress and maintaining constructive relations with the social partners and with our Organization on the implementation of the recommendations of the Commission of Inquiry in relation to the Convention, and developing social dialogue even further within the framework of the national legislation.

We call on the ILO supervisory bodies to set aside political considerations which fall outside the scope of their comments and, as we have said on repeated occasions, which undermine their seriousness and credibility and are prejudicial to our objective as they interfere with the sovereignty of States.

The Government of the Bolivarian Republic of Venezuela trusts that the Committee's conclusions, resulting from our discussions, will be objective and balanced with the aim of the Government of Belarus continuing to make progress in compliance with the Convention while also maintaining peace and re-establishing public order, as it must continue to do in accordance with the provisions of the Convention.

Interpretation from Russian: **Worker member, Russian Federation** – We note that the systematic non-compliance by the Government of Belarus with the ILO's recommendations to ensure workers' rights has led to large-scale arrests of leaders and activists of the BKDP and its branch organizations.

Right now, the President of the BKDP, Alexander Yaroshuk, Deputy-Secretary, Siarhei Antusevich, and Treasurer, Irina But-Gusaim, are under arrest. The representatives of the REP Union have been arrested: Deputy Chairperson, Gennady Fedynich, and activist, Vaclav Areshka. The representatives of the SPM: Deputy Chairperson, Yana Malash, the acting Chairperson of the Council, Vasil Beresnev, the Secretary of the Council, Mikhail Gromov, member of the Council, a labour inspector, Vitaly Chichmarev, and activist, Miroslav Sabchuk, representative of the primary organization at the Minsk Automobile Plant, Artyom Zhernak. The Chairperson of the BNP, Alexander Mishuk, is also under arrest.

Zinaida Mikhnyuk, Deputy Chairperson of the REP Union, as well as Igor Povarov and Yevgeny Khovar, who are activists of the BNP in the Belarusian Metallurgical Plant, have been convicted in criminal cases. Maksim Pozniakov, acting Chairperson of the BKDP, was convicted in an administrative case.

Other trade union members have been released under supervision including: Mikalaj Sharakh, the representative of the SPB, as well as Alexander Bukhvostov, the representative of the Metallurgy Workers' Union, and Andrey Khanevich, the representative of the Belarusian Independent Trade Union. This is 19 in all.

We call upon the Committee to urge the Belarusian Government to take steps rapidly to release these individuals and bring an end to the administrative and criminal proceedings against them, as well as to put in place conditions for the normal operation of the BKDP and its branch-based organizations.

Government member, China – We have carefully read the report by the Committee of Experts and also its comments on implementation of the Convention by Belarus. We would like to thank the Government representative for her introduction. We note that the Government attaches importance to the recommendations of the Commission of Inquiry. It has adopted a series of well-targeted measures to conscientiously fulfil its obligations under the ratified Convention.

It has made enormous efforts and achieved positive progress. The Government has set up mechanisms to protect trade union rights, relaxing registration procedures for trade unions, achieving constructive progress, and also, the national Constitution clearly stipulates that every person's rights and freedoms are protected by law in an independent and impartial manner. Legislation is in place to guarantee rights, such as trade union rights and the right to strike. We also appreciate the in-depth communication and exchanges with the social partners, technical cooperation with the ILO, and the active resolution of labour disputes.

We believe that the discussion of this case should focus on the implementation of the Convention rather than interfering in the internal affairs of Member States, let alone politicizing technical issues. We hope that when the Committee comes to conclusions on this case, the actual situation in the country, and the progress the Government has made in implementation, can be reflected objectively and fairly, and constructive decisions should be made collectively to help the Government to further strengthen its ability to implement the Convention and promote the comprehensive development of the country.

Worker member, United States of America – The American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) strongly condemns the recent escalation of attacks on worker rights by the Government of Belarus and calls for the immediate release of these union members and any others who have been targeted for exercising their fundamental workers' rights.

Since the rigged presidential election in 2020, the Government of Belarus has persecuted working people engaged in peaceful protests to express their demands for free and fair elections and democratic governance in Belarus. Through strikes and other legal protests, workers and independent trade unions have shown they are key to this grassroots, citizen-driven defence of democracy.

The BKDP has been on the front lines of the struggle for democracy in the country. In response, its members have received harsh prison sentences based on vague, politically motivated charges of "disrupting political order".

In roughly 11 pages of text, the Committee of Experts' report lays out the dire situation for trade union rights in Belarus in both law and practice. In a separate 32-page special report to the Governing Body, the CFA also raised deep concerns about the continued harassment and jailing of trade union members. We note with particular concern that the Government has

not met even the most basic tenets of due process by failing to produce the written court rulings which supposedly justify the detention of trade union members.

In April 2022, the AFL–CIO sent a public letter to Prime Minister Roman Golovchenko calling for the immediate end to the anti-union repression and the immediate release of trade unionists, journalists and others who have stood up for democracy and human rights in Belarus. We reiterate that demand and call on the Government to address all the recommendations contained in the Committee of Experts' report.

Government member, Lithuania – Lithuania aligns itself with the statement of the EU and the statement of the Nordic and Baltic countries. Since 2004, the ILO's Commission of Inquiry has investigated respect of labour rights by the Republic of Belarus. For all these 17 years, Belarus has had countless opportunities to prove its compliance with the ILO's fundamental Conventions.

Last year, the International Labour Conference noted that the Government of Belarus had failed to address most of the recommendations of the Commission of Inquiry. The ILO specifically requested the Government of Belarus to take all recommended steps before the next Conference and to provide detailed and complete information on the measures taken and the progress made before the next meeting of the Committee of Experts. The Belarusian authorities have not only failed to take the aforementioned steps, but over the last year have significantly intensified the repression of independent trade unions, their members and leaders.

Repression, detentions and harassment are facts of last year's developments. Belarus has clearly failed to implement the recommendations of the Commission of Inquiry and has knowingly and deliberately exacerbated the situation for its trade unions and workers.

The CFA, in its March 2022 report to the Governing Body, reviewed most of the facts mentioned and decided to draw this serious situation to the attention of the Governing Body so that it may consider any further measures to secure compliance herewith, thus calling for the application of article 33 of the ILO Constitution in respect of Belarus.

In this connection, Lithuania asks the Committee to make recommendations to the ILO Governing Body for the application of strict measures, forcing the authorities of the Republic of Belarus to fully comply with its obligations under the ILO's fundamental Conventions.

Worker member, Japan – I am speaking on behalf of the Hind Mazdoor Sabha (HMS) of India, workers from Myanmar, Singapore, Philippines, Indonesia, Republic of Korea, Fiji, Australia, New Zealand and the Japanese Trade Union Confederation (JTUC-RENGO). The Committee has discussed this case more than other cases since 2000. The Government threatened ITUC's affiliate the BKDP when the case was examined in this Committee last year. Now, we see that these threats are being followed by specific action aimed at the extermination of the union.

In April 2022, more than 20 trade unionists were arrested. Ten of them are still in prison, including the BKDP President, a member of the ILO Governing Body, Alexander Yaroshuk, as many people have noted. He regularly spoke in this Committee. He and other BKDP leaders face charges of preparing mass protests in the police state of Belarus that could lead to four years of imprisonment. Independent unions are being labelled as extremist organizations.

We have clear evidence that the Government of Belarus is not willing to cooperate with the ILO, indeed the contrary. The recommendations of the Commission of Inquiry from 2004 are clear and unequivocal. The Government has shown no intention to implement them, even

though the CFA repeated the request earlier this year. We consider that it is time for the ILO to take further steps as foreseen in the ILO Constitution.

We demand the immediate release of all imprisoned trade unionists. The Government must drop all charges against them and stop further attacks against them. Workers from Asia and the Pacific stand in solidarity with our sister organization, the BKDP.

Government member, Sri Lanka – The Government of Sri Lanka welcomes the continuing efforts of the Government of Belarus to ensure the implementation of the provisions of the Convention and its commitment to fundamental principles and rights at work.

The Government of Belarus has expressed its commitment to implement the recommendations of the Commission of Inquiry by giving due consideration to the agreements reached and plans developed jointly with the ILO. We note that the Government of Belarus has already taken a number of specific targeted steps, as a result of which some of the recommendations have been fully implemented, and significant progress has been achieved in the implementation of the rest.

We request the Committee to adopt a balanced and considered approach to the content of incoming complaints. We believe that the way forward is to foster an open and constructive dialogue between the Government of Belarus and the ILO and the social partners, a process to which the Government of Belarus has already expressed its commitment.

Worker member, Cyprus – As a matter of principle, we would like to underline that we support the full respect and implementation of all ILO international Conventions and Recommendations. At the same time, however, we would like to note that there are different approaches to this specific issue in terms of their implementation. There is no doubt that there are recorded cases of violations of fundamental trade union freedoms which, due to political expediency and prejudice, are not dealt with.

In our view, the ILO has an important role to play in ensuring, on an equal basis and without any political expediency, the full implementation of trade union freedoms and rights.

Government member, Nicaragua – The Government of National Unity and Reconciliation of the Republic of Nicaragua recognizes the will of the Government of Belarus to work with transparency and commitment to international labour standards. We also welcome the information shared by Belarus on the effect that it is giving to the Convention, thereby demonstrating the implementation of its national laws.

As a member of the United Nations, we reiterate that it is the duty of all nations to promote relations of friendship based on respect for the principle of equality of rights and duties imposed by the United Nations Charter and not to interfere in matters that essentially fall within the internal jurisdiction of States.

The Government of Nicaragua calls on the Committee to not develop positions on the basis of unverified data relating to the action taken by Belarus for the implementation of the Convention. Events of a political nature must not be related to processes of social dialogue in the area in which this Organization works and cannot and must not be used as a basis for evaluating the situation of compliance with the Convention.

The respect shown by the fraternal Republic of Belarus is well known in its protection of freedom of association and the right to organize attached to the ILO supervisory system.

We take advantage of the opportunity offered in this important Committee to refute any action that tends to undermine the institutions and sovereignty of ILO Member States. We encourage all the Member States and organizations participating in this 110th Session of the

International Labour Conference to intensify their efforts for the establishment of true forms of cooperation, guaranteeing equality of conditions and respect for all participants. We reiterate our support for the position of the Government of Belarus and emphasize its legitimacy and legality as a sovereign State.

Worker member, Colombia – The General Confederation of Labour (CGT), the Confederation of Workers of Colombia (CTC) and the CGT-Argentina express solidarity with the people of Belarus in light of the situation of violence experienced by trade union leaders.

The workers of Belarus are experiencing the worst attacks on freedom of association and the right to organize. Recently, at least 14 leaders of the independent trade union movement in the country were arrested. As workers of the world, we express deep concern at the violence and disappearance of workers.

The Government of Belarus has not brought an end to this policy of violence; indeed, on the contrary attacks are being intensified on the right to freedom of association by refusing to register independent unions and pressurizing members to resign their membership under threat of their employment contracts not being renewed.

The leader of the BKDP has described to this Committee on various occasions the manner in which they have been isolated and discriminated against, and alleged tolerance of their work has been expressed only for their appearance before the ILO. Nevertheless, there is a constant attitude of non-respect, discrimination against and repudiation of independent unions.

It is urgent to make recommendations on this case for a mission to be able to see evidence of the victimization to which unions and their members are subjected when they seek to re-establish their individual and collective rights.

Urgent action is required, as lives are in serious and permanent danger.

Government member, Turkmenistan – Turkmenistan wishes to extend greetings to the distinguished delegation of Belarus at this session of the Committee. We take a positive view of the efforts made by the Republic of Belarus in seeking to give effect to measures intended to develop social dialogue in the country and to ensure that the Government complies with agreements it has reached and other plans that have been developed in coordination with the ILO.

Apart from that, we support the Government's work on seeking to give effect to ILO standards, and indeed this is something that was commended by the Committee of Experts in its report in 2020 and 2021, with particular reference to the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and the Nursing Personnel Convention, 1977 (No. 149).

In these reports, Belarus was recognized as being a country that had made definite progress. With reference to Belarus, we consider that there is every reason to believe that, at present, trade unions in the country are fully-fledged participants in building a better future for the people there. This choice has predetermined further development of a partnership between the authorities and civil society organizations.

We recommend continuing open and constructive dialogue on all the Conventions that have been ratified and on all issues of social and labour relations with a view to improving the standard of living of people in Belarus. We recommend taking further measures to support the people of Belarus in social matters, to improve employment and protection for workers and to cooperate in all areas of the life of the country, including cooperation in all humanitarian fields.

We further recommend continuing to give greater attention to the work of trade unions within their remit and the need to focus on wages being paid on time and being increased, ensuring full and productive employment, supporting the most vulnerable categories of workers, improving conditions of work, as well as monitoring discipline.

In conclusion, we wish to extend our hopes for every success to Belarus in future.

Worker member, Poland – The situation in Belarus is becoming more difficult day after day. There is a brutal attack on trade union rights, on freedom of association and on freedom of bargaining.

Nine employees have been in custody since September 2021. Most of them belong to the BKDP. They face sentences of several dozen years in prison. The charge is treason and the creation of an extremist group, when they only organized aid for repressed workers and discussed scenarios for possible strikes in workplaces.

On 19 April this year, more than 20 leaders and members of the BKDP were detained. Many of them have not been released to this day, including Alexander Yaroshuk, President, and Siarhei Antusevich, Vice-President of the BKDP. The basis for their detention is the alleged preparation of actions that seriously violate public order.

Union organizations are said to pose a threat to state stability. At the same time, measures are being taken to deprive the independent trade union movement of its autonomy and independence. Many trade union activists are leaving the country because of fear of oppression. We know about searches and surveillance. These are well-known actions that regimes use against the free trade union movement. We know it first-hand, from the history of Solidarność.

In the written information to the Committee, the Government of Belarus states that the information provided by the independent trade union movement is not based on facts, that it is biased and politically motivated. Arguments and conclusions presented by the Government of Belarus perfectly illustrate the Government's approach to workers' rights and trade union rights. They also manifest the fear, but also the desire to suppress any sign of freedom and independence.

We call on the Government of Belarus to release the trade union members and to drop the charges against them. We call on the Government of Belarus to fully respect trade union rights, in accordance with the legal framework under the Convention.

Government member, United Kingdom of Great Britain and Northern Ireland – This is the seventh day and the 17th case we are discussing before this Committee. Yes, we are discussing compliance with international labour standards, but ultimately we are talking about the impact of these standards on human life. So as other colleagues have done this morning, I would like to take a moment to keep the human beings concerned at the front and centre of our minds.

Alexander Yaroshuk, Siarhei Antusevich, Irina Bud-Gusaim, Vasil Bersenev, Gennady Fedynich, Yana Malash, Mikhail Gromov, Vitaly Chichmarev, Miroslav Sabchuk, Vatslave Hajestch, Zinaida Mikhniuk, Maksim Pozniakov and Alexander Mishuk are just some of the names of trade unionists who are currently being unjustly detained in Belarus. One of them is a member of the Governing Body and Vice-President of the ITUC; two have testified before this very Committee; three are women trade unionists; four of them are elected leaders of the BKDP. All have been detained for exercising their human right to freedom of association.

Not only do the actions of the Belarusian authorities constitute a gross violation of the Convention. They also emphasize the acute regression in the implementation of the recommendations made in 2004 by the Commission of Inquiry and, as a result, Belarusian workers have faced unprecedented levels of repression.

Given the utter deterioration of the situation regarding freedom of association in Belarus and the lack of meaningful progress in the implementation of the 2004 Commission of Inquiry's recommendations, the United Kingdom requests the Committee to refer this issue to the 346th Session of the Governing Body in November 2022, so that additional measures may be applied, including under article 33 of the ILO Constitution. The continued violation of workers' rights in Belarus is unacceptable. In conclusion, the United Kingdom calls on the Belarusian authorities to immediately release all trade unionists unjustly detained and to take all necessary measures to ensure that they can carry out their trade union activities in a climate free from violence, intimidation, or threats of any kind.

Employer member, France – The case of Belarus is paradoxical in that it is at the same time both simple and complex. Simple, first, because it has been examined on 14 occasions by this Committee since 1997 and has been the subject of 26 observations by the Committee of Experts to date, which unfortunately reflects the Government's lack of action in bringing the legislative situation into conformity with international standards, particularly as the Committee of Experts has not noted any progress since its 2004 observations. And also complex because the case presented up to now is based on Convention No. 87, whereas all of the violations noted in all the reports go well beyond the simple framework of this fundamental Convention.

Why Convention No. 87? Because the Committee of Experts has on many occasions noted numerous failings in the exercise of freedom of association. In brief, the Government has not replied concerning the allegations of intimidation and physical violence against trade unionists, nor in relation to the cases of criminal prosecutions and imprisonment of demonstrators described as peaceful in the observations of the Office of the United Nations High Commissioner for Human Rights. Should we add allegations of searches of trade union premises and the homes of trade union leaders? Sadly, the list established by the Committee of Experts of the serious failings to comply with the obligations of the Government of Belarus is as clear as it is long.

What is the Committee of Experts asking? It is requesting the Government of Belarus to examine the issue of the registration of unions, to cease any interference in the organization of social dialogue in private enterprises and, finally, in general, to repeal any provision that is contrary to the exercise of civil rights and fundamental ILO rights so as to leave all necessary latitude to the social partners in the system for the settlement of labour disputes.

In conclusion, violations of the requirements of the Convention by the Government of Belarus are causing substantial harm to the partners in social dialogue. Employers need free organizations for themselves, but also for workers, as the indispensable prerequisite for the existence of any social dialogue that is needed for the achievement of decent work.

The situation seen in Belarus is therefore contrary to the principles and the Constitution of the ILO.

Interpretation from Chinese: **Worker member, China** – We give thanks for the Government for the information provided and agree with the observations made by the Workers' delegate of Belarus. In our opinion, the information in the report of the Committee of Experts is one-sided and it does not therefore correspond to the real state of affairs in Belarus.

A number of Chinese businesses operate in Belarus and, in this connection, we notice some of the situation related to workers' rights, and we notice that workers have the right to join together and defend their rights with the help of trade unions. A tripartite agreement between the Government, employers and trade unions has also been signed and entered into force. It should also be noted, in particular, that trade unions are consulted on all Belarusian laws and regulations related to labour and social rights. We regret that the Committee of Experts has made an assessment contrary to the facts. Moreover, according to the feedback from Chinese businesses in the country, practices in the country do meet the requirements of the Convention.

Finally, we believe it is necessary to pay attention to the fact that the current unilateral sanctions imposed on Belarus are undermining the well-being of workers and their families. They also damage the stability and vitality of businesses. The ILO Declaration on Social Justice for a Fair Globalization (2008) emphasizes the commitment to strengthening the role of businesses and to creating an enabling business environment as businesses are a major force for economic development and job creation. We are confident that the ILO will be contributing to the well-being of workers.

Government member, Canada – Canada is deeply concerned that more than 18 years since the findings of the 2004 Commission of Inquiry, the Government of Belarus has yet to make meaningful progress towards implementing the recommendations and ensuring compliance with the Convention. This demonstrates a lack of respect for the ILO's supervisory system, which is unacceptable.

Canada is particularly concerned at continued reports of intimidation, physical violence and retaliation against trade unionists, arrests and imprisonment of workers and trade unionists, and searches of trade union premises and the houses of trade union leaders by the police. Canada urges the immediate release of all trade union leaders and representatives who were arrested in April 2022 and are still detained.

We are deeply concerned at the steep deterioration of human rights, including labour rights, in the country, and the repression of key civil liberties, in particular freedom of expression, freedom of peaceful assembly, freedom from arbitrary arrest and detention, and the right to a fair trial by an independent and impartial tribunal or judiciary.

We are also concerned at the continued obstacles to trade union registration, government interference with the establishment of trade unions, and the slow to no progress in the various labour law reforms needed to comply with the principles of the Convention.

Canada therefore again urges the Government of Belarus to take immediate, concrete actions to implement the recommendations of the Commission of Inquiry and the Committee of Experts, in full cooperation with the social partners and the ILO.

In light of the lack of progress to date, Canada joins other countries in requesting the Committee to refer the issue of the Government of Belarus' implementation of the 2004 Commission of Inquiry's recommendations to the November 2022 session of the ILO Governing Body for the consideration of additional measures, including those provided under the ILO Constitution.

Worker member, Nigeria – I am speaking on behalf of the millions of workers who are members of the Organisation of Trade Unions of West Africa (OTUWA). For 20 years, the Government of Belarus has been suppressing freedom of association of workers. It has denied independent unions' registration, forced members to leave unions under the threat of the induced non-renewal of contracts, exercised workplace pressure and discrimination. As the

leader of the BKDP has stated to this Committee several times: "free unions are in ghetto-tolerated situation, but without any space for development or actions". This tolerance was a symbolic gesture towards the ILO.

Recently the Government has rejected any act or show of tolerance by workers. The Head of State has placed independent unions on the list of destructive organizations, de facto, ordering their intimidation and annihilation by the KGB. By the end of May, all leaders of independent unions in Belarus had been arrested and later released, subject to non-disclosure of any information about their cases, banned from leaving the country, or considered offenders and kept in prison. At least 14 of them are in custody now. Trade union offices are searched, some sealed, documents confiscated, trade union communications labelled extremist and primary groups de-legalized. Union activists can be arrested and put in prison at will, without access to legal protection and placed under psychological and even physical pressure by and through the KGB. Many have had to flee the country, but their relatives are targeted.

No doubt, there is no respect for any freedom of human rights in Belarus. This iron-clad gestapo industrial relations style must be rolled back and the spaces for the enjoyment of civil liberties and fundamental human rights must be restored.

Government member, Switzerland – Switzerland reiterates the concerns that it raised last year in this Committee. It regrets the minimal progress made in the implementation of the recommendations, 18 years after the report of the Commission of Inquiry.

Switzerland is particularly concerned that peaceful collective action is extremely limited, and even non-existent in practice, and that mechanisms such as tripartism and social dialogue are very restricted. Despite repeated requests, my delegation insists that Belarus authorizes collective peaceful demonstrations. The State must not interfere in the organization of independent unions, which should be able to evolve freely.

Freedom of association is one of the fundamental principles and rights at work that are at the heart of a democracy and an essential element of social justice. This principle, through collective action, makes it possible to combat forced labour and to develop measures based on non-discrimination and equality for everyone. Switzerland calls on the Government of Belarus to take all the necessary measures to free trade unionists and to guarantee union leaders immunity against administrative detention in the exercise of their functions and public freedoms. Switzerland encourages Belarus to provide all the information requested by the Committee of Experts in its report.

Worker member, Cuba – Our delegation supports the arguments made by the FPB, which does not share the observations contained in the annual report of the Committee of Experts on the alleged violation of the Convention.

The trade union movement and the Government of Belarus recognize significant progress in recent years in the development of more effective tripartite social dialogue which has enabled the development of socio-economic policies that are consistent with the fundamental principles and rights at work defended by all ILO Member States.

An example is the general tripartite agreement signed by the Government of the Republic of Belarus, national employers' associations and the trade union movement which establishes the rights, duties and obligations of the social partners, the measures agreed to reach an adequate level of wages, pensions and social benefits which guarantee decent work and quality Jobs and greater access by the population to basic goods and services.

Our delegation also requests the Committee to continue promoting the spirit of dialogue, collaboration, technical assistance and cooperation by the Bureau for Workers' Activities (ACTRAV) and the ILO with the Government of Belarus on compliance with the Convention so that its statement and those of other delegations which support it in defence of workers' rights are taken into account.

Interpretation from Russian: **Government member, Russian Federation** – The Russian Federation shares the view expressed in the statement made by the representative of Belarus with reference to compliance with obligations under the Convention.

It is clear that the legislation in Belarus is in line with the Convention. For instance, dissolution of a trade union because it has received assistance from abroad or the regulations pertaining to peaceful demonstrations that have been so much criticized are indeed very clearly defined in law and regulations in that country and it is very clear that there are very significant filters in terms of the way that any kind of penalties can be applied. Trade unions can only be dissolved following a court decision, and that is a guarantee of independence.

It is very clear that there has been no violation of the rules while this legislation has been in force, which would surely seem to run counter to the idea that this is an excessively oppressive measure, as some have claimed here today.

We believe then that there is a clear political agenda in the way that complaints are made against Belarus and, if you analyse the domestic political situation there, it is clear that a lot of what is being said goes well beyond the mandate of the ILO. The representative of Belarus called for us to abstain from politicizing the debate and we reinforce that statement.

Government member, United States of America – Over the past 18 years, the ILO supervisory bodies have monitored and engaged with the Belarusian authorities on the country's application of the Convention in follow-up to the findings of the 2004 Commission of Inquiry.

Although the ILO has provided technical assistance, the Belarusian authorities have failed to fully implement these recommendations and the situation for trade unionists in Belarus is increasingly deteriorating. In April and May, officials of the State Security Committee searched trade union offices and the homes of their leaders and employees, seizing personal documents and other items. Several trade union leaders and labour activists were arrested, including ILO Governing Body member, Alexander Yaroshuk, Siarhei Antusevich, Oleg Podolinski, Elena Yeskova and Mikola Sharakh.

We call for the immediate release of trade unionists who are still in detention and for all charges against them to be dropped. The authorities must cease all arrests and acts of violence, harassment and intimidation against trade unionists exercising their human and labour rights, including to voice opposition to the policies and action of the Lukashenko regime.

We again call on the Belarusian authorities to implement the Commission of Inquiry's recommendation to guarantee adequate protection against the administrative detention of trade union officials when performing their duties or exercising their civil liberties.

There has been no meaningful progress towards the full implementation of the Commission of Inquiry's recommendations; rather the authorities have reiterated that they have no intention of amending the relevant legislation and have further retreated from Belarus' obligations under the Convention.

In the words of the Committee of Experts, the Belarusian authorities' lack of action to follow up on the conclusions of this Committee also demonstrates a lack of commitment to ensure respect for Belarus' obligations under the ILO Constitution.

We therefore request this Committee to refer the matter of Belarus' implementation of the 2004 Commission of Inquiry's recommendations to the November 2022 session of the Governing Body for the consideration of additional measures to be taken, including under article 33 of the ILO Constitution.

Government member, Azerbaijan – We thank the delegation of Belarus for providing the update on the application of the Convention. Azerbaijan appreciates the efforts made by Belarus to fulfil its obligations arising from this fundamental Convention, including the positive steps taken by the Government to implement the recommendations of the Commission of Inquiry. We understand some recommendations have been fully implemented, while progress has been secured in implementing the remainder.

We also note positively the technical cooperation activities carried out with the support of the ILO to address specific recommendations of the Commission of Inquiry following the direct contacts mission in close cooperation with the social partners. The tripartite Council for the Improvement of Legislation in the Social and Labour Sphere continues to play an important role in promoting social dialogue and implementing the recommendations of the Commission of Inquiry.

These actions by the Government of Belarus demonstrate its commitment and willingness to address the concerns raised through the tripartite consultation process and with the active engagement of the ILO.

We encourage the Government of Belarus to continue working closely with the ILO and increasing its efforts to implement ILO standards. At the same time, in fulfilling its labour-related obligations, we invite the ILO to fully support the Government of Belarus by providing any technical assistance that it may seek, including to improve the system for resolving labour disputes.

Interpretation from Arabic: **Government member, Syrian Arab Republic** – With reference to the examination by the Committee of the case of the application of the Convention in Belarus, the information provided by the Government in relation to the Convention, and cooperation with the ILO, as well as the efforts made within the framework of the Convention, our delegation supports the position of Belarus in terms of cooperating with the ILO and the stakeholders, the continuation of such cooperation and not to adopt an approach which would consist of politicizing ILO action, which would not be in conformity with the principles of the Organization and would not serve the interests of any of the parties.

Observer, IndustriALL Global Union – I am speaking on behalf of three global unions: IndustriALL, Public Services International (PSI) and the International Transport Workers' Federation (ITF). For years and years, the Government of Belarus has continued to blatantly ignore its obligations under the Convention, but since the rigged elections, the situation has become catastrophic, with countless attacks against independent democratic unions, particularly over the last two months.

On 7 April, the authorities declared the IndustriALL affiliate, REP Union, as an extremist organization. Zinaida Mikhniuk, ex-Chairperson of the union, has been sentenced to two years' imprisonment. Gennady Fedynich, another leader of the same union, is still in prison as we speak. On 11 May, the BNP, the local organization in the city of Grodno, another IndustriALL affiliate, was declared an extremist organization and is now facing dissolution. Just before the

start of this annual Conference, on 25 May, Maksim Pozniakov, Chairperson of the BNP, was detained and remains in prison.

Hundreds of ordinary union members have been subjected to various forms of harassment and intimidation. The pressure placed on union members to resign from their unions has become harsh in a very widespread way. Interrogations of activists, illegal installation of video and listening devices in union offices have become regular exercises of the authorities.

Following a seven-hour long interrogation, Alexander Bukhvostau, President of another SPM affiliate, was hospitalized. On 30 May, Vladimir Krysenok, former member of the BNP in Novopolotsk, killed himself because of harassment and threats throughout his 12 years in jail.

The repression of independent trade unions in Belarus is politically motivated and constitutes an assault on democracy and its institutions. The arrest of trade unionists constitutes a grave violation of fundamental trade union and human rights. We urge the Belarusian Government to change course and commit to global democratic standards and to demonstrate this commitment by releasing the union leaders who have been arrested and dropping all the charges.

We call on the Committee to observe the severe deterioration in fundamental trade union rights in Belarus and apply all possible measures under the ILO Constitution to make sure that the Belarusian Government fulfils its obligations.

Interpretation from Russian: **Observer, General Confederation of Trade Unions (GCTU)** – The question of compliance by Belarus with the provisions of the Convention has come before the Committee several times and it remains the subject of lively discussion. We must note that the reports of the Committee of Experts on this topic over the years have not always fully reflected the situation in relation to the development of the trade union movement in Belarus.

In recent years, we have seen that various international sanctions and prohibitions have been applied to the country with consequent effects on the way in which it is able to exercise its sovereignty. We must recognize that it is not acceptable to harass or persecute trade union officials for their professional duties, for what they do in seeking to defend the interests of workers. If we look at other violations of law, however, that do affect national security interests, then they should be subject to decisions by other judicial bodies.

We must recognize that the information that we have from the Committee of Experts' report does note that progress has been made. We must also recognize that we do now have a tripartite agreement in that country that involves the social partners in the development of economic development plans and in ensuring that social guarantees are applied in the country.

When it comes to matters relating to labour relationships in the economic interests of the citizens of Belarus, the voices of trade unions are appropriately heard, and they can also make those voices heard at the legislative level. When there have been instances of accusations of failure by Belarus to respect the provisions of the Convention, we must recognize that those have not always been made when looking at the full situation in terms of trying to ensure the economic development of the country. We call on the country to respect the Convention, but we also ask the Committee to take an objective view of developments in Belarus and to craft its recommendations accordingly.

Observer, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) – Our contribution is complementary to the statement of the IndustriALL Global Union and other global union federations.

The ILO has made numerous attempts to offer the Belarus Government support for the implementation of the Convention, but all those efforts over the years failed. The Government has failed to carry out the recommendations contained in the 2004 report of the Commission of Inquiry and continues to manifest its disrespect of the ILO's fundamental principles and the ILO as an organization.

Last year, this Committee expressed its disappointment at the slow progress in the implementation of the recommendations of the Commission of Inquiry and urged the Government to fully implement the outstanding recommendations before this year's Conference took place. Instead, what is happening in Belarus today indicates a further refusal by the Government to meet its obligations under the Convention. The recent arrest of union leaders, including Alexander Yaroshuk, President of the BKDP, who addressed this Committee at the previous session, is the most obvious illustration of that. We therefore believe that this Committee should adopt conclusions which call upon the Governing Body and the Office to take all and every possible measure under the ILO Constitution to secure the observance by Belarus of the recommendations of the ILO Committee of Experts and the Commission of Inquiry which were issued over 17 years ago.

Interpretation from Russian: **Observer, International Trade Union Confederation (ITUC)** – The Government of the Republic of Belarus over the last two decades has systematically violated Conventions Nos 87 and 98. However, in many respects, thanks to the opinions of the Committee members that have been expressed, trade unions are the last civil society organizations that have not been destroyed in the country. Trade unions were called destructive organizations before the Conference last year, and that opened the way to a worsening of the situation, leading to the organization of workers' arrests, raids, liquidation and dissolution of trade union organizations.

The REP Union was deemed to be an extremist organization. We have seen the arrests by the KGB of more than 20 trade union leaders, including the President of the BKDP, a member of the ILO Governing Body, Vice-Chairperson of the ITUC, Alexander Yaroshuk, Vice-President of the BKDP, Siarhei Antusevich. They have been behind bars for one and a half months. We have also seen similar cases against their co-workers.

On the eve of the International Labour Conference, Maksim Pozniakov, President of the Belarusian Independent Trade Union and acting President of the BKDP, and Aliaksandr Mishuk, leader of the Independent Trade Union of Miners, were sent to jail. Zinaida Mikhniuk, Vice-President of the REP Union, was sentenced to two years' imprisonment.

The Belarus Government is showing that it is not willing to implement the Commission of Inquiry's recommendations. It is demonstrating that it does not respect the ILO and its supervisory bodies. We hope that decisions will be taken that are provided for by the Constitution of the ILO in response to repeated violations of the fundamental principles, as reflected in the Convention. It is also essential that all of those leaders in detention are released, and their legitimate trade union activities continued.

Interpretation from Russian: **Government representative, Minister of Labour and Social Protection** – I thank you for giving me this opportunity of addressing you once again to explain the position of the Government of Belarus. I sincerely thank those countries that have expressed support for the Republic of Belarus, your support is very important to us, and it gives us grounds to hope that the assessment of the situation in Belarus by this Committee will be well thought out and well balanced.

I must also say, however, that I categorically reject the politicized statements made by the representatives of the ITUC, the EU and a number of other countries. Such statements are completely groundless, and there is no evidence for what is being alleged at all. We see such statements as trying to drag the ILO into a political game, so that the ILO and this Committee become one more mechanism for exerting pressure on Belarus.

We must recognize that this Organization needs to distance itself as much as possible from such illegitimate actions. We must act in strict compliance with our mandate, and the mandate of the ILO is very clear. It relates to Conventions and Recommendations adopted within the framework of the ILO.

Decent work for all, that is a universal concept, and it brings under the auspices of the ILO all States who are Members of this Organization. That being so, there can be no place for unilateral compulsory measures of any kind. We believe that the politicized statements made run totally counter to the philosophy and fundamental principles underpinning the ILO.

Some countries, in seeking to achieve their foreign policy goals, are willing to enter into a policy of exerting pressure on other countries without paying attention to the appropriateness or not of different forums. I recently drew the attention of the ILO Director-General to the question of exerting pressure or introducing sanctions of some kind against countries that did not comply with ILO standards, and I pointed out that the way that this was being put forward was not in line with the ILO's fundamental principles. The way in which it is being proposed that unilateral coercive measures be taken is not legitimate. I put that point to the Director-General last year. I have not yet received a response from him.

We believe, however, that we need to focus on the issues that are truly within our mandate and truly in the interests of the Members of the ILO. We need to ensure that we are seen as a centre of excellence internationally for employment issues and the protection of workers.

Secondly, we should be seen as an international organization that does not divide countries but brings them together to serve noble and lofty goals.

When I spoke earlier in my introductory comments, I described in some detail the measures being taken by the Government of the Republic of Belarus in seeking to develop and take forward social dialogue and tripartism in accordance with the recommendations of the Commission of Inquiry. I wish to emphasize that success has been achieved in developing social dialogue and tripartism and that was noted by the Committee of Experts and the direct contacts mission. But some of those who have spoken today seem to have forgotten that or just do not want to recognize it.

I would also note that we have made considerable progress over the past 20 years in cooperation with the ILO, and we are working on ensuring that we can now have collective agreements that can be applied in different parts of the country and in different sectors of our economy.

We have indeed succeeded in creating many such agreements, although we have not been able to do as much as we wanted in recent years because of the pandemic. Nonetheless, we have made significant progress.

Belarus cannot be held responsible for anything that it has done in trying to prevent trade unions from carrying out the activities that it is legitimate for them to do, that is to say, being involved in collective bargaining and protecting workers at the enterprise and sectoral levels. Indeed, there is no way that you could accuse us of not respecting that. But when there are trade unions that step beyond their remit and step into other areas, then they must be willing

to be accountable for that before the law. We have the law in our country, and it is the same law that applies to all. That is not the situation only in Belarus; it is the situation in all the countries of the world.

Today, the names of a number of persons have been mentioned and, it is true, these persons are at present subject to legal proceedings. But each and every case is being thoroughly investigated and will be thoroughly dealt with through the courts I can assure you. In terms of violations of the Convention, that is simply something not appropriate to the cases that have been referred to and if you wish for more detail on the cases then we are happy to give you that information. Do not jump to unfounded conclusions, I would ask you.

The Government of Belarus is interested in continuing open and constructive dialogue with the ILO. We stand ready to work with you, not just in terms of giving effect to the recommendations of the Commission of Inquiry, but also to work on other broader labour and social protection issues. I am sure that our cooperation can make a significant contribution to ensuring that we can improve the standard of living of people in Belarus and to ensuring that the more than 10 million people who live there can enjoy all their human rights, including labour rights.

This is what the ILO is supposed to be about. This is what the Committee is supposed to be about. If this is going to happen, I would ask you not to take a partial one-sided view of our situation and, secondly, do not jump to critical conclusions about what is being done by the authorities in Belarus, when what they are doing is simply seeking to ensure respect for law and order in the country.

Let me once again call on the members of this Committee, representatives of Governments, Employers and Workers not to take decisions now which in future might be a hindrance to developing constructive cooperation between Belarus and the ILO.

I would call upon you to listen to what has been said by all who have spoken and to refrain from a unilateral politicized approach to this issue. Let me remind you once again that decent work for all is a universal concept and the ILO can bring together all the countries of the world in the service of that cause and, in that area, you will find Belarus to be a reliable and committed partner.

Worker members – We note the comments of the Government of Belarus and that the Government of Belarus has failed to implement its obligations under the Convention and the recommendations of the Commission of Inquiry. The Government of Belarus is not just failing to implement the recommendations of the Commission, it has taken escalatory measures of repression and has engaged in the intentional and systematic destruction of independent trade unions.

Without serious measures to address the impunity shown by the Government of Belarus, the whole supervisory system will be seriously weakened. The Government must immediately release all trade union leaders and members arrested for participating in strikes and peaceful assemblies or, for that matter, for exercising their civil liberties pursuant to their legitimate trade union activities, including Alexander Yaroshuk, a member of the Governing Body of the ILO, Siarhei Antusevich and Gennady Fedynich. As a matter of urgency, the Government must give access to visitors, including ILO officials to ascertain the conditions of arrest and detention and their welfare.

We note that several other union leaders arrested in April have been released, but face similar charges, including the SPB President, Mikalaj Sharakh, and the SPM President,

Alyaksandr Bukhvastau. The two-year sentence against the Vice-President of the REP Union, Zinaida Mikhniuk, must be quashed and she must be released immediately.

The Government must take immediate action to implement fully the 2004 recommendations of the Commission of Inquiry and the conclusions of the Committee, including the conclusions adopted by this Committee in 2021, as well as the recommendations of the CFA.

We take note of the serious and grave deterioration of the conditions for the exercise of trade union rights for independent trade unions, including the breakdown of respect for civil liberties by the Government and the authorities in Belarus, the arrest and detention of trade union leaders, the ongoing interference in trade union affairs and the violation of privacy through searches of trade union property.

We must recall that every opportunity has been given to the Government of Belarus to comply with its obligations under the Convention, without any success whatsoever. We note with deep regret the failure of the Government of Belarus to fully implement the conclusions of the Committee, including its 2021 conclusions, and the failure of the Government to fully implement the 2004 reports and recommendations of the Commission of Inquiry, as well as the recommendations of the CFA, in 2022, after 18 years, this Committee must refer this matter to the Governing Body for follow-up at its June 2022 session so that it can consider at that time any further measures to secure compliance therewith in line with the ILO Constitution. This case must again be included in a special paragraph.

Employer members – We begin by noting the comments of the Government of Belarus and thank it for the information that it has provided to our Committee today. We also thank the participants who joined the discussion today on the case of Belarus and its application of the Convention.

We have listened very carefully to all of the representatives of Workers, Employers and Governments who have taken the floor. The majority of these contributions, in our view, focused on the issue of the application of the Convention in law and practice, taking into account the report of the Commission of Inquiry in 2004, the Committee of Experts' observations and the Committee's conclusions, most recently its 2021 conclusions. Therefore, we believe that the issues being discussed in our Committee have fallen within its mandate, and we appreciate the feedback on these issues that the speakers have provided.

The Employer members must note that we regret that there has not been any meaningful progress towards the implementation of the Commission of Inquiry's recommendations, and we also deeply regret that there has been no progress towards the implementation of the Committee's 2021 conclusions. In fact, based on the information provided by the Committee of Experts, it appears that the situation is in fact deteriorating. This is deeply regrettable.

Furthermore, the Employer members are deeply concerned at new allegations of criminal prosecution, arrest and imprisonment of trade unionists. Therefore, we join the call by other members of the Committee for the immediate release of any individuals arrested or imprisoned because of trade union activities, membership or affiliation. At a fundamental level, employers' and workers' organizations must be free to associate and organize their activities freely without intimidation, without interference and at a fundamental level. This is a basic compliance obligation with the Convention. In our view, this principle applies equally whether we are discussing the freedom and security of workers' or employers' organizations, but it is the foundational requirement for true compliance in both law and practice with the Convention and so, in our view, it is not possible for a government to take the position that it is in

compliance, or substantial compliance, with the Convention while failing to respect this basic right.

In addition, taking into account our deep regret that no meaningful progress has been made regarding the implementation of the Committee's 2021 conclusions, the Employer members must conclude this case by recalling the detailed recommendations set out in our 2021 conclusions and urging, in the strongest terms, that the Government implement these recommendations without any further delay or excuse.

The Employer members invite the Government to avail itself of technical assistance, where necessary, and request the Government to provide detailed and complete information on any measures taken and any progress made on the issues raised in the Committee's 2021 conclusions, in consultation with the most representative employers' and workers' organizations nationally, and to report to the ILO before 1 September 2022. Taking into account the submissions made and the discussion of this case, as well as the Committee of Experts' observations, the Employers' group can support the Workers' call for the inclusion of this case in a special paragraph.

Conclusions of the Committee

The Committee took note of the oral and written information provided by the Government and the discussion that followed.

The Committee noted the long-standing nature and the prior discussion of this case in the Committee, most recently in 2021.

The Committee deplored and deeply regretted the allegations of extreme violence to repress peaceful protests and assembly, and the detention, imprisonment and violent treatment of workers while in custody. The Committee deplored the escalating measures deployed to repress trade union activities, as well as the systemic destruction of independent trade unions.

The Committee expressed its deep concern that, 18 years after the Commission of Inquiry's report, the Government had failed to take measures to address most of the Commission's recommendations. The Committee recalled the recommendations of the 2004 Commission of Inquiry noting the failure to make progress on its implementation and the need for their full and effective implementation, without further delay.

Taking into account the discussion, the Committee urges the Government, in consultation with the social partners, to:

- **restore without delay full respect for workers' rights in respect of freedom of association;**
- **refrain from the arrest, detention, violent treatment, intimidation or harassment, including judicial harassment, of trade union leaders and members conducting lawful trade union activities;**
- **investigate without delay alleged instances of intimidation or physical violence through an independent judicial inquiry;**
- **immediately release all trade union leaders and members arrested for participating in peaceful assemblies or arrested for exercising their civil liberties pursuant to their legitimate trade union activities and drop all related charges, including for the following persons: Aliaksandr Yarashuk – a member of the Governing Body of the ILO;**

Siarhei Antusevich, Vice-President of the Belarus Congress of Democratic Trade Unions (BKDP); Gennadiy Fedynich, leader of the Belarusian Union of Radio and Electronics Workers (REP); Mikalai Sharakh, President of the Belarusian Free Trade Union (SPB); Aliaksandr Bukhvostov, President of the Free Trade Union of Metal Workers (SPM); and Zinaida Mikhniuk, Vice-Chairperson of the Belarusian Union of Radio and Electronics Workers (REP);

- **give access, as a matter of urgency, to visitors, including officials of the ILO, to ascertain the conditions of arrest and detention and the welfare of the above-mentioned persons;**
- **take immediate action to implement fully the 2004 report of the Commission of Inquiry and the conclusions of the Conference Committee on the Application of Standards, including the conclusions adopted by the Committee in 2021.**

The Committee also refers this matter to the Governing Body to follow up at its June 2022 session and consider, at that time, any further measures, including those foreseen in the ILO Constitution, to secure compliance with the recommendations of the Commission of Inquiry.

In addition, the Committee reproduces its 2021 conclusions in full:

> **The Committee took note of the written and oral information provided by the Government representative and the discussion that followed.**
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> **The Committee noted the long-standing nature and the prior discussion of this case in the Committee, most recently in 2015.**
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> **The Committee noted with great concern and deeply regretted the numerous allegations of extreme violence to repress peaceful protests and strikes, and the detention, imprisonment and torture of workers while in custody following the presidential election in August 2020 as well as the allegations regarding the lack of investigation in relation to these incidents.**
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> **The Committee expressed its deep concern that, 17 years after the Commission of Inquiry's report, the Government of Belarus had failed to take measures to address most of the Commission's recommendations. The Committee recalled the outstanding recommendations of the 2004 Commission of Inquiry and the need for their rapid, full and effective implementation.**
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> **Taking into account the discussion, the Committee urges the Government to:**
>
> - **restore without delay full respect for workers' rights and freedom;**
> - **implement recommendation 8 of the Commission of Inquiry on guaranteeing adequate protection or even immunity against administrative detention for trade union officials in the performance of their duties or when exercising their civil liberties (freedom of speech, freedom of assembly, etc.);**
> - **take measures for the release of all trade unionists who remain in detention and for the dropping of all charges related to participation in peaceful protest action;**
> - **refrain from the arrest, detention or engagement in violence, intimidation or harassment, including judicial harassment, of trade union leaders and members conducting lawful trade union activities; and**
> - **investigate without delay alleged instances of intimidation or physical violence through an independent judicial inquiry.**
>
> **As regards the issue of legal address as an obstacle to trade union registration, the Committee calls on the Government to ensure that there are no obstacles to the registration of trade unions, in law and practice, and requests the Government to keep it**

informed of further developments on this matter, in particular any discussions held and outcomes of these discussions in the Tripartite Council.

As regards the demand by the President of Belarus for the setting up of trade unions in all private companies by 2020 on the request of the Federation of Trade Unions of Belarus (FPB), the Committee urges in the strongest terms the Government:

- **to refrain from any interference with the establishment of trade unions in private companies, in particular from demanding the setting up of trade unions under the threat of liquidation of private companies otherwise;**
- **to clarify publicly that the decision whether or not to set up a trade union in private companies is solely at the discretion of the workers in these companies; and**
- **to put an immediate stop to the interference with the establishment of trade unions and refrain from showing favouritism towards any particular trade union in private companies.**

As regards the restrictions of the organization of mass events by trade unions, the Committee urges the Government, in consultation with the social partners, including in the framework of the Tripartite Council:

- **to amend the Law on Mass Activities and the accompanying Regulation, in particular with a view:**
  - **to set out clear grounds for the denial of requests to hold trade union mass events, ensuring compliance with freedom of association principles;**
  - **to widen the scope of activities for which foreign financial assistance can be used;**
  - **to lift all obstacles, in law and practice, which prevent workers' and employers' organizations to benefit from assistance from international organizations of workers and employers in line with the Convention;**
  - **to abolish the sanctions imposed on trade unions or trade unionists participating in peaceful protests;**
- **to repeal the Ordinance No. 49 of the Council of Ministers, as amended, to enable workers' and employers' organizations to exercise their right to organize mass events in practice; and**
- **to address and find practical solutions to the concerns raised by the trade unions in respect of organizing and holding mass events in practice.**

As regards consultations in respect of the adoption of new pieces of legislation affecting the rights and interests of workers, the Committee requests the Government to amend the Regulation of the Council of Ministers No. 193 to ensure that social partners enjoy equal rights in consultations during the preparation of legislation.

As regards the functioning of the Tripartite Council for the Improvement of Legislation in the Social and Labour Sphere, the Committee urges the Government to take the necessary measures to strengthen the Tripartite Council so that it can play an effective role in the implementation of the recommendations of the Commission of Inquiry and other ILO supervisory bodies towards full compliance with the Convention in law and practice.

The Committee expresses its disappointment at the slow process in the implementation of the recommendations of the Commission of Inquiry. Recent developments indicated a step backward and further retreat on the part of the Government from its obligations under the Convention. The Committee therefore urges the Government to take before the next Conference, in close consultation with the social partners, all necessary steps to fully implement all outstanding recommendations of the Commission of Inquiry.

The Committee invites the Government to avail itself of ILO technical assistance.

The Committee requests the Government to provide detailed and complete information on measures taken and progress made on all of the above issues and to transmit all relevant legislative texts to the Committee of Experts before its next meeting in consultation with the social partners.

The Committee invites the Government to avail itself of technical assistance from the Office.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 communicating information on the application of the Convention in law and practice, in consultation with the social partners.

The Committee decides to include its conclusions in a special paragraph of the report and to mention this case as a case of continued failure to implement the Convention.

Interpretation from Russian: **Government representative** – The Government of Belarus has carefully considered the conclusions of the Committee with regard to Convention No. 87. We are obliged to note that, once again, these are unfair and politicized and not objective. The Government provided information on the efforts made to give life to the recommendations. These have been ignored. Certain States asserted support for Belarus. Unfortunately, our fears have come to fruition. This ILO forum is being used for political purposes and we believe that such action is unfair.

Belarus has done much to develop tripartism and social dialogue on the basis of social partnership. This fact has not been reflected in the conclusions. We believe that the inclusion of a special paragraph on Belarus is not in line with the reality on the ground. There is no basis pursuant to article 33 of the ILO Constitution for this procedure to be engaged. In four days' time, this is to be discussed at the 345th Session of the Governing Body. I had already indicated that a detailed report is to be provided by August to the Office.

Belarus has been a long-standing reliable partner of the ILO. We are convinced that those who are calling for the application of article 33 against Belarus are deliberately seeking to misuse the ILO. This should not be permitted. The Government is in favour of constructive and open dialogue with all ILO Members in order to achieve an inclusive, fair and secure labour sphere. All attempts to exert pressure for political ends should be fully and immediately excluded from this type of forum.

Benin (ratification: 2001)

Worst Forms of Child Labour Convention, 1999 (No. 182)

Written information provided by the Government

The Government has taken several types of action to combat all forms of forced labour and the commercial sexual exploitation of children, particularly *vidomégon* children.

Examples of this include:

- analysis of the extent to which national legislation is in conformity with the Domestic Workers Convention, 2011 (No. 189), with a view to its ratification;
- the establishment and strengthening of communication on the children's helpline and implementation of the communication plan for the "hello 138" campaign.

As a result of the children's helpline:

- 28,364 calls were received between 18 March 2020 and 30 November 2021;
- 138 cases of child victims of violence have been dealt with;
- 13,356 calls offered an opportunity to provide advice, guidance and information about the children's helpline and other toll-free numbers, as well as fun calls with children;
- 186 children, 77 in Ouando, 18 in Parakou and 91 in Dantokpa, were removed from the large markets of Benin in 2017 as a result of inspection missions organized by labour inspectors;
- in 2022, 15 cases of *vidomégon* children were resolved with the perpetrators and parents appearing before the juvenile court. To date, 3 children have been rehabilitated and the others returned to their families following rulings by the juvenile court.

In the context of the implementation of Act No. 2006-04 of 10 April 2006 establishing conditions for the movement of young persons and the repression of child trafficking in the Republic of Benin, several types of action have been undertaken, including:

- the drafting of the National Policy to Combat Trafficking in Persons 2022–31 and its plan of action 2022–26;
- the workshop on the drafting of plans of action for the implementation of the recommendations resulting from the diagnostic study of the criminal justice system in relation to trafficking in persons;
- the participation of Benin in the 14th Annual Review Meeting of the Economic Community of West African States (ECOWAS) Regional Network of National Focal Institutions against Trafficking in Persons Plus.

In accordance with its mandate, the Central Office for the Protection of Children and the Elimination of Trafficking in Persons (OCPM) intervenes to combat trafficking of children through prevention, and by raising awareness among children, parents and, particularly, vulnerable categories.

In terms of protection, the OCPM intervenes in the system for the repression of trafficking of children, in collaboration with border units, several NGOs and the Office of the Public Prosecutor to identify and punish cases. This action has led to the following results:

- in 2020, the Office recorded 49 cases of trafficking of children, with 34 convictions (20 men and 14 women);
- in 2021, 37 cases were recorded and led to 13 convictions (9 men and 4 women).

In view of its magnitude, the Government is concerned about child labour in mines and quarries. In November 2019, an important meeting was organized in the framework of intersectoral dialogue on combating child labour, at the initiative of the ministry responsible for child labour, with a view to the periodic evaluation of the situation with those responsible for sectors with high levels of child labour.

The conclusions and recommendations of the meeting pointed to the need to organize a joint visit with the various ministries to mining sites in the departments of Mono and Couffo in October 2021.

During this visit, which brought together various political and administrative authorities in the sectors concerned, with participation of Ministers of Labour and Social Affairs, the chief of staff of the Minister of Mines and the United Nations Children's Fund (UNICEF) resident representative in Benin, the various authorities had the opportunity to evaluate the situation of children working at those sites and assess the risks related to the work. It was an opportunity for the ministers, the prefects of Mono and Couffo and the UNICEF resident representative to raise awareness among parents, children and site operators of the need to end the exploitation of children in this sector.

Following this visit, the authorities decided to launch a specific study to assess precisely the magnitude of the phenomenon. It is envisaged that the study will be accompanied by a three-year plan of action for targeted and significant intervention in the mining sector over the coming years. This study was launched in March 2022.

The 2019–23 National Plan of Action prepared by Benin is fully in line with the implementation of the Convention and is aimed at the elimination of the worst forms of child labour, while also pursuing the objective of the elimination of all forms of child labour in the long term.

In this regard, several types of action have been undertaken, including:

- analysis of the extent to which the law is in conformity with the Domestic Workers Convention, 2011 (No. 189), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), with a view to their ratification;
- the review and updating of the list of hazardous types of work;
- the drafting of the list of light types of work in Benin;
- the establishment of services to combat child labour in the 12 departments of Benin;
- the preparation of the procedure and protocol document for the monitoring of child labour.

The labour inspection services carry out monitoring to prevent children becoming victims of trafficking and remove those who are victims of the worst forms of child labour. In this regard, the 2022 annual work plan for departmental labour directorates and the civil service includes inspections throughout the country.

The Ministry of Social Affairs, through social assistants, is setting up and strengthening the capacity of child protection monitoring committees (identification of at-risk children and victims, establishment of local alert and reporting systems).

For this purpose:

- 409 monitoring committees have been established, 197 in Bourgou and Alibori and 212 in Atacora;
- 118 monitoring committees have been strengthened in Bourgou and Alibori.

The following action has been taken to ensure the protection of orphans and vulnerable children (OVCs).

At the institutional level:

- capacity-building for social workers working in social promotion centres; and
- the establishment of a collaboration framework for those working to protect OVCs.

At the technical level:

- the identification and categorization of OVCs according to a vulnerability scale;
- a support kit for school and apprenticeship for highly vulnerable OVCs;
- monitoring of the schooling of OVCs by social promotion centres; and
- advocacy with communal authorities to take account of the needs of OVCs in communal development plans and the inclusion of a budget line to that effect.

In the framework of cooperation efforts with neighbouring countries with a view to bringing an end to the trafficking of children under 18 years of age, the following cross-border bilateral agreements have been signed:

- the Benin–Gabon Agreement, 11 November 2020;
- the Benin–Congo Agreement, 20 September 2011;
- the Benin–Nigeria Agreement, 2013;
- the Benin–Togo–Burkina Faso Agreement, 2020;
- the Benin–Ghana Agreement (ongoing).

Multilateral cooperation agreements to combat child trafficking in West Africa have also been signed. These include the agreement between Benin, Burkina Faso, Côte d'Ivoire, Guinea, Liberia, Mali, Niger, Nigeria and Togo signed in 2005.

It should be noted that a national plan of action to combat trafficking has been drawn up, but its implementation has not yet begun.

Discussion by the Committee

Government representative – Our country has always been sensitive to the issue of child labour, and particularly its worst forms. That is why it ratified the Convention, in order to reinforce its legal framework to facilitate the elimination of harmful labour by children. Efforts have been made to limit the phenomenon over the past decade. However, despite these efforts, our country has been included on the list of countries called upon to appear today on the basis of the observations of the Committee of Experts, which find the application of the Convention unsatisfactory.

Taking note of this situation, the Government agrees to submit to the procedure of being called before the Committee, while considering this an opportunity to do better. That is why

we are taking this opportunity to provide further explanations of the action undertaken by the Government and to reaffirm our will and our commitments in relation to the issue that we are examining this morning. We dare to hope that following this sometimes complex exercise, Benin will be better understood by the international community in terms of the national policy for the protection of children in general, and in particular to combat child labour.

To do so, let me provide you with an overview of the *vidomégon* concept, covered by the observations. We will then review the global environment of action to combat the phenomenon through the legislative and institutional framework. I will finish by referring to the prospects and the ILO cooperation and assistance that we are calling for.

With reference to *vidomégon* children, the concept has evolved greatly since 1960. The Government does not deny the existence and gravity of the problem, but it should be noted that the origins of the *vidomégon* practice are intimately related to the culture of Benin. Its objective is as a vehicle for the values of solidarity and mutual aid in the community.

The origins of the *vidomégon* practice have to be seen in relation to the institution of marriage and, more generally, family solidarity. Parents in our culture are not a priori considered to be good at bringing up children, for emotional reasons. That is why children are placed in the households of close relatives, who bring them up with a certain rigour.

Reference should also be made to the fundamental role that urbanization has played for children from villages and their cultural adaptation through the practice of *confiage*, or the placement of children with other families, in a considerable number of cases in Benin in the achievement of an enviable socio-economic situation. It would not be an exaggeration to say that most middle and higher-level personnel in Benin, such as myself, were *vidomégon* children placed with aunts or uncles who provided us with a slightly more rigorous upbringing than our own mothers and fathers.

In light of the above, it may be concluded that the practice in question originally displayed no element of perversity. It has been with changes in mentality and customs that it has become corrupted and given way to a universe in which children are exploited and enslaved.

Even now, in view of its magnitude, statistics are limited on the situation of *vidomégon* children. Nevertheless, there has already been a reduction as a result of laws and regulations adopted by the Government.

With regard to the overall situation, I have to say that, according to recent data, the national incidence of child labour, which was assessed at 52.5 per cent in 2014, fell to 33 per cent in 2018, according to a demography and health survey. That means that the number of children in harmful situations has greatly diminished.

The laws and regulations adopted have enabled us to ratify many international Conventions adopted by the United Nations system, including the United Nations Convention on the Rights of the Child (1989), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), ILO Convention No. 182 and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2004).

At the national level, many laws have been adopted, among which reference may be made to: Act No. 2015-08 of 8 December 2015 issuing the Children's Code of the Republic of Benin; Act No. 2006-04 of 10 April 2006 establishing conditions governing the movement of children and repressing the trafficking of children in the Republic of Benin; Act No. 2018-16 of 28 December 2018 issuing the Criminal Code regulating the conditions of repression; and,

finally, Act No. 2017-20 of 20 April 2018 issuing the Numerical Code in the Republic of Benin. Through this latter Code, any crimes related to trafficking committed using information and communication technologies are subject to severe penalties.

In terms of regulations, reference may be made to a recent decree organizing the Ministry of Justice with a view to the preparation and implementation of a criminal policy to protect children against trafficking, sexual exploitation and forced labour, and implementing alternative measures to imprisonment for children in violation of the law and the establishment of a system of restorative justice.

These new measures are inauguring in our country an era of the establishment of a justice system based on the approach of victim protection. They involve institutional organization and measures.

There are three institutional levels, starting at the national level with the coordination of the action and interventions to combat child labour.

At the national level, there is a coordination committee consisting of various ministries, such as the Ministry of Labour, the Ministry of Trade, the Ministry of Finance, the Ministry of Foreign Affairs, the Ministry of Maternal and Primary Education, the Ministry of Secondary and Technical Education and Vocational Training and the Ministry of Mines, among others. Representatives of the most representative organizations of employers and workers are members of the coordination committee. At the departmental level, interventions are organized by the prefect, that is the administrative authorities. At the communal level, there are coordination units headed by mayors (of whom there are 77).

All the actors intervene within the framework of a programme. For example, in accordance with the programme established by the Government in 2014, Benin adopted its National Child Protection Policy. Following a few years of implementation in practice, its plan of action was reviewed. In 2019, the second National Plan of Action to Combat the Worst Forms of Child Labour emerged. Five strategic priorities formed the backbone of the plan: reinforcement of the legal framework; social mobilization; education; training; control and repression.

Moreover, Benin has developed the National Policy to Combat the Trafficking of Children 2022–31.

The implementation of these policies and strategies has led to certain results of which we would like to inform the Committee.

The Government has undertaken several types of action to combat all forms of forced labour, the commercial sexual exploitation of children and particularly *vidomégon* children.

By way of illustration, reference may be made to the analysis of the conformity of the national legislation with Convention No. 189 to broaden protection under the Convention, as well as under Convention No. 129 covering, respectively, domestic workers and labour inspection in agriculture with a view to their ratification and the development and strengthening of communication on the children's helpline.

Through the children's helpline, 28,364 calls were recorded as of 30 November 2021; 138 cases of child victims of violence were dealt with; advice, guidance and information was provided in response to 13,356 calls on the children's helpline and other toll-free numbers, as well as fun calls with children; 186 children were removed from the major markets in Benin in 2017 as a result of inspection missions organized by labour inspectors; in 2022, 15 *vidomégon* children were rescued with the perpetrators and parents appearing before the juvenile court;

to date, 3 children have been reintegrated and others have been returned to their families by decision of the juvenile court; a workshop was held on the drafting of plans of action for the implementation of the recommendations resulting from the diagnostic study of the criminal justice system in relation to trafficking in persons; and Benin participated in the 14th Annual Review Meeting of the ECOWAS Regional Network of National Focal Institutions against Trafficking in Children and Persons.

In accordance with its mandate, the OCPM intervenes to combat trafficking of children through prevention, and by raising awareness among children, parents and, particularly, vulnerable categories.

In terms of repression, the OCPM intervenes in the system for the repression of trafficking of children, in collaboration with border units, several NGOs and the Office of the Public Prosecutor, to identify and punish cases.

These actions have led to the following results: in 2020, the Office recorded 49 cases of trafficking of children, with 34 convictions (20 men and 14 women); in 2021, 37 cases were recorded and led to 13 convictions (9 men and 4 women).

In view of its magnitude, the Government is concerned about child labour in mines and quarries.

Visits were therefore organized, in collaboration with the Ministry of Labour, to assess the situation with those responsible for sectors with a high incidence of child labour. In November 2019, a meeting was organized bringing together high-level Ministry officials representing the worst affected sectors, such as agriculture, tourism, commerce, craftwork and mines.

The conclusions and recommendations of that meeting pointed to the need to organize a joint visit with the various ministries.

Following this visit, the authorities decided to launch a specific study to precisely assess the magnitude of the phenomenon. It is envisaged that the study will be accompanied by a three-year plan of action for targeted and significant intervention in the mining sector over the coming years. This study was launched in March 2022.

It should also be emphasized that, in budgetary terms, the overall amount of the direct investments made by the Government every year to combat child labour can be estimated at around 200 million CFA francs.

Clearly, this amount does not include the interventions by civil society organizations, which have an independent budget.

In light of the above, and in order to achieve an ideal situation as planned by the Government in relation to its ambition to achieve the Sustainable Development Goals (SDGs), some challenges need to be outlined.

First, the issue of repression is both a worrying and a complex matter. In practice, when action to remove children gives rise to the prosecution and conviction of those responsible, other social problems immediately arise. For example, in the case of craftworkers, the arrest of a master craftworker in most cases results in the disappearance of the activity and, consequently, the dispersion of the apprentices, leading to other problems for their parents with a view to their reintegration. In such circumstances, the question arises as to how to use the system of repression so that it does not turn against us.

Second, it should be emphasized that, for a large number of the children who are removed, reception centres are often overcrowded and a considerable number of children

have nowhere to go and are therefore sent back to their families. This was the case in 2017 with the removal of approximately 100 children from the Dantokpa market, which gave rise to problems in dealing with them.

Moreover, the insufficient numbers of labour inspectors and child protection specialists does not always facilitate the proper organization of controls and care for the children.

In the near future, the Government will continue its action to combat the issue and will focus on the following initiatives: the ratification of Conventions Nos 129 and 189; the preparation of a study in 2022 on the situation of children in mines and quarries, combined with a three-year action plan; the completion of the process of updating the list of hazardous types of work prohibited for children; and the strengthening of the vocational training system with a view to quality apprenticeship.

In terms of future prospects, it should be emphasized that the Government needs to be included in ILO cooperation and technical and financial assistance, as well as with other competent organizations.

The Government already requests the support of the international community, and particularly of the International Labour Standards Department and the Committee of Experts in relation to the multiple challenges arising in particular in relation to: support in updating the compliance studies on Conventions Nos 129 and 189; support for the organization of a tripartite capacity-building workshop for the actors involved in action to combat the worst forms of child labour, and on the drafting of reports on the application of international labour standards; support for the construction and equipping of adapted child reception and protection centres and their geographically balanced distribution throughout the country; support for the development of an appropriate strategy for the repression of the abuse and exploitation of children on the labour market; advocacy for the massive recruitment of labour inspectors and their specialization in protection and related matters to strengthen the staff of monitoring teams through human resources of the appropriate quality and quantity; support for the training of investigators so that they are adapted to technological developments; and support for the interconnectivity of the various databases for the different services that intervene in combating child labour.

This is the additional information that the delegation wished to present to the members of the Committee.

The Government considers that this appearance offers an opportunity and a source of motivation for our country in the sense of accelerating its progress towards the effective elimination of child labour in response to the SDGs.

Employer members – Benin ratified the Convention in 2001 and the Committee of Experts made prior observations in 2014, 2018 and 2021. This is the first time the Committee has discussed Benin's application of the Convention. We thank the Government of Benin for having submitted relevant information to the Committee regarding the application of this Convention in law and practice. We find this information is very promising as is the strong commitment expressed by the Government representative.

The Committee of Experts' observations outline persisting gaps in Benin's compliance with the Convention. First, regarding Article 3(a) of the Convention which prohibits the worst forms of child labour, including forced labour, the Committee of Experts has noted with deep concern the continuing situation of *vidomégon* children. It is noted that an important number of *vidomégon* children, that is children who are placed in the home of a third party by their parents or by an intermediary in order to provide them with education and work, still face many forms

of exploitation in host families, including forced labour and sexual exploitation. Various United Nations reports highlight the fact that 90 per cent of *vidomégon* children do not go to school. Instead, they are employed at the local market and in street trade and are often victims of prostitution. At the same time, it is noted that existing legislation establishes the obligation of the child placed in the host family to attend school and prohibits the use of these children as domestic workers. Furthermore, we take note that the Government has adopted specific measures to tackle this phenomenon such as the launch of a child helpline.

The Employer members are of the view that the prevalence of these unacceptable practices illustrates the multiple challenges faced in implementing existing regulations. Therefore, we would like to request the Government to redouble its efforts and take measures to ensure that, in practice, thorough investigations are robust, prosecutions are carried out and that sufficiently effective and dissuasive sanctions are imposed to deter adults from employing and abusing children.

On a related topic, the provisions of Articles 3(a) and 7(1) on the worst forms of child labour and penalties regarding the sale and trafficking of children, the Employer members welcome the Government's efforts in developing legislative and other administrative measures to identify child trafficking and collect statistical data on the number of investigations, prosecutions, convictions and criminal sanctions. In particular, we welcome the effort put into developing the National Policy Document to Combat Human Trafficking 2022–31 and its Action Plan 2022–26, the Second National Action Plan on the Elimination of the Worst Forms of Child Labour 2019–23, and the number of bilateral agreements that Benin has concluded with neighbouring countries to combine efforts.

However, we must express deep concern regarding the observations of the Committee on the Rights of the Child which established in 2018 that the existing prevention strategies are ineffective, inadequate and inefficient. This issue must be analysed in the context of prevalent practices of child trafficking from and into neighbouring countries as noted in the Committee of Experts' observations, particularly for domestic servitude and commercial and sexual exploitation in the case of girls, and forced labour in mines, quarries, markets and farms in the case of boys.

The Employer members understand the challenges regarding implementation and early identification of high-risk areas and vulnerable groups, all of which has proven fundamental in order to define priorities to ensure efficient resource allocation. Against this background, we request the Government to continue reporting on the measures taken, as well as the number of investigations, prosecutions, convictions and criminal sanctions imposed.

At the same time, we encourage the Government to implement as a matter of priority measures concerning child labour awareness and community sensitization, and to continue working in cooperation with the social partners and international development partners in order to build capacity among public officers, as well as employers' and workers' organizations.

The Employer members would like to highlight that, while essential, prosecuting and sanctioning adults and removing children from the worst forms of child labour are not stand-alone solutions. As such, the above-mentioned measures cannot be sufficient, effective or sustainable when not implemented in conjunction with strategic policies aiming to address the root causes, risk factors and socio-economic circumstances that either lead to or result in the exploitation of children.

The Committee of Experts takes this into consideration when addressing Article 7(2), paragraphs (a) and (b), on preventing the engagement of children in the worst forms of child

labour and providing assistance for their removal. In particular, the Committee of Experts made observations regarding children working in mines and quarries.

The Committee of Experts took note of the various measures adopted by the Government to prevent child labour in mining sites, including awareness-raising and occupational safety and health training for mining site operators, and alert mechanisms put in place to notify site supervisors of the presence of working children.

The Committee of Experts also noted that committees to monitor child labour in quarries and on granite-crushing sites were established in several communes with UNICEF's support in 2020 and have revealed several working children at these sites.

The Employer members echo the Committee of Experts' request that the Government continue taking effective and time-bound measures to protect these children from hazardous work. In particular, we would like to request the Government to intensify its efforts to facilitate access to free basic education for all children and to provide information on the concrete measures taken in this regard, as well as on school attendance, maintenance and drop-out rates.

The Employer members once again thank the Government for the written and oral information submitted to the Committee and want to highlight that the strong commitment expressed by the Government regarding this case is noted.

We reiterate our request to the Government to intensify its efforts regarding implementation of early identification of high-risk areas and vulnerable groups, improve resource allocation regarding the identification of child victims, and continue to report relevant data on the measures taken and the results achieved.

Finally, the Employer members note that the ILO has assisted the Government with regard to its reporting obligations through the International Training Centre of the ILO in 2021 and encourage the Government to continue seeking further assistance to increase the capacity of the tripartite constituents and develop and implement multidimensional sustainable strategies to eradicate the worst forms of child labour, built upon timely and effective consultation with the social partners.

Worker members – We had already emphasized during the examination of a previous case during the course of this session that child labour is a scourge that the world has undertaken to eradicate as soon as possible through the universal ratification of the Convention.

Despite these commitments, in recent years there has been a recrudescence of child labour which is a cause for deep concern following many years of the reduction in its incidence. The crises that we have experienced are threatening to reduce to nothing the efforts made in the past. Today we now have to renew our efforts in order to convert political commitments into tangible reality.

We are today examining the case of Benin, in which the delicate issue arises of the so-called *vidomégon* children.

These children are placed in the home of a third person by their parents or an intermediary in order to obtain an education and work. According to an article in *Le Monde*, this practice, which has existed for a long time, enables poor families to offer their children the possibility of benefiting from access to education in exchange for the performance of certain agricultural or household tasks.

It would appear that since the 1990s, this practice has been totally diverted from this purpose and unfortunately now often constitutes an unacceptable form of exploitation of children, sometimes even organized by malicious networks, which only rarely guarantees these children access to education; indeed, quite the contrary.

According to UNICEF, there are approximately 200,000 *vidomégon* children in West Africa. Although we do not have exact figures for Benin, the NGO Espoirs d'Enfants estimates that there are 5,000 in Dantokpa alone. It would be useful for the Government to establish a system for the collection of data on *vidomégon* children so that trends in the phenomenon in the country can be monitored.

Alongside its observations on this practice, the Committee of Experts also raises other concerns relating to the trafficking and sale of children, as well as child labour in mines and quarries in Benin.

The first observations of the Committee of Experts on these issues date from 2014, and they have also been the subject of direct requests since 2004.

To come back to the *vidomégon* children, the Committee of Experts indicates that they are particularly exposed to the various forms of exploitation in the families in which they are placed.

Even though the Children's Code in Benin establishes the requirement for children who are placed in families to go to school and prohibits their use as domestic workers, the United Nations Committee on the Rights of the Child and Human Rights Committee have expressed concern at the persistence of abuses related to the placement of these children, which come close to forced labour and is a source of economic and sometimes sexual exploitation.

The Government reports the adoption of initiatives to combat such abuses. They are clearly welcome but would need to be considerably reinforced.

Although the difficulties referred to by the Government relating to access to the home have to be overcome so that the abuses that are occurring can be identified, the exploitation of these children often happens outside the home, as 90 per cent of *vidomégon* children do not attend school and work on markets or in street trading. Those are the findings of the 2017 report of the Office of the United Nations High Commissioner for Human Rights, which particularly focuses on the specific risks affecting young girls who, in addition to economic exploitation, are also reported to be victims of prostitution.

The report of the Committee of Experts also points the finger at the problem of the sale and trafficking of children. The Committee on the Rights of the Child and the Human Rights Committee have considered Benin to be a country of origin, transit and destination of trafficking in persons, and particularly women and children, for the purposes of domestic work, subsistence farming and trade, as well as sexual exploitation.

Despite the initiatives taken by the Government to combat this issue, the Committee on the Rights of the Child estimated in 2018 that the initiatives launched to identify child victims of sale and trafficking were inadequate and ineffective.

Finally, the report of the Committee of Experts also refers to the situation of children working in mines and quarries. According to a study carried out within the context of an ILO project over the period 2010–14, some 2,995 children worked in 201 mines, 88 per cent of whom were of school age.

In this regard, we welcome the development by the Government of initiatives such as awareness-raising for people involved in mines, training in occupational safety and health and

the establishment of monitoring committees in collaboration with UNICEF. We join the Committee of Experts in encouraging the Government to pursue and reinforce its prevention efforts. We also call on the Government not to overlook enforcement and to impose dissuasive sanctions when abuses are identified in practice.

The situation that we have just described in Benin forces us to conclude that the Convention is not always fully respected in practice, and particularly Articles 3(a) and 7(1) and (2).

We will have the opportunity to further specify our recommendations in our concluding remarks, but it appears to us that, to take action in practice for the elimination of the worst forms of child labour, which are still present in Benin, the Government first needs to develop an effective and permanent system for the compilation of data on the placement of *vidomégon* children, the sale and trafficking of children and the engagement of children in hazardous types of work.

On the basis of the resulting statistical data, the Government will be able to closely follow trends in these various issues and take the necessary measures to actively combat the abuses identified.

It is clear that the destiny of children in Benin closely depends on the socio-economic situation of their parents. It is therefore also essential to ensure that their parents are not faced with the terrible choice of placing their children in the hope of being able to offer them the education to which every child must be entitled. The Government therefore needs to work very hard to create decent jobs for all the citizens of Benin and to develop robust social protection mechanisms that prevent parents from being faced with these terrible choices.

The development of access to education for all children in Benin will also have to be a priority for the Government by reinforcing the education system in the country, an area in which it should be possible to find synergies with other United Nations organizations.

We are aware of the colossal challenges that this raises and we do not doubt the will or capacity of the Government to take up these challenges, with ILO technical assistance.

Employer member, Benin – I first wish to commend the excellent supervisory work carried out by the Committee of Experts. Its work helps countries to better assess the implementation of ILO Conventions and Recommendations, whether or not they have been ratified. The observations of the Committee of Experts are an invitation to improve our strategies.

Employers in Benin take the issue of child labour very seriously. In our view, child labour is a serious violation of human rights, as emphasized by our spokesperson. Early work is prejudicial to the child and a loss in every respect for the enterprise, parents and the nation as a whole. It deprives children of all the potential of their abundant talents.

We wish to recall that Benin has ratified all the ILO fundamental Conventions, including this Convention, with the support of the employers. The employers of Benin thank and support the Government for the information provided in response to the concerns raised by the Committee of Experts to address, prevent and eradicate the phenomenon of *vidomégon* children. Benin has plentiful legislation on the protection of children. Our organization promotes corporate social responsibility (CSR) and is a signatory to the Benin CSR Charter, for which it has led the whole process. The Charter, in point 2, clearly sets out our vision on the subject under discussion in relation to the Convention by calling for the respect and promotion

of human rights under five priority headings reflecting fundamental principles and rights at work, the last of which is entitled “Prohibiting direct or indirect recourse to child labour”.

Employers in Benin have been engaged for decades in the battle to eradicate the worst forms of child labour. With a view to giving effect to the Convention in practice, employers have undertaken various awareness-raising activities in different sectors of the economy in Benin. In 2013, they signed with the workers’ organization, a bipartite declaration on child labour in parallel with the launch of the manual for employers and workers on hazardous types of child labour.

One of the areas in Benin in which social dialogue operates correctly and in which the partners in the world of work most easily reach agreement is on action to combat child labour. And yet, sadly, despite these efforts, the phenomenon persists in the informal economy.

Our organization plays an active role in all consultations on labour legislation, and specifically on the Convention, within the framework of the preparation of various guidance documents (the list of hazardous types of work forbidden for children and its updating, the preparation of the second-generation Decent Work Country Programme (DWCP), the list of light work, the National Plan to Combat Child Labour) and it engages in promoting respect for labour standards in enterprises.

The employers in Benin reiterate to the Committee their determination to continue working at the national level to raise collective awareness of the issue of child labour under the leadership of the newly elected President of the National Employers’ Council of Benin (CNPB), Mr Eustache Kotingan.

The employers of Benin however call on the Government to continue its efforts for the structural transformation of the economy with a view to addressing the deep underlying causes (poverty, informality, inadequate social protection, compulsory schooling), as emphasized by the Employer members.

In conclusion, the employers of Benin encourage the Government to request ILO technical assistance, where necessary, to intensify action to combat child labour, as set out in the National Plan of Action 2019–23.

Worker member, Benin – In our culture and according to our traditions, the child is the property of the community. The education and social integration of children are not the sole responsibility of their physical parents, but more of the community as a whole, and indeed the whole of society. Accordingly, children may be entrusted to a member of the extended family, or even to a friend outside the family circle, to ensure a good family environment for their development. These children are known as *vidomégon* children, which literally means children entrusted to another person or placed with a third person. It is neither more nor less than a tacit social convention established by tradition and which constitutes an act of solidarity and mutual assistance for children from poor families.

However, in recent years, this practice, which was not bad in itself, has now become deviated, tarnished and used for other purposes which do not contribute to the development of children who are so placed. Poverty, hardship, seeking easy gains at any price have become involved. In practice, poor parents, who are incapable of providing for the needs of their families, are obliged to watch their children leave for unknown destinations with dubious people who are only intent on enriching themselves. This sad scourge is now unfortunately reaching beyond the borders of Benin and is being combined with the trafficking of children, who become migrant workers despite themselves.

In that connection, it may be asked what our Government is doing to ensure the application of the Convention to combat the worst forms of child labour. We have to simply recognize that the Government has the real will to combat child labour and that the legislation exists. Action is being taken and there is also a work plan, which all allows the hope that results will be achieved. However, in practice, it can be seen that, despite all these efforts which, among other decisions, include free schooling and the general availability of school meals, the problem exists, persists and continues. Much therefore remains to be done. We workers believe that for this purpose what is needed is a sacred union bringing together all the related actors, religious circles, the social partners, parents of schoolchildren and all others concerned in a vast campaign.

All this also means that it is necessary to prevent the Government weakening trade unions through the adoption of laws which are in violation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

It is therefore necessary to engage in real sincere dialogue. Only dialogue of this type will allow Benin to produce standards that are capable of eradicating the worst forms of child labour. Such standards could deal with the root of the evil by giving priority to combating poverty, the structural transformation of the economy and the issue of employment.

The unions consider that it is necessary to bring an end to the precarity of applicant schoolteachers, known as *aspirants*, who account for over 51 per cent of the staff in secondary education and over 25 per cent in primary education. It is necessary to recruit and motivate teachers in their work.

The unions call on the Government to ratify as soon as possible all the Conventions that can help support action to combat child labour. These include the Labour Inspection (Agriculture) Convention, 1969 (No. 129), the Domestic Workers Convention, 2011 (No. 189), the Migration for Employment Convention (Revised), 1949 (No. 97), the Employment Policy Convention, 1964 (No. 122), and the Violence and Harassment Convention, 2019 (No. 190).

In brief, we, the workers of Benin, consider that the Government must once again engage in a process of dialogue in synergy with all the partners. A sacred union is absolutely necessary if the objectives are to be achieved, and the recommendations adopted in Durban at the World Conference on Child Labour must be used as a guide. That is important if progress is to be made.

Government member, France – I have the honour of speaking on behalf of the **European Union (EU) and its Member States**. The candidate countries, **Montenegro** and **Albania**, and the European Free Trade Association country, **Norway**, Member of the European Economic Area, as well as the **Republic of Moldova** and **Georgia**, align themselves with this statement.

The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights and the fight against child labour, in particular its worst forms.

We actively promote the universal ratification and implementation of fundamental international labour standards, including the implementation of Convention No. 182. We support the ILO in its indispensable role of developing, promoting and supervising the application of ratified international labour standards, and the fundamental Conventions in particular.

As stated in the recently adopted Durban Call to Action, the universally ratified Convention requires action by ILO Member States to eliminate as a matter of urgency the worst forms of child labour. We recall the importance of scaling up efforts in this regard and underline our strong commitment thereto.

The EU and its Member States are long-term partners of Benin. This partnership is further reinforced in the framework of our cooperation with the African Union (AU) and ECOWAS, as well as the inclusion of Benin among the beneficiaries of the EU's "Everything but Arms" scheme for least developed countries.

We thank the Government for the information provided ahead of our discussions and take note of the enactment of the 2019–23 National Plan of Action for the elimination of the worst forms of child labour in Benin.

While noting certain measures taken by the Government, we reiterate the call by the Committee of Experts urging the Government to intensify its efforts to protect children under 18 years of age from all forms of forced labour or commercial sexual exploitation, including *vidomégon* children exposed to various forms of exploitation by their host families, also taking into account the special situation of girls. We are particularly concerned at the observations of the Committee on the Rights of the Child and the United Nations Human Rights Committee in 2015, which drew attention to the persistent nature of this exploitation. We also express deep concern that, based on the reports of the Office of the United Nations High Commissioner for Human Rights, 90 per cent of *vidomégon* children do not go to school and they are employed in markets and street trading, in addition to performing unpaid domestic tasks.

We also express our great concern at reports of the sale and trafficking of children, including for the purpose of domestic servitude, subsistence farming or trade, or commercial sexual exploitation, predominantly in the case of girls, or forced labour in mines, quarries, markets and farms in the case of boys, especially in diamond-mining districts.

While recognizing the efforts made by the Government, we fully echo the call made by the Committee of Experts urging the Government to take the necessary measures to ensure that thorough investigations and prosecutions are conducted of persons subjecting children under 18 years of age to forced labour, commercial sexual exploitation, or engaging in their trafficking, and that sufficiently effective and dissuasive penalties and sanctions in this respect are imposed in practice.

We urge the Government to ensure the immediate removal of children from the worst forms of child labour and to take all necessary measures for their rehabilitation and social integration, including their access to education. We also call on the Government to continue to take effective and time-bound measures to protect children from hazardous work in the mining and quarrying sector.

As compulsory education is one of the most effective means of combating child labour, we encourage Benin to step up effective implementation of compulsory education throughout the country. We will continue to support Benin in strengthening its education system through dedicated bilateral development assistance, as well as the Global Partnership for Education.

The EU and its Member States are fully committed to working alongside Benin, and we will continue our engagement for the children of the country. We look forward to continuing joint efforts with the Government and the ILO.

Worker member, Norway – I am speaking on behalf of the trade unions in the Nordic countries. Human trafficking is modern-day slavery, a crime, and a grave violation of human

rights. Benin continues to be a source, transit and destination country for trafficking in persons, from and into neighbouring countries. The most serious issues regarding trafficking are nevertheless internal. These cases predominantly involve Beninese children from low-income families exploited in forced labour or sex trafficking.

In Benin, under the practice of *vidomégon*, poor rural families send their children, usually girls, to the cities with the purpose of receiving education while working as domestic servants. Regrettably, however, too many of these children end up being exploited by means of forced labour.

Although the Republic of Benin prohibits the sale and trafficking of children, thousands of children have been found working under hazardous conditions in various sectors.

The Nordic trade unions are deeply concerned about these violations. We urge the Government to intensify its efforts to protect children from all forms of forced labour or commercial sexual exploitation, concerning *vidomégon* children in particular. In addition, the Government should take immediate action to ensure their rehabilitation.

We further demand that the Government take genuine and consistent steps to apply existing anti-trafficking legislation laws to rein in offenders. This can be done through investigations, prosecutions and sanctions.

Government member, Central African Republic – I am taking the floor to express the support of the Government of the Central African Republic for the eloquent responses made by the Government to the observations relating to the application of the Convention in law and practice.

Nobody ignores the fact that the worst forms of child labour are a major challenge for the international community. The recent 2021 ILO–UNICEF report truly sets out the complexity of the issue, what is at stake and the challenges faced by many States throughout the world in view of the deterioration in the living conditions of tens of millions of children engaged in hazardous types of work, aggravated by the COVID-19 pandemic.

However, the Government of the Central African Republic notes the strategic action undertaken and carried through, the statistics of which have been provided, which offer sufficient proof of the will of Benin to place action to combat child labour among the priorities that we should, in principle, support within the framework of ILO technical cooperation. In addition to the data provided by Benin, it has established a national integrated school meals programme which is proving to be a model for educational success for the many children removed from the worst forms of child labour, and particularly for the socio-economic integration of basic communities.

Employer member, Colombia – First, I consider it important to emphasize the importance and priority which, as employers, we give to the Convention, with its purpose of protecting children. I wish to emphasize that, in order to achieve target 8.7 of the SDGs of ending child labour in all its forms by 2025, it is necessary for us to work in a coordinated manner through social dialogue and with the social partners.

With reference to this specific case, the Committee of Experts indicated in its report that according to the information provided by the Office of the United Nations High Commissioner for Human Rights, 90 per cent of *vidomégon* children do not go to school. They are set to work in markets and street trading, as well as performing unpaid domestic tasks. It adds that girls, in addition to being exploited economically, are often victims of prostitution.

We thank the Government for the information provided on the measures taken to prosecute and convict those responsible for the labour exploitation of *vidomégon* children, although we regret that in practice children continue to be victims of this scourge.

In this regard, it is relevant to recall that, in accordance with Article 1 of the Convention, the Government is required to take the necessary measures to secure the prohibition and elimination of the worst forms of child labour, which include, under the terms of Article 3(a) and (b), all forms of slavery, such as the sale and trafficking of children, forced labour and their use or procurement for prostitution.

In this regard, we reiterate the call made by the Employer spokesperson to the Government to carry out the necessary investigations to identify and punish those responsible for committing such abuse against boys and girls and to intensify its efforts in coordination with the most representative organizations for the implementation of multi-dimensional strategies and policies with a view to capacity-building for the eradication of child labour.

Worker member, Zimbabwe – The Committee of Experts' report on Benin exposes serious violations of this Convention. These range from a long-standing practice of placing children in the hands of third parties for work and education known as *vidomégons*, which exposes them to sexual exploitation, sale and trafficking of children, child work in mines and quarries, among others.

I recall the United Nations SDG 8.7 that seeks to eliminate child labour by 2025 and forced labour by 2030, but I am not sure if other countries like Benin will achieve this goal within the agreed period.

I recall that recently, on 16 to 20 May 2022, the ILO organized a conference on this subject and came up with the Durban Call to Action. This action requires and reiterates the need to:

- make decent work a reality for adults and youth above the minimum age for work by accelerating multi-stakeholder efforts to eliminate child labour, with priority given to the worst forms of child labour;
- end child labour in agriculture; and
- strengthen the prevention and elimination of child labour, including its worst forms, forced labour, modern slavery and trafficking in persons, and the protection of survivors through data-driven and survivor-informed policy and programmatic responses.

I have not even reiterated most of them in the interests of time, but we have already identified what needs to be done and it is now time for meaningful action if we are to totally eliminate this problem. I call upon the Government of Benin to strengthen social dialogue in all processes, including economic planning and budget design.

It is only when concerned parties' inputs are taken on board that measures will yield results, as there will be ownership of such measures. Such government measures must be complemented by investment in jobs, social protection and the care of economy and education.

However, for social dialogue to provide results, there must be respect for freedom of association and collective bargaining rights.

Lastly, I commend the Government for some of the measures that it is taking to make sure that the issues are addressed, but there is still more that needs to be done. I encourage the Government to accelerate its efforts and seek ILO technical assistance.

Government member, Burkina Faso – The universal ratification of the Convention has succeeded in convincing the world that no effort is too great in the combat to protect the future of our children. In the conviction that it is through respect for fundamental principles and rights at work that the ILO will achieve the objective of social justice, my country reaffirms its commitment to the promotion of these principles, one of the pillars of which is based on action to combat the worst forms of child labour.

We thank the Government for the detailed information that it has been able to provide to the Committee. On the basis of this information, we recognize the affirmed political will, the statistics and the partnerships that demonstrate the efforts made by this fraternal country to give full effect to the Convention under examination.

Burkina Faso welcomes the results obtained by the Government and encourages it to continue this dynamic, while taking into account the relevant observations of the Committee of Experts.

The Committee will therefore have to weigh carefully in its conclusions the effective support of the ILO for government action in Benin for the elimination of child labour.

Employer member, Guatemala – The present and the future depend on the children of the world and it is the responsibility of all of us, governments, workers and employers, to ensure with urgency the prevention and eradication of child labour, with zero tolerance of its worst forms.

Today, we are examining a very serious case which has already been examined, not only by the Committee of Experts, but also by other United Nations treaty organizations, which have noted with concern the evidence of the seriousness of the problem. However, this is the first time the case has been examined by this Committee, which has the responsibility to take exemplary measures to bring an end once and for all to this scourge.

A global approach needs to be taken to child labour and its worst forms, and it is therefore the responsibility of the Government to adopt social protection measures in accordance with such socio-economic circumstances as informality, poverty, the lack of access to education and healthcare, which are the social conditions that lead to families having recourse to child labour. And it will have to pay special attention to traditional solidarity practices which have been distorted, being transformed into child labour and their sexual exploitation, among other worrying situations.

It is therefore necessary to create formal, productive and good-quality jobs for adults, which will help to build a safe environment for children, as well as the promotion of education for all children as a means of preventing child labour. The case of Benin is a clear illustration that promoting the universal ratification of Conventions is not sufficient, as their implementation also has to be ensured, especially in the case of the fundamental Conventions. Although the Government has indicated that it has taken various types of action to combat the worst forms of child labour, it is necessary for social dialogue to be developed through the adoption of tangible measures to reduce without delay the high numbers of children who are suffering, through sustainable, efficient and effective measures adopted with the support of the social partners and relying on ILO technical assistance to achieve this objective.

Worker member, Belgium – In the same way as the Committee of Experts, we are particularly concerned at the persistent exploitation of *vidomégon* children, trafficking and the use of children in mines and quarries. We note in particular that, according to the 2017 report of the Office of the United Nations High Commissioner for Human Rights, 90 per cent of

vidomégon children do not go to school, and that they work in markets as well as performing domestic tasks.

Certain measures have been taken by the Government, but they are not sufficiently effective in practice. Efforts must be continued on an urgent basis to prosecute those responsible and hand down dissuasive sanctions.

The worst forms of child labour are linked to low incomes, and to the non-financial dimensions of poverty, such as food insecurity and bad health. Child labour also perpetuates the poverty of households over the generations. It prevents social progress, which is dependent on adequate education and schooling, and children who work cannot have access to proper schooling. It is necessary to break the vicious circle by ensuring universal access to education in practice.

It is also essential to adopt tangible measures to combat the poverty and socio-economic vulnerability of workers and their families. These measures must be based on rights and children and workers have to be central to interventions in order to resolve their vulnerability effectively.

The implementation of such measures could enable Benin to respect its commitment to the United Nations to achieve the SDGs, and particularly SDG 8 (decent work) and 16 (peace, justice and strong institutions), which specifically target the worst forms of child labour.

Government member, Switzerland – The eradication of the worst forms of child labour, to which the Convention contributes, is the universal principle applicable to all children under the age of 18 and is one of the most important objectives of the ILO. Switzerland attributes very great importance to this fundamental Convention, which has been universally ratified, but which still requires much effort for its application with a view to eliminating all forms of child labour. The recent Global Conference in Durban made us aware of the urgency of redoubling our efforts.

While recognizing the efforts made by the Government for the elimination of child labour and to combat the ill-treatment and physical violence of which children, including *vidomégon* children, are the victims, many children continue to be economically and sexually exploited and exposed to the worst forms of child labour, trafficking and forced labour.

Switzerland shares the deep concern of the Committee of Experts and reiterates the call made by the Committee of Experts to the Government to further intensify its efforts to protect children under 18 years of age from all forms of forced labour and commercial sexual exploitation. Switzerland encourages the Government to establish a system for the identification of *vidomégon* children and ensure their school attendance and good treatment. It also recommends the adoption as rapidly as possible of all the necessary measures to carry out in-depth investigations and prosecute any persons who engage in the trafficking of children under 18 years of age. In cases involving criminal offences, sufficiently dissuasive sanctions must be applied to those responsible in all cases. Action to combat trafficking in persons which involves children must be as robust as possible in all countries.

We also call on the Government to continue to take effective measures rapidly to protect children from hazardous work in the mining and quarries sector, and in agriculture. Finally, in view of the fact that the number of children under the age of 14 engaged in child labour remains high, Switzerland strongly encourages the Government to continue its efforts to prevent and progressively eliminate child labour in the country.

Worker member, Senegal – I am speaking on behalf of the workers' organizations of West Africa and I wish to commend the quality of the work carried out by the Committee of Experts. We note with interest the information provided by the Government on the action taken to bring an end to child labour in the Republic of Benin.

It is still necessary to emphasize that, despite the efforts made, we note with great concern the persistence of the problem, and indeed its deterioration, as thousands of children, 88 per cent of whom are of school age, are continuing to be used as labour in hazardous types of work, in mines and quarries, in violation of the Convention. We also note the lack of reliable statistics on the number of children who have been protected and removed from hazardous types of work, which would support the Government's efforts in this regard.

We call on the Government to comply in law and practice with Article 7(2)(a) and (b) of the Convention to prevent children from being engaged in the worst forms of child labour and to provide assistance to remove them from these forms of child labour.

In order to combat child labour effectively, it is necessary to take action against poverty and social inequality. To do so, we urge the Government to implement an effective policy to combat poverty and social inequality within the framework of a national social protection strategy, to which everyone has access, and which provides everyone with a minimum guaranteed income, particularly for poor parents who send their children to work to ensure the survival of the household.

This will require the establishment of social security grants which include a financial component, health coverage and school support for children, as well as the implementation of a policy of cash transfers through continuous financial support for the most vulnerable households in relation with technical, financial and social partners, as has been done recently in Senegal, in partnership with the World Bank, through an allocation of 43 billion CFA francs to the 500,000 most vulnerable households.

We also invite the Government to establish a real apprenticeship policy by regulating and supporting apprenticeship centres and ensuring the social security of apprentices.

We call on the Committee to take action with the Government of Benin for the adoption of an effective and inclusive social protection policy for the elimination of child labour.

Government member, Mali – Allow me to begin with a proverb from my country: "the tree must not hide the forest". While the case for which the Government is before us is undoubtedly important, we should not lose sight of the immense efforts made by the Government to implement the Convention, particularly through the adoption of legislative and institutional measures.

These efforts are readily apparent in the comments made by the Government representative. However, as the Government does not deny the existence and seriousness of the issue, the Government of Mali encourages it to persevere in its efforts to find solutions, particularly in terms of awareness-raising.

In conclusion, my Government asks the ILO to provide support to the Government of Benin so that they can meet their challenges.

Worker member, Canada – Compulsory education is widely recognized as one of the most effective means of combating child labour and governments have an obligation to guarantee it is effectively implemented, which includes ensuring decent work conditions for educators.

Studies indicate that 48 per cent of children complete primary education in Benin. Among the major obstacles to providing stable education are the conditions of work of teachers. Meagre salaries, precarious and insecure contract work, assignments in isolated regions and high student-to-teacher ratios lead to high levels of teacher absenteeism in schools and contribute to an unstable teacher workforce.

It is estimated that almost 25 per cent of primary school teachers in Benin undertake income activities besides their teaching jobs, leading to extreme levels of teacher absenteeism that leave students in classrooms with no teacher. Contract teachers are more frequently absent than those with permanent and pensionable employment.

The student–teacher ratio in Benin as last reported in 2018 was 39 students per teacher, which is considered high compared to a world average of 24 students per teacher.

The 5th Global Conference on the Elimination of Child Labour calls for improving teacher and learning outcomes by recruiting qualified teachers in sufficient numbers to close the teacher gap and providing them with good conditions of work and supporting teacher unions.

Government expenditure on education as a total percentage of GDP in Benin was reported to be 2.9 per cent in 2019. The Government should do all it can to meet the target of at least 4 to 6 per cent of GDP, as recommended by the UNESCO Education 2030 Framework.

Government member, Cameroon – The Government of Cameroon has taken note of the report of the Committee of Experts and thanks it for the observations made on the implementation of the Convention by the Republic of Benin. The Republic of Cameroon remains very committed to respect for fundamental principles and rights at work and, to this end, thanks the delegation of Benin for the useful information provided to the Committee.

The Government's presentation shows that, in the context of the implementation of the instrument, it has taken many types of action to combat all forms of forced child labour, as well as the commercial sexual exploitation of children. In addition, the Government is very concerned about child labour in mines and quarries and has developed a national policy document to combat trafficking in persons, together with an action plan.

In order to make these political ambitions a tangible reality, Benin has not confined itself to taking measures, but has put them into practice by intervening decisively in networks engaged in repressing trafficking in children to investigate and punish cases together with the competent authorities and cross-border units. All of this shows the Government's commitment to eradicating child labour.

The Government of Cameroon therefore congratulates and encourages its sister Government of Benin to press ahead with the efforts already under way, particularly in raising awareness and building the capacities of all actors, drawing on the Durban Call to Action. It welcomes the fact that the Government has requested ILO technical assistance and asks the latter to provide assistance to Benin in order to eradicate this scourge.

Worker member, Italy – I am speaking on behalf of Italian, German and Spanish workers. Despite the adoption of a National Plan of Action 2018–23, the report of the Committee of Experts highlights the persistence and increasing number of children being trafficked within the country and internationally for sexual exploitation and domestic work. Between 2010 and 2014, almost 3,000 children were working at 200 mining sites, 88 per cent of whom were of school age.

The conclusions of the 5th Global Conference on the Elimination of Child Labour held in May 2022 in Durban provide the most relevant framework for the implementation of effective policies in a climate of tripartism and with full respect for trade unions.

In this context, in order to improve the implementation of the National Plan of Action, we emphasize the need to strengthen the national labour inspectorate to ensure that cases of violations are identified and give rise to prosecutions and convictions.

We also reiterate that decent work for all, especially women, an inclusive and quality education system and an adequate social protection system are essential conditions for the elimination of child labour and for protection against poverty, the main cause of child labour.

In order to effectively implement the action set out in the National Plan of Action, the Government should not delay in creating decent and good-quality jobs for adults; ensure the harmonization of the age of compulsory schooling with the minimum age for admission to work; ratify the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Domestic Workers Convention, 2011 (No. 189); and, finally, ensure the application of the Penal Code in relation to the exploitation of child labour.

Government member, Senegal – Senegal notes with great interest the written information provided by the Government following its inclusion on the list of individual cases to be examined by the Committee. The delegation of Senegal welcomes the action and measures taken by Benin to combat child trafficking and forced labour. The Government has taken many types of action at both the institutional and technical levels in collaboration with the labour inspection services to combat all forms of forced labour, commercial sexual exploitation of children and, more specifically, the *vidomégon* system.

We commend the efforts made by the Government and ask it to maintain the same momentum, while strengthening the action already taken. Continuing this action over time in a consistent and ongoing manner will make it possible to eradicate this scourge.

Furthermore, the Government of Senegal urges the Government of Benin to maintain and strengthen cooperation with border countries and other stakeholders to combat more effectively the worst forms of child labour.

In view of all the projects undertaken, the Government of Senegal appreciates the good will expressed by the Government. It invites the Committee to take the various initiatives into account in its conclusions and also asks the Office to assist this Member State in implementing programmes and projects that give full effect to the principles set forth in the Convention, with a view to eradicating child labour, and particularly its worst forms.

Government representative – We welcome the progress in the understanding of the *vidomégon* system among the members of the Committee following our additional information. We wish to thank all those who took the floor, the Vice-Chairpersons, delegations, representatives of international organizations and institutions for their contributions, guidance and support.

I can confirm that the Government is willing to cooperate transparently with the Committee of Experts, the ILO and representatives of civil society, who are providing incalculable support to our country through their direct interventions. We thank the ILO in particular, the EU and the governments which maintain bilateral relations with our country in relation to compliance with the Convention.

We reaffirm that the Government will continue its efforts in the field of combating forced labour, trafficking of children and work in mines and quarries. In practice, Benin is not a great

mining country, but it will take the necessary measures to remove these children, who are being used through constraint, poverty and destitution.

With reference to education, the Government has made school free for young girls and boys at the primary level. The Government has combined that with the development of school meals with a view to supporting poor children and children whose parents do not have the bare necessities to ensure their education.

With regard to the *vidomégon* system, the Government, through the National Plan of Action to Combat Child Labour, will mobilize the necessary resources to reliably identify the issue in statistical terms.

With reference to repression, the legislative texts exist and we have a legal system which now enables us to make use of the enforcement system. In this context, we are in need of assistance to enable us to take the right measures and alternative measures for the full elimination of harmful work by children.

The extension of social protection is set out in the second-generation DWCP, which will be signed by the Government in the coming months, the priorities of which are women's employment, youth employment, social protection for children and the promotion of international labour standards.

In this context, as we have said, we reiterate our intention to ratify Conventions Nos 129 and 189, for which we request the relevant support from the International Labour Standards Department to facilitate the compliance assessments.

In light of the above, we request the support of all donors through bilateral and multilateral agreements, so that we can continue our mission and our action effectively.

Extended social dialogue for this purpose is our ambition to achieve definitive success in the path we have taken and to allow children to be removed from the worst forms of child labour.

In conclusion, this is what we can say to you, the members of the Committee. We are willing to cooperate and listen, and we are seeking, requesting and claiming the support of the international community, because the issue of child labour is a global and strategic matter.

Employer members – In our concluding remarks on this case, the Employer members would like to again thank the Government for the additional information submitted to the Committee. As said before, we find this information is promising and we welcome the strong commitment expressed by the social partners. We also thank the delegates for their participation and insight.

Considering the complexity of the situation and the prevalence of many of the worst forms of child labour on the ground, we reiterate our deep concern regarding this case. The Employer members highlight that we cannot turn a blind eye to any form of child labour, even more so when children are victims of abuse, forced labour and hazardous work, and deprived of the right to education.

We must consider that, given the scope and prevalence of the worst forms of child labour practices, this case also has a relevant impact on the economic and social post-pandemic recovery in Benin.

We share the concerns expressed by the Committee of Experts, taking into consideration the role of education in preventing children from being engaged in the worst forms of child labour and facilitating labour market transitions towards employment opportunities.

As stated before, we are facing the threat of reversing years of progress against child labour, and the Employer members agree that it is essential to stand against this and combine efforts to prevent and eliminate child labour with the highest priority being given to the worst forms of child labour.

In light of the debate, the Employers members would like to recommend the Government to:

- intensify its efforts in order to ensure that thorough investigations and robust prosecutions are carried out and that sufficiently effective and dissuasive penalties are imposed in practice and to inform on the number of investigations undertaken, prosecutions and convictions applied in compliance with national legislation;
- implement strategies regarding early identification of high-risk areas and vulnerable groups, improve resource allocation regarding the identification of child victims, and continue to report on the measures taken and their results;
- strengthen policies regarding prevention, removal, rehabilitation and social integration of children and to put an end to the described practices, and continue providing information on the measures taken, and the number of children benefiting from these policies;
- ensure access to free basic education for all children and provide information on the measures taken, as well as on school attendance, maintenance and drop-out rates.

We take note of the Government's request for technical and financial assistance and hope that Benin continues to work with international development partners, including the ILO and UNICEF, in order to build capacity among public officers, as well as employers' and workers' organizations to design and implement multidimensional, effective and sustainable strategies to eradicate the worst forms of child labour in Benin, including the promotion of an enabling environment for sustainable enterprises, which create quality jobs for adults to help in building a safe environment for the children. Effective and efficient implementation and sustainability of the recently adopted and developed action plans is of the utmost importance, and the Employer members hope that the Government's efforts will be equal to the task.

The Employer members also hope that the Government's commitment will continue to develop in terms of the concrete measures to ensure the protection of the significant number of boys and girls who remain vulnerable to being trafficked and subject to commercial exploitation, and that we can soon witness progress regarding the state of affairs described.

Worker members – We thank the Government representative of Benin for the written and oral information provided. We also thank the other speakers for their contributions.

The placement of *vidomégon* children, the sale and trafficking of children and work in mines and quarries in Benin are still too widespread today. Despite the initiatives taken by the authorities, the persistence of these practices in the country is a matter of particular concern.

It is certainly an indication that all these initiatives are still inadequate and would need to be reinforced and accompanied by further initiatives with a view to bringing a lasting end to these practices in the country.

We first call on the Government to develop all the necessary statistical tools to monitor trends in the placement of *vidomégon* children, the sale and trafficking of children and the engagement of children in hazardous types of work.

The Government should then redouble its efforts to protect children under 18 years of age against all forms of forced labour and commercial sexual exploitation, with particular

reference to *vidomégon* children. Particular attention needs to be paid to girls. These additional efforts should focus on: the strengthening of the national legal system through the adoption of the necessary additional legal texts; awareness-raising and education for the population on the appropriate attitudes to be adopted in terms of combating child labour; and the strict application of laws prohibiting and protecting children against the worst forms of child labour.

The authorities will need to increase the resources, particularly for the inspection services, so that robust inspections and prosecutions can be carried out of persons subjecting children under 18 years of age to child labour, commercial or sexual exploitation, trafficking of children and work in mines and quarries. The Government should provide for the effective implementation of sufficiently effective and dissuasive sanctions.

In this respect, we welcome the indication by the Government of its intention to ratify Convention No. 129. The authorities should also provide the Committee of Experts with full data on the number of investigations, prosecutions, convictions and penalties imposed for forced labour by children, commercial and sexual exploitation, trafficking of children and work in mines and quarries.

The Government should ensure that effective and time-bound measures are taken to protect children against hazardous types of work in the mining and quarries sector. It should also provide statistical data on the number of children who have been protected against and removed from this hazardous type of work. Finally, it should indicate the rehabilitation and social integration measures from which they have benefited.

The creation of decent jobs and the reinforcement of social protection measures in the country should be such as to prevent the risk of parents envisaging placing their children with a third person or having to depend on their children working to cover family needs.

The strengthening of the resources for the education system, including through the improvement of the working conditions of teachers, will also be fundamental in keeping children from the worst forms of child labour.

The authorities should also ensure the adoption of specific measures for the rehabilitation and social integration of children who have been the victims of abuse in the context of their placement, victims of trafficking or taken away from school to engage in hazardous types of work.

The Government should ensure the implementation of all these recommendations in close consultation with the social partners and civil society organizations with a view to achieving the necessary synergies for effective and decisive action against these practices.

With a view to the implementation of all these recommendations, we invite the Government to have recourse to ILO technical assistance. In order to coordinate the necessary action to resolve the problems under examination, synergies will also need to be sought with other United Nations agencies, and particularly with UNICEF, in order to give effect in practice to these recommendations.

We also call on the Government to report in full to the Committee of Experts before its next session on the initiatives taken with a view to giving effect to the Committee's recommendations.

Conclusions of the Committee

The Committee took note of the written and oral information provided by the Government representative and the discussion that followed.

While noting the initiatives taken by the Government to address issues of the worst forms of child labour, the Committee noted with deep concern the persistent and widespread practices of *vidomégon* children, the sale and trafficking of children and children working in mines and quarries.

Taking into account the discussion, the Committee urges the Government, in consultation with the social partners, to:

- **develop a robust statistical machinery to allow an efficient follow-up of the evolution of the practices of *vidomégon* children, the sale and trafficking of children and children working in mines and quarries;**
- **strengthen its efforts in order to protect children under 18 years of age from all forms of forced labour and commercial sexual exploitation, particularly *vidomégon* children, with specific attention provided to girls. These efforts should reinforce the legal framework by adopting the necessary legal texts, by raising awareness and education related to the elimination of the worst forms of child labour, and by enforcing the provisions that prohibit the worst forms of child labour;**
- **strengthen the capacity, including of inspections, to conduct investigations and prosecutions of persons subjecting children to the worst forms of child labour, including commercial sexual exploitation, sale and trafficking and dangerous work, especially in mines and quarries, and ensure that sufficiently effective and dissuasive penalties are imposed in practice;**
- **provide information on the number of investigations, prosecutions, convictions and penalties imposed for the offence of subjecting children to the worst forms of child labour including commercial sexual exploitation, sale and trafficking of children and dangerous work, especially in mines and quarries;**
- **take effective and time-bound measures to protect children from hazardous work in the mining and quarrying sector and provide statistical data on the number of children removed from this hazardous work and provide information related to the rehabilitation and social integration measures;**
- **ensure access to free basic education to all children, particularly from poor and disadvantaged families, particularly girls and children in rural areas;**
- **strengthen the rehabilitation and social integration measures provided to children victims of the worst forms of child labour, commercial sexual exploitation, the sale and trafficking of children and those in hazardous work; and**
- **develop a multidisciplinary time-bound action plan, with ILO technical assistance and in close cooperation with the social partners and other relevant civil society organizations with relevant competencies and expertise, including UNICEF.**

The Committee urges the Government to avail itself of ILO technical assistance to progress towards the full eradication of the worst forms of child labour in accordance with the Convention.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 with information on the application of the Convention in law and practice, in consultation with the social partners.

Government representative – The Government of Benin takes note of the conclusions adopted by the Committee.

However, it considers that the *vidomégon* system will be re-examined by the Government with the participation of the social partners and other social organizations with a view to reaching mutual understanding. As we have said, the *vidomégon* system has changed very much and we take into account the remarks and observations made in this regard.

With reference to school, as we have emphasized, schooling has already been made free for girls and for boys in primary education. The Government will continue its efforts in this field to rationalize and put into context any misunderstanding that might once again arise in this respect. In this context, the Government is counting on the international community, on ILO cooperation and assistance to achieve its objectives.

We thank you for the assessment made by the Committee with its understanding of the problems of developing countries with limited resources.

Central African Republic (ratification: 2000)

Worst Forms of Child Labour Convention, 1999 (No. 182)

Written information provided by the Government

The Government would like to begin by thanking the Committee for recognizing the complexity of the situation in the Central African Republic, which is marked by recurring armed conflicts, and for noting the progress made in combating child labour. It now has the honour of providing updated and detailed information on the action taken at the national level in accordance with Article 3(a) of the Convention.

In its keen awareness that the worst forms of child labour and similar practices constitute a key component of trafficking in persons, the Government has established, by Decree No. 20.077 of 13 March 2020, a National Committee to Combat Trafficking in Persons in the Central African Republic, under the direct authority of His Excellency the President of the Republic, the Head of State. An operational action plan 2022–23 has recently been adopted, which will enable the Government and all stakeholders to continue implementing the strategic vision based on the "four Ps" of prevention, protection, prosecution and partnership.

In the meantime, in 2020 and 2021, the National Committee undertook work to raise awareness, strengthen the capacity of stakeholders and in particular extend into certain provincial towns the Joint Rapid Intervention and Repression Unit for sexual violence against women and children (UMIRR), established by Decree No. 15.007 of 8 January 2015. Under section 7 of the Decree, the UMIRR is responsible for: "preventing and suppressing all forms of sexual violence committed against women and children, irrespective of their social or marital status, including widows and orphans". This approach is part of the process of bringing together social, police and judicial services for victims of gender-based violence and children throughout the country. It will support the provision of care to victims of conflict-related sexual violence.

In the interests of coherence, in 2022, the Central African Republic adopted a National Strategy to Combat Gender-Based Violence, Child Marriage and Female Genital Mutilation.

The Government's commitment to promoting social justice has recently resulted in the adoption and promulgation of Act No. 21.003 of 1 September 2021 authorizing the ratification of the ILO Violence and Harassment Convention, 2019 (No. 190). The Government immediately

transposed it into the existing body of national legislation in order to provide the authorities responsible for child protection with effective tools to combat all forms of discrimination, violence and harassment in relation to children.

In a similar vein, the Government has requested the technical assistance of the International Labour Office to develop a national plan to combat child labour and establish a related national committee. This request was reiterated during the visit of a Government delegation to the ILO headquarters in January 2022. All this is sufficient proof of the Government's willingness to prevent, protect and guarantee a better life for children.

The Government has also requested the ILO to extend the Decent Work Country Programme for the Central African Republic (2017–21), which has been instrumental in the process of consolidating peace and the promotion of decent and productive jobs, as well as supporting the capacity-building of labour administration and labour inspection personnel on international labour standards. The common theme of all these requests is active and dynamic partnership to eradicate the worst forms of child labour.

With regard to the observations concerning the provisions of Article 7(2) of the Convention, the Government indicates that, with the gradual return of peace and the re-establishment of the authority of the State over the national territory, several projects have been initiated that have made it possible to rebuild or construct much school infrastructure in areas that were severely affected by the armed conflict. For example, in the northern, eastern central and north-eastern academic inspectorates, the rebuilding and reopening of schools has enabled boys and girls in their first two years of primary education to return to school.

The Government further indicates that Title 5 of Act No. 20.016 of 15 June 2020 on the Child Protection Code in the Central African Republic strengthens the overall framework for the repression of abuses and violations of children's rights. The abuse and violation of children are now criminalized. Section 179 of the Act prohibits the recruitment of children in armed conflict and perpetrators are liable to a prison sentence of 10 to 20 years and/or a fine of 5 to 20 million CFA francs.

With regard to the prosecution of perpetrators of human rights violations, including the worst forms of child labour, the Government draws the attention of the Committee to the efforts made in recent years, which have been encouraging. Political declarations and guidelines, strategies and institutional reforms have been conducive to the adoption of a more coherent approach to accountability for violence against children involved in armed conflict.

The Government recognizes the competence of the International Criminal Court (ICC) to investigate and judge war crimes, crimes against humanity and the crime of genocide committed in the Central African Republic and is continuing to take all the appropriate corrective measures with a view to improving the protection of the civil population, and particularly children.

Indeed, one of the principal providers of the presumed perpetrators of certain of these crimes to the ICC is still the Central African Republic. The Government emphasizes that the establishment of the Special Criminal Court by Basic Act No. 15.003 of 3 June 2015 forms part of this approach, and in particular is a response to the will and the thirst for justice expressed by the People of the Central African Republic through the work of the Bangui Forum held from 4 to 11 May 2015.

Despite the difficulties encountered and those resulting from the restrictions related to the COVID-19 pandemic, as well as the attempt by the Coalition of the Central African People (CPC 2020–21) to destabilize the country, the Government, with the support of the various

partners, has contributed significantly to the process of the operationalization of this Court, which commenced its solemn procedure on 25 April 2022.

Moreover, the combined efforts of the Government and the international community have made it possible to reinforce the criminal justice system, particularly through the holding of regular criminal sessions since the end of 2015. At the last criminal session in February 2020, the national jurisdictions had to determine the guilt of some of those responsible for the tragic events that shook the town of Bangassou in May 2017, convicting all of the seven accused to heavy sentences. During the trial, many victims were able to benefit from a public hearing and put forward their versions of the facts to the Criminal Court of Bangui. The Government will provide the Committee with all the judgments handed down.

Furthermore, the military jurisdictions of Bangui and Bouar (in the west of the country) have been operating since 9 July 2020. The Bangui jurisdiction held correctional hearings in February and July 2021. The criminal session of the martial court was held on 20 September 2021, as a result of which 20 sentences were issued for both offences and crimes.

The Government adds that the session of the Criminal Court is currently being held to judge the presumed perpetrators in the cases envisaged in Article 7 of the Convention, the final judgments of which will be provided to the Committee. Over 15 cases are to be examined.

The Government informs the Committee that the Central African Republic, through the Committee on Strategic Disarmament, Demobilization, Reintegration and Repatriation; Security Sector Reform; National Reconciliation (DDRR/RSS/RN), under the presidency of the President of the Republic, Head of State, on 20 March 2017, adopted a National Strategy for Defence and Security Sector Reform for the period 2017–21. The Strategy is anchored in the international commitments undertaken by the State, and more specifically the principles set out by the United Nations (UN) within the framework of security sector reform, the African Union Policy Framework on Security Sector Reform and the lessons drawn from the various studies and analyses undertaken which emphasize the concerns of populations relating to the protection of persons and property.

The implementation of this programme has led to the demobilization of several former combatants, some of whom have been incorporated into the armed forces, while others have benefited from the socio-economic integration programme.

The Government emphasizes that multiple types of action are continuing with a view to effectively combating all forms of violations of human rights and similar practices in accordance with Article 3 of the Convention. For example, in March 2022, a joint mission consisting of representatives of the Government and MINUSCA went to Alindoo in the Prefecture of Basse-Kotto to investigate allegations of the use of children by the defence and security and allied forces. The mission confirmed the presence around military bases of children seeking subsidies, but who were not being used as child soldiers. This situation has also been noted by the MINUSCA in all the FACA military bases.

The mission recommended a joint inquiry by the Government and the United Nations Children's Fund (UNICEF) with a view to identifying children in need of special protection and the implementation of protection measures. In this connection, the Central Inspectorate of the National Army organized from 20 to 24 April 2022 an awareness-raising mission on trafficking in persons in military environments, specifically in Bangui and Sibut, and will continue in all the military bases. The Government has already taken measures to prohibit the presence of children in the vicinity of military bases.

In light of the above, the Government requests the Committee to note its good will as demonstrated by the new action taken, as summarized, in a difficult situation and once again requests ILO support for the protection of children against the worst forms of child labour. It reassures the Committee that the Central African Republic is determined to comply with its commitment to ensure the social protection of children.

Discussion by the Committee

Government representative, Minister of Labour, Employment, Social Protection and Vocational Training – The Government would first of all like to thank the Committee, which has not only recognized the complexity of the situation in the Central African Republic, which is marked by recurring armed conflict, but has also noted the progress made in combating child labour. However, it now has the honour to provide updated and detailed information on the action taken at the national level in accordance with Article 3(a) of the Convention.

Indeed, highly aware that the worst forms of child labour and similar practices constitute a key component of trafficking in persons, the Government has established, by Decree No. 20.077 of 13 March 2020, a National Committee to Combat Trafficking in Persons in the Central African Republic, under the direct authority of His Excellency the President of the Republic, the Head of State. An operational action plan 2022–23 has recently been adopted, which will enable the Government and all stakeholders to continue implementing the strategic vision based on the "four Ps" of prevention, protection, prosecution and partnership.

In the meantime, in 2020 and 2021, the National Committee undertook work to raise awareness, strengthen the capacity of stakeholders and in particular extend into certain provincial towns the Joint Rapid Intervention Unit for the repression of sexual violence against women and children (UMIRR), established by Decree No. 15.007 of 8 January 2015. Under section 7 of the Decree, the UMIRR is responsible for: "preventing and suppressing all forms of sexual violence committed against women and children, irrespective of their social or marital status, including widows and orphans". This approach is part of the process of bringing together social, police and judicial services for victims of gender-based violence and children throughout the country. It will support the provision of care to victims of conflict-related sexual violence.

In the interests of greater clarity regarding all the action taken, in 2022 the Central African Republic adopted a National Strategy to Combat Gender-Based Violence, Child Marriage and Female Genital Mutilation.

The Government's commitment to promoting social justice has recently resulted in the adoption and promulgation of Act No. 21.003 of 1 September 2021 authorizing the ratification of the ILO Violence and Harassment Convention, 2019 (No. 190). The Government immediately transposed it into the existing body of national legislation in order to provide the authorities responsible for child protection with effective tools to combat all forms of discrimination, violence and harassment in relation to children.

In a similar vein, the Government has requested the technical assistance of the International Labour Office to develop a national plan to combat child labour and establish a related national committee. This request was reiterated during the visit of a Government delegation to the ILO headquarters in January 2022. All this is sufficient proof of the Government's wish to prevent child labour, to protect children and to guarantee a better life for them.

The Government has also requested the ILO to extend the Decent Work Country Programme for the Central African Republic (2017–21), which has been instrumental in the process of consolidating peace and the promotion of decent and productive jobs, as well as supporting the capacity-building of labour administration and labour inspection personnel with regard to international labour standards. The common theme of all these requests is active and dynamic partnership to eradicate the worst forms of child labour.

With regard to the observations concerning the provisions of Article 7(2) of the Convention, the Government indicates that, with the gradual return of peace and the re-establishment of the authority of the State over the national territory, several projects have been initiated that have made it possible to rebuild or construct a large amount of school infrastructure in areas that were severely affected by the armed conflict. For example, in the northern, eastern central and north-eastern academic inspectorates, the rebuilding and reopening of schools has enabled boys and girls in their first two years of primary education to return to school.

The Government further indicates that Title 5 of Act No. 20.016 of 15 June 2020 issuing the Child Protection Code in the Central African Republic strengthens the overall framework for the repression of abuses and violations of children's rights. Abuses and violations committed against children are now criminal offences. Section 179 of the Act prohibits the recruitment of children in armed conflict and perpetrators are liable to a prison sentence of 10 to 20 years and/or a fine of 5 to 20 million CFA francs.

With regard to the prosecution of perpetrators of human rights violations, including the worst forms of child labour, the Government draws the Committee's attention to the fact that the efforts made in recent years have been encouraging. Political declarations and guidelines, strategies and institutional reforms have been conducive to the adoption of a more coherent approach to accountability for violence against children involved in armed conflict.

The Government recognizes the competence of the International Criminal Court (ICC) to investigate and judge war crimes, crimes against humanity and the crime of genocide committed in the Central African Republic and is continuing to take all the appropriate corrective measures with a view to improving the protection of the civil population, and particularly children. Indeed, the Central African Republic remains one of the main sources for handing over the presumed perpetrators of some of these crimes to the ICC. The Government emphasizes that the establishment of the Special Criminal Court by Basic Act No. 15.003 of 3 June 2015 forms part of this approach, and in particular is a response to the wish of the people of the Central African Republic, indeed its thirst for justice, expressed through the work of the Bangui Forum held from 4 to 11 May 2015.

Despite the difficulties encountered especially as a result of the restrictions related to the COVID-19 pandemic and the attempt by the Coalition of the Central African People (CPC 2020–21) to destabilize the country, the Government, with the support of the various partners, has contributed significantly to the process of the operationalization of this Court, which commenced its solemn procedure on 25 April 2022.

Moreover, the combined efforts of the Government and the international community have made it possible to reinforce the criminal justice system, particularly through the holding of regular criminal court sessions since the end of 2015. At the last criminal court session in February 2020, the national jurisdictions had to determine the guilt of some of those responsible for the tragic events that shook the town of Bangassou in May 2017, convicting all of the seven accused to heavy sentences. During the trial, many victims were able to benefit

from a public hearing and put forward their versions of the facts to the Criminal Court of Bangui. The Government will provide the Committee with all the judgments handed down.

Furthermore, the military jurisdictions of Bangui and Bouar (in the west of the country) have been operating since 9 July 2020. The Bangui jurisdiction held correctional hearings in February and July 2021. The criminal session of the martial court was held on 20 September 2021, as a result of which 20 sentences were issued for both offences and crimes.

The Government adds that the session of the Criminal Court is currently being held to judge the suspects in the cases envisaged in Article 7 of the Convention, the final judgments of which will be provided to the Committee. Over 15 cases are to be examined.

The Government informs the Committee that the Central African Republic, through the Committee on Strategic Disarmament, Demobilization, Reintegration and Repatriation; Security Sector Reform; National Reconciliation (DDRR/RSS/RN), chaired by the President of the Republic, Head of State, adopted on 20 March 2017 a National Strategy for Defence and Security Sector Reform for the period 2017–21. The Strategy is anchored in the international commitments undertaken by the State, and more specifically the principles set out by the UN within the framework of security sector reform, the African Union Policy Framework on Security Sector Reform and the lessons drawn from the various studies and analyses undertaken, which emphasize public concerns relating to the protection of persons and property.

The implementation of this programme has led to the demobilization of a number of former combatants, some of whom have been incorporated into the armed forces, while others have benefited from the socio-economic reintegration programme.

The Government emphasizes that multiple types of action are continuing with a view to effectively combating all forms of violations of human rights and similar practices in accordance with Article 3 of the Convention. For example, in March 2022, a joint mission consisting of representatives of the Government and the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) went to Alindoo in the Prefecture of Basse-Kotto to investigate allegations of the use of children by the defence and security and allied forces. The mission confirmed the presence around military bases of children who were seeking financial assistance but were not being used as child soldiers. This situation has also been noted in all military bases of the Central African Armed Forces (FACA) and MINUSCA too.

The mission recommended a joint inquiry by the Government and the United Nations Children's Fund (UNICEF) with a view to identifying children in need of special protection and the implementation of protection measures. In this connection, the Central Inspectorate of the National Army organized from 20 to 24 April 2022 an awareness-raising mission on trafficking in persons in military environments, specifically in Bangui and Sibut, and will continue in all the military bases. The Government has already taken measures to prohibit the presence of children in the vicinity of military bases.

In light of the above, the Government requests the Committee to note its good will as demonstrated by the new action taken, as summarized, in a difficult situation and once again requests ILO support for the protection of children against the worst forms of child labour. It reassures the Committee that the Central African Republic is determined to comply with its commitment to ensure the social protection of children.

Employer members – The present case is a double-footnoted case dealing with the application in law and practice of a fundamental Convention, Convention No. 182, in the Central African Republic. The universal ratification achieved by the Convention reflects

universal consensus and a strong tripartite commitment to put an end to the worst forms of child labour. However, this does not mean automatic universal implementation in law and practice. In fact, according to the ILO and UNICEF report *Child Labour: Global Estimates 2020*, 160 million girls and boys remain in child labour, with 9 million additional children at risk due to the impact of COVID-19.

It is the first time that the Committee discusses the Central African Republic's application of the Convention, which was ratified in 2000. The Committee of Experts has issued seven observations noting serious gaps in the compliance of the Central African Republic with the Convention in 2008, 2009, 2010, 2011, 2014 and 2017, and most recently in the report issued in 2021.

We thank the Government for having submitted additional information to the Committee, and for clarifying some issues regarding the application of this Convention in law and practice. We find this information is very promising and we hope that the operational action plan 2022–23 can be properly developed.

The Committee of Experts' observations outline very serious elements of inadequacy on the implementation of the Convention in the Central African Republic. Let me summarize them around three issues.

Firstly, regarding Article 3(a) of the Convention, which prohibits all forms of slavery or practices similar to slavery, including forced or compulsory recruitment of children for use in armed conflict. The Committee of Experts recognized the complexity of the situation prevailing on the ground and the existence of an armed conflict and armed groups in the country. Also, the Committee of Experts noted that, according to the report by the independent experts on the human rights situation in the Central African Republic in 2020, the time limit fixed by the national authorities of the end of January 2020 to complete disarmament and demobilization was not respected.

In this context, despite the signing of the Political Agreement for Peace and Reconciliation in the Central African Republic in 2019, both the armed forces and armed groups continued to recruit and use children. It is noted that children were used as combatants and in support roles, and that they were subjected to sexual violence.

The Committee of Experts deplored the continuing recruitment and use of children in the armed conflict in the Central African Republic, all the more so as it gives rise to other serious violations of children's rights, such as abductions, murder and sexual violence.

It is noted that the Central African Republic Child Protection Code, promulgated in 2020, criminalizes the recruitment and use of children by armed forces and groups, and considers enlisted children as victims. However, considering the prevalence and gravity of these practices, the Employer members echo the Committee of Experts and urge the Government to redouble its efforts and take measures to put an end to the practice of forced recruitment of children of less than 18 years of age, and to ensure that all persons, including members of the regular armed forces, who recruit children under 18 years of age are thoroughly investigated and prosecuted and that sufficiently effective and dissuasive sanctions are imposed.

We request the Government to continue to report on the measures taken, especially on the application of the Child Protection Code. We are pleased to hear that the Government has requested the technical assistance of the ILO to develop a national plan against child labour and encourage this course of action.

Secondly, regarding provisions in Article 7(2)(a) considering access to free basic education. The Committee of Experts noted from various UN reports that half of the country's children are out of school and that several schools had partially or totally closed because of the armed conflict, particularly in the hinterland and rural areas, thus cutting off children's access to education. According to UNICEF, one in four schools is not functioning due to the fighting. The Committee of Experts further noted that confrontations during the electoral period in 2020 and 2021 gave rise to looting, attacks and occupation of numerous schools, gravely affecting the resumption of school.

To appreciate the impact of these considerations, the Employer members want to highlight that according to UN *World Population Prospects*, by 2020 almost 44 per cent of the Central African Republic population was under 14 years of age. This is a very serious case, with an undeniable impact on the economic and social recovery of the Central African Republic.

In this context, the Committee of Experts has expressed its deep concern and urged the Government to intensify its efforts to improve the operation of the education system and facilitate access to free basic education for all children; and to provide information on the concrete measures taken in this regard. We share the concerns expressed by the Committee of Experts, taking into consideration the role of education in preventing children from being engaged in the worst forms of child labour.

We are pleased to hear that the Government has initiated projects to rebuild or construct school infrastructure in severely affected areas. The Employer members encourage the Government to intensify its efforts to facilitate access to free basic education for all children, especially girls and children residing in the zones affected by the conflict; and to continue to cooperate with the international community, as well as to seek further assistance from the ILO and UNICEF to develop sustainable strategies to tackle this challenge during the transition towards lasting peace.

Thirdly, regarding Article 7(2)(b) on effective and time-bound measures to provide direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. The Committee of Experts noted that, within the framework of the Programme for Disarmament, Demobilization, Reintegration and Repatriation, the armed groups signed protocols and action plans with the authorities to release children from their ranks and refrain from further recruitment. As a result, a number of children were either released or self-demobilized and enrolled in reintegration programmes. However, the Committee of Experts noted that cases of enlistment and use of children by armed groups were still documented. And, even though a number of children have been released, according to UNICEF, more than one in five of these children had yet to be enrolled in a reintegration programme.

The Employer members urge the Government to intensify its efforts to provide appropriate direct assistance to remove child victims of forced recruitment from armed groups and ensure their rehabilitation and social integration, and to report on the concrete measures taken to ensure the removal of children recruited for use in the armed conflict and for their rehabilitation and social integration, providing, if possible, data disaggregated by gender and age.

The Employer members once again thank the Government for the information submitted to the Committee. And, while acknowledging the complexity of the situation prevailing on the ground, we are forced to point out that the Committee of Experts has been raising this issue since 2008, and that the recruitment and use of children in armed conflict has sharply increased in recent years.

We note that the Office is already supporting the country in its efforts to combat trafficking, including joining Alliance 8.7. We encourage the Government to seek further assistance from the ILO to increase the capacity of the tripartite constituents, in order to implement effective and sustainable strategies to eradicate the worst forms of child labour in the country.

As stated in the "Durban Call to Action" recently adopted by the 5th Global Conference on the Elimination of Child Labour, the COVID-19 pandemic, armed conflicts, and humanitarian and environmental crises threaten to reverse years of progress against child labour. The Employer members agree that it is essential to stand against this scourge and accelerate multi-stakeholder efforts to prevent and eliminate child labour with the highest priority given to the worst forms of child labour.

Worker members – It is now nearly two years since the Convention was ratified by all ILO Member States, thereby making it the first universally ratified Convention, and in a record time of 21 years. This all testifies to the global consensus and commitment to eradicating the scourge of child labour. These commitments towards realizing this goal were also the subject of the 5th Global Conference on the Elimination of Child Labour, which was recently held in Durban.

Although it is a source of satisfaction that political commitments have now been made universally to work for the elimination of child labour, a huge amount of work still remains to be done to eradicate child labour in practice. Indeed, the Durban Conference made the sad assessment that there was an increase in child labour globally, which is certainly not unconnected with the crisis context of these last two years.

Moreover, the Central African Republic has been faced with a completely different crisis for a long time, which obliges us to reach the same conclusions as for the global level: that unfortunately children are often among the first victims of these crises. Exacerbated by the electoral context, this serious political and security crisis in the Central African Republic, in the form of numerous armed conflicts in the country, is having a devastating impact on the country's children. The latter are either forcibly enlisted by various armed groups involved in the conflict, including the regular army, or deprived of access to education, which makes them particularly vulnerable from all points of view.

Children who have been forcibly enlisted are doubly victims of this unstable situation, because of the inadequacy of the resources allocated for their rehabilitation and reintegration into society. As long ago as 2010, the problem of the forcible enlistment of children in armed conflict was the subject of discussion in our Committee, in relation to the Minimum Age Convention, 1973 (No. 138). Twelve years later, this problem is here before our Committee again, in relation to Convention No. 182 this time, with the dismal analysis that the situation has not improved since then.

We also regret the fact that the Government of the Central African Republic has not made use of the possibility given to it to produce written observations after it was placed on the preliminary list of individual cases.

The July 2017 report of the independent expert on the human rights situation in the Central African Republic cites a figure of between 4,000 and 5,000 children enlisted in the conflict. The United Nations Office of the High Commissioner for Human Rights and the UN mission to the Central African Republic recently published a report which describes a worsening of the security situation in the country, resulting in the continued enlistment of children in the conflict. In May 2021, the report of the UN Secretary-General on children and

armed conflict recorded 580 cases of children recruited and used by armed groups and the armed forces, which represents an alarming deterioration of the situation. The report describes the use of children as combatants and in support roles. A total of 82 instances of sexual violence are also cited in the report. In addition, 42 children have been killed or wounded and 58 children have been abducted by armed groups for the purposes of recruitment, sexual violence and ransom.

Article 3(a) of the Convention is very clear: forced or compulsory recruitment of children for use in armed conflict is one of the worst forms of child labour. Article 1 of the Convention requires Member States to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour. This obligation applies not only to the official armed forces but also to other armed groups. We are bound to observe that these provisions of the Convention are still not respected in the Central African Republic today.

The worsening of this situation also has a consequent impact on access to primary education for children. The school enrolment rate remains extremely low in the Central African Republic, especially for girls. The drop-out rate between primary and secondary education is also very high. In June 2021, the report of the UN Secretary-General on the Central African Republic stated that half of the country's children do not attend school.

This situation is due in particular to the partial or total closure of a number of schools owing to the armed conflict, especially in the interior of the country, with armed groups looting, attacking and occupying schools as part of the armed conflict. In April 2021, UNICEF estimated that one in four schools was not operating as a result of the fighting.

Article 7(2)(a) and (c) of the Convention provide that Member States shall take effective and time-bound measures to prevent the engagement of children in the worst forms of child labour and ensure access to free basic education. The Central African Republic still has a lot of work to do to fulfil these obligations.

According to information from UNICEF reproduced in the Committee of Experts' report, almost one in five children enlisted in armed groups has still not been enrolled in reintegration programmes. It also appears that some children who were initially released have fallen back into the hands of the armed groups. It is clear that the reintegration programmes must be reinforced to ensure effective and lasting demobilization for the children.

It is indisputable that the rehabilitation of former child soldiers represents a major challenge; it is therefore essential that adequate aid is provided to these children who are victims of forcible enlistment into the armed forces. In particular, it is important to avoid treating these children as war criminals and to treat them as the victims which they are.

Article 7(2)(b) of the Convention provides that Member States shall take effective and time-bound measures to provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. We are bound to note that, even though the political commitments were made a long time ago in the Central African Republic, the time limit for actually putting these commitments into practice has long gone. We are bound to note with regret that numerous problems persist in practice.

These problems have been the subject of recurring observations by the Committee of Experts since 2008. Even though the efforts made to reach political agreements aimed at demobilizing child soldiers are undeniable, we are bound to regret that there are difficulties in implementing these agreements in practice. It also appears from the Committee of Experts' report that the situation has been getting worse in recent years. This is why the Central African

Republic is now the subject of a double-footnoted case, a sign of how serious the situation is. The response from the Central African Republic should be commensurate with the gravity of the situation.

In the light of the comments of the Committee of Experts, which invites the UN treaty bodies to conduct a joint discussion on the means of reinforcing synergies and complementarities with the Committee, on the basis of the respective separate mandates of the various bodies, it seems to us that the case of the Central African Republic might be a case in which the specific implementation of synergies between the ILO and the other UN bodies could be tried out with a view to pooling available resources in order to provide a coordinated response to the fundamental problems observed in the country.

Worker member, Central African Republic – I would like to thank the Committee of Experts for identifying this case as one of those to be discussed at this session of the Conference.

Our appreciation arises from the fact that the incidence of child labour continues to rise in our country. Both workers and parents are concerned about this situation. In addition to the fact that the increase in child labour highlights higher adult unemployment, we fear that the stability of our country continues to be challenged by the prevalence of child labour. A recent UNICEF report indicates that the incidence of child labour in the Central African Republic is 31 per cent for children aged 5 to 17 years. The report also recognizes the Government's efforts to enact legislation prohibiting children from being engaged in hazardous work.

The Committee of Experts rightly alluded to the lack of clarity in the Code's provisions. In addition, abuses are in most cases deliberately perpetrated without remorse. Aside from the weakness of the law's provisions, the gaps in the definitions and the weakness of the political will to advance robust programmes to combat child labour, there is little capacity to punish individuals and organizations for wrongdoing. Most indigent parents are guilty of a deliberate practice of child labour, using the pretext of an unsafe and unstable environment to engage their children in paid work. This practice is the norm in the informal economy.

Without making excuses for my country, I think it is fairly well known why child labour is prevalent. The combination of poverty, high unemployment, stagnant and low wages, and prolonged warfare has seriously contributed to the exacerbation and continuation of the practice of child labour. The situation is worse for girls, who are more likely to be easily recruited by their mothers to help generate and increase family income, while parents may help boys to attend school.

Our country will need help to successfully and permanently stop the civil war. We will also need help to improve our Labour Code and legislation to protect the rights of children.

The 5th Global Conference on the Elimination of Child Labour was held in Durban, South Africa a few weeks ago. This Conference resulted in the "Durban Call to Action", as an outcome document, which was fully endorsed by the trade unions of the Central African Republic. The Conference identified the need to receive and deploy social protection to combat poverty and the vulnerability of households as a means to stop child labour. Social security is essential for children. There is a great need for social protection to ensure economic, social and nutritional well-being now that our country is struggling with inflation and economic recession owing to civil war, coronavirus, the knock-on effects of the war in Ukraine, and soaring debt servicing.

We also believe in the effectiveness of education. Unfortunately, the recurrent situation of civil war makes it difficult for children to attend school. Many children recruited as child soldiers need to be rehabilitated and reintegrated. Of course, this can only happen if we

succeed in ending the war. To achieve good school enrolment and keep children in school, incentives to parents such as conditional cash transfers may need to be authorized.

Lastly, let me point out that my country is before this Committee for the second time in a decade. In conclusion, therefore, I would like to ask the ILO to consider a multi-partner approach with other development agencies, such as UNICEF, the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Food Programme (WFP), the United Nations Development Programme (UNDP), the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and the Joint United Nations Programme on HIV/AIDS (UNAIDS) to work with our Government, social partners and other stakeholders in a collaborative and inclusive manner to help us effectively address this threat.

We want a secure future for our children: they are our legacy.

Government member, France – I have the honour of speaking on behalf of the **European Union (EU) and its Member States**. The candidate country **North Macedonia**, and the European Free Trade Association countries **Iceland** and **Norway**, Members of the European Economic Area, as well as **Georgia** and **Türkiye** align themselves with this statement. The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights and the fight against child labour, in particular in its worst forms.

We actively promote the universal ratification and implementation of fundamental international labour standards, including ILO Convention No. 182. We support the ILO in its indispensable role to develop, promote and supervise the application of ratified international labour standards and of fundamental Conventions in particular.

As stated in the recently adopted "Durban Call to Action", this universally ratified Convention requires action from the ILO Member States to eliminate as a matter of urgency the worst forms of child labour. We recall the importance of scaling up efforts in this regard and underline our strong commitment thereto.

The Central African Republic and the EU have a close and constructive relationship under the Cotonou Agreement, further reinforced by a new partnership agreement reaffirming our joint commitment to protect, promote and implement human rights, fundamental freedoms and democratic principles, and to strengthen the rule of law and good governance. The Central African Republic is also a beneficiary of the EU's "Everything but Arms" scheme for least developed countries.

The recruitment and use of children is unacceptable in itself and results in serious other violations of the most fundamental child rights, such as abductions, murder and sexual abuse and violence. The existence of an armed conflict and armed groups in the country can never be used as an argument for the continued and increasing recruitment and use of children, including by the armed forces, both as combatants and in support roles, regardless of the complexity of the situation in the country.

In line with the Committee's call, we urge the Government to pursue its efforts to put an immediate end to the practice of forced recruitment of children by the armed forces and by armed groups in the country. We also urge the Government to ensure that all those responsible for such acts are thoroughly investigated and prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice, in conformity with the Child Protection Code.

We also reiterate the call to the Government to ensure that all children removed from armed groups and from the armed forces benefit from reintegration programmes focused on their rehabilitation and social integration through child protection services and appropriate education, so as to guarantee their definitive demobilization.

Similarly, while acknowledging that the Central African Republic has been faced with ongoing political turbulence, violence and insecurity for years, and given the extent of the challenges to be overcome, we call on the Government to intensify its efforts – in line with the National Plan for Recovery and Peace Consolidation (RCPCA) 2017–23, which the EU co-chairs with the Prime Minister – to improve the operation of the education system and facilitate access to free basic education for all children, with special attention for girls, and in the zones affected by the conflict. We express our deep concern at the large number of children deprived of education because of the climate of insecurity and recall that education plays a central role in preventing children from being caught up in the worst forms of child labour.

We furthermore insist on the need to put an end to child labour in society. In this regard, we encourage the Government to implement the Child Protection Code in order to better respect children's rights in Central African society.

The EU and its Member States are fully committed to working alongside the Central African Republic, and we will continue our engagement for the children in the country and for the education of the most vulnerable children in the framework of existing and future cooperation programmes. We expect the Government to commit itself to immediately end the use of children as combatants or in support roles both by its own armed forces and by other armed groups within the country.

We look forward to continuing joint efforts with the Government and the ILO.

Employer member, Colombia – At the outset, it is important to state the priority that we as employers attach to the Convention, aimed at protecting children, the most important members of society. With the adoption of this Convention, the ILO recognized this issue as a priority, at both national and international levels, and this standard seeks to provide a solution to a particularly abhorrent situation, which is why it was adopted by the ILO quickly and unanimously.

The Convention addresses the worst forms of child labour and is a clear and unquestionable wake-up call for all Member States to take urgent and comprehensive measures. In accordance with Article 1 of the Convention, the Government must take the necessary measures to secure the prohibition and elimination of the worst forms of child labour, encompassing Article 3(a), which refers to all forms of slavery or practices similar to slavery, including forced or compulsory recruitment of children for use in armed conflict.

The Committee of Experts indicated in its report on the case that 584 cases of children recruited and used by armed groups and the armed forces were confirmed in 2020. Children were used as combatants and in support roles and were subjected to sexual violence. To this end, while the Government has indicated the adoption of an Act issuing the Child Protection Code, which provides for the protection of children from enlistment in the armed forces or by armed groups, and also signed a Political Agreement for Peace and Reconciliation in the Central African Republic in 2019, such efforts must be strengthened. Immediate measures must therefore be taken to investigate and punish in practice those who are involved in criminal conduct, such as the recruitment of children under 18 years to use them in armed conflict.

We ask the Government to commit to effectively implementing and complying with the Convention and the recently adopted legislation and to provide information demonstrating the application in practice of the Convention. Lastly, we ask the Government to continue making progress, with ILO technical assistance and through the various existing international cooperation mechanisms, in aligning law and practice with the provisions of the Convention and ensure, as a matter of urgency, the elimination of the worst forms of child labour in the country.

Worker member, Eswatini – Education is one tool that has proved to be very effective in the fight against child labour. Quality education can only thrive in an environment conducive for learning. The ongoing violent conflicts in the Central African Republic exacerbate the already deteriorating situation of abuse of children and it greatly impedes children's right to education. Children are reported to be kidnapped, used as ransom and bait for money to finance the rebel fights.

The violence catalyses the worst forms of child labour and makes schooling impossible as parents cannot reasonably be expected to send their children to school in an environment characterized by violence. Infrastructure, including schools, is damaged. According to the 2020 report of the Bureau of International Labor Affairs within the United States Department of Labor, an estimated 1.3 million children lack access to education because of the ongoing instability.

The Government must take concrete and immediate steps and be further assisted to allocate adequate funds for the financing of education. The country needs to be assisted on strategies to raise funds to finance quality education. The scourge of companies evading taxation through illicit financial flows needs to be attended to in haste. Illicit financial flows in any country negates expected service delivery by the State, including on issues of education.

The allegations that children are used as soldiers by non-state militias needs to be thoroughly investigated. Those found to be behind this gross abuse of children must be prosecuted.

Government member, Burkina Faso – The elimination of the worst forms of child labour is one of the essential components of the fundamental principles and rights at work enshrined by the ILO. Our country strongly encourages the promotion of the fundamental principles and rights as pillars for the promotion of decent work and the achievement of the objective of social justice at the heart of our shared Organization and will spare no effort to support all Member States in this regard.

Information provided by the Government of the Central African Republic shows that efforts have been made recently by the highest authorities to wage a relentless fight against trafficking in persons, including the worst forms of child labour. It should be recognized that the fight against child labour is particularly complex in countries beset by violence where areas controlled by armed groups pose enormous difficulties. In view of this particularly difficult context, Burkina Faso commends the efforts made by this sister republic and strongly encourages it to pursue this momentum.

The ILO must, as requested by the Central African Republic, support the Government's actions and invite other partners to support the various processes under way. In the light of the foregoing, our Committee must demonstrate understanding and clemency when the conclusions to this individual case are adopted.

Worker member, Senegal – Thank you for giving me the opportunity to speak on behalf of the workers of West Africa.

We wish to welcome the efforts of the Committee of Experts regarding the notable work carried out on the subject being discussed.

We have noted with interest the Government's statements on the efforts made, particularly the revision of the Labour Code. It should be emphasized, however, that these efforts fall far short of expectations and that a significant number of children under the age of 14 are still used as part of the workforce, including in hazardous conditions, in violation of the spirit and letter of the Convention.

In places where laws for determining the minimum working age are absent and vague, abuse becomes the norm and practice. This is precisely the case in the Central African Republic. Children under the minimum working age are engaged as workers in agriculture, construction sites, factories and the pervasive informal economy. Most parents, especially those living in poverty, easily account for this situation by arguing that they are sending children for apprenticeships while they are minors.

Child labour undermines the socio-economic development of the country and exposes these children to an uncertain and precarious future. As we have always emphasized in this Committee, children should be in the classroom and not in factories and sweatshops.

The lack of a clear and well-implemented minimum age policy and legislation must be addressed as a matter of urgency. The Government must also be encouraged and supported to intensify measures for quality public education, ensuring access and improving completion rates. We also wish to add that a well-coordinated labour inspection system with adequate resources must be established to ensure observance of policies and legislation aimed at determining the minimum working age and eliminating child labour. We urge the Committee to take effective action with the Government to ensure that the necessary measures are taken as soon as possible to combat and eliminate child labour.

Government member, Switzerland – Switzerland is deeply concerned about the continuing conflict situations in the Central African Republic and their devastating effects on the entire population. We call on all arms bearers and armed groups to respect the provisions of international law and to work towards a peaceful solution. Only the laying down of arms, security, peace and reconciliation will improve the situation in the long term.

Switzerland is particularly concerned about the increasing recruitment and use of children in armed conflict. We call on all parties to the armed conflict to put an immediate end to this practice, which not only affects some of the most vulnerable members of society but, with all its consequences, also literally destroys hope for a better future. Switzerland calls on the Government to ensure that all those who recruit children for use in armed conflict and illegal activities are thoroughly investigated and prosecuted with effective sanctions.

Furthermore, Switzerland remains very concerned about the large number of children deprived of education owing to the ongoing conflicts. Education is a right that must be guaranteed. It is the basis for a sustainable and peaceful future. Switzerland calls on all actors to make greater efforts to ensure that all children, boys and girls, have access to good-quality basic education. These efforts must also include the reintegration of victims of forced labour.

In conclusion, while thanking the Government for the information provided, Switzerland urges it to continue to work closely with the various institutions of the UN system.

Worker member, Portugal – I would like to take this opportunity to make some remarks regarding the inherent connection between child labour, insecurity and the absence of democracy. In this report the cruel reality of facts speaks for itself. Workers are deeply

concerned by the situation in the Central African Republic and the ongoing violations of human rights and violence against civilians by armed groups, including the abduction and removal of children recruited for use in the armed conflict.

The entire report of the Committee of Experts on the Central African Republic is a cry for peace and democracy. Democracy is not a luxury of rich countries. Democracy is the means to achieve the best solutions to fight inequality and poverty and work towards achieving social justice, peace and development for everyone.

The utter breakdown of peace and security is at the core of the collapse of democracy, good governance and ultimately the loss of protections for civilians, and in this deplorable situation the loss of protections and rights for children. In our view, it is urgent to promote and establish peace and security, and strengthen democracy, good governance and respect for human rights. There are multiple challenges to be addressed, and all initiatives contributing to conflict prevention and sustainable peace in the region are welcome.

As long as the conflict goes on, it is impossible to ensure that children can attend school. It is everyone's concern that children have access to education and training to stop poverty from passing from one generation to the next. It is vital to end this vicious circle that entangles families, communities and economies, and hinders the growth of the entire nation.

Too many children in the Central African Republic have been deprived of their right to education in this climate of insecurity prevailing in the country. They deserve a proper future with access to education, health and social protections. They deserve hope. They need a global commitment to permanently reduce the insecurities caused by conflict and the risks and vulnerabilities that leave families in a state of perpetual poverty. This means strengthening and supporting livelihoods and school enrolment, as well as government social protection systems which are essential to the fight to eradicate and prevent child labour.

Tripartite social dialogue in a democratic environment has a key role to play in this regard, delivering the right measures to promote social progress and eradicate all forms of child labour.

Government member, Mali – I would like to thank my colleagues from the Government of the Central African Republic for the clarity and relevance of the answers they have given, but also to show them our full support. Indeed, the measures already adopted and those envisaged by the Government are sufficient proof of its determination to eradicate the worst forms of child labour, despite the political, security and health challenges it faces. In conclusion, I would like to say that our Government remains convinced that the Government of the Central African Republic will be able to meet these challenges, in particular through the development and adoption, in the very near future and in collaboration with the Office, of a national action plan for the elimination of child labour.

Worker member, United States of America – Given the difficult situation in the Central African Republic, a multidimensional approach is urgently needed to protect children from the worst forms of child labour. As noted in the Committee of Experts' report, the primary responsibility for ending the forced recruitment of children by armed groups lies with the Government. Put simply, it must do more to enforce the Child Protection Code's criminalization of the recruitment and use of children by the armed forces and groups active in the country.

At the same time, we must not overlook the role of the private sector in the continued financing of armed rebel groups, particularly as it relates to the international diamond trade. Under the UN *Guiding Principles on Business and Human Rights*, companies are supposed to conduct human rights due diligence to ensure that their business operations and supply chains

are not connected to human rights abuses like those taking place in the Central African Republic. However, in practice, very few international corporations live up to these guidelines and far too many continue business as usual.

Consequently, it is critical that all governments, including the Government of the Central African Republic, establish laws and practices requiring companies headquartered or domiciled in the country to conduct human rights due diligence across their business operations. With respect to the international diamond trade, we call on all States to adopt laws that require companies to investigate and report publicly on their mineral supply chains in accordance with international standards such as the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*.

In conclusion, tackling the worst forms of forced labour in the Central African Republic requires a multifaceted approach that includes holding the private sector accountable for its role in funding the armed conflict. The Government needs to adopt a mandatory human rights due diligence policy with effective enforcement mechanisms to incentivize greater corporate action to eliminate conflict diamonds and minerals from global supply chains.

Government member, Gabon – Gabon has the honour of taking the floor before this assembly to endorse the responses provided by the Central African Republic further to the observations of the Committee of Experts.

Like its sister country, the Central African Republic, Gabon has ratified the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Minimum Age Convention, 1973 (No. 138), and Convention No. 182, and understands the complexity of the situation in the Central African Republic, particularly given the political and social situation there.

Consequently, Gabon encourages the Central African Republic to continue to intensify its efforts and therefore requests the Committee to pay particular attention and show particular understanding when addressing the issue of child labour in the Central African Republic, especially by taking into account the efforts made despite a particularly hostile context. In addition, Gabon requests the Office and other development partners to provide the Central African Republic with multifaceted support to achieve its child protection objectives in accordance with the provisions of the Convention.

Government member, Cameroon – Cameroon thanks the Central African Republic for the detailed answers provided to the Committee and, from the Government's presentation, it is clear that, despite the complex situation it has been experiencing over the past few years, it has spared no effort to make the fight against child labour and human trafficking its leitmotiv.

The universal ratification of the Convention places the Central African Republic among the countries that have ratified this fundamental instrument, thus demonstrating its wish to eradicate child labour from its territory. Very conscious that the worst forms of child labour must be excluded by all means, the Government has set up a National Committee to Combat Trafficking in Persons under the direct authority of His Excellency the President of the Central African Republic. This shows the importance that this country attaches at the highest level to the fight against child labour and human trafficking.

In addition, the Central African Republic adopted a national strategy in 2022 to combat gender-based violence, child marriage and female genital mutilation. The Government of Cameroon welcomes the fact that the Central African Republic has requested technical assistance from the Office to develop a national plan for the elimination of the worst forms of

child labour in line with the resolutions of the various global conferences on combating the worst forms of child labour.

All the information presented to the Committee today by the Government demonstrates the will of this country to remove children from the environment of child labour and armed groups in order to completely eradicate child labour from its territory.

In conclusion, the Government of Cameroon calls on the Central African Republic, on the one hand, to continue the steps taken and, on the other, to cooperate closely with the Office for the continuation, finalization and success of this process.

Government representative, Minister of Labour, Employment, Social Protection and Vocational Training – I would like to thank the ILO once again for the opportunity given to the Government of the Central African Republic to speak in response to the observations of the Committee of Experts. We thank all speakers, all countries and the social partners for their precious contributions and recommendations, which will strengthen our Government's conviction to pursue its efforts to promote human rights and combat the worst forms of child labour. We have taken due note. The Government of the Central African Republic holds the ILO in high esteem; we will address all the points that have been raised and we will continue our efforts.

There has been some notable progress. The Government has identified the deep-rooted causes to enable the effective application of this Convention. It has identified the need for more judges in labour tribunals and the labour inspectorate; currently there are not enough, and many who are in active service will soon be retiring. A plan of action is under way to provide training and enhance skills in order to apply the Conventions more effectively. Once again, we request ILO support in relation to the need for support from standards specialists. In addition, another form of support established by the Government has involved joining Alliance 8.7 as a pioneer country. This procedure was transmitted to the Kinshasa Office and we were informed last week that the matter was settled. We will be able to organize a strategic workshop and an action plan which will enable us to support the Abidjan and Durban Declarations. This is a priority for the ILO and also for the country.

I wish to make my own contribution, as the head of the Ministry of Labour. With regard to the issue of reporting, I call for support from the ILO with providing a standards specialist to assist the country with reporting. The country has been through various crises, as you know. A new team is in place. We need to reinforce this new team, and the presence of a standards specialist alongside the Central African Republic will be a great support. This is my request in order to ensure the effective application of the Convention with regard to the worst forms of child labour.

Employer members – In its concluding remarks, the Employer members would like to again thank the Government for the additional information submitted on the case. As we said before, we find this information very promising. We welcome the fact that the Central African Republic has joined Alliance 8.7, but, given the complexity of the situation prevailing on the ground and the existence of armed conflict and armed groups in the country, we believe this case still demands strong political commitment and strategic partnership to put into practice sustainable strategies involving all stakeholders. We would also like to thank all the delegates for their participation and insight. Overall, the global crisis has certainly been exacerbated by the armed conflicts and the humanitarian crisis in the Central African Republic, which has pushed families towards increased poverty levels and therefore made them more vulnerable to the worst forms of child labour.

We are facing the threat of years of progress against child labour being reversed and the Employer members agree that it is essential to stand against, discourage, and join efforts to prevent and eliminate child labour with the highest priority given to the worst forms of child labour. The Employer members are pleased to hear the efforts being made by the Government to deal with this persistent and serious problem. In light of the debate, we would like to recommend that the Government intensify its efforts on the prevention, removal, rehabilitation and social integration of children recruited for use in armed conflict and put an end to this practice, as well as to provide information on the measures taken and the number of children benefiting from the rehabilitation and social integration programmes. The Government should also ensure that thorough investigations and robust prosecutions are carried out and that sufficiently effective and dissuasive penalties are imposed in practice, and provide information on the number of investigations, prosecutions and convictions applied in compliance with the Child Protection Code. Additionally, we would like to recommend that the Government intensify its efforts to improve the operation of the education system and facilitate access to free basic education for all children; and provide information on the measures taken, as well as on school attendance, maintenance and drop-out rates.

Finally, we encourage the Government to seek further technical assistance to increase capacity-building among constituents in order to implement effective and sustainable strategies to eradicate the worst forms of child labour in the Central African Republic.

Worker members – We thank the Government representative for the information she provided during the discussion and for the written information that was indeed sent, contrary to what was mistakenly stated in my opening speech. We regret, however, the late submission of this written information. We also thank the speakers for their statements.

We have said it before and we say it again: there is no denying that the political will to address the issues we have discussed today exists. But the problem lies in putting these political commitments into practice.

Following years of the government authorities being called into question on these issues by various international institutions, regrettably we still find the continued use of children in armed conflict in the Central African Republic, both by the official armed forces and by various armed groups involved in the conflict. This situation puts the children concerned in a particularly vulnerable situation and exposes them to other serious violations of their rights, in total contravention of the Convention. Even more seriously, this phenomenon appears to have deteriorated in recent years.

The impact of these armed conflicts in the country on access to education is devastating, both for children forcibly recruited into conflict, as well as for other children, as a significant number of children are deprived of education.

We must therefore strongly urge the Government to take immediate and decisive action, as a matter of urgency, to ensure the effective elimination and prohibition of the forced recruitment of children in armed conflict. To this end, we join the Committee of Experts in calling on the Government to continue to strengthen its efforts to put an end in practice to the forced recruitment of children under 18 years of age by the armed forces and armed groups in the country. We also ask the Government to take immediate and effective measures to ensure that all persons, including members of the regular armed forces, who recruit children under 18 years of age for use in armed conflict are thoroughly investigated and prosecuted, and that sufficiently effective and dissuasive sanctions are imposed in practice. The Government will provide useful information on the number of investigations, prosecutions,

and convictions in this regard and will provide a copy of the Child Protection Code to the Committee of Experts.

In order to protect children from forced recruitment into armed conflict, the Government will strengthen its efforts and take effective time-bound measures to improve the functioning of the education system and facilitate access to quality basic education for all children in the Central African Republic, particularly in areas affected by armed conflict. The Government will also pay particular attention to the situation of girls.

In order to be able to follow developments in the situation, the Government will provide useful information on the specific measures taken in this regard, as well as on the enrolment, completion and drop-out rates at primary and secondary levels.

Lastly, the Government will take appropriate and time-bound measures to ensure the removal of children recruited for use in armed conflict, and for their rehabilitation and social integration. It will also ensure that all children removed from armed groups and the armed forces are placed in reintegration programmes. Although it has already provided some information in this regard, the Government will undertake to send such information to the Committee of Experts, including information on the number of children who have benefited from rehabilitation and social integration.

In order to give effect to all of these recommendations, we invite the Government to avail itself of the ILO's technical assistance and provide a full report to the Committee of Experts before its 2022 session.

We also invite the Government to cooperate fully with any initiatives established by the ILO in collaboration with other UN treaty bodies with a view to promptly remedying the serious violations of children's rights in the Central African Republic.

Conclusions of the Committee

The Committee took note of the written and oral information provided by the Government representative and the discussion that followed.

While acknowledging the complexity of the situation prevailing in the country and the presence of armed groups and armed conflict in the country, the Committee deeply deplored the current situation where children are being recruited and used by the armed forces and armed groups as combatants and in support roles, which also results in other serious violations of children's rights, such as abductions, murder and sexual violence.

The Committee also noted with deep concern the situation of children, especially girls, who are deprived of education due to the impact of the political and security crisis prevailing in the country.

Taking into account the discussion, the Committee urges the Government to take all necessary measures, in consultation with the social partners, to:

- **ensure the full and immediate demobilization of all children and to put a stop, in law and practice, to the forced recruitment of children into the armed forces and armed groups;**
- **intensify its efforts on the prevention, removal, rehabilitation and social integration of children recruited to be used for armed conflict, including through awareness-raising and reintegration programmes;**

- **inform on the measures taken, and the number of children who have benefited from rehabilitation and social integration programmes;**
- **ensure that thorough investigations and robust prosecutions of all persons, including members of the armed forces and armed groups, are carried out, and that sufficiently effective and dissuasive penalties are imposed in law and practice;**
- **inform on the number of investigations undertaken, prosecutions and convictions applied in compliance with the Child Protection Code and to provide a copy of same to the Committee of Experts;**
- **intensify its efforts to improve the operation of the education system and facilitate access to free quality basic education for all children, particularly girls, and in zones affected by the conflict;**
- **inform on the measures taken, as well as on the school attendance, maintenance and drop-out rates of children;**
- **develop a multidisciplinary time-bound action plan, with ILO technical assistance and in close cooperation with the social partners and other relevant civil society organizations. In addition, coordinate with other UN agencies with relevant competencies and expertise including UNICEF; and**
- **seek further ILO technical assistance to progress towards the full eradication of the worst forms of child labour in accordance with the Convention and to build capacity of the tripartite constituents to help achieve that goal.**

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 with the relevant information on the application of the Convention in law and practice, in consultation with the social partners.

China (ratification: 2006)

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

Written information provided by the Government

The Chinese Government has taken note of the observations made in the report of the Committee of Experts on China's implementation of the Convention. The Government attaches great importance to the observations and has conducted studies of those observations with relevant departments, local governments and the social partners. A supplementary note is provided as follows:

China's laws, regulations and practices are fully in line with the principles of the Convention, which is to promote equality of opportunity and treatment in employment. The Chinese Government takes employment as the top priority that serves our people's fundamental well-being. China adopts a proactive employment policy, which is based on friendly cooperation and equal consultation with social partners, and in coordination with the national economic and social development policies. China gives high priority to workers' employment rights. A series of policy measures have enabled workers to fully enjoy equal opportunities and treatment in respect of employment and occupation. China has achieved the United Nations Millennium Development Goals (MDGs) and Sustainable Development Goal 1 ten years ahead of schedule. Article 3 of China's Labour Law provides that "workers shall have equal right to employment and choice of occupation, the right to remuneration for work,

to rest and vacations, to protection of occupational safety and health, to training in vocational skills, to social insurance and welfare, to submission of labour disputes for settlement and other rights relating to labour stipulated by law". The Labour Law has two special chapters on "Promotion of Employment" and "Vocational Training", specifying detailed requirements. Article 12 of the Labour Law stipulates, "workers, regardless of their ethnic group, race, sex, or religious belief, shall not be discriminated against in employment". Article 3 stipulates that "workers shall have equal right to employment and choice of occupation, the right to remuneration for labour …". The equal right to employment is an important basis for the subsistence and development of workers and is protected by law. Article 3 of China's Law on Promotion of Employment states, "workers shall have equal right to employment and choice of occupation in accordance with law. In seeking employment, the workers shall not be subject to discrimination because of their ethnic background, race, gender, religious belief, etc." Article 21 provides that "The State supports the development of regional economy, encourages cooperation between different regions and comprehensively coordinates the efforts for balanced increase of employment in different areas. The State supports ethnic minority areas in their efforts to develop the economy and increase employment." Article 28 provides that "workers of all ethnic groups enjoy equal rights to work. When an employing unit recruits personnel, it shall give appropriate considerations to ethnic minority workers in accordance with law". Chapter II, article 4 of China's Regulations on Employment Services and Employment Management reiterates that workers enjoy equal employment rights in accordance with the law. Workers shall not be discriminated against in employment by reason of ethnicity, race, gender, religious beliefs, etc. Article 20 stipulates that recruitment brochures or advertisements published by employing units shall not contain discriminatory content. Article 25 requires that public employment service agencies provide workers with free consultation on employment policies and regulations, supply and demand information on the job market, career guidance and job introduction services. Article 58 stipulates that employment agencies are prohibited from releasing employment information that contains discriminatory content. On 20 April 2022, the 34th Session of the Standing Committee of the 13th National People's Congress revised the Law of the People's Republic of China on Vocational Education, article 5 of which stipulates that "citizens have the right to receive vocational education in accordance with the law". Article 11 stipulates that "The State implements a system whereby workers receive necessary vocational education before they are employed or take up posts." The Guiding Opinions on Safeguarding the Labour Rights and Interests of Workers in New Forms of Employment (MOHRSS [2021] No. 56) clearly provides for the implementation of a fair employment system and the elimination of employment discrimination. The Chinese Ministry of Human Resources and Social Security (MOHRSS) will earnestly implement policies for safeguarding the rights and interests of workers in new forms of employment. China's laws and regulations that explicitly prohibit employment discrimination and guarantee the equal rights of workers to employment have been fully and effectively reflected in judicial practices. In addition to discrimination because of ethnicity, race, gender and religious beliefs, as stipulated in the Labour Law, workers who suffer from discrimination for other reasons may also file lawsuits and obtain relief in accordance with the law. For example, the Hangzhou People's Court recently heard a dispute case of *Yan v. the company* on equal rights to employment. The ruling pointed out that workers enjoy equal employment rights according to law, and employers shall not discriminate against anyone when recruiting personnel. In this case, Yan suffered differentiated treatment because of his residential location from the company, which undermines Yan's right to equal employment opportunity and treatment. Yan's equal right to employment was violated. Therefore, the

company was ordered to pay compensation to Yan for emotional distress, make an oral apology and a public apology through a state-level newspaper.

The laws and practices of the Xinjiang Uyghur Autonomous Region are consistent with the requirements of China's national legal framework and in compliance with the Convention's requirements. Just like any other province, region or municipality in China, Xinjiang implements national laws and regulations such as the Labour Law and the Law on Promotion of Employment under a unified national legal framework, follows the principles of equal employment and equal treatment, and facilitates decent work by promoting economic growth that creates jobs. The autonomous region's subnational administrative regulations, departmental rules, and normative documents are all in line with the principles of national laws and conform to the principles and requirements of the Convention. Employment with higher quality is always a top priority. First, establish an active policy system for the promotion of employment. Xinjiang has enhanced the effective connection between employment policies and economic policies. The local government has comprehensively evaluated their impact on jobs, employment environment and unemployment risks when formulating major fiscal and taxation, financial, industrial, trade, investment and regional policies, and promotes the linkage between economic growth and employment expansion and the coordination between structural improvement and employment transformation. Second, implement supporting policies covering the whole process of employment for all types of workers. To support economic and social development, Xinjiang has adopted a series of measures in accordance with the law to encourage workers to get jobs in enterprises, start their own businesses, take flexible employment and participate in vocational training while providing various public services. Third, implement policies to support employment by encouraging entrepreneurship. Xinjiang has continued to deepen the reform of streamlining administration, delegating power and improving government services, constantly improved the business environment, opened up channels for business start-ups and wealth creation, stimulated and protected entrepreneurship, and encouraged more social entities to make innovations and start businesses. Fourth, provide equal access to employment services. Xinjiang has provided basic public employment services free of charge, including policy consultation, employment and unemployment registration, career guidance and job introduction, skills training, and entrepreneurship training, for both employers and jobseekers to promote equal employment opportunities. The region has promoted the establishment of a unified, open, competitive and orderly human resources market, enhanced the flexibility of market-led employment and the initiative of workers in choosing their own jobs, and promoted the free mobility of workers among regions (including between regions inside and outside Xinjiang and between areas within Xinjiang), industries and enterprises. The local government has established information platforms for monitoring supply and demand information in the human resources market, surveyed and collected information on urgently needed talents, and managed personnel files of mobile workers, and broadened online public service channels. A lifelong vocational skills training system has been introduced for all urban and rural workers to help them improve their employability and ability to start their own businesses. Xinjiang has built an "Internet plus" public employment and entrepreneurship service platform; put in place an information network of public employment services covering urban and rural areas and all kinds of groups; expanded the scope of self-service; promoted online application, processing and feedback sending; and facilitated the use of information technology in employment and entrepreneurship services and the whole process of management to continuously improve the capacity and quality of public employment services. More than half of Xinjiang's population is made up of ethnic minorities, and it is the basic duty of the Government to protect their rights to freely chosen employment on an equal footing in accordance with the law. The above-

mentioned policies in Xinjiang are within the framework of the State's employment promotion system, which are similar to those in other regions of China. They are implemented after taking into account the overall economic and social development of Xinjiang and are formulated through dialogue and consultation with various government departments and social partners.

Conclusion. Since the ratification of the Convention in 2007, the Chinese Government has deepened cooperation with all stakeholders, including social partners, earnestly fulfilled the requirements of the Convention, continuously improved its legal system, and made positive achievements in ensuring equal employment opportunities and equal treatment for workers. In particular, in promoting and protecting the employment rights of ethnic minorities, rapid development has been achieved in all minority-populated areas, including Xinjiang, which is a well-recognized fact. For instance, in 2018, the United Nations Committee on the Elimination of Racial Discrimination (CERD) affirmed the efforts and achievements of the Chinese Government in fulfilling the International Convention on the Elimination of All Forms of Racial Discrimination. The Chinese Government will continue its unwavering commitment to ensuring equal employment and career opportunities and equal treatment for workers of all ethnicities across the country and is willing to further international labour cooperation on the basis of equality and mutual respect. It should be pointed out that in recent years, under the pretext of "protecting human rights", a few countries and organizations have openly boycotted and sanctioned products and enterprises from Xinjiang, which is unjustified, irresponsible and extremely wrong, not only depriving all ethnic groups in Xinjiang of the opportunity to work, obtain jobs and receive labour remuneration, but also violating the basic principle of respecting human rights, especially the right to subsistence and development. This violates the basic requirements of the Convention for anti-discrimination, runs counter to the human-centred approach advocated in the ILO Centenary Declaration, and is detrimental to the achievement of the United Nations Sustainable Development Goals by 2030 as well as an inclusive, sustainable and resilient socio-economic recovery. It should be further pointed out that certain materials received by the Committee of Experts fabricated by organizations that openly deny China's territorial sovereignty and seek to split China's territory, and some of which even have close ties with terrorist activities. The so-called accusations carry obvious political intentions and are seriously inconsistent with the facts. China welcomes cooperation and dialogue between Member States and the Committee of Experts, which should be based on the principle of respecting state sovereignty and territorial integrity as stipulated in the United Nations Charter. The allegations which are in clear violation of the United Nations Charter should not serve as a basis for the Committee's concluding observations.

Discussion by the Committee

Interpretation from Chinese: **Government representative, Vice-Minister of Human Resources and Social Security** – In 2018, as required, the Chinese Government submitted a report on the application of the Convention. In 2020 and 2021, we timely responded on two occasions to the observations formulated by the International Trade Union Confederation (ITUC) on the status of implementation. In August 2021, this Government submitted materials in response to the comments of the Committee of Experts.

We have noted the observations made in the annual report of the Committee of Experts on China's application of the Convention. Relevant government departments, together with related regions and the social partners, have looked into it carefully and deeply regret that China has been listed among the cases to be reviewed by the Committee. We especially do not understand why it was marked with a "double footnote" by the Committee of Experts. In reality, Chinese legislation is fully in line with the Convention's provisions on the elimination of

discrimination in employment and occupation, which have been effectively implemented nationwide. The Chinese Government wishes to take this opportunity to expand and clarify the situation and re-establish the truth.

The Chinese Constitution, the Labour Law, the Labour Contract Law, the Employment Promotion Law, the Social Insurance Law, the Education Law, the Vocational Education Law and other laws clearly stipulate the respect and protection of labour rights of all citizens, maintenance of workers' lawful rights and interests and promotion of decent work.

The Chinese legislation provides clearly for equal rights to employment and occupation. Both the Labour Law and the Employment Promotion Law stipulate that workers, regardless of their ethnicity, race, sex or religious belief, shall not be discriminated against in employment. The Employment Promotion Law further prohibits rejection of recruitment on the grounds of being a carrier of infectious diseases, including hepatitis B. The Government, at all levels, has created an enabling environment for equal employment and the elimination of discrimination. Workers from all ethnic groups enjoy labour rights on an equal footing. A number of regulatory documents, including the Regulations on employment services and employment management, the Regulations on the administration of online recruitment services, the Guidelines on the safeguarding of labour rights in new employment forms, all prohibit discrimination against workers on the grounds of ethnicity, race, sex and religion, and provide that the online recruitment information shall not contain discriminatory content, nor should companies establish discriminatory conditions which are unlawful.

Through routine inspections, review of written materials, and receiving complaints, labour inspectors enforce legislation and regulations relating to labour and social security, safeguarding workers' right to equal employment in accordance with the law.

The Chinese judiciary, through court rulings, sanctions acts that violate the right to equal employment. Every ordinary worker is therefore protected and feels that he or she is being treated with justice and fairness. For example, the Hangzhou People's Court ruled on the case *Yan v. the Company*, stating that the employers shall not discriminate against anyone on the grounds of his or her residential location, and ordered the company to compensate Mr Yan financially for moral damages and to make a verbal apology and public apology through state-level media.

By the end of 2020, China accomplished as scheduled the arduous task of poverty alleviation in the new era. All 98.99 million rural poor under the current standard were lifted out of poverty. As the world enters the last decade of the implementation of the United Nations 2030 Sustainable Development Goals (SDGs), China has already achieved the poverty-related goal ahead of schedule. The effect of poverty elimination is particularly remarkable on minority inhabitants or concentrated regions with all of the 31.21 million people lifted out of poverty, which has been made possible for a large proportion of them through employment. The Chinese Government, together with its social partners, has provided skills training and employment guidance to people willing to work but lacking job skills or with limited information channels. They have benefited from basic public employment services, just as the inhabitants of other regions of China, and have managed to emerge from poverty through hard work.

We have taken note of the recommendations made by the Committee of Experts in its observation on the implementation of the Convention in Xinjiang. I hereby would like to pass the floor to the representative from the Xinjiang local government, who will present the true facts on the ground on promoting equal employment and occupation and creating more job opportunities.

Interpretation from Chinese: **Another Government representative** – I am a Uyghur cadre working at the department of Human Resources and Social Security of Xinjiang. I have worked in employment promotion for a long time, involved both in establishing employment policies and in employment promotion activities. More importantly, I have witnessed how the people of Xinjiang have enriched themselves through hard work.

My home region, Xinjiang, is located close to the north-west border of the country. For a long time, due to natural and historical factors, its economic foundation was seriously inadequate to support employment. Local people suffered from low employability too, leading to relatively low employment rates and very limited income. In recent years, under the guidance of the central Government, the Government of Xinjiang, together with the social partners, has made great efforts to promote equal employment, and effectively ensure the employment rights of workers of all ethnicities in Xinjiang.

First of all, efforts are made to create a fair employment environment. We have established a sound and complete system of employment policy. In Xinjiang, an employment-first strategy and active employment policy are continuously implemented. We have also adopted the Xinjiang Implementing Rules under the Employment Promotion Law, providing a solid institutional guarantee to equal employment rights and conditions. Employment increased consistently from 2014 to 2020. The workforce has increased from 11.35 million to 13.56 million, which is an increase of 19.5 per cent. The annual increase of urban employment was 470,000.

A sound and fair public system of employment services was also established in Xinjiang, which covers both urban and rural areas. Free services provided to both employers and workers include policy advice, employment and unemployment registration, vocational guidance, job referral, skills training and entrepreneurship training, as well as other basic services, aimed at promoting fair employment opportunities. We have given full play to the role of markets in regulating employment and promoting the free movement of workers between regions, industries and enterprises. We have created a public employment and entrepreneurship service platform, "Internet+", providing workers with convenient employment services, enhancing accessibility, and increasing job opportunities and incomes. Between 2014 and 2020, the per capita disposable income of urban residents in Xinjiang increased from 23,200 Chinese yuan to 34,800 yuan, and the per capita disposable income of rural residents increased from 8,724 yuan to 14,000 yuan.

Moreover, a lifelong vocational skills training system covering all types of people has been established and comprehensively implemented in Xinjiang. It is market- and employment-oriented, including all urban and rural workers, such as enterprise workers, rural workers and groups with employment difficulties in the scope of training, giving subsidies for vocational training, providing skills and opportunities for every worker and constantly improving their employment capability. Through training, workers have mastered at least one employment skill, and the vast majority have obtained professional certificates, vocational skills level certificates or special proficiency certificates, which have significantly improved their employability.

Secondly, efforts have been made to ensure workers' equal right to employment. In this respect, workers' willingness is always respected in employment promotion activities. In providing employment services, the Xinjiang Government ensures that workers can work and live independently and comfortably. For this purpose, we conduct regular surveys on workers' willingness to work, to keep abreast of workers' needs in terms of their location, position, remuneration and working conditions. Xinjiang government departments extensively contact

employers to collect information on job supply and demand, and timely publish it through multiple channels so as to provide information to workers for voluntary employment and free choice of occupation. After fully understanding the employment willingness and training needs of the public, government departments provide more targeted services to meet the specific needs of different workers and strive to achieve a precise match between workers and jobs to increase their satisfaction and employment stability.

Workers' equal employment rights are effectively guaranteed. The Xinjiang Government takes measures to ensure that workers are not discriminated against based on ethnicity, region, gender, or religious beliefs, nor are they restricted on the grounds of urban and rural areas, where they come from, their industries or status. In terms of ensuring women's employment rights, the Xinjiang Government has made efforts to remove barriers to women's equal employment and formulated policies to support the entrepreneurship of women. In 2021, 477,400 new jobs were created in cities and towns, of which 215,200 were for women, accounting for 45 per cent. In terms of safeguarding the labour rights of persons with disabilities, we have made efforts to reinforce vocational training, vigorously developed centralized employment and public welfare jobs, actively promoted employment by quota, as well as encouraging and supporting their multiple forms of employment. By the end of 2021, 181,000 persons with disabilities were employed across Xinjiang, accounting for 58 per cent of the total number of this group of working age.

Great attention is paid to the employment of key groups. The Xinjiang Government focuses on the unemployed young rural labour force, with local jobs close to home as the main channel and encourages and guides the rural workforce to work in towns, enterprises, industrial parks and agricultural cooperatives. The local government actively develops labour-intensive industries, such as textiles and garments, agricultural product processing and other service industries, such as catering, tourism and commerce, to create suitable jobs for them. Xinjiang has consolidated the results of poverty alleviation, with 1.058 million poor workers lifted out of poverty through employment by the end of 2020, and 1.0823 million people out of poverty continued to be employed in 2021. The Xinjiang Government has strengthened assistance services for people with employment difficulties and from zero-employment families, and continuously improved assistance policies to promote various forms of employment, including employment in enterprises, flexible self-employed and entrepreneurship. People with difficulties, such as those who are older or have low skills, and people from zero-employment families in urban areas, were placed in public welfare positions, effectively solving the employment problems for these groups.

Thirdly, the legitimate rights and interests of workers have been safeguarded. Workers' rights to rest, leave and occupational safety are ensured. The relevant national regulations have been strictly followed with a system of eight working hours per day and 40 hours per week. If an employer needs to extend working hours, it must consult the trade union and the workers themselves in accordance with the law and arrange for time off or pay compensation. Workers are guaranteed the right to statutory holidays and rest days, such as the Spring Festival, Eid ul-Fitr and Eid al-Adha.

Workers' rights to social insurance are also guaranteed. We comprehensively implement the universal insurance scheme, actively promote and guide key groups, such as employees of micro, small and medium enterprises (MSMEs), internal migrant workers from rural to urban areas, workers with flexible working hours, and those in new forms of employment, to participate in the social security scheme and strive to achieve full coverage.

We further improve the mechanism for protecting workers' rights and interests. The labour contract system has been fully implemented, with the rights and obligations of employers and workers clarified. We have improved the tripartite consultation mechanism with the participation of representatives of the Government, workers and employers, and actively build harmonious labour relations. We leverage the role of trade unions in safeguarding the legitimate rights and interests of workers. Efforts have also been made to effectively strengthen labour inspection and dispute mediation and arbitration, in order to deal with disputes in a timely manner. We deal with prominent violations of labour laws in accordance with the law, and carry out special supervision of major violations, so as to effectively protect their legitimate rights and interests.

An old Uyghur proverb says: "Crops grow lush and green by rain, while people gain happiness by labour". In this land of Xinjiang, labour has changed our lives, and created happiness. In the future, through our hard work, the people of all ethnic groups in Xinjiang will have a sweeter life, and more prosperous days, they will realize their potential dreams, and usher in a better tomorrow. We welcome you all to our Xinjiang for a visit and to have a look when such an opportunity arises.

Worker members – The case of China, Convention No. 111, is a double-footnoted case, and China ratified the Convention in 2006. This is a most serious case involving state-sponsored forced labour of an entire population because of its ethnicity and religion. As such, we agree with the decision of the Committee of Experts to double footnote this case.

Freedom from discrimination is a fundamental human right, and the Committee of Experts has explained that freedom from discrimination in employment is essential so that workers can chose their employment freely, in order to develop their full-potential and realize their own aspirations. The Convention requires ratifying partners to adopt a national equality policy to eliminate discrimination. It defines discrimination as "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation".

As the Committee of Experts has noted, laws and regulations in China neither provide a definition of discrimination, whether direct or indirect, nor do they seem to cover all aspects of employment and occupation as defined in Article 1(3) of the Convention. The concept of race under the Convention has been determined to apply also to linguistic communities, or minority groups whose identity is based on religious or cultural characteristics, as in this case. Ratifying States do have an obligation to prevent physical, verbal or non-verbal conduct based on race which undermines workers' dignity, or which creates an intimidating, hostile or humiliating working environment.

Not only is the Government of China failing to promote non-discrimination in employment and occupation, but it is itself actively violating these rights on a massive scale against the Uyghur population. Xinjiang is home to approximately 13 million of Uyghurs and other Turkic and/or Muslim groups. While constituting half the population of Xinjiang, they are a minority population within China as a whole. The Government of China has argued that the Uyghur population constitutes a domestic security threat and has therefore implemented programmes, including so-called poverty alleviation, vocational training, re-education through labour and deradicalization programmes, as a form of collective punishment. A key feature of this programme is the use of forced or compulsory labour of over 1 million people, including in internment camps and prisons in Xinjiang, and in workplaces across the region and the country.

The system is maintained through extensive digital and physical surveillance in the region, with the authorities using pervasive and overlapping systems to closely monitor the population, as well as mass collection of biometric data.

Under the Government's so called poverty alleviation plan, rural workers are trained to work in manufacturing, including in the textile and garment sector. To ensure that these individuals have the skills required for factory jobs, they are mandated to go through training. This programme is governed through a centralized training centre which focuses on the Chinese language, work discipline and military drills. Any resistance to attend these training centres is seen as a sign of extremism and can result in being sent to re-education camps, thus having that implied threat ever present.

The rural population has resisted incorporation into the manufacturing sector for many years. Thus, it is unlikely that much of the Uyghur population is freely making the decision to join the manufacturing workforce. According to interviews with ex-detainees, minority workers who were part of the poverty alleviation plan were threatened with internment if they refused to work in a garment or textile factory. The practice of forcing these individuals to attend military style training, surveillance of all the members of the community with implicit and explicit threats of being put in detention and being paid less than the minimum wage with no opportunity to leave the employment, is clearly forced labour.

In a separate but parallel policy to China's Public Poverty Alleviation Plan, the Government has also enacted a Public Re-education Policy. This is an extrajudicial system that operates outside the criminal justice and regular prison systems. Many of the reasons for such detention are because individuals have travelled abroad, applied for a passport, communicated with individuals abroad and pray regularly. Government documents state that released re-educated minorities will be part of the new manufacturing workforce and are expected to assist the Government in meeting its quota requirements.

The Public Poverty Alleviation Plan and the Public Re-education Policy are both organized re-education programmes, whose facilities are internment camps, completed with police stations, high surrounding walls with watch towers, a surveillance and monitoring system and intercom systems generally found in prisons. The re-education programme focuses on military style drills, Chinese language courses and indoctrination with the expectation that individuals will renounce their religion and culture.

Detailed information released just a couple of weeks ago documented the extent and brutality of the internment camps, including a cache with thousands of photos of those who have been held in mass detention programmes. Documents reveal that guards have been given "shoot-to-kill" orders for those seeking to escape. That would be a strange order to give at a vocational training centre, raising doubts about the Government's claims. Other documents reveal that orders to expand the detention facilities in Xinjiang came directly from the national level.

Some Uyghurs are also within the traditional prison population rather than in the internment system, often for dubious crimes. The Xinjiang Production and Construction Corporation (XPCC), for example, administers its own prison system and factories. The XPCC forces its own prison population to conduct commercial activities, mainly in cotton harvesting and production. The XPCC was the enterprise that established Xinjiang's cotton industry and some estimates suggest that almost 34 per cent of China's overall cotton output comes from forced prison labour.

Much of this cotton, produced by prison labour, is absorbed into global supply chains and found in garments worn by people around the world.

The Government also offers incentives to companies to incorporate these Uyghur populations into their operations. Companies that train or employ detainees can receive subsidies. The Xinjiang Government has offered subsidies and inducements to encourage Chinese-owned companies to invest in and build factories around the vocational training compounds. The Government also permits these companies to pay workers less than the minimum wage of the region. These companies have been given five-year tax exemption, subsidies for workers' training, land, warehouse storage, transportation and electricity.

Tens of thousands of Uyghurs and other ethnic minorities have also been transferred from Xinjiang to factories in Eastern and Central China. This is part of a state-sponsored transfer of labour scheme, marketed as "Xinjiang Aid". The Xinjiang Aid Scheme allows companies to open up satellite factories inside Xinjiang or hire Uyghur workers for their factories located outside Xinjiang.

Furthermore, factories outside the Uyghur region in the Xinjiang Aid Programme have similar compounds complete with watchtowers, razor wire, barbed wire fencing and so on. The factories that are part of the Xinjiang Aid Programme are suppliers to some of the largest global apparel and technology companies.

The Government of China has for years denied the existence of any form of prosecution of the Uyghur population and has denounced critics as "enemies of China", but the evidence is overwhelming. Even now, when the United Nations High Commissioner for Human Rights, Michelle Bachelet, concluded her visit to China, she noted that she was unable to assess the human rights situation of the Uyghur people. The Chinese authorities went to great lengths to frame the narrative around her visit. This includes falsely quoting her as "praising China for protecting human rights" which, as her office clarified, was not said.

The scale of this situation is deeply concerning. We deplore the efforts of the Government of China to impose deradicalization responsibilities on employers' and workers' organizations. The Government must act in compliance with its international labour and human rights obligations.

Employer members – The Employer members would like to begin by thanking the Government representatives for their comprehensive and relevant comments today before our Committee as well as the written information provided.

By way of background, China has ratified a total of 26 Conventions, including 4 fundamental Conventions, 2 governance Conventions and 20 technical Conventions. China ratified the Convention that we are discussing today in 2006. We note that this is the first time that the Committee of Experts has provided its observations on China's application of this Convention in law and practice. We also note that the Committee of Experts double footnoted this case. This is our first opportunity to discuss this case in the Committee in a tripartite manner. This occasion coincides with the visit of the United Nations High Commissioner for Human Rights, Michelle Bachelet, who has returned from a recent official visit to China. In her statement, dated 28 May, Ms Bachelet indicated that during her visit she raised questions and concerns about the application of counterterrorism and deradicalization measures in the Xinjiang Uyghur Autonomous Region (XUAR), and particularly their impact on the rights of Uyghurs and other predominantly Muslim and Turkic minorities, who are the subject of the case that we are discussing today.

Furthermore, Michelle Bachelet noted that she was unable to fully assess the scale of the vocational, educational and training centres, and raised with the Government the lack of independent judicial oversight of the operation of the programme.

During her visit, in her statement, she noted that the Government of China gave her reassurance that the vocational, educational and training centres system had been dismantled. In her statement, Ms Bachelet noted that she encouraged the Government to undertake a thorough review of all counterterrorism and deradicalization policies to ensure that they fully comply with international human rights standards and, in particular, that they are not applied in an arbitrary or discriminatory manner.

The Employer members also take note of the fact that, based on Ms Bachelet's statement, it was agreed to establish a working group to facilitate substantive exchanges and cooperation between her Office and the Government through meetings in Beijing and Geneva, as well as virtual meetings. This working group is stated to be developed to organize a series of follow-up discussions about specific thematic areas including, but not limited to, development, poverty alleviation, human rights, rights of minorities, business and human rights, counterterrorism and human rights, digital space and human rights, judicial and legal protection and human rights, as well as other possible issues.

We trust, as in Ms Bachelet's statement, that the establishment of the working group will allow the structured engagement of her Office with the Government of China on a number of human rights issues and we look forward to further reports in that regard.

The Employer members recall that Article 2 of the Convention under discussion today requires that each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

In the present case, we note that the Committee of Experts has identified three main issues and, in essence, these three issues include the following: first, the definition and prohibition of discrimination in employment and occupation, which refer to Article 1(1)(a) and (3) of the Convention; allegations of discrimination on the basis of race, religion, national extraction and social origin affecting ethnic and religious minorities in the Xinjiang Uyghur Autonomous Region, which relate to the application of Articles 1, 2 and 3 of the Convention; and finally, the third issue, equality of opportunity and treatment of ethnic and religious minorities, including civil servants, with reference to Articles 2 and 3 of the Convention.

In respect of the first issue, the Employer members note the Committee of Experts' assessment of the Labour Law of 1994 and the Employment Promotion Law of 2007, indicating that these laws do not provide for a definition of discrimination, either direct or indirect, and that both pieces of legislation do not seem to cover all aspects of employment and occupation, as defined in Article 1(3) of the Convention.

We note that the Committee of Experts has requested the Government to take steps to include a clear and comprehensive definition of discrimination in these laws and to ensure that they cover all discrimination grounds identified in Article 1 of the Convention, in particular race, colour, sex, religion, political opinion, national extraction and social origin.

The Employer members note that it does not appear that the legal structure identified by the Committee of Experts defines discrimination. Therefore, we note that it is necessary to ensure that the definition of discrimination is included in a clear and comprehensive manner, in line with Article 1(1)(a) of the Convention.

Also, the Employer members note that it is important to ensure that the discrimination grounds identified in Article 1, but not yet mentioned in the Government's labour legislation, specifically colour, national extraction, social origin and political opinion, are explicitly referred to in the respective laws. Also, the Employer members are of the view that it is necessary for the Government to clarify in these laws that prohibited discrimination in employment and occupation also covers discrimination in access to employment and vocational training.

Turning now to the second issue of allegations of discrimination, we note with concern the serious allegations that members of the ethnic and religious minorities in Xinjiang, who belong to the Uyghur and other Turkic or Muslim groups, are targeted on the basis of their ethnicity and religion. We take note of the Government's explanation of its various regulations and policies on the eradication of poverty without discrimination. We do share the Committee of Experts' concerns regarding the methods applied and their discriminatory effect on employment and opportunities, as well as the treatment of ethnic and religious minorities in this region.

We take special note of the Committee of Experts' reference to the United Nations Committee on the Elimination of Racial Discrimination (CERD) and its observations regarding the situation in the Xinjiang Uyghur Autonomous Region. The CERD recommended that the Government undertake prompt, thorough and impartial investigations into all allegations of racial, ethnic and religious profiling. In this regard, the Employer members also note the allegations and information communicated by both the ITUC and the Government on the application of the Convention in this region, as well as the stated government policy in various regulatory and policy documents.

The Employer members take note of the Government's explanation of its various regulations and policies, including on the eradication of poverty. The Employer members nevertheless must express concern in respect of the methods applied, the impact of the stated government objectives and their direct and indirect discriminatory effect on the employment opportunities and the treatment of ethnic and religious minorities. The Employer members recall that the Convention requires the formulation and adoption of a national equality policy with a view to eliminating any discrimination and defines discrimination as any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

Therefore, I will close my opening comments by recalling that Article 3 of the Convention also establishes a number of specific obligations with respect to the design of a national policy to promote equality of opportunity and treatment and the elimination of discrimination in respect of employment and occupation. Parties to the Convention must repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with this requirement under the Convention.

Interpretation from Chinese: **Worker member, China** – Observations in certain materials received by the Committee of Experts are not consistent with the real situation in China. China's Labour Law, Employment Promotion Law and other laws and regulations clearly stipulate that workers have equal rights to employment and choice of occupation and to remuneration for labour. China has also adopted a series of policy measures to comprehensively safeguard equality of opportunity and treatment in employment and occupation. In the course of their formulation and implementation, China's trade unions and workers have been consulted. Workers in China do feel the effects and benefits of these laws and policies. To safeguard

workers' rights to equal employment and treatment, China's trade unions have made efforts in several areas:

(1) we promote and participate in legislation by asking for the promulgation of new laws and giving opinions on existing laws;

(2) we supervise law enforcement by carrying out sector-specific inspections or sending reminder notices or suggestion letters to employers;

(3) we also participate in formulating national policies by sending union proposals to the Chinese People's Political Consultative Conference and giving opinions on the tripartite conference or other national inter-ministerial joint meetings;

(4) in addition, we undertake extensive awareness-raising activities to promote non-discrimination at the workplace.

All these efforts have received strong support and a positive response from the Government. We believe China's laws, regulations and practices are fully in line with the Convention. We hope that the Committee will take due consideration of our opinions.

Interpretation from Chinese: **Another Worker member, China** – I am a worker and a union member. In Xinjiang, equal employment and occupation of all ethnicities is protected by the Constitution and the various laws. Our local administrative regulations and policies follow the legal principles of the State protecting the equal rights of workers regardless of their ethnicity or religious beliefs. Companies in Xinjiang sign labour contracts with their employees in accordance with the law, ensuring fair pay, time off, paid leave and social security. In my company, employees are 100 per cent covered by labour contracts. The legislation and practices are in line with the purposes and requirements of the Convention and are in the interest of employees like us.

As an employee from an ethnic minority, I feel safe and secure in life and at work because of the guarantee provided by the Chinese legislation and practices. Take my example, I was born in a poor rural village, dropped out of school after middle-school and could not find a stable job. Later on, thanks to the good policy of the State, the Government offered me many job and training opportunities. Once equipped with the skills, there are a lot more opportunities in terms of choices of sector and companies. In 2009, I was lucky enough to be hired by a company in the energy and chemicals sector. The training I received and the experiences gained at work have made me a qualified furnace worker. Today I have a daughter and a son and I live a happy life. There are many cases like this around me.

Many ordinary workers in Xinjiang firmly believe that it is because of the full guarantee of equal employment and treatment offered by the national legislation and policies that we have managed to enjoy a happy life through diligent work. In Xinjiang, every employee, like me, cherishes his or her job. We also value the opportunities of working in various professions and of receiving training at work. To be honest, we, the ordinary workers in Xinjiang, are really against those unfriendly countries and organizations which have brought difficulties to our companies by imposing unilateral sanctions. As a result, many local companies have cut or stopped production and even gone bankrupt. Many of my worker friends have lost their jobs and incomes. Their families are in difficulties and have trouble making ends meet. This is truly tragic and this is what really deprives us of equal rights to employment and treatment.

I strongly call on the ILO and its Committee to maintain objectivity and impartiality, distinguishing right and wrong, and condemning those countries and organizations for irresponsible acts and the distortion of facts. Through your work, you can help us, the workers

of Xinjiang, to truly enjoy equal rights to employment and treatment and to restore stability and tranquillity in our life and at work. This is the aspiration of the grassroots workers in Xinjiang.

Interpretation from Chinese: **Employer member, China** – It is my pleasure to address the Committee on behalf of Chinese employers. As an employers' organization representing Chinese enterprises, the China Enterprise Confederation (CEC) is dedicated to guiding enterprises to operate according to the law and to be proactive in fulfilling their social responsibilities.

China's laws and regulations constitute an important guarantee for the elimination of employment discrimination. They are also a prerequisite as guarantees for the implementation of ILO Conventions. Relevant legal provisions that exist in China provide legal support to the fight against discrimination in employment and profession.

China's Constitution provides that citizens are equal before the law, and they have the right and duty to work. The Labour Law, the Employment Promotion Law, the Education Law, the Law on the Protection of Women's Rights and Interests, and the Law on Regional Ethnic Autonomy, as well as local regulation departmental rules, have all addressed the issues of employment and occupational equality.

Section 3 of the general provisions of the Labour Law provides that labourers have the right to be employed and choose occupations on an equal basis, obtain remuneration for labour, take rest, have holidays and leave, receive labour safety and sanitation protection, receive training and professional skills, enjoy social insurance and welfare treatment and submit applications for the settlement of labour disputes and other labour rights, as stipulated by the law.

Section 12 states that labourers should not be discriminated against in employment due to their nationality, race, sex or religious beliefs. The Employment Promotion Law adopted in 2008 devotes a whole chapter to equality in employment. The Law also stipulates that the Government at all levels shall create a fair employment environment, eliminating employment discrimination, formulate policies and take measures to support those who have employment difficulties. In the recruitment process, both employers and employment agencies shall provide workers with equal employment opportunities and fair employment conditions. They shall not engage in any discriminatory acts.

The CEC actively cooperates with the Government in improving business practices by enterprises in compliance with the relevant laws and regulations, and we play an active role in promoting equal employment and in boosting employment through multiple channels and methods. We encourage enterprises to carry out collective consultations and build harmonious labour relations. We urge them to fulfil their social responsibilities to formulate human resource strategies for equal pay for equal work and to eliminate discrimination in the workplace, in order to enhance their competitiveness and sustainable development capabilities. Enterprise confederations in Xinjiang also actively participate in our activities, encourage local enterprises to recruit workers in compliance with relevant laws and regulations, implement policies of equal pay for equal work, and create jobs and promote the local economy and social development.

Since China ratified the Convention in 2007, the CEC has cooperated with the ILO and other international organizations. We have played an important part in organizing training for enterprises and representative organizations, employers' organizations – even at the enterprise level – to promote the implementation of core ILO Conventions, including the

dissemination of the content of Convention No. 111. These activities have played an important role in awareness-raising, implementing sound human resource policies and building efficient and family-friendly enterprises. Furthermore, we have edited and published relevant guidelines and contributed to the establishment of a system for a discrimination-free workplace.

Some of the material received by the Committee of Experts contains allegations that are obvious in their political intent and run counter to the facts. They seem more related to the major issue of China safeguarding national sovereignty, security and territorial integrity. The cooperation and dialogue between the ILO Committee of Experts and Member States should be based on respect for national sovereignty and territory integrity, as stipulated in the United Nations Charter. Xinjiang-related allegations that are inconsistent with the spirit of the United Nations Charter should not become the basis for the Committee of Experts to arrive at its concluding observations.

The Chinese Government adheres to the people-centred approach and strives to achieve development that is of a higher quality, more efficient, more equitable, more sustainable and fairer. We, as Chinese employers, are also willing to contribute more to the country's economic and social development. At the same time, we are willing to strengthen communication and cooperation with employers' organizations in various countries in our joint effort to promote sustainable enterprises.

Government member, France – I have the honour of speaking on behalf of the **European Union (EU) and its Member States.** The candidate country, **Albania**, and the European Free Trade Association countries, **Iceland** and **Norway**, Members of the European Economic Area, align themselves with this statement.

The EU and its Member States are committed to the promotion, protection and fulfilment of human rights, including labour rights.

We actively promote the universal ratification and implementation of the fundamental international labour Conventions. We support the ILO in its indispensable role of developing, promoting and supervising the application of ratified international labour standards and fundamental Conventions in particular.

The principle of equality and non-discrimination is a fundamental element of international human rights and labour law, as well as at the EU level. Convention No. 111 is the translation of this fundamental human right to the world of work, employment and occupation.

We take this opportunity to discuss the implementation of the Convention in China. We have noted with great attention the report of the Committee of Experts and have listened carefully to the interventions of the Chinese delegation.

During the recent 23rd bilateral EU–China Summit, the leaders discussed the situation of bilateral relations, reviewed areas of shared interest, and explored possible ways of ensuring more balanced and reciprocal trade relations.

In recent years, China has made notable efforts for poverty alleviation and improved access to health and education and, more generally, the social situation of its citizens. We have noted the information provided by the Government and carefully considered the provisions of the Labour Law and the Employment Promotion Law. However, based on the observations of the Committee of Experts, we express our concern at their direct or indirect discriminatory effect on employment opportunities due to inadequate implementation and the methods

applied for the achievement of the stated objectives, in particular for persons belonging to ethnic and/or religious minorities in China.

We note the conclusions of the Committee of Experts on the existing normative gaps in the national legislation and we underline the importance of a clear and comprehensive legal definition of "discrimination" (both direct and indirect) that covers all aspects of employment and occupation. We recall that the absence of discrimination is essential for workers to be able to freely choose their employment.

The EU and its Member States continue to be deeply concerned at the apparent discrimination in relation to human and labour rights in China. More specifically, we remain seriously concerned at the situation in the Xinjiang Uyghur Autonomous Region (XUAR), and particularly the existence of a vast network of political re-education camps, the documented use of forced labour, widespread surveillance, the absence of freedom of movement, and systemic restrictions on freedom of religion and belief for Uyghurs and persons belonging to other minorities in the region.

We note with great concern the climate of intolerance, which is conducive to discrimination in employment and occupation and the forced labour of ethnic and religious minorities in Xinjiang, who are assigned to factories in the region and other provinces, including the continuous implementation of the Xinjiang regulation on deradicalization. We fully support the request by the Committee of Experts to amend the respective national and regional regulatory provisions with a view to reorienting the mandate of vocational training and education centres.

We reiterate our call to China to comply with its obligations under the Convention, which requires the Government to ensure equality of opportunity and treatment in employment and occupation for all, including with respect to ethnic and religious groups in China, in particular in Xinjiang, Tibet and Inner Mongolia.

We welcome the decision by the Chinese National People's Congress to approve the ratification of Conventions Nos 29 and 105 and we look forward to the full alignment of Chinese laws and regulations with these Conventions on forced labour and their effective implementation. We hope that this fundamental step in the protection of all workers will take less time than the effective implementation of Convention No. 111.

The EU and its Member States are ready to further engage with China in bilateral and multilateral forums in its efforts to give full effect to the Convention in relation to discrimination.

If the Committee on the Application of Standards decides to call for a high-level tripartite fact-finding mission, we would see the value of such a mission to support the Government in its obligation to effectively implement the Committee's conclusions.

Finally, while noting the non-investigative nature of last week's mission to China of the United Nations High Commissioner for Human Rights, Michèle Bachelet, we regret that her access to independent civil society organizations, human rights defenders and detention centres was restricted. We continue to call on China to provide meaningful, unrestricted and unsupervised access for United Nations special procedures mandate holders, independent international experts, foreign journalists and diplomats to Xinjiang, Tibet and elsewhere in China.

Government member, Canada – I am speaking on behalf of the Governments of Canada and **Australia**. We thank the Committee of Experts for its report. Canada and Australia share

the deep concerns expressed by the Committee of Experts over allegations of employment discrimination, including forced labour practices, affecting ethnic and religious minorities in Xinjiang.

Canada and Australia take the issue of discriminatory policies targeting ethnic and religious minorities seriously, especially their intersection with forced labour and involuntary vocational training. We have actively voiced concerns regarding the situation of Uyghurs and other minorities in Xinjiang in forums such as this one.

Mounting evidence points to systemic, state-led human rights violations by Chinese authorities in Xinjiang, often under the false pretext of countering terrorism and violent extremism. Canada and Australia remain alarmed by the mass arbitrary detentions, forced labour, forced political re-education, repressive surveillance and allegations of torture and mistreatment.

At the same time, we take note of China's announcement of its ratification of Conventions Nos 29 and 105. We look forward to seeing meaningful steps towards their full implementation, including China's adherence to the ILO definition of forced labour and its adoption of the Committee of Experts' recommendations aimed at addressing the concerns raised in its report.

However, noting the seriousness of China's discriminatory policies, as described in this ILO report and as raised by United Nations Special Rapporteurs, Canada and Australia today call for a high-level tripartite mission to be established and be granted unfettered access to Xinjiang before the next International Labour Conference, with a view to supporting, and reporting on, China's implementation of Convention No. 111. We urge China to review its policies to ensure equality of opportunities and treatment in employment and occupation, and to repeal or revise its laws and practices of employment discrimination against racial and religious minorities in Xinjiang.

It is incumbent on all Members to end serious and persistent labour rights deficits. We urge all Members to do their part to ensure that the ILO continues to be a leader in addressing major labour rights issues around the world. We hope that China takes the concerns raised here seriously, heeds the recommendations that this Committee will bring forward, and cooperates with the ILO to prevent continued employment discrimination and forced labour practices.

Government member, Sri Lanka – The Government of Sri Lanka welcomes the continuous efforts of the Government of China to ensure effective implementation of the provisions of the Convention. We also commend the recent decision by China to ratify ILO Conventions Nos 29 and 105.

We understand that, since the ratification of the Convention in 2007, the Chinese Government has deepened cooperation with all stakeholders, including the social partners, earnestly fulfilled the requirements of the Convention, continuously improved its legal system, and made positive achievements in ensuring equal employment opportunities and equal treatment for workers.

We note the important steps taken by the Government of China to promote equality of opportunity and treatment in employment through its national labour law provisions and regulations implemented throughout all regions of China, including in the Xinjiang Uyghur Autonomous Region. We support the efforts of the Government of China to ensure the freedom of employment and labour rights of all ethnic groups, including in the Xinjiang region, and encourage an open and constructive dialogue on the implementation of ILO Conventions.

We also recognize the establishment of an open and competitive human resources market, as well as the promotion of the free mobility of workers among regions.

We request in this context the Committee to adopt a balanced, technical and objective approach with regard to China.

Worker member, Indonesia – We emphasize our deep concern in respect of the policy and methods applied by the Government of China that have caused discriminatory effects and impacts on the employment opportunities and treatment of ethnic and religious minorities in the country.

We also regret, as the Committee of Experts has noted, that the legislation and policy in China generate a climate of intolerance, which deepens discrimination in employment and occupation. The ethnic and religious minorities in Xinjiang region are not entitled to the same right to be free from discrimination in employment.

The employment-related policies adopted and carried out by the regional and national authorities in the Xinjiang region target ethnic and religious minorities. The vocational training, labour relocation and poverty alleviation programmes have the purpose of deradicalization and ideological conversion of the ethnic and religious minorities. They are backed up by state policies in the context of combating terrorism. The Uyghurs and Muslims are particularly targeted on the basis of race, religion, social and cultural characteristics. This is stated in the Xinjiang Uyghur Autonomous Region Regulation on Deradicalization, as amended in 2018. It is reflected and implemented systematically in the workplans and policies of the regional and national authorities.

The Convention, in its Preamble, 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 this regard, we call on the Government to implement the recommendations of the Committee of Experts and review its national and regional policies in order to eliminate any distinction, exclusion or preference which has the effect of limiting access to equal opportunity and treatment in employment and occupation.

We emphasize that the Government has an obligation to respect international labour and human rights standards, as well as the guidance provided by the Committee of Experts in line with its mandate.

Government member, United States of America – The Government of the United States shares the Committee of Experts' deep concern regarding the People's Republic of China's policies towards Uyghurs and members of other ethnic and religious minority groups in Xinjiang. Specifically, the Committee of Experts' observations highlight discriminatory policies that permit the arbitrary detention of members of these groups ostensibly for re-education. We are also disturbed by policies that incentivize or require businesses and trade unions to engage in such abusive practices.

The People's Republic of China submitted information in response to these concerns, explaining that its policies are non-discriminatory, voluntary and used to alleviate poverty. However, publicly available People's Republic of China policy documents and countless victim testimonies, detailing coercive recruitment, limitations of movement and communication, and constant surveillance, instead clearly demonstrate systemic violations of labour and human rights.

Critically, the People's Republic of China is failing to address the arbitrary detainment of more than 1 million Uyghurs and members of other ethnic and religious minority groups, including approximately 100,000 individuals who may be working in conditions of forced labour following detention in internment camps.

We call on the People's Republic of China to immediately end its discriminatory policies and abuses against minority groups. To that end, we urge the People's Republic of China to take effective action to:

- fully implement the recommendations of the Committee of Experts;
- avail itself of ILO technical assistance, including to effectively implement Conventions Nos 105 and 29 following their successful ratification; and
- accept a high-level tripartite mission to further investigate the allegations and provide full and unhindered access, including meaningful, unrestricted and unsupervised access to all relevant organizations, individuals and locations implicated in the system of detention.

The People's Republic of China's existing policies and practices are in clear violation of its obligations under Convention No. 111 and the commitments in the ILO 1998 Declaration on Fundamental Principles and Rights at Work. It is our strong view that the Committee's conclusions merit inclusion in a special paragraph of the report.

Government member, Ethiopia – My delegation would like to thank the distinguished representative of the Government of the People's Republic of China for his statement on the application of the Convention. We have taken note of the information provided by the Government in relation to the proactive employment policy that it has adopted, based on friendly cooperation and consultation held with the social partners and coordination with national economic and social development policies.

The Chinese Government has also informed this august assembly that, just like all other provinces, regions and municipalities in China, the Xinjiang Uyghur Autonomous Region implements national laws and regulations under a unified legal framework, follows the principles of equal employment and treatment, and facilitates decent work by promoting economic growth that creates jobs.

We are encouraged to hear that these are in line with the principles of national laws and in conformity with the principles and requirements of the Convention. Furthermore, United Nations Treaty Bodies, such as the CERD, have recognized the efforts and achievements of the Chinese Government in fulfilling the Convention on the Elimination of All Forms of Racial Discrimination.

In view of the above, we are of the view that the progressive efforts made so far by the People's Republic of China are directed towards the full application of the Convention under discussion. In conclusion, we hope that this Committee and its conclusions will take into consideration the critical information provided by the Government and all the constructive comments and discussion that transpired in this sitting.

Interpretation from Russian: **Worker member, Belarus** – We have listened closely to the comments of the Committee of Experts relating to the application of the Convention by China. We believe that the law and practice in China are fully in line with the principles of the Convention. The measures taken in China by the social partners allow workers to fully benefit from a regime of equality in employment and occupation. There are a number of provisions which clearly bolster the individual's right to work and employment and it is also clearly noted

that regardless of ethnical group, race, gender or religion, no worker can be subjected to discrimination in this area of employment.

In law and practice, the State supports the development of regional economies and encourages cooperation between regions for the development of employment in different regions. The State supports those areas with ethnic populations by developing education and industry and, with regard to the Xinjiang Uyghur Autonomous Region, we also think it is necessary to emphasize the respect for the law of the country and the requirements of the Convention. As in all countries, the regions abide by national laws, follow principles of non-discrimination at work and facilitate decent work through economic growth and the creation of employment. In this situation, we think it is necessary to pay attention to the fact that the social partners in China are focused on economic and social development, securing employment and equality for workers. Other countries and organizations are trying to counter the progress of the State, introducing sanctions and boycotting products from the region of Xinjiang. This not only deprives ethnic minorities of the opportunity to work and be rewarded for their work but undermines the fundamental right to develop and live. This is something that we are hearing in the ILO, which undermines the principles of the ILO and the SDGs. The international community, including the ILO, should listen to the voice of the workers in Xinjiang and defend their rights, including that of equal access to work.

Government member, Cuba – The Cuban Government delegation welcomes the information provided by China. The information provided by the national delegation, which we note provides updates on various matters and shows the will of the Government to continue making progress in its territory in the application of the matters covered by the Convention and in its work with the ILO.

Cuba has placed emphasis on several occasions in the ILO on the importance of allowing governments the necessary time and space to work with the relevant actors within the context of their national legislation and in compliance with their obligations and commitments deriving from ILO instruments. We consider that the employment support and non-discrimination policies implemented in the country, and other related matters, need to be analysed impartially. That must be done in avoidance of politicization and a punitive approach, which do not facilitate our discussions. The ILO has always been a forum for finding solutions and consensus, through broad and inclusive dialogue, in which the views and consent of the countries concerned are essential. We believe in tripartite dialogue and negotiated solutions.

Government member, United Kingdom of Great Britain and Northern Ireland – Following the Committee of Experts' report on Chinese non-compliance with the Convention, the United Kingdom is deeply concerned about the continued reports of a widespread and systematic programme of forced labour in Xinjiang involving the Uyghur and other Turkic and Muslim minorities. New evidence continues to emerge to reveal the scale and severity of the human rights violations in the region, including from the Chinese Government's own documents. In order to effectively implement the recommendations contained in the Committee of Experts' report, we strongly call for the Chinese Government to accept a high-level tripartite mission in Xinjiang.

We urge the Chinese Government to grant all necessary accommodations to enable the mission to carry out its duties in a meaningful and unfettered matter, just as we did prior to the recent visit by the United Nations High Commissioner for Human Rights. We request that this mission be conducted before the next session of the International Labour Conference in 2023.

In addition, we suggest that the Chinese Government avails itself without delay of all available technical assistance to ensure comprehensive compliance with the Convention in law and practice. We request that the Chinese Government provides detailed and complete information on the application of the Convention to the Committee of Experts before its next session in December 2022. Such is the seriousness of this case that we believe that it merits inclusion in a special paragraph in the final report.

Furthermore, we take note of the announcement by the National People's Congress of the ratification of Conventions Nos 29 and 105. We call on the Chinese Government to officially ratify both Conventions and any accompanying protocols by depositing the legal instruments at the International Labour Office and to take expeditious action to align its laws.

The United Kingdom pays tribute to the Committee of Experts for bringing this serious issue to the attention of the ILC and we call on China to immediately cease its repressive and discriminatory policies in Xinjiang.

Worker member, Ireland – Labour laws in China ban discrimination in recruitment based on race, gender and religious belief. Employers are prohibited from asking female job candidates about their marital and childbearing status, or from demanding pregnancy tests. However, discriminatory recruitment practices remain in both the public and private sectors to unlawfully deprive women and minorities of free choice, equal job opportunities and equal access to remedies.

The Provisions on the Recruitment of Civil Servants of 2019 still require applicants to be between the ages of 18 and 35. In 2020, about 11 per cent of government job postings still specified a preference or requirement for men only.

It is commonplace for working candidates to field intrusive questions in job interviews, such as whether they have or are intending to have children. Under the State's promotion of the two-child and now three-child policy, it is common to find recruitment advertisements specifying a preference for married women with children, in order to save costs on paying maternity benefits. Ethnic and religious minorities working from the Xinjiang region are recruited systematically by regional authorities to work, without free choice of employment, in coastal provinces. They are made to work and live in factories segregated from others, placed under high surveillance and exploitative working conditions.

Until now, the scope of labour inspection under the Regulation on Labour Security Supervision does not include discrimination related to work and recruitment. It remains at the discretion of the inspection authorities to take action on the complaints filed by victims of discrimination. The labour relocation programmes of ethnic and religious minorities in the Xinjiang region, which seek to deradicalize them, also fall outside the remit of inspection and monitoring.

Letters sent by United Nations Special Rapporteurs to China and more than 150 multinational companies about labour rights in the coastal region pointed to allegations of the denial of access for multinationals to conduct due diligence in these factories.

We are concerned about deficiencies in labour inspection and the inconsistent application of the law and practice to eliminate discrimination in employment and recruitment to all workers.

We call on the Government to bring national and regional laws and practices into compliance with the Convention based on the recommendations of the Committee of Experts.

Government member, Plurinational State of Bolivia – The Plurinational State of Bolivia thanks the distinguished delegation of the Government of China for its presentation on compliance with the Convention, and all the representatives who have taken the floor. We have listened to the information provided on the employment policy adopted by the Government of China, which is based on cooperation and egalitarian consultation with the social partners with a view to the sustained social and economic development set out in the national Labour Law.

The Plurinational State of Bolivia is firmly committed to combating all forms of discrimination and we accordingly emphasize the importance of implementing labour mechanisms and policies for this purpose.

The Chinese delegation has clearly explained the legislative framework adopted in accordance with the principles of equality of treatment in employment for decent work. In recent years, China has made clear efforts to promote national development and growth. The promotion of economic growth that respects the labour rights of all women and men is critical, especially during a period of recovery following the pandemic, which is still present.

We also emphasize that we have heard that, since the ratification of the Convention in 2007, the Chinese Government has developed cooperation with all the social partners and has adopted improvements to promote and protect the labour rights of ethnic minorities. We encourage it to continue with this progress and, in a context of respect for its internal affairs and sovereignty, to promote further constructive dialogue with the ILO.

We also urge the Committee of Experts to avoid the politicization of the ILO and to promote dialogue and agreement with Members, by avoiding disinformation. It is a cause of concern that negative campaigns by certain States are recurrent in various bodies, when our priority should currently be to strengthen multilateralism in response to common problems. My delegation reiterates the importance of broad dialogue with a view to achieving agreed solutions.

Worker member, Germany – I am speaking on behalf of the workers in Germany, Canada, France, the Netherlands and Switzerland. We are concerned at the protection against sex-based discrimination, especially sexual harassment, under the employment-related policies in China, and equal access to the same protection, including for ethnic and religious minorities. Prohibition against sex-based discrimination is provided in labour laws and regulations in China without providing a definition of discrimination.

The new Civil Code covers sexual harassment of both men and women, including the right of the victim to file civil litigation, and the responsibilities of the management to adopt anti-sexual harassment policies. The laws still fail to prohibit “quid pro quo” and “hostile work environment” sexual harassment in all aspects of employment and occupation, including vocational training and job placement. The liabilities of management are unclear.

The equal access to legal remedies for victims, including those under the systematic mass labour relocation programmes for ethnic and religious minorities to work in the coastal province, is unclear without available data. Since 2019, only 18 verdicts out of 110 lawsuits related to sexual harassment that had been filed by victims have been handed down. The victims, who bear the burden of proof, have won the lawsuit in only four cases, yet without being awarded compensation. In the prominent lawsuit of a young female activist against a famous host in a broadcast company, with CCTV of sexually harassing her in 2014 when she was an intern, the case was thrown out of court claiming insufficient evidence in 2021.

On the other side, the victim is also campaigning for sexual harassment victims, yet the authorities continue to censor her and shut down discussions. Many more cases have been driven underground.

We call on the Chinese Government to review national and regional laws in China for compliance with its obligations under the Convention, and to implement the recommendations made by the Committee of Experts to ensure that sex-based discrimination against all workers is eliminated.

Interpretation from Russian: **Government member, Belarus** – We are grateful to the delegation of China for the exhaustive information provided. It has provided detailed comments on the issues raised, including questions relating to anti-discriminatory practices, as well as issues relating to other legislation.

We note that the Government of the People's Republic of China takes a systemic approach to improving the economic situation in the country and also to social and labour relations. It does that by encouraging employment throughout the country, including in the Xinjiang Uyghur Autonomous Region. It is important to recognize the achievements of China. It has created a business environment that is conducive to entrepreneurship. It has also encouraged innovation, and this has led to job creation in that part of the country, as well as in other areas. For instance, it has provided free-of-charge services for recruitment in that part of the country. Career guidance services are also available, and it is possible for people to undergo training and upskilling throughout their lives.

Repeatedly then, we have also seen that China has involved international experts to advise on how best to do all this and that there are witnesses to its openness and transparency. We have seen, for instance, that the United Nations High Commissioner for Human Rights recently visited China. We consider that the Government of China is committed to full compliance with the Convention and we note the active and constructive cooperation that exists between the ILO and China.

We therefore believe that the accusations levelled at China about the supposed use of forced labour among certain ethnic minority groups do not in fact give the full picture. When it comes to the way in which economic and social development is taking place in the country, and also when you look at the stability in the Xinjiang Uyghur Autonomous Region, it is clear again that these allegations are not well founded. The accusations do not take due account of the particular features of the region. Sadly, in the way that this issue has been addressed, we are told that, thanks to certain policies followed by the Government, certain things have happened, but we are not told that in fact people have come out of abject poverty thanks to the policies that were pursued. That is something that is very important to note. Therefore, when it comes to the application of the Convention, we believe that China has provided all of the information required to convince us that it is indeed complying with it.

Interpretation from Russian: **Government member, Russian Federation** – The Russian Federation fully endorses the assessment of the Chinese Government with reference to compliance with the Convention in the Xinjiang Uyghur Autonomous Region, as well as elsewhere in the country. We believe that the information provided describing what is done in the country in terms of the Labour Code and the efforts to promote employment demonstrates that China is indeed ensuring that there can be no discrimination whatsoever against the ethnic group in that area. If we look at the Convention, we see that it seeks to outlaw discrimination, and we do indeed believe that there is no discrimination in China and that there is therefore no reason to accuse it of not being in full compliance with this Convention.

We believe the allegations are unfounded and they do not respect the steps that have been taken within the country in seeking to ensure that there can be no discrimination whatsoever when it comes to employment. We believe that a very objective and partial approach is being taken in levelling these accusations, not recognizing what has been done to create jobs and ensure that people can enjoy better and decent jobs. We believe that we must recognize that what is happening in China is fully in compliance with the Convention.

As for the accusations about the alleged use of forced labour, they are completely unfounded allegations and they are partial and biased. We believe that this is indeed a trend that we are seeing increasingly when certain complaints are made about some countries. We believe this is something that can only undermine the credibility and authority of the ILO. We are supposed to look only at well-founded allegations of violations of human rights and labour rights in this area. We think it is very important to ensure that the ILO takes a properly balanced, impartial and objective approach to the way that it works. We think that it should act solely on the basis of information received from reliable sources, otherwise it will simply find that its position is undermined in the long term.

Government member, Nicaragua – As a member of the United Nations organizations at this 110th Session of the International Labour Conference, we reiterate that it is the duty of all nations to develop friendly relations, in compliance with the principle of equality of duties and obligations imposed by the United Nations Charter, and not to interfere in affairs that are essentially within the internal jurisdiction of States.

The Government of Nicaragua calls on the Committee not to be influenced by policies of lies and disinformation concerning Xinjiang in relation to the implementation of the Convention by the People's Republic of China.

The respect due to the brotherly People's Republic of China is well known in relation to the protection of labour rights and the ILO standards supervisory systems. Nevertheless, going beyond their mandate constitutes a clear manipulation and politicization of the international labour system. Nicaragua firmly opposes any form of politicization and other approaches that can prejudice sovereignty or interfere in the internal affairs of the People's Republic of China.

Interpretation from Arabic: **Government member, Egypt** – The delegation of Egypt wishes to commend the measures that have been taken by China with reference to giving effect to the Convention. China is doing all that is required to be done in order to undertake the necessary reforms to bring its situation into full compliance with all labour standards. We believe that the ILO should focus on providing the technical assistance that is required by Member States to give effect to international labour Conventions: that is its role and that is what it should be doing.

Government member, Zimbabwe – Zimbabwe has listened attentively to the discussion on the application of the Convention by the People's Republic of China. From the discussion and the information presented to this august Committee, it is clear that China has made great strides in advancing the welfare of her people through a robust legislative framework and sound economic and labour policies. The information submitted by the Government demonstrates China's commitment to alleviating poverty among the people by creating decent jobs, building sustainable livelihoods and skills development, among many other initiatives.

This shows that China is a strategic player in the global labour discourse and in promoting social justice in the world of work, as evidenced by the Memorandum of Understanding for strategic partnership, focusing on the four dimensions of the Decent Work Agenda, signed by the Chinese Government and the ILO.

This is also further demonstrated by the information contained on the ILO website stating that "the ILO works with China to disseminate Chinese successful experiences and good practices that could inspire other nations on the way towards poverty eradication and employment promotion".

The information submitted by the Government of China is a clear demonstration of China's commitment to fulfilling the objectives of the Conventions that it has ratified, which include Convention No. 111.

The narrations of the allegations seem generalized and not based on facts. My delegation is however confident that the Government of China has the capacity to address the issues in the context of implementing the Decent Work Country Programme. Going forward, Zimbabwe commends China for the programmes being implemented within the context of its Decent Work Country Programme and would like to encourage both the Office and the Chinese tripartite partners to deepen their collaboration within this framework.

Government member, Pakistan – Pakistan appreciates the continuing commitment of the People's Republic of China to comply with international labour standards, and particularly its implementation of the Convention. It is encouraging that China has taken a number of significant legislative and administrative measures after the ratification of the Convention in 2006.

We are of the view that all Member States should have the necessary space to implement laws and regulations in light of their specific circumstances and sovereign obligations to ensure the well-being of their people. It is the responsibility of every government to create an environment that is conducive to the well-being and welfare of its people. Accordingly, policy measures should be pursued to not only afford equal opportunities, but also to grant positive discrimination to disadvantaged groups so that they have a pedestal to grow and compete with others. This also applies to the promotion of employment and choice of occupation.

It is important to resolve all concerns and complaints amicably in the spirit of tripartite cooperation. It is important to refrain from politicizing the work of the ILO supervisory mechanisms and this Committee. Objectivity is the first victim of politicization, which contravenes the human-centred approach advocated in the ILO Centenary Declaration and reiterated every year, especially in the post-pandemic world of work. We believe deliberations in the Committee should be in line with the spirit of multilateralism and aimed at the application of labour standards in a non-political and objective manner.

Government member, Algeria – The Algerian delegation thanks the Government of the People's Republic of China for its substantive report on compliance with its commitments through the effective implementation of the provisions of the Convention and supports all its comments.

Algeria welcomes the active employment policy implemented by the Chinese Government, based on dialogue with the social partners, in order to enable workers to enjoy full equality of opportunity and treatment in employment and occupation.

It welcomes the measures taken for balanced employment growth in the various regions and the protection of ethnic minorities. It also commends the labour policies adopted by China with a view to the elimination of all forms of discrimination, by making any such act a punishable offence.

My country supports the efforts made by China to promote economic growth that creates decent jobs by encouraging urban and rural workers to find jobs in enterprises, create their

own enterprise and enabling them to benefit from lifelong vocational training with a view to helping them improve their employability and their capacity to create their own enterprises.

Algeria is also convinced that the ILO should take into account the national situation and characteristics of the People's Republic of China in evaluating the application of international labour standards and contribute through technical assistance to enabling China to reinforce its capacities to combat discrimination and take measures to achieve decent work for all workers.

Government member, Burundi – The delegation of Burundi takes due note of the report of the Committee of Experts, the statement made by the representative of the Chinese Government and the written information provided. We appreciate the commitment and continuous efforts of the Chinese Government to give effect to ratified Conventions. We note the explanations provided by the Government concerning the various regulations and policies, particularly in relation to employment and the eradication of poverty without discrimination.

We wish to draw the attention of the Committee to the fact that the laws, regulations and practices in China are in conformity with the principles of the Convention, which is intended to promote equality of opportunity and treatment in employment, and that the law and practice in Xinjiang are in conformity with the requirements of Chinese national legislation. We welcome the tangible measures taken by the Government to protect the right to equality in employment and the treatment of all types of workers everywhere, including in Xinjiang.

We welcome the efforts made by the Chinese Government to cooperate with all stakeholders, including the social partners, in order to give effect to the obligations deriving from the Convention. It is very important for the Committee of Experts to treat the case with total neutrality. Any other approach would be contrary to the achievement of social justice, which is the ILO's ultimate objective.

We are fully convinced that the Government will continue its efforts and will make further progress in the implementation of its obligations deriving from ratified Conventions. In conclusion, we hope that the Committee will take into account in its conclusions the important information provided by the Government of China and all the constructive comments and discussions during this sitting.

Government member, Cambodia – My delegation takes note of the report of the Committee of Experts and the details presented by the Government of China.

Cambodia believes that the enduring strength of all human rights mechanisms lies in even-handed approaches based on transparency, objectivity and impartiality, as well as in full adherence to the principles of sovereign equality, territorial integrity and non-interference, which are well enshrined in the United Nations Charter. This agenda must be addressed through a genuine dialogue-based approach with non-confrontation, non-politicization and non-selectivity, based on verified sources of information and bearing in mind the national particularities of each country.

We welcome China's measures and achievements in observance of the Convention. China has demonstrated its willingness to work towards ensuring equal employment opportunities in accordance with international labour standards. In addition to its legislation, the adoption of a proactive employment policy, in consultation with the relevant stakeholders, and a series of policy measures have contributed to the enjoyment of equal opportunities and protection against discrimination.

China has also deepened its cooperation with all stakeholders, earnestly fulfilled the requirements of the Convention, continuously improved its legal system and made positive achievements in ensuring equal employment opportunities and equal treatment for workers.

To conclude, China's efforts and achievements in assisting its people, including all ethnic groups, to acquire skills and access to satisfactory employment of their own free will have resulted in substantial poverty alleviation. China's attainment in lifting the population out of poverty in its territory, including in Xinjiang, and meeting the target of Sustainable Development Goal No. 1 ten years ahead of schedule should be recognized.

Interpretation from German: **Government member, Germany** – Germany aligns itself with the statement of the European Union and its Member States. We thank the independent Committee of Experts for its thorough analysis.

The principle of equality and non-discrimination is a fundamental principle of international human rights. The Convention applies that fundamental principle to the world of work.

We are deeply concerned about labour and employment provisions and their application in China relating to ethnic and religious minorities which discriminate against them. According to the Committee of Experts, there is a climate of intolerance allowing for discrimination in employment and occupation, as well as providing fertile ground for forced labour. We call on the Chinese Government to review its policy in Xinjiang, a minority policy which is based on discrimination, repression and mass internment. We renew our call to China to honour its obligations under national and international law and observe and protect the rights of all ethnic and religious groups.

We have in many forums, together with our EU and G7 partners, expressed our deep concern at the Uyghur and labour rights situation in Xinjiang. In the past year in Germany, the law on the duty of care in the supply chain has been adopted, which makes it obligatory for enterprises established in the country to identity, prevent and counter human rights violations in the supply chain. We are also working across Europe to ensure a ban on imports produced using forced labour.

International cooperation is essential, and Germany is working worldwide to ensure that human rights, which are an essential part of the rules-based order, are protected. China ratified Conventions Nos 29 and 105 in April 2022. We ask for these to be fully transposed into law in China and we are ready to work with the Chinese Government at any time.

Government member, Bolivarian Republic of Venezuela – The Government of the Bolivarian Republic of Venezuela gives thanks for the presentation by the distinguished delegation of the Chinese Government on compliance with the Convention. China has emphasized that employment is the principal priority for the well-being of its people, and in this regard its employment policy is proactive and respects the rights of workers at the national level, including in the Xinjiang region.

We emphasize, as indicated by the Government, that China has achieved the MDGs and SDG1 ten years earlier than called for by the United Nations.

Moreover, the Government has provided full explanations on the provisions and compliance with the Labour Law in China, which prohibits discrimination, taking into account that equality of rights in employment and occupation are an important basis for the subsistence and development of workers. As the Government has also explained, in China the

labour market and initiative in choosing jobs are promoted, and there is free movement of workers between regions, including regions within and outside Xinjiang.

We welcome the fact that in its 2022 report the Committee of Experts has explicitly noted the progress reported by China in relation to the equality of opportunity and treatment of ethnic and religious minorities.

As always, we call for the ILO supervisory bodies to refrain from political considerations which have no place in its comments and undermine its seriousness and credibility, and moreover harm the noble objective of our Organization by interfering in the sovereignty of States. Finally, the Bolivarian Republic of Venezuela hopes that the Committee's conclusions will be objective and balanced so that the Government of China continue making progress and strengthening compliance with the Convention throughout the country.

Government member, Japan – First, Japan would like to express our gratitude to the Office and the Committee of Experts for their efforts in pursuit of the principles enshrined in the ILO Constitution.

Japan places great importance on maintaining and strengthening the international order, which is based on universal values and rules, such as freedom, democracy, human rights and the rule of law. We are determined to work extensively for this, through our efforts to address international human rights issues.

Japan is seriously concerned at the human rights situation in the Xinjiang Uyghur Autonomous Region, which is pointed out in the Committee of Experts' report. As a responsible member of the ILO Governing Body, Japan strongly expects the Chinese Government to provide the necessary explanations to the Office and all ILO constituents. As previously stated by other Member States, we request the Chinese Government to address in good faith the points raised in the Committee of Experts' report and to address accountability and improvement by providing, in consultation with the social partners, detailed and complete information to the Committee of Experts before the next session of the Conference in 2023. We strongly urge the Committee to decide to include this case and its conclusions in a special paragraph of the report.

Last but not least, we strongly expect the Chinese Government to follow the procedure adopted by this tripartite structure.

Government member, Islamic Republic of Iran – We would like to express our gratitude for the comprehensive and detailed information shared by the Government of China with regard to the latest developments in the application of the Convention, as well as the information requested and replies by the Committee of Experts. We particularly take note of the information provided regarding the regulatory and normative environments safeguarding the equal rights of all to employment and decent work.

The Islamic Republic of Iran attaches great importance to the Government of China's achievements in economic and social development, poverty eradication and its high standing in the global economy. We commend China's people-centred approach and policies, particularly in the alleviation of poverty in the Xinjiang region, and we believe that all of this has been achieved with the support and satisfaction of the people and based on social dialogue and tripartism.

At a time of rising global poverty as a result of the COVID-19 crisis, my delegation believes that the successful implementation of poverty eradication programmes based on youth empowerment merits due attention by the Committee's distinguished members.

Government member, New Zealand – New Zealand thanks the Committee of Experts for its report. Discriminatory policies that target ethnic and religious minorities are a major issue globally and constitute a violation of the rights enunciated by the Universal Declaration of Human Rights. The New Zealand Government takes this issue seriously and is committed to helping eliminate all forms of discrimination both in New Zealand and abroad.

New Zealand continues to have grave concerns about the growing number of credible reports of human rights violations taking place against Uyghurs and other ethnic and religious minorities in Xinjiang. New Zealand has been consistent in calling for China to allow meaningful and unfettered access to Xinjiang for independent international observers, including the United Nations, for some time. In line with this, New Zealand supports calls for a high-level tripartite mission in Xinjiang, to be undertaken before the next International Labour Conference in 2023.

We would like to take this opportunity to acknowledge and welcome China's announcement that it will ratify Conventions Nos 29 and 105. We look forward to seeing China take meaningful and concrete steps to implement the Conventions to their fullest extent and ensure that its policies and practices guarantee equality of opportunity and treatment in respect of employment and occupation.

We recall that freedom from discrimination is a fundamental human right and is essential for workers in order to choose their employment freely, develop their full potential and reap economic rewards on the basis of merit. As Members of the ILO, it is incumbent on all of us to ensure we are setting an example by upholding fundamental labour rights to the highest possible standard.

Government member, Lao People's Democratic Republic – The Lao People's Democratic Republic thanks China for the comprehensive presentation on the implementation of the Convention. My delegation commends China's tireless efforts and achievements in implementing the Convention, such as deepening cooperation with all stakeholders, including the social partners; fulfilling all the requirements of the Convention; continuously improving its legal system; ensuring equal employment opportunities and equal treatment for workers; and promoting and protecting the employment rights of marginalized groups of people and ethnic minorities, including in the Xinjiang region, among others.

Moreover, we are heartened to witness that the Chinese Government attaches great importance to fulfilling all the obligations of international labour Conventions ratified by China and cooperating closely with the ILO's Office and standards supervisory bodies in preparing and submitting the requested information and replies.

In conclusion, the Lao People's Democratic Republic strongly believes that the standards supervisory system of the ILO should carry out its mandate based on genuine dialogue and cooperation and should remain free from the politicization of the issues that are not under the mandate of this Committee or the ILO.

Government member, Switzerland – In the first place, Switzerland conveys its deep concern at the human rights situation in the Xinjiang Uyghur Autonomous Region. Credible reports indicate the existence of a vast network of political re-education camps in which over 1 million persons have been arbitrarily detained. We have seen a growing number of reports of generalized and systematic violations of human rights. Severe restrictions are imposed on freedom of religion and belief and on the freedoms of movement, association and expression, as well as the Uyghur culture.

The Uyghur and members of other minorities continue to be targeted in a discriminatory and disproportionate manner by generalized surveillance. The observations of the ITUC describe an extremely worrying situation of discrimination against them.

Switzerland shares the concern expressed by the Committee of Experts with regard to the methods adopted, the impact of the stated objectives and their discriminatory effect on the employment opportunities and treatment of ethnic and religious minorities in China. While awaiting the closure of the political re-education centres, Switzerland calls on China to respect the rights of persons belonging to ethnic and religious minorities and to ensure the freedom of choice of work and vocational training of the Uyghur and other ethnic minorities when they seek employment.

Finally, Switzerland calls on China to adopt a national equality policy with a view to eliminating any discrimination based on race, colour, sex, religion, political opinion, national extraction and social origin, as required by Article 2 of the Convention, and to give effect to the recommendations of the Committee of Experts.

Observer, International Trade Union Confederation (ITUC) – Forced labour is modern slavery and it is not acceptable anywhere. The facts are clear. More than 1 million of the Uyghur people are exposed to state-sponsored forced labour and discrimination in China. The Chinese Government has justified this serious and grave violation of human and labour rights by declaring the Uyghur population a domestic security threat. On the basis of that threat, the Chinese authorities have developed and are implementing the various programmes you have heard about, so-called "poverty alleviation", "vocational training", "re-education through labour" and "de-extremification" programmes". A key feature of these programmes is the use of internment camps and prisons in Xinjiang, and in workplaces across the region and the country. The programmes are maintained by massive digital and physical surveillance. This collective punishment of the Uyghur people and other Turkic and Muslim minorities in China simply must end. Justifying this treatment under the guise of providing subsistence and development as part of meeting its human rights and employment obligations is simply absurd. The facts are clear, and they do not support this claim of the Government.

The Chinese Government has also accused the ITUC of political motivation. Yet, the reality is that the Government does not contradict the information provided in the Committee of Experts' report. The Government rather justifies its discriminatory programmes and policies in the way that we have indicated. In any case, the evidence on this matter is overwhelming and it comes from victims' testimonies, not just media reports. Also, other civil society organizations and the United Nations human rights system have raised serious concerns. I am at the World Justice Forum and I have spoken to Uyghur representatives here: I can tell you that we are standing against oppression.

It is time for the Government of China to take seriously its international human rights obligations. I know it can. I know China can make change. It must implement the recommendations of the Committee of Experts. Discrimination against a minority population, imposing collective surveillance and punishment on this group and others, forcing them to work, punishing them with reduced wages, forcing them to learn languages and to recant their religion and, of course, forcing trade unions and employers' organizations to perform deradicalization duties, is simply contrary to China's human rights obligations. China, I plead with you: end the forced labour and discrimination of the Uyghur people. I know that this would make a huge difference. If you work with the ILO, if you work with us and the employers, we can actually support progress. But right now, this is an extremely worrying case and, in a

developed nation with the wealth that you have, it is not acceptable anywhere but particularly in your country, where you are making progress in other areas.

Interpretation from Chinese: **Government representative, Vice-Minister of Human Resources and Social Security** – I have just heard statements by many tripartite representatives who have shown understanding of and support for China and its policy measures. Their evaluations are both objective and factual, for which the Chinese Government expresses appreciation and gratitude.

We also believe, at the same time, that some made unfounded allegations, which we strongly object to, such as the ITUC and a number of delegates. Some representatives have even failed to follow basic procedures of the Conference, turning such a solemn forum into a platform for political show. Their statements are irrelevant to our discussion today and groundless, to which we express our strong objection.

Right now, I would like to invite my colleague from Xinjiang to clarify certain facts.

Interpretation from Chinese: **Another Government representative** – I am from the Xinjiang public employment service centre. I was born and grew up in Xinjiang. Here, I would like to respond to some of the questions raised.

Firstly, it concerns the so-called forced labour in Xinjiang, which I do not understand, because forced labour has absolutely nothing to do with our current review at this Committee. Nevertheless, I wish to briefly respond to this issue. China's Labour Law, Labour Contract Law, Employment Promotion Law and Labour Inspection Regulations, as well as other laws and regulations, all clearly prohibit forced labour. Workers' rights and interests are protected by punishing the practice of forced labour and prosecuting those guilty of such practices according to the law. As a matter of fact, there is no so-called forced labour in Xinjiang.

In recent years, under the pretext of protecting human rights, some countries and organizations have boycotted Xinjiang products and sanctioned Xinjiang enterprises by alleging the existence of forced labour. As a result, Xinjiang workers, especially those from ethnic minorities, cannot find jobs, lose the means of earning a living and run the risk of falling back into poverty. Such situations restrict the employment opportunities of Xinjiang workers, especially minority workers, which is tantamount to employment discrimination and violate the basic requirements of anti-discrimination in the Convention. It also runs counter to the people-oriented concept, as advocated in the ILO Centenary Declaration. It certainly does not contribute in any way to an inclusive, sustainable and resilient social economic recovery.

My second point is on the so-called "re-education camp". Let me point out that the so-called "re-education camp" or the "internment camp" does not exist. There was a time when terrorist activity brought tremendous harm to the normal productive life of the people in Xinjiang. In the fight against terrorism and deradicalization, the Government established – according to the law – vocational and educational training centres. There is no difference in essence between the deradicalization centre, community corrections centre and transformation disengagement programmes in many countries. They are by no means so-called re-education camps.

In October 2019, all students had graduated from those training centres. Let me point out that the education training centre has improved the students' ability to use the national common language and employability and has enhanced their patriotic feeling, civic awareness and knowledge of the rule of law. Some of the graduates have decided to apply for jobs of their choice, others chose to set up their own businesses and some have found jobs with the help of the Government. In short, all are living a stable life.

The third issue is about deradicalization. Extremism destroys religious harmony, creates ethnic hatred and is tremendously harmful to social harmony and stability. Let me ask all delegates present. In your country, would anyone be allowed to incite ethnic hatred? Those who blind their eyes on purpose and defend terrorists, please reflect on yourselves. Hatred and terrorism would not be allowed in any country. Please do not practice double standards.

Furthermore, regarding the policy of employment transfer, Xinjiang workers have the right to go to other parts of the country. Let me say this, workers throughout China are free to decide where to seek jobs and Xinjiang workers are no exception. Xinjiang has set up a complete system of public employment services, through which information on vacant posts and remuneration and other employment advice are provided free of charge. The right to free choice and personal preference is fully respected and under no circumstances is anyone obliged to take up a political job or a job at a particular location.

Finally, with regard to the interventions of Canada and Australia, let me say this: you are not in a position to represent justice. In Canada and Australia, there was a time when millions of aboriginals were living there. Two hundred years have passed; today, where are their descendants? Science has progressed, but their population, however, has diminished to the point of being negligible. They are actually living at the rock bottom of society, subject to poverty and discrimination.

To the distinguished Ambassador from the United States, please, first and foremost, ask your Government to ratify the Convention.

Interpretation from Chinese: **Government representative, Vice-Minister of Human Resources and Social Security** – Employment is pivotal to people's well-being. Employment provides essential support for economic development. The Chinese Government always adheres to the people-centred approach by prioritizing employment among economic and social development. Through the promulgation and implementation of a series of laws, regulations and policy measures, the Chinese Government has effectively guaranteed that workers fully enjoy equal employment rights, equal employment and occupational opportunities and equal treatment.

Since its ratification of Convention No. 111, the Chinese Government, working closely with the social partners, has in earnest turned into practice various provisions of the Convention. China's achievements in promoting fair employment and protecting labour rights and interests are obvious to all.

All the areas inhabited by ethnic minorities in China, including Xinjiang, have achieved rapid economic and social development. China met the poverty reduction goal of the United Nations 2030 Agenda for Sustainable Development ten years ahead of schedule. In 2018, the United Nations Committee on the Elimination of Racial Discrimination affirmed the Chinese Government's efforts and achievements in implementing the International Convention on the Elimination of All Forms of Racial Discrimination.

The Chinese Government will continue to implement the employment promotion policy with the people-centred approach in order to further achieve employment of higher quality. In the 14th five-year Social and Economic Development Plan, employment promotion is clearly included as an integrated part of the macro strategy. We have always prioritized employment promotion and economic and social development, which are important safeguards of people's livelihoods. Employment stabilization and expansion is thus a priority goal for macro control.

Another point is the promotion of equality of opportunity for employment, which is essential to unlock social mobility channels and to make the most of the labour force and of

talent. Further efforts are to be made to eliminate employment discrimination based on ethnicity, race, gender and other characteristics. All rights have to be protected, and special measures are taken to protect women's rights. For example, supportive measures are continuously taken to enable women whose employment has been interrupted because of childbirth to retain their jobs. Any complaint of discrimination is handled according to the law. With 746 million people in employment, China has made an outstanding contribution to the global employment landscape. I sincerely invite all of you to visit China, take a look and feel the power of the people in the ethnic minority areas, including in Xinjiang. We are committed to the sustained implementation of Convention No. 111.

We reject prejudiced, irrelevant remarks and groundless accusations, we also strongly reject the request for a tripartite mission made by certain representatives. I would like to invite all of you to come to Xinjiang and to see for yourselves that the people have realized their self-growth, increased their family income and are living happy lives through productive employment. My Government is ready to maintain communication with the Committee of Experts on relevant issues.

Worker members – The Government of China is reported to be detaining more than 1 million Uyghurs and other Muslim minorities in prisons and internment camps in Xinjiang because of their ethnicity and their religion. Ethnicity and religion cannot be grounds for unequal treatment and this falls under the scope of the Convention. Despite the Government's outright denials of the existence of internment camps and the use of forced labour of Uyghur workers in detention, there can be little doubt of a centralized programme of forced labour on a massive scale based on the religious and ethnic identities of the victims. This cannot continue one day longer.

I must repeat that no one here is against China. What we are deeply concerned about is the policy of a specific government which violates the core principles of this Organization and the obligations it has freely undertaken, as a valued Member of the ILO.

We do take note that the Government of China is planning to deposit the instruments of ratification of the two forced labour Conventions, Conventions Nos 29 and 105. This is welcome and must be pursued with the technical assistance of the Office to give full effect to Convention No. 111. This means ending the unequal treatment of an entire population and enabling that population to pursue its freely chosen employment. Deliberate government policy is urgent to prevent further irreparable harm against the population.

In light of the foregoing, we urge the Government of China: to immediately cease the use of all forced labour of the Uyghur population; to immediately cease the harassment of the Uyghur people, including physical, verbal, or non-verbal conduct based on their ethnicity and religion; to adopt national and regional policies with a view to eliminating all distinction, exclusion or preference leading to inequality of opportunity and treatment in employment and occupation, particularly with regard to the Uyghur population; to repeal regulations and other policies that impose deradicalization duties on enterprises and trade unions and prevent enterprises and trade unions from playing their respective roles in promoting equality of opportunity and treatment in employment and occupation; to amend national and regional policies with a view to ensuring that activities of vocational guidance, vocational training and placement services serve the purpose of assisting ethnic and religious minorities in the development and use of their capabilities for work in their own best interests and in accordance with their own aspirations; to amend national and regional regulatory provisions with a view to re-orienting the mandate of vocational training and education centres from political re-education based on administrative detention; to repeal the 2019 white paper on

vocational education and training in Xinjiang; and to bring its legal framework into line with the Convention, including the prohibition of all forms of sexual harassment and violence.

We urge the Government of China to avail itself of technical assistance in order to meet the obligations of the Convention.

We heard several calls for a high-level tripartite mission and the Worker members can support these calls so that the full scale of the problem is exposed and the appropriate assistance provided.

Employer members – The Employer members have listened very carefully to the positions of all participants in the discussion today of China's application of the Convention, both in law and practice.

In this regard, we positively note China's stated intention to deposit the instrument of ratification of Convention No. 29. We also positively note the submissions of the Government representative in respect of the willingness of China to welcome the visit of the ILO to better understand the situation on the ground in China with respect to the issues raised.

We also positively note the Government representative's openness to continue dialogue and engagement with the ILO.

The Employer members, having duly considered the information included in the Committee of Experts' observations and the submissions of the participants today, and having carefully considered the information provided by the Government in response to these serious allegations, would propose the following. We would encourage the Government to include a clear and comprehensive definition of discrimination in its labour legislation, in consultation with the most representative employers' and workers' organizations; to review its national and regional policies with a view to eliminating any distinction, exclusion or preference which has the effect of nullifying or compromising equality of opportunity and treatment in employment and occupation so as to come into line with its obligations under Convention No. 111.

Further, the Employer members recommend that the Government repeal provisions in the Xinjiang Uyghur Autonomous Region that impose deradicalization duties on enterprises and trade unions and prevent enterprises and trade unions from playing their respective roles in promoting equality of opportunity and treatment in employment and occupation without discrimination based on race, national extraction, religion or political opinion.

The Employer members recommend that the Government revise national and regional policies with a view to ensuring that the activities of vocational guidance, vocational training and placement services serve the purpose of assisting ethnic and religious minorities in the development and use of their capabilities for work in their own best interests and in accordance with their own aspirations, account being taken of the general needs of society.

The Employer members recommend that the Government amend national and regional regulatory provisions with a view to reorienting the mandate of vocational training and education centres from political re-education based on administrative detention towards the purposes set out in Article 3 of the Convention so that it is focused on the promotion of equality of opportunity and treatment in employment and occupation without discrimination.

The Employer members also recommend that the Government provide information on the measures taken in observance of the policy to promote equality of opportunity and treatment in the vocational training activities carried out in Xinjiang's vocational training and education centres.

The Employer members recommend that the Government provide information on the measures taken to ensure observance of the policy to promote equality of opportunity and treatment specifically for the Uyghur minority and other ethnic, Turkic or Muslim minority groups when seeking access to employment, both inside and outside the Xinjiang Uyghur Autonomous Province.

Finally, with respect to equality of opportunity and treatment of ethnic minorities, including in the civil service, the Employer members note, in particular, the Committee of Experts' request for the Government to continue to provide information on the measures taken to promote this area and to provide information on the Government's efforts to engage with the social partners in order to design and implement such measures.

The Committee of Experts also requested that the Government provide information on the current employment situation of various ethnic and religious minorities inside and outside the autonomous regions, including employment data disaggregated by sex and ethnicity in the civil service. We would make specific note that we support these requests and encourage the Government to comply with these requests from the Committee of Experts without further delay.

Conclusions of the Committee

The Committee took note of the oral and written statements made by the Government and the discussion that followed.

The Committee deplored the use of all repressive measures against the Uyghur people, which has a discriminatory effect on their employment opportunities and treatment as a religious and ethnic minority in China, in addition to other violations of their fundamental rights.

The Committee also expressed grave concern at the Government's efforts to impose "deradicalization" responsibilities on employers' and workers' organizations.

Taking into account the discussion, the Committee urges the Government to, in consultation with the social partners:

- **immediately cease any discriminatory practices against the Uyghur population and any other ethnic minority groups, including internment or imprisonment on ethnic and religious grounds for deradicalization purposes;**
- **immediately cease the racial harassment of the Uyghur people, including physical, verbal or non-verbal conduct or other conduct based on their ethnicity and religion, which undermines their dignity and creates an intimidating, hostile or humiliating working environment;**
- **adopt national and regional policies with a view to eliminating all distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity and treatment in employment and occupation, particularly with regard to the Uyghur population;**
- **repeal provisions in the Xinjiang Uyghur Autonomous Region Regulation, and any other laws, regulations or other policies, that impose deradicalization duties on enterprises and trade unions that prevent enterprises and trade unions from playing their respective roles in promoting equality of opportunity and treatment in employment and occupation without discrimination;**

- **amend national and regional policies with a view to ensuring that the activities of vocational guidance, vocational training and placement services serve the purpose of assisting ethnic and religious minorities in the development and use of their capabilities for work in their own best interests and in accordance with their own aspirations;**
- **amend national and regional regulatory provisions with a view to reorienting the mandate of vocational training and education centres from political re-education based on administrative detention;**
- **bring the existing legal framework on sexual harassment in the workplace fully into line with the Convention and ensure that victims of sexual harassment have effective access to judicial mechanisms and legal remedies; and**
- **amend the Labour Law and Employment Promotion Law so as to bring this legislation fully into line with the Convention.**

The Committee recommends that the Government accept an ILO technical advisory mission to allow the ILO to assess the situation together with the support of the ITUC and IOE.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 with information on the application of the Convention in law and practice, in consultation with the social partners.

Interpretation from Chinese: **Government representative** – The Chinese Government has taken note of the conclusions made, adopted by the Committee on China's application of Convention No. 111. Since 2020, China has supplied the Committee with numerous reports, elaborating facts, shown great sincerity; this shows that we are a responsible Member of this Organization.

Regrettably, the Committee has adopted such a groundless position against China and asks China to stop the so-called and non-existing discriminative practices against Uyghur populations. We firmly reject such a practice. According to China's Constitution, in the first chapter, all ethnic groups in China are treated equally. Any discrimination against any ethnicities is firmly prohibited and, in practice, we also uphold the equality of all ethnicities. Therefore, there exists no discrimination against any ethnicities.

On China's application of Convention No. 111, there are always a handful of anti-China forces who are manipulating this issue and criticizing, using the Convention and this platform. This is very worrisome. For many years, the tripartite constituents of China have cooperated with members of the Committee as well as Members of the Organization. Regretfully, the Committee fails to recognize active efforts and positive achievements made by China.

We are ready to consolidate our efforts with the ILO to maintain our communication with the Committee of Experts. We sincerely hope that all the Officers and the Committee of Experts could come to China and make impartial comments based on facts.

Djibouti (ratification: 1978)

Employment Policy Convention, 1964 (No. 122)

Discussion by the Committee

Government representative – Djibouti, as a full Member of the ILO, respects the guiding values and principles of this institution, which has been promoting tripartism and social dialogue for more than a century. The Republic of Djibouti, which became a Member of the ILO in 1978, has ratified 68 international labour Conventions and one Protocol – the Protocol of 2014 to the Forced Labour Convention, 1930 – of which 12 have been denounced. In total, 51 international labour Conventions are in force, including 8 fundamental Conventions and 3 governance (priority) Conventions.

Before responding to the comments of the Committee of Experts, I would like to stress that the Ministry of Labour submitted reports on the international labour Conventions ratified by Djibouti, in accordance with article 22 of the Constitution of the ILO, or the relevant information requested, on 15 May 2022. This delay was out of the control of my department because the Ministry of Labour was busy managing the health crisis in our country. Indeed, in March 2019, the Ministry of Labour implemented the first government measures to combat the spread of COVID-19 in the world of work.

My department, following the example of other ministerial departments and under the guidance of His Excellency the President of the Republic also implemented a number of actions to protect employees and employers during this difficult period. A labour relations exemption scheme was drafted and implemented with the President's signature of Decree No. 2020-063/PR/MTRA of 23 March 2020, governing the labour market during the pandemic. In addition, Order No. 2020-049/PR/MTRA of 29 April 2020 on the conditions for awarding compensation payments to employees and allowances for enterprises during the pandemic was also drafted and implemented. This new order aimed to save jobs in private sector enterprises that were affected by the COVID-19 crisis. It was an unprecedented peacetime effort by the Government to keep people in their jobs and avoid mass unemployment in the country.

Moreover, on behalf of the Ministry of Labour, I am here now to respond to the Committee and provide information on conformity with the observation adopted by the Committee of Experts with regard to our country's implementation of Convention No. 122, in particular Article 1 on the adoption and implementation of an active employment policy.

In order to conform to the aforementioned Article, the Republic of Djibouti has equipped itself with a programming framework of public policies known as "Vision 2035", in order to better respond to the aspirations of its people and make Djibouti an emerging country by 2035. Resolving the crucial unemployment problem and combating poverty are among the challenges identified by this vision.

The Government has also developed a New Rapid Growth and Employment Promotion Strategy (SCAPE) to bring this vision to life. In order to better respond to the challenges and use all of the country's potential, the Government has drafted the National Development Plan (NDP) 2020-24, entitled "Djibouti ICI", which will endeavour to consolidate the progress made by the SCAPE and the NDP. Drafted in a participatory manner and in the framework of Vision 2035, the second NDP takes account of Djibouti's international commitments, in particular the African Union's Agenda 2063 and the United Nations 2030 Agenda for Sustainable

Development. The overall objective is to make Djibouti "a stable, peaceful, clean, secure country with a view to achieving a calm environment for private initiatives".

Moreover, in 2014 the country adopted a National Employment Policy and an Operational Action Plan for 2014–19. Indeed, youth unemployment is a major challenge for the Government. It is in that framework that the Government of Djibouti launched the "Initiative for Employment" project, under the patronage of the Head of State, on 26 October 2020, which promoted the creation of 5,000 jobs in 2021, made necessary by the COVID-19 crisis, and established the policy guidelines and set out the working methods to achieve the expected results of 5,000 jobs.

With this in mind, the Ministry of Labour organized a combined forum and jobs fair, bringing together all relevant stakeholders to strengthen our commitment to youth employability, with support from the Office as well as from the United Nations Development Programme (UNDP).

The fair and the forum on "initiatives for employment" should enable the introduction of a new paradigm for the job market and give rise to dynamics with the capacity to reduce unemployment, through a concerted and inclusive job-creation effort, and provide the Ministry with a new jobs strategy.

This is why, during the National Employment Forum, all stakeholders – the Government, represented by several key ministries, the private sector, social partners, technical and financial partners, the United Nations system, but also and above all the young people themselves – were able to exchange and consult on how to increase opportunities for the creation of decent jobs, through short-, medium- and long-term measures, by enacting the necessary reforms to vocational training and apprenticeship for the integration of young people into the labour market, for the employment of persons with disabilities and, above all, to address the imbalance between supply and demand for jobs in the labour market.

The main objective of the National Employment Forum was to better guide public action in terms of professional integration. Also, a new national strategy for employment with a new operational plan (2020–24) was developed, which proposes to meet the challenge of youth employment by pooling all available forces, thus committing to improve the integration of young people in the world of work through concrete actions with immediate and short-term effects.

The Forum was also an opportunity to discuss the outline of a Decent Work Country Programme (DWCP) for Djibouti in line with national priorities and with the fruitful collaboration of the Office.

It should be recalled that, at the end of the forum on employment held from 18 to 20 February 2021 at the *Palais du Peuple*, a declaration for employment was signed resulting from consultation with social partners, civil society and agencies of the United Nations system, thus formalizing the commitment of all stakeholders in the forum to promote decent work. A copy of the declaration was sent to the Committee of Experts.

The exchanges with the stakeholders at this forum allowed for a common vision to be mapped out on the priority elements to respond to employment challenges. The themes discussed are included in the declaration of commitment for employment.

Finally, it is important to highlight that to date, thanks to the "Employment Initiative" project fair launched in October 2020, almost 4,000 young people have been able to find

employment on the basis of the recruitment commitments of enterprises. The initial target of 5,000 jobs will be reached this year.

With regard to youth employment, I will not go into the details of the response that was sent to the Committee of Experts on 15 May 2022. I would simply like to highlight that, to better combat youth unemployment, the Government has created a guarantee fund of 89 million Djibouti francs specifically for unemployed youth who want to engage in entrepreneurship.

Regarding compliance with Article 2 of the Convention on the collection and use of employment data, it should be noted that economic activity in the Republic of Djibouti is heavily dominated by the tertiary sector (services, transport, communications), the bulk of which is located in the city of Djibouti.

Between 2015 and 2019, the number of salaried workers increased from 57,912 to 70,049, an increase of 20 per cent. The service and trade sectors alone account for more than half of the jobs created during this same period. The source is the National Social Security Fund of Djibouti.

In addition, in 2017, the percentage of the working-age population in employment was 36.4 per cent for men, while this figure was less than 12 per cent for women. Year-on-year inflation (December 2019 and 2018) was over 3.3 per cent. In 2022, inflation is expected to remain moderate, but food and energy prices may exert slight upward pressure.

In order to improve the information system on the labour market and to consolidate the mechanisms for linking this information system to decision-making on employment policy, it was noted during the National Employment Forum that the institutional approach of placing the management of the observatory within the National Agency for Employment, Training and Professional Integration runs counter to the good practices observed in many countries in the region and that employment observation structures require a certain degree of autonomy, guaranteeing neutrality in their observations, analyses and recommendations.

This is why, in the operational action plan (2020–24) of the National Employment Policy, it was deemed necessary to have an autonomous, dynamic and efficient observatory that could, by providing data and analysis, participate in the monitoring of the implementation of the National Employment Policy, improve knowledge of the labour market and training in Djibouti, and document quantitative and qualitative changes in the employment situation in Djibouti.

As a technical mechanism to support decision-making, the observatory will develop reliable statistical indicators on the labour market, in accordance with international standards, on topics such as employment trends, wages, sectoral mobility or the evaluation of employment programmes.

To address the lack of recent information on employment, we will give priority to launching a new labour force survey that will lay the groundwork for regular surveys, so that we can begin to obtain longitudinal data, which will allow us to see the effects of employment and other economic policies on the labour market. We hope to be able to count on the technical assistance of the Office for this purpose.

To comply with Article 3 of the Convention on collaboration with the social partners, of course the social partners were consulted in the context of the renewal of the National Employment Policy (2014–24), and in particular its Operational Action Plan (2020–24). These consultations were concretized by the signing of a declaration for employment, as mentioned earlier in the text.

Finally, we hope we have addressed the concerns of the Committee of Experts. The Government of Djibouti will continue to provide the Committee of Experts with the requested information in due course.

Worker members – This is the first time that the Committee has examined the application of Convention No. 122 by the Government of Djibouti. Firstly, we note with regret that the Government of Djibouti has failed to fulfil its reporting obligations since 2014 and that, as a result, the Committee of Experts has been forced to repeat its observation five times.

In its comments, the Committee of Experts raised a number of issues, including the absence of a national employment policy and the lack of labour market information. The Committee of Experts also requested further information on the results of strategies implemented to promote youth employment and on measures in place to consult the social partners on employment policies, as mandated by the Convention.

Not only has no information on the application of the Convention been received by the Committee for the past eight years, but this appears to be a recurring pattern, as the Government's previous report dated back to 2008, constraining the Committee to repeat its observation twice in that case. Such a track record should put us on the alert. We strongly emphasize the fundamental nature of the dialogue that must be established between the Member States and the ILO, particularly through the scrupulous respect of reporting obligations linked to the standards.

These shortcomings are all the more regrettable as it appears that the Government continues to work closely with the Office in the development of employment policies and action plans.

In December 2021, the Ministry of Labour launched a National Trust for Employment Pact, under the aegis of various international agencies, including the ILO. This Pact is the latest in a series of action plans for employment recently adopted by the Government, including the National Development Plan "Djibouti ICI", the new National Employment Policy 2021–24 and its Operational Action Plan (PAO-2). The Government has rolled out initiatives for youth employment in recent years.

We take note of these policies and initiatives, while regretting that no information on their elaboration, adoption and implementation was communicated to the Committee of Experts in the framework of its regular supervision.

Based on these policy documents, the Government of Djibouti has set ambitious objectives to boost employment in the country, especially youth employment. In its Vision 2035, the Government has elaborated a policy to combat youth unemployment, while the employment initiative mentioned earlier aimed to create 5,000 decent jobs by 2021.

In addition, the 2021 Pact lays out strategic directions for the professional integration of young people, the regulation of the labour market, the formalization of employment, as well as social protection for all, with a view to creating 9,700 jobs by 2024. The Pact also aims to guarantee the establishment of mechanisms to help ensure that the active population, including refugees and documented migrants, have a minimum income that will allow them to meet their basic needs.

While the adoption of these action plans must be welcomed, we need to emphasize the many challenges that Djibouti must address. According to the latest data available, in 2018, over 20 per cent of the population was living below the poverty line and the chronic lack of

decent jobs resulted in an unemployment rate of 47 per cent. For young workers, this rate reached 73 per cent.

A January 2021 ILO study confirms this data and points to several deficiencies, including generalized unemployment and underemployment, a staggering youth unemployment rate and a lack of information on the labour market. The similarities between the findings of this 2021 study and the Committee of Experts' comments are striking and point to the persistence of the issues raised almost a decade ago. Therefore, the Worker members call on the Government to step up its efforts to combat the high unemployment rates in the country, especially among young workers, and to foster the creation of decent jobs, including through measures to strengthen labour market institutions. In this respect we call on Djibouti to adopt measures to improve the labour market information system and to consolidate the mechanisms linking this system with decision-making processes.

In the absence of any information provided by the Government, we are left to question whether these action plans and strategies for employment have been elaborated and adopted in full consultation with the social partners, as mandated by Article 3 of the Convention. We recall that the full and continuous participation of the social partners is a precondition for success. We request the Government to engage in social dialogue on the implementation of the current action plans and on the elaboration and adoption of future measures.

Lastly, we urge the Government to respect its reporting obligations.

Employer members – Djibouti ratified the Convention in 1978. It is an ILO priority Convention which, in essence, requires ratifying Member States to declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment. While the Convention does not prescribe the means and strategies to achieve this goal, the key role of the private sector and an enabling environment for entrepreneurship and sustainable enterprises should be recognized. The Employers trust that the Committee of Experts will give due consideration to an enabling environment for sustainable enterprises, as highlighted in the ILO Centenary Declaration for the Future of Work, in its future assessments of the application of Convention No. 122 by Djibouti.

While the case is being examined by the Committee for the first time this year, the Committee of Experts has previously issued six observations in 2014, 2017, 2018, 2019, 2020 and 2021. This Committee also cited Djibouti in 2021 as a case of serious failure by a government to comply with its reporting obligations. We also note that there was a mission for the evaluation of technical cooperation undertaken by the ILO in March 2011, where the Government reiterated its commitment to developing a Djibouti Decent Work Programme. This case is before this Committee, not to discuss any substantive shortcomings in the application in law and practice of the Convention by the Government of Djibouti, but rather, as the Committee of Experts has repeatedly observed, Djibouti's failure to submit information or respond to requests made to it since 2014 on the adoption and implementation of an active employment policy. Failure by governments to submit replies to requests or observations by the Committee of Experts seriously limits the ability of this Committee, as part of the ILO's supervisory mechanism, to properly assess whether or not there is compliance with ratified Conventions. As part of their obligations under the ILO Constitution the governments of Member States have an obligation to report and to communicate copies of their reports to representatives of employers' and workers' organizations. Compliance with this obligation is necessary to ensure proper implementation of tripartism at the national level. Therefore, the Employers call on the Government to submit its replies to the Committee of Experts' observations in respect of Articles 1, 2 and 3 of the Convention and to do so by no later than

1 September 2022, in consultation with the most representative employers' and workers' organizations in Djibouti.

Given the passage of time since the initial observations and requests made in 2014 – that is, almost ten years ago – we call on the Government to submit the latest information in respect of its labour market, including any progress made in finalizing a national employment policy, the situation of youth employment, the situation of women's employment, the relevance of education and vocational training to the needs of the labour market, measures taken to improve the labour market information system, updated employment statistics, any other relevant employment trends, and consultations with its social partners. If there are capacity constraints within the Government hindering its ability to comply with a Convention in law and practice and to report to the Committee of Experts in a timely manner and in consultation with the most representative employers' and workers' organizations, we would urge the Government to request technical assistance from the ILO.

The COVID-19 pandemic has highlighted the importance of the private sector, the undeniable value of small and medium-sized enterprises (SMEs) and the relevance of global supply chains. Conducive environments for business are not the goal but the basis for employment creation, growth and sustainable development, including in Djibouti. Businesses in Djibouti need the Government to do what only governments can, which is to facilitate and create an enabling environment for private sector growth and resilience, in order to be able to create productive employment. In the absence of governments creating such an environment, growth cannot take place and productive jobs in the formal sector cannot be created. An enabling business environment is essential for creating a stable, predictable and incentivizing environment for investment, innovation and employment which are all vital for any sustained and job-rich recovery from the COVID-19 crisis. We therefore also invite the Government to provide information to the Committee of Experts on the enabling business environment for employment creation in Djibouti.

Achieving the goal of full, productive and freely chosen employment, as set out in the Convention, requires productivity, growth and an enabling business environment for employment opportunities to be created. This will happen only with investment in both traditional and entrepreneurial job opportunities. While it is investment that will make the biggest difference, it is also investment that we lack the most information on here. We therefore urge the Government of Djibouti to further develop an enabling business environment for employment creation so that the international community may understand and support them.

Worker member, Portugal – We must emphasize our regret that the Committee of Experts has not received the Government's report, as expected, especially in view of the economic and social situation in the country.

The objective of the Convention is to promote employment policies in order to achieve full employment, and it was ratified by Djibouti in 1978. Data is relevant – without data we will not have transparency and accountability. Information is a key element in taking the best decisions regarding poverty reduction and deciding on macroeconomic and social policies. Data is relevant to the achievement of social justice, productivity and development through the creation of decent work. Data is essential to be able to evaluate and implement policies that give rise to the creation of decent jobs in all sectors of the economy. How can the social partners fulfil their role without accurate data? We wish to emphasize Article 3 of the Convention, which requires that the social partners be consulted, with a view to their full cooperation in formulating employment policies and providing the necessary support for the

measures. Data collection and dissemination can be a challenge, but it is extremely important to involve the social partners in the decision-making process and if the Government does not provide a report, the social partners cannot do their job.

Therefore, we urge the Government to report on how it is already designing and implementing public policies and programmes to promote productive employment for women and young people, with a view to achieving equality in employment. With that in mind, it is extremely important to provide updated statistical data, disaggregated by age and sex, as well as other relevant data relating to the size and distribution of the workforce, and the nature and scope of unemployment and underemployment, and the respective trends.

Worker member, Botswana – I am speaking on this case to propose solutions to the challenges facing not only Djibouti, but African youth in general, owing to the problem of unemployment, which is proving increasingly cumbersome for societies.

Libraries are littered with ample evidence pointing to the fact that unemployment has profound effects on young people. It impacts adversely on their psychological and social development, and in some instances even leads to depression and suicidal tendencies.

More importantly, lack of employment in the early stages of life for young people is bound to have lifelong implications on income and employment stability, as well as negative self-perceptions and therefore lower confidence and resilience in responding to life challenges generally, and labour market opportunities specifically, later on in life.

Therefore, in addition to missing out on acquiring appropriate life skills to channel their energies in the right direction now, as a consequence, young people will be more prone to substance abuse and negative stereotyping, and hence be unable to secure a proper and positive transition into adulthood.

This then defines the future of our societies, because when we speak of youth, we are referring to the very foundation of our economies and our future development. In order to bring an end to this trajectory of social malady and despair, we urge the Government of Djibouti, and by extension all African governments, to invest in projects that generate real jobs that can engage young people and other unemployed persons.

This may involve creating the infrastructure for entrepreneurial empowerment and development where young people can be assisted in self-employment. This can target industries based on manufacturing and processing, as well as agriculture. This requires deliberate policy to empower young people in real terms, provision of training and funding, which involves limited but progressive access to funds to ensure wide coverage in numbers of employed or unemployed youth, and productive investment. However, setting up infrastructure for investing in youth is not enough given that young people are not experienced enough. Provision must be made for constant monitoring and evaluation measures to determine shortcomings and offer much-needed support, when necessary.

There is also a need for constant training on entrepreneurship and life skills, to build confidence and resilience against the never-ending challenges of life.

In conclusion, we emphasize that all of the above must be done in a space that encourages social dialogue, and youth representatives must be given a seat at the decision-making table.

Worker member, Argentina – In this case we are presenting opinions shared by the trade union confederations of the Americas. The first issue that draws our attention and deserves our strongest criticism is that Djibouti has not complied with its constitutional

obligation to provide its report on the Convention for which it has been the subject of observations by the Committee of Experts.

This shows a blatant disregard for its basic commitments in relation to the ILO, which in addition to its severity, makes it difficult to deal with this case because the latest data provided on employment are from 2014, so clearly the Government does not collaborate with tripartite bodies, the distinguishing characteristic of the ILO in the United Nations system.

In our opinion, this omission casts doubt on the existence of a willingness on the part of the Government to find a solution to the problem of non-compliance with the Convention. In reality, the country does not have a national employment plan, nor has it fulfilled its promise to implement a decent work programme.

Fundamentally, an employment plan must at least tailor vocational training to the requirements of the productive system in terms of qualifications and skills and must also incorporate a public and free job placement mechanism for those who work. Without these pillars of an employment policy, people are abandoned to the fluctuations of the market, leaving them exposed to unemployment, insufficient income and a risk of social marginalization.

We therefore share the Committee of Experts' concern that the Government's disregard for the implementation of an employment policy within the meaning of Article 1 of the Convention – that recognizes the policy of promoting full, productive and freely chosen employment as a major objective – seems to demonstrate that it does not consider this to be a key factor in its macroeconomic policies for poverty reduction.

In short, in the case of Djibouti, the pursuit of decent work requires tripartite dialogue at all levels, accurate information on the employment situation, and the political will to adopt measures that meet the objective of employment as an instrument for overcoming poverty.

Worker member, Niger – I am speaking on behalf of the Organization of Trade Unions of West Africa. When we talk about the importance of a national employment policy, we need to understand that regardless of the type of workplace or business we run, policies are essential because they help clarify and reinforce the standards expected of employees in all employment relationships and help employers manage their staff effectively and fairly.

While it is very important for a nation to regulate job creation, for trade unions employment policy has primacy in the development and functioning of the national labour market. It is equally important that the national employment policy aims to promote the Decent Work Agenda, the implementation of international labour standards and social protection and fundamental workers' rights.

Given the poverty level in Djibouti, a national employment policy should be considered a priority. Furthermore, a national employment policy recognizes the role of skills development and sets the framework. It strengthens the ability of workers to adapt to changing market demands and to benefit from innovation and investment in new technologies, clean energy, the environment, health and infrastructure.

We therefore urge the Committee of Experts and the ILO not to tire of steering the Government of Djibouti towards doing what is necessary by providing technical, institutional and material support. We stress that the Government should abandon its education programme and focus on quality education and training. There is no doubt that technical and vocational education and training must reflect the new realities. We would welcome the ILO supporting the country in revitalizing its job-creation efforts.

Government representative – The Government of Djibouti has taken note of the observations and recommendations of this honourable Committee.

As we said in our statement during the discussion of the case, we are experiencing difficulties in collecting labour market statistics. Our Government will continue its efforts. This year, we intend to revitalize the National Observatory of Employment and Qualifications (ONEQ) on the basis of priority lines of action.

The first line of action is to redefine the institutional and organizational structure of the ONEQ in order to bring it into line with international best practices. The second line of action will focus on the effective performance of the Observatory's functions. For an employment observatory to fulfil its functions, it is important that it be operational at three levels: the collection of information; the processing and analysis of this information; and lastly, the dissemination of these analyses.

To collect information, the Observatory will have to establish agreements and partnerships with key institutions in Djibouti. First of all, the existing partnership with the National Institute of Statistics of Djibouti needs to be renewed for conducting statistical surveys, and then new partnerships need to be established with other institutions such as the University of Djibouti and the National Social Security Fund, and so on.

With regard to the exchange of administrative data, technical partnerships will also have to be established between development partners and donors. The next step will be to define the Observatory's technical and human resources needs and to fulfil these needs, including its network of correspondents, as provided for in the institution's implementing decrees. In parallel to the setting up of the network of correspondents, the Observatory will have to carry out studies to identify the needs of its partners in order to strengthen its position as the primary interlocutor in the field of training in the labour market.

As I said in my opening statement, to address the lack of recent information, as a matter of priority, we will launch a new labour force survey that will lay the groundwork for regular surveys to begin to obtain longitudinal data, which will allow us to gain an awareness of the effects of the national policy and other economic policies on the labour market.

I will also keep repeating that Djibouti developed a ten-year National Employment Policy in 2014 (2014–24). The four-year Operational Action Plan 2014–18 has been sent to the Committee of Experts. Of course, we regret the fact that we did not send the requested information to the honourable Committee of Experts and, again, we request the technical assistance of the Office.

The Government will also take all necessary steps to fully implement the recommendations of this honourable Committee. I would like to thank the social partners and Governments once again for their constructive discussion of our case and for their support.

I cannot conclude my remarks without also mentioning the improvement of the business climate in Djibouti. Obviously, reforms have been undertaken in recent years. Our country has taken an honourable place in the "Doing Business" ranking, moving up 55 places to 99th place. This demonstrates the Government's determination to develop a dynamic and innovative private sector, as this sector remains a determinant of economic development and a provider of sustainable employment. Finally, we take note of the comments and conclusions of the Committee of Experts.

Worker members – We thank the Government of Djibouti for their detailed comments. We also thank all the other speakers for their interventions.

As we indicated in our opening remarks, our group notes with regret the failure of the Government of Djibouti to respect its reporting obligations. We emphasize once again the importance of maintaining dialogue between Member States and the Committee of Experts to ensure regular supervision of the measures taken to implement the Convention and to correct the course of action, where necessary.

We welcome the efforts deployed by the Government to address the long-standing situation of generalized unemployment and underemployment in the country. We also note the Government's assurance that the social partners were consulted in the development of current and forthcoming initiatives. However, much clearly remains to be done. Over one fifth of the population is still living below the poverty line and challenges to the creation of decent jobs persist, especially for young workers.

We call on the Government to step up its efforts to combat the high unemployment rates in the country and to foster the creation of decent jobs, including through measures to strengthen its labour market institutions. The social partners must be fully involved in the design, implementation and review of measures, and we urge the Government of Djibouti to describe in detail such consultations in its future reporting, to fully demonstrate compliance with Article 3 of the Convention.

We echo the Committee of Experts' call for the improvement of the labour market information system and the consolidation of the mechanisms linking this system with decision-making in the field of employment policy. We also support their request for the Government of Djibouti to collect and communicate updated statistical data disaggregated by age and sex, as well as any other relevant data relating to the size and distribution of the workforce, the nature and scope of unemployment and underemployment, and the respective trends.

Employer members – The Employers welcome the views shared by the various delegates on this case and also take note of the information submitted by the representative of the Government of Djibouti in this meeting today.

Like the Committee of Experts, we also express deep concern that the Government has continually failed to comply with the requests for information over a long period, which limits the ability of both the Committee of Experts and this Committee to effectively assess whether Djibouti is complying with its obligations under the Convention. Therefore, we call on the Government to submit its replies to the Committee of Experts' observations by no later than 1 September 2022 and to do so with the most up-to-date information about the labour market. We also call on the Government to provide information on the following areas: any progress made in finalizing a national employment policy; the situation of youth employment; the situation of women's employment; the relevance of education and vocational training to the needs of the labour market; measures taken to improve the labour market information system; updated employment statistics; and relevant information on the enabling environment for business in Djibouti to create full, productive and freely chosen opportunities for men, women and youth. Then, we urge the Government to consult with its social partners and also to request ILO technical assistance, if required.

Conclusions of the Committee

The Committee took note of the oral information provided by the Government and the discussion that followed.

The Committee deeply regretted the failure of the Government to respect its reporting obligations.

The Committee took note of the long-standing situation of generalized unemployment and underemployment in the country.

The Committee noted with concern the persistence of a high level of poverty, unemployment and informality, especially among women and youth.

Taking into account the discussion, the Committee urges the Government to take effective, urgent and time-bound measures, in consultation with the social partners, to:

- **adopt a comprehensive national employment policy to promote the creation of full, productive and freely chosen employment opportunities within the meaning of the Convention;**
- **step up its efforts to combat the high unemployment rates;**
- **collect and inform on the situation of employment;**
- **strengthen the education and vocational training systems;**
- **improve the labour market information system;**
- **consolidate the mechanisms linking this information system with decision-making in the field of employment policy;**
- **collect and communicate updated statistical data disaggregated by age and sex, as well as any other relevant data relating to the size and distribution of the workforce, the nature and scope of unemployment and underemployment, and their respective trends.**

The Committee invites the Government to avail itself of technical assistance from the Office.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 communicating information on the application of Convention in law and practice, in consultation with the social partners.

Ecuador (ratification: 1967)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Written information provided by the Government

The Ministry of Labour, pursuant to its constitutional and legal powers, is the body responsible for regulating and guaranteeing the right to work in the territory of Ecuador, in accordance with the provisions of the Constitution of the Republic of Ecuador, international agreements signed by the country, and the legal system in force, specifically the provisions of articles 33 and 326(7) and (8) of the Constitution, in which the right to freedom of association is recognized, with the State having the implicit duty to promote the functioning of labour organizations in accordance with the fundamental principles of democracy, participation, transparency, rotation and legality.

It should be noted with regard to the exercise of constitutional rights in Ecuador that, in accordance with article 11(3) of the Constitution, the said rights shall be immediately applicable to and by any male or female public servant. It should be emphasized that constitutional rights will be exercised in a progressive manner through standards, jurisprudence and public policies, in accordance with article 11(8) of the Constitution, complying in this regard with

previous requirements for exercising that right, taking into consideration that freedom of association is a right recognized in the Ecuadorian legal system, as provided for by article 326(7).

In terms of application of the hierarchy of standards enshrined in article 425 of the Constitution, the State is bound to apply the provisions of ILO Convention No. 87, an instrument which defines freedom of association as: the right of workers to establish and join organizations of their own choosing; to draw up their constitutions and rules; to elect their representatives in full freedom; and to organize their administration and activities and to formulate their programmes, without interference from the public authorities.

In order to monitor compliance with the provisions of Convention No. 87, the ILO has made concrete observations to the country. The Ministry of Labour therefore considers it important to underline the following points.

In accordance with the principle of legality and the right to legal certainty, the State of Ecuador is developing a normative proposal in the area of labour legislation and at the same time seeking to issue or reform related standards (Regulations on Labour Organizations) with legal and technical input from the Ministry of Labour, taking account of the participation of workers and employers in tripartite dialogue forums, in order to comply with the principles of participation, transparency, rotation and legality on the part of the State, and thus better guarantee the application of the right of association.

In this context we inform you that the Ministry of Labour has granted legal personality to a total of 5,783 labour organizations (4,064 private, 1,719 public), with a membership of 312,748 persons. These data are constantly being updated, according to the information supplied by the organizations. As regards committees of public servants, three organizations have obtained legal personality, with 979 members. As part of the implementation of the functions of the Ministry of Labour with respect to labour organizations, since 2021 the Ministry has responded, through ministerial decisions or official letters, to 2,416 applications relating to constitutions, statute reforms, registration of executive committees and various formalities.

The Republic of Ecuador is currently complying with the ruling of 25 May 2021, as part of Judgment No. 17981-2020-02407, on the case of the right to freedom of association, which, in its relevant part, contained the following *inter partes* decision:

> [It is ordered that:] "(2) The Ministry of Labour, pursuant to revision and analysis of the documents of the Trade Union Association of Agricultural, Banana and Rural Workers (ASTAC), shall proceed with its registration as a trade union. ... (5) The Ministry of Labour shall regulate the exercise of the right to freedom of association by branch of activity." In compliance with the above-mentioned due process and the regulations in force, legal personality was granted to ASTAC by means of Ministerial Decision No. MDT-2022-001 of 11 January 2022, further to registration of the list of constituent members by means of Official Letter No. MDT-VTE-2022-0035-O of 10 January 2022. In addition, as the Ministry of Labour already explained, secondary legislation is being developed.

The State of Ecuador is undertaking the necessary actions to comply with the provisions of Convention No. 87. In this context, we reiterate our acceptance of the technical assistance to be provided by ILO experts, presented in 2021 as part of the reports on Conventions ratified by the country. This assistance will make it possible to hold working groups on the implementation and applicability of legal instruments for fostering and above all enabling tripartite social dialogue in Ecuador, the aim of which is to reinforce existing channels of

communication between the Ecuadorian Government and the national actors in the labour sphere.

Discussion by the Committee

Government representative, Minister of Labour – For us Ecuadorians it is a pleasure to be part of the ILO. We are one of the first countries in the world to have signed the Convention as a result of being part of the ILO and it gives us the greatest pleasure to be here now.

The State of Ecuador, as an active Member of the ILO since 1948, has been working to provide responses to the needs of society, and since the advent of the Government of President Guillermo Lasso, "the Government of encounters", efforts have increased enormously to ensure that citizens' rights, especially labour rights, are observed.

In my statement at the 109th Session of the International Labour Conference, I mentioned that it is a priority for Ecuador to include all stakeholders in the formulation of policies needed for the creation of quality employment, making use of social dialogue as an effective instrument for the management and adoption of measures and of course for finding solutions.

However, these efforts and commitments have to come from all parties to this social dialogue and generous contributions must come from all our forums to create better conditions for eliminating the gaps that create inequality. We wish to overcome inequality. The Government is absolutely convinced that with appropriate state policies we can overcome inequality, the gender wage gaps, the inequality gaps and the ill treatment that young people have suffered prematurely throughout Latin America and, of course, we are also concerned with freedom of association and protection of the right to unionize or organize in the private sector.

With regard to Article 2 of the Convention and the observation of the Committee of Experts regarding the possibility of establishing trade union organizations by branch of activity, the Ministry of Labour, which I am in charge of thanks to the generosity of President Lasso, in strict compliance with the ruling of 25 May 2021 of the Provincial Court of Justice of Pichincha, by Ministerial Decision No. MDT-2022-001 of 11 January 2021, signed by the Deputy Minister for Labour and Employment, decided in articles 1 and 3 to approve and register the constitution of ASTAC and grant legal personality to this union, ordering the Regional Directorate for Labour and Public Service of Guayaquil, a major city in Ecuador, to register the name and details of the constitution of the aforementioned association. Hence, by a decision of 27 January 2022, the judiciary indicated that the ruling had been complied with. Beyond what we may or may not think about this sensitive subject, we always comply with the law.

In this context, I must point out that the Government ensures and will always ensure that the rights and guarantees established in the Political Constitution of Ecuador and, of course, in duly ratified international Conventions, are fulfilled. Article 326(7) of the Constitution, the text of which explicitly defines the right to organize as a fundamental principle and, moreover, the right to work, forms the basis for building a just society with equal rights and freedom of association.

Documents inherent to the Constitution of Ecuador and of course our whole legal framework are evidence of the respect for the equal status of the rights of freedom of association.

Furthermore, in labour relations within a country under the rule of law such as ours, there are clear standards that regulate the establishment of labour organizations. National law has seen the need to require trade union leadership to be based on having the most representative

status within enterprises. However, it should be emphasized that the setting of a minimum number of workers and limiting the establishment of a trade union to the enterprise level is not aimed at restricting or limiting the creation of this type of organization. Rather, the aim is to ensure the representativeness of the trade union in its relations with the employers, demonstrating cohesion and agreement on the part of the majority.

With regard to Article 3 of the Convention, referring to compulsory time limits for convening trade union elections, the Government, through the Ministry of Labour in response to the ILO's comments, is working with a legal technical team on preparing the reform of the Regulations on Labour Organizations, issued by a ministerial decision of 8 August 2013, with regulation being imposed only as an exception in cases where the association's constitution does not provide for procedures to appoint its representatives when the association is without officers.

In line with the observation on the same Article regarding the requirement to be of Ecuadorian nationality in order to hold trade union office, the Ministry of Labour, within its area of competence, on the basis of article 326(7) of the Ecuadorian Constitution and with regard to Article 3(1) and (2) of the Convention, registers the officers of labour organizations on the basis of the provisions of the Ecuadorian Labour Code, respecting freedom of association and the right to organize, and enabling the organization concerned to operate within the activities inherent to its legal existence in full autonomy, preserving its legal certainty through the corresponding legal analysis, which includes fulfilment of the basic requirements, in this case the relationship of labour dependency, as established by section 449 of the Labour Code and the legal power of anyone who convenes, legitimizes and certifies the election process and the formal requirements established by section 9 of the Regulations on Labour Organizations. Where this is the case, the Ministry will promote inter-institutional coordination for the implementation of effective policies for the public benefit, providing the necessary adequate support for undertaking the reform suggested by the ILO.

On the other hand, as regards the election of non-affiliated workers as officers of enterprise committees, the standards in force recognize freedom of association, which is the right of workers to establish and join organizations of their own choosing, without previous authorization; the right to draw up their constitutions and rules; the right to elect their representatives in full freedom; and the right to organize their administration and activities and formulate their programmes, without interference from the public authorities. Hence, in accordance with Article 3(2) of the Convention, the State of Ecuador does not have any authority to intervene in the due exercise of freedom of association.

Furthermore, with regard to the application of the Convention in the public sector, I would like to make the following points:

- With regard to Article 2 of the Convention concerning the right of workers, without distinction whatsoever, to establish and join organizations of their own choosing, the Ecuadorian State, seeking to ensure that public servants have the right to organize, issued in 2017 the reform to the Basic Public Service Act (LOSEP), incorporating in that text the right to establish committees of public servants, determining the features and general aspects for their establishment and management, and establishing the legal exceptions that were consistent with the nature of certain activities which must be impartial in the exercise of their functions and which normally correspond to activities related to the defence of the State or the general public and the provision of public services. We want the provision of public services to be of a high quality.

- With regard to the observation of the right of workers to establish organizations of their own choosing without previous authorization, particularly regarding organizations of public servants other than the committees of public servants, the legal provisions in force in Ecuador determine two labour regimes for the public sector: one relating to bureaucrats who are covered by the LOSEP, and one relating to workers under a special scheme in line with their duties who are covered by the Labour Code. In both cases the freedom to organize is recognized.
- With regard to the registration of associations of public servants and their officers, article 66(13) of the national Constitution recognizes the right to associate, assemble and demonstrate in a free and voluntary manner, thus recognizing as a constitutional right the right to associate, in accordance with section 36 of the Basic Act on Civic Participation, which establishes that social organizations that wish to obtain legal personality shall complete the formalities with the various public authorities corresponding to their sphere of action duly based on section 3 of Decree No. 193, which defines a social organization as "one whose purpose is not to secure any economic benefit but whose goals are principally social, altruistic, humanitarian, artistic, community-related, cultural, sporting or environmental", etc.

It is important to mention that Ecuadorian legislation recognizes various types of associations, which are regulated by different sets of regulations that are applicable to their nature.

With regard to the observation of the Committee of Experts that the necessary steps should be taken to amend section 346 of the Basic Comprehensive Penal Code, we reiterate that public servants' right to strike is specified in Chapter III of the LOSEP, and what constitutes a criminal offence is when a person commits acts of violence or causes damage to private property or generally blocks people's access to public services which we wish to be of high quality. In other words, the Ecuadorian State recognizes the right to legitimate strike action by public servants, provided that it is peaceful.

Lastly, with regard to the administrative dissolution of the National Federation of Education Workers (UNE), this Government insists that the union's dissolution was governed by the regulations in force, with the corresponding administrative formalities and due process in the competent government institution having been completed.

Recognizing the importance of the observations made by the Committee of Experts, the "Government of encounters", the Government of President Lasso, through the Ministry of Labour, convened a tripartite dialogue within the National Labour and Wages Council. A meeting was held on the premises of the Ministry on 30 May 2022 in which representatives of both the workers and the employers participated freely and actively. The meeting was moderated by the highest authorities of the Ministry of Labour – starting with myself, as I am the Chairperson of the National Labour and Wages Council, promoting social dialogue in labour relations and in dispute settlement, an area in which we are ready to receive the necessary international collaboration and technical assistance for promoting tripartite dialogue.

In Ecuador, there are practically no labour disputes, no significant labour conflict. We have resolved the recurring issues in a decisive, just and timely manner. The Ministry of Labour seeks to create an amicable atmosphere between workers and employers. This has been the hallmark of the "Government of encounters", this has been the hallmark of the Ministry of which I am now the head.

We are therefore rigorously addressing the topics inherent to the defence of workers' rights. We are also concerned with defending the rights of non-workers, the Ecuadorians who do not have jobs. Through major drafts of laws and regulations, we are striving to ensure that, God willing, non-workers can find decent and stable work. We are concerned with those who do not have jobs, and we are always paying attention to the rights of workers who, with God's help, do have jobs. So this form of action by the Ministry of Labour is the appropriate one when there is a desire to do things well.

Worker members – We want to draw attention to the fact that the most representative unions in Ecuador were not consulted in the delegation to the International Labour Conference and are not part of it. A complaint is currently before the Credentials Committee, however, pending this process, we will have to examine the case of Ecuador without the benefit of an intervention from the Workers' delegate of Ecuador and we deeply regret this absence which can only be detrimental to the discussion.

This is the second time in five years that the Committee has had to examine the application of this Convention by the Government of Ecuador. Regrettably, no significant improvement was recorded during this time and anti-union acts and attacks against freedom of association committed by the authorities and by employers continue unchecked.

For many years, the Committee of Experts has been raising concerns regarding legal gaps in the protection of the right to freedom of association and collective bargaining and the pervasive anti-union climate which prevails in the country. In the public sector, workers are deprived of their fundamental right to establish and join organizations of their choosing. The Basic Reform Act of 2017 established the concept of a committee of public servants which guarantees certain prerogatives to organizations of public servants comprising 50 per cent plus 1 of the staff. These provisions trample on trade union pluralism by preventing organizations of public servants other than these committees from representing and defending the interests of their members. The Basic Reform Act also excludes from the right to join and form trade unions certain categories of public service staff, including those under contract for occasional services, those subject to free appointment and removal from office and those on statutory fixed-term contracts.

In addition, Decree No. 193 excessively restricts freedom of speech and opinion for public workers and their organizations as it retains engagement in party political activities as grounds for administrative dissolution. Despite calls from the Committee of Experts to amend this rule, the Government persists in saying that party politics are the sum total of activities aimed at governing society from a specific ideological or philosophical standpoint and that these activities are prohibited for trade union organizations since the unions' objectives regardless of political affinity must seek and focus on the economic and social improvement of their members. We must express our firm disagreement with such an interpretation and reaffirm, as did the Committee of Experts, that defending the interests of their members requires associations of public servants to be able to express their views on the Government's economic and social policy and that Article 4 of the Convention prohibits the suspension for administrative dissolution of such associations.

We recall that, in 2016, the National Federation of Education Workers (UNE) was dissolved by an Administrative Act issued by the Under-Secretariat of Education and its property was seized by the administration. The organization has been seeking re-registration ever since, and it is facing administrative obstruction in this process. As regards the private sector, numerous legal obstacles continue to hinder the development of independent and strong unions in the country, especially sections 443, 449, 452 and 459, which fix at 30 the minimum number of

members required to establish workers' associations and enterprise committees and do not permit the establishment of primary-level unions comprising workers from several enterprises.

In an economy characterized by the prevalence of small enterprises, such provisions represent a significant hurdle to the exercise of freedom of association. Furthermore, section 459(3) and (4) of the Labour Code, constitute undue interference in the elections of trade union officers. Paragraph 3 provides that enterprise committees shall be composed of any workers, whether or not union members, who are registered on the list for such elections in complete violation of the right of unions to freely administer themselves, while paragraph 4 requires Ecuadorian nationality to be eligible for trade union office. The Committee of Experts has been calling for years that these provisions are contrary to Articles 2 and 3 of the Convention and must be amended. The Government of Ecuador has yet to comply with the comments of the Committee of Experts.

Section 10(c) of Ministerial Decision No. 0130 of 2013 provides that trade union executive committees shall lose their powers and competencies if they do not convene elections within 90 days of expiry of their term of office, as set out in their respective union constitutions.

This provision clearly constitutes undue interference in internal trade union matters and bears a serious risk of paralysing the capacity for trade union action. Meanwhile, these legal provisions have very real consequences for trade unions. In 2020, the Ministry of Labour had refused to register ASTAC as a trade union on the grounds that it was not formed of workers from the same enterprise. ASTAC challenged this decision in court and obtained a ruling in the Provincial Court of Justice of Pichincha on 25 May 2021, which ordered the Ministry to proceed with its registration as a trade union and to regulate the exercise of the right to freedom of association by branch of activity so as to avoid any recurrence of such situations. Despite this ruling, ASTAC's request for registration remained pending for seven months before the Ministry of Labour, which, as it was finally complying with the ruling, indicated to ASTAC that their registration was a one-off situation that would not lead to the registration of other branch unions. To top it all, the Ministry also filed an extraordinary motion for protection which is currently before the Constitutional Court of Justice.

Finally, we must deplore the total inaction of the Government of Ecuador to fulfil its commitments to the technical assistance mission which was carried out by the Office at the request of the Government in December 2019. The mission had presented the tripartite constituents with a draft road map for initiating a tripartite dialogue with a view to adapting measures to address the comments of the ILO supervisory bodies. Since then, no steps have been taken to give effect to this road map and the Government claims now that it wishes to receive technical assistance only with regard to tripartite dialogue, with the aim of improving and strengthening communication between the Government and social partners. In the view of the Worker members, making good on its international commitments giving effect to the road map presented by the technical assistance mission, and amending as a matter of urgency the legal provisions which are not in compliance with the Convention in consultation with the social partners, would be a good place to start to improve communications with workers and trade unions.

Employer members – To start with, the Employers' group recalls its disagreement with the views of the Committee of Experts in relation to this Convention and the right to strike. The Employers' group recalls the statement made in March 2015 by the Government group that the "scope and conditions of this right are regulated at the national level". It is within this

meaning that the Employers are approaching this discussion of the case of the application of the Convention by Ecuador.

This is a very long-standing case, which has been examined by the Committee on many occasions, most recently in 2017. It involves serious issues and refers to a fundamental Convention, for which reason it has to be dealt with by us very carefully. We note with concern that, despite the technical assistance provided by the Office in 2019, there have not been any tangible results. Nevertheless, according to the Minister's statement and the information that we have received from the employers' organization of Ecuador, the social partners are better disposed to engage in social dialogue on the issue with a view to seeking definitive solutions to the matters raised in the comments of the Committee of Experts, to which we give our resolute support. We therefore encourage the Government, workers and employers of Ecuador to resolve the issues raised by the Committee of Experts in accordance with the very specific characteristics of the legal system and national practice.

In the same way, we take due note of the information provided by the Government to the effect that the State of Ecuador is developing a legislative proposal on this subject with the legal and technical contributions of the Ministry of Labour and taking into consideration the participation of workers and employers. Social dialogue on this subject, in view of the will expressed by the Government and the social partners, will also give impetus to the social dialogue forum in the country, that is the National Labour and Wages Council.

We would like to contribute a few comments, without prejudice to the information that will be provided by our Employer colleague from Ecuador, on the issues raised by the Committee of Experts.

We support the comments of the Committee of Experts that workers should be able to freely establish organizations of their own choosing and that the requirement of a reasonable level of representativeness for the conclusion of collective agreements is in accordance with the ILO Conventions on freedom of association.

Without losing sight of the above, it needs to be noted that the Committee of Experts is recommending the amendment of laws which relate to one of the institutions of collective labour law, without taking the other such institutions into consideration. In this regard, we are convinced that the Government of Ecuador and the social partners, by engaging in social dialogue as noted previously, must take into account the overall revision of all the institutions of collective labour law in order to ensure a harmonious whole that is in conformity with the Convention. However, the amendment of an isolated provision would necessarily have repercussions on the others, and so the reform would have to be comprehensive to avert the danger of the system becoming non-functional.

That is of particular importance in relation to certain aspects referred to by the Committee of Experts: the number of persons required to establish a union, the establishment of unions by branch of activity and, in particular, the minimum level of representativeness of a union to negotiate at the branch level, which we understand is not a usual practice in the Ecuadorian context.

Provisions governing bargaining at the enterprise level cannot easily be applied directly to collective bargaining at the branch level. We would not be doing a great favour to the exercise of freedom of association in Ecuador if we encouraged the establishment of branch unions without there being clear requirements on the representativeness of those involved setting out their scope and obligations.

We would like to conclude by recognizing the predisposition to dialogue demonstrated by the Government and the social partners, for which reason we once again call for an effective and efficient process of overall review in the social dialogue forum in Ecuador, as indicated earlier, to give the system internal consistency and avoid isolated reforms which may give rise to contradictions or run counter to other international Conventions.

Employer member, Ecuador – In addressing the observations contained in the report of the Committee of Experts, we find it necessary to note that trade union rights and freedom of association are recognized in the Constitution of Ecuador as key principles of workers' rights. That freedom allows workers to form, join and leave any type of organization. Indeed, those activities are encouraged by the State itself, in accordance with the provisions set out in law; that is, there are no restrictions on the establishment of labour organizations in the private sector.

According to the Convention, the acquisition of legal personality by employers' and workers' organizations may not be made subject to conditions of such a nature as to restrict the application of the Convention's provisions. In accordance with that rule: national legislation grants legal personality to trade union organizations without the need for previous administrative authorization; guarantees their right to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their administration without interference from the authorities; and guarantees the right to dissolve or suspend organizations without any previous administrative authorization. The Convention recognizes that the application of some provisions may, however, be subject to the legislation of each signatory, such as in relation to the representativeness requirements that workers must fulfil in order to establish trade union organizations that respect parameters of rationality and objectivity, thereby avoiding obstacles and serving as a guarantee for both parties in the employment relationship, as recognized expressly in the 2012 General Survey on the fundamental Conventions. Accordingly, under the Ecuadorian Labour Code, at least 30 workers are required to establish a trade union. However, to establish an enterprise committee, which is the highest level of trade union representation, 50 per cent plus one of the enterprise's workers are required. That distinction is explained by the different powers granted to those organizations. For example, enterprise committees are responsible for representing workers in collective bargaining, whether or not they are unionized, and also have the power to call a strike, in accordance with the requirements set out in law. If any group within an enterprise, even a group representing a very small numbers of workers, could be recognized as a trade union organization and therefore represent unaffiliated workers, there would be a risk, firstly, of diluting labour demands, compromising the legitimate representation of the workers and harming relations between members of the different organizations present within the enterprise and, secondly, destabilizing the enterprise, thus threatening its sustainability, given the complexity of managing resources and monitoring and honouring the commitments made.

We therefore believe that freedom of association is not infringed by the requirement for a minimum level of representativeness for organizations to be established, and we therefore consider the mistaken assertion that the requirement for a minimum number of members hinders the freedom to establish trade unions. This is supported by the fact that there are currently 5,783 labour organizations, of which 4,054 are in the private sector. In the first quarter of 2022, 32.89 per cent of workers were in adequate employment, of whom 81.34 per cent were in the formal economy, and 46.3 per cent of those were in medium-sized and large enterprises. Therefore, if we consider the number of workers in medium-sized and large enterprises and the number of labour organizations in the private sector, it is clear that the

problem of unionization lies outside the formal sector, that is, in the sector where the majority of workers are not in adequate employment, with an informality rate of 70.9 per cent, and 83.9 per cent of workers, mainly in micro- and small enterprises or self-employed, lacking any form of social protection.

Furthermore, the report of the Committee of Experts also deems the Convention to have been violated by the lack of approval of trade union organizations by branch of activity, owing to the Ministry's initial refusal to recognize the legal personality of ASTAC, a case that remains pending before the Constitutional Court of Justice of Ecuador.

Given that freedom of association is linked intrinsically to the right to collective bargaining, our legislation links the exercise of that freedom to a specific employer, thereby allowing for the creation of the conditions necessary for employment relations to function and improve. We therefore believe that the recognition of trade unions by branch of activity, a concept that is alien to our legal tradition, would have a negative effect on employment relationships because it would bring together within one branch numerous organizations with differing objectives that would create conflicts of interest, particularly when negotiating the economic conditions governing the relationship with employers in that branch, thus leading to conflict among employers themselves given that realities and capacities differ even among employers in the same sector.

Any observation relating to freedom of association should be discussed in advance during tripartite consultations with stakeholders within the country, pursuant to the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and with regard to the general analysis of the institution of collective rights contained in the Labour Code, with a view to arriving at an objective and rational determination of its impact given that a recommendation for amendments and consultation restricted to certain aspects of interest to a specific group would have a serious impact on legal certainty and the creation of adequate work and would threaten the sustainability of the formal sector.

Worker member, Argentina – Those of us who follow this Committee may be thinking, "Ecuador again! Governments change and Ecuador still comes before the Conference Committee on the Application of Standards." In fact, governments change and, despite what we have heard, the same problems persist. Except that it is worse than that: the governments change and the problems get worse.

The Committee of Experts, the national jurisprudence of the Constitutional Court of Ecuador, the Inter-American Court of Human Rights, all those who examine the legal terms and social consequences of the labour regulations in Ecuador agree with the workers' complaints and claims. Thus, the governments, which are repeatedly cornered by international pressure given the clear lack of grounds, quickly resort to a request for technical assistance. In my country, we have expressions that mean "pass the buck" or "go through the motions"; in reality they are doing nothing and are misusing a remedy based on social dialogue to delay solutions. The ILO cannot allow the abusive use of its cooperation tools.

How many times will the Committee of Experts say that Ecuadorian regulations require an excessive number of members to form unions? How many times will the Committee of Experts say that workers with the status of public servants have the right to form unions? Years go by and we are still in the same position. How long will this continue?

How can it be that the requirement of union membership of more than 50 per cent in order to have the right to collective bargaining is still in force? This is a clear violation of

freedom of association and is a requirement which is impossible to meet in Ecuador and which in fact functions to deny that right.

How is it possible that the prohibition persists against trade union organization and collective bargaining in branches of economic activity? What we have been told, then, is that what works in the world cannot work in Ecuador.

In the public sector the issue is extremely serious. Trade union leaders are criminally prosecuted if they contest government policies. The authorities went to the extreme of prosecuting a public sector union leader for his opinions on social networks. This is medieval criteria: public workers are considered servants of their feudal master and are not recognized as workers. The labour regime in the State is chaotic, with reform upon reform, patch upon patch. The Committee of Experts requests the Government to provide information on what the regulations are because not even they know what the applicable legal body is.

It is necessary to pass a regulation that establishes a legal basis for state public service workers in Ecuador without artificial distinctions between workers and employees that fully guarantees the right to freedom of association enshrined in the Convention with its three dimensions: freedom of association, free collective bargaining and the right to strike.

The Ecuadorian authorities invented the oxymoron of "compulsory resignation". This is a contradiction in itself, a euphemism used to pressure workers into renouncing their rights. The Constitutional Court has declared the unconstitutionality of this famous decree; however, it has left its victims defenceless and without any reparation.

Worker member, Unites States of America – For several years, the Committee of Experts has repeatedly asked the Government of Ecuador to revise its Labour Code to remove several arbitrary restrictions on the right of workers to freely organize trade unions. The Committee of Experts has provided the Government with clear and specific guidance on how to bring its Labour Code into line with the Convention, but regrettably they remain out of compliance.

This is an important case as the deficiencies in the Labour Code identified by the Committee of Experts go directly to the heart of the ability of workers to organize trade unions at both the enterprise and sectoral level. For example, the Committee of Experts has found that the existing requirement that a minimum of 30 workers to form a trade union is simply too high and constitutes an unreasonable obstacle to the formation of trade unions. In addition, it has repeatedly asked the Government to lift the current ban on sectoral trade unions, which has been used by the Ministry of Labour to repeatedly deny workers in the banana sector their right to organize and bargain at the sectoral level.

Taken together, these legal restrictions on the formation of trade unions are clearly intended to frustrate legitimate trade union activity and represent a clear violation of the Convention. Accordingly, we call on the Government of Ecuador to take immediate action to revise its Labour Code in line with the Committee of Experts' clear recommendations.

Worker member, Brazil – I wish to bring to the Committee's attention information from the Ecuadorian trade unions to the effect that the Government aims to introduce in the National Assembly a new draft Labour Act entitled the Basic Act on Employment, which even as a draft is an even more regressive attack than those that currently exist and for which the Ecuadorian Government has been called before this Committee today.

The Government's proposal is to finalize a new Act independent of the Labour Code:

- without public servants, including only workers in the public sector, deepening the division of the source of law that regulates the public sector;

- increasing inequality in the law;
- providing for the application of new agreements, leaving the Labour Code in limbo, leading to its disappearance; and
- with clear governmental interference in all areas of freedom of association, understood as the right to freedom of association, to collective bargaining and to strike.

Some aspects of this proposal can be briefly outlined as follows:

- limits to the establishment of a trade union, by increasing the number of members from 30 as it currently stands (which is already excessive as noted by the Committee of Experts) to 50;
- limiting the protection of trade union leaders against acts of anti-union discrimination, such as dismissal, exclusively to payment of compensation, to amounts that have been significantly reduced between 2020 and currently;
- government interference in determining the content of trade union constitutions;
- the definitive prohibition of collective bargaining in the public sector for workers in the manual labour category; and
- prohibition of the right to strike in public services.

The provisions set out in this draft Act are totally contrary to international labour law and more specifically the Convention. It is therefore a priority and a matter of urgency for the Committee to consider more robust support. For this reason, we call for a new visit by a high-level mission, to prevent an even greater setback and to give effect to international support.

Worker member, Italy – This is a joint statement with the Trade Union Confederation of Workers' Committees (CCOO). The report of the Committee of Experts indicates that, for the case of Ecuador, the Committee has requested the Government to take the necessary measures to amend section 346 of the Basic Comprehensive Penal Code.

We fully agree with the need to repeal this provision of Ecuadorian positive law, since it represents a serious penalization of one of the fundamental rights of working people.

We do not need to add anything to what is already known and said, such as the universal recognition of the right to freedom of association embodied in the founding instruments of the ILO and reaffirmed by the ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998, and by the constitutional charters, from the Mexican Constitution of Querétaro (1917) onwards.

Through freedom of association and its primary instruments, such as collective bargaining and strikes, workers are able to balance out industrial relations that are basically unequal due to an imbalance of power between the employer and the worker respectively. Freedom of association is a right that encompasses a range of different manifestations that are difficult to sum up, to the extent that the best definition of freedom of association is the one contained in Article 3 of the Convention, in the sense that it is the right to engage in trade union activity.

Within the framework of this concept, freedom of association enables the independent development of workers' organizations' activity for furthering and defending workers' interests, as set out in Article 10 of the Convention.

In the dynamics of the exercise of union activity, the State cannot intervene in a punitive sense in the exercise of the right to freedom of association as it does in Ecuador, a position that has been repeatedly established by the Committee on Freedom of Association and as indicated in the observation of the Committee of Experts in relation to the present case.

Therefore, we ask the Republic of Ecuador to strictly observe freedom of association by repealing section 346 of the Basic Comprehensive Penal Code to make way for greater independence and freedom of association for the workers' organizations of the country.

Worker member, Colombia – I speak on behalf of the three Colombian trade union confederations: the Single Confederation of Workers of Colombia (CUT), the Confederation of Workers of Colombia (CTC) and the General Confederation of Labour (CGT). We observe with immense concern the level of violation in Ecuador of freedom of association in its three facets: association, collective bargaining and strike action.

In Ecuador, of 8.5 million workers only 3.6 per cent have managed to unionize, one of the lowest rates in the region, and only slightly lower than in Colombia, where less than 5 per cent of workers are unionized in the private sector.

The excessive requirement of 30 workers in the same enterprise to form a union, when 89 per cent of the firms in the country are micro or small enterprises with less than 25 workers, makes it unfeasible in practice to belong to a union; this, added to the complete refusal of the Government to permit the establishment of branch- or industry-level unions, maintains union association as a marginal right in Ecuador and not the fundamental right that it is.

The calls of the Committee of Experts and the Committee on Freedom of Association, and even those of the Constitutional Court, have fallen on deaf ears in the Government of Ecuador. The Digital Platform Workers' Front (FRENAPP) union has tried several times to register with the Ministry, which refuses to grant it legal personality, contrary to the recommendations of the ILO. Although the Ministry has been ordered to regulate the exercise of the right to union association by branch of activity, the Ministry and the Attorney-General's Office insist that only workers with a common employer and in a relationship of dependence can organize, openly ignoring Article 3 of the Convention. What a strange country this is.

Although Ecuadorian legislation provides for collective bargaining at a higher level, it is thwarted by government practice and obstacles, as is also the case in Colombia (where, for example, the professional football players' association has not been able to negotiate its demands). These normative gaps or lack of specific regulation in Ecuador, as in Colombia, are used by anti-union employers and governments to obstruct freedom of association and the advancement of collective bargaining.

Ecuador has promoted a legislative initiative with arbitrary provisions, making the Ecuadorian Government deserving of great reproach for its serious non-compliance with the Convention and for which a high-level mission would be a more than necessary measure. We are with you, fellow workers of Ecuador!

Observer, Public Services International (PSI) – It is becoming the custom of this Committee to discuss the case of Ecuador, either under the Convention before us today, or under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); three times in the last five years or four times in the last eight years.

If we add the observations of the Committee of Experts and the cases before the Committee on Freedom of Association, as well as the rulings of the highest legal body in Ecuador and the Inter-American Court of Human Rights, we can affirm that at this point it is no

longer a technical or legal discussion, but a case of the political obstinacy and bad faith of three different governments.

And then there are the ILO missions; firstly, the technical mission in January 2015, which made a series of recommendations, particularly on the right of civil servants to form the unions of their choosing. Then there was a technical assistance mission in December 2019, carried out at the request of the Government, which presented a draft road map for a tripartite dialogue to be initiated with a view to adopting measures to address the comments of the ILO supervisory bodies. The mission's recommendations were ultimately not implemented by the Government.

Now, we understand that there is a new request for technical assistance. The question is: for what?

If I were sitting in the central section of this room, representing one of the governments that do not use natural disasters or pandemics as an excuse to avoid fulfilling their obligations or, above all, to avoid making financial contributions for the effective functioning of this Organization, I would be offended that resources are being squandered on technical assistance which will then be ignored.

For many, it is enough to spend a week at the International Training Centre of the ILO in Turin and, for others less fortunate, reading the International Labour Standards Department's publications, which are also available in Spanish, to understand the scope and limits of this fundamental Convention.

Even our colleagues in the Employers' group, who in recent years have been very critical of some aspects of the application of the Convention, agree that there is a clear violation as far as the public sector is concerned.

The Minister said that one of the Government's goals is to overcome inequality. Either he is lying or he is mistaken, because without respect for the fundamental Conventions these goals will not be achieved.

We would like this Committee to agree on conclusions that actually help to achieve a positive resolution of this case in the short term. It is not more technical assistance that is needed but more firmness from the Government of Ecuador.

Government representative, Minister of Labour – I have listened closely to the statements of the Worker members of Argentina and Colombia, and that of the observer from PSI.

I am going to respond with the utmost tact, since everybody deserves respect, and I am one of those people who respect different opinions. I am part of the "Government of encounters", which respects different opinions. Every opinion has value when there is respect for others' opinions – not necessarily agreement, but respect. I am going to begin by repudiating the phrase used by the Worker member of Colombia, when he said, in reference to Ecuador – and I quote – "what a strange country this is". I will not tolerate this phrase. I exclude this absolutely erroneous and tendentious reference to my country from the language that should be used among Latin Americans. My country is respected just as I respect Colombia, a country with which we have a strong fraternal relationship. A few months ago, I had the enormous pleasure of receiving in Quito the Minister of Labour of Colombia, Mr Ángel Cabrera, a gentleman in his public duties. So that phrase uttered by the Worker member of Colombia is not accepted, either by me, or by my country's Ministry of Labour, or by the Government led by President Lasso. In Ecuador, there is freedom of association, absolute

freedom of association; what cannot exist is licentiousness with regard to violent protests. In my statement I mentioned the absolute respect for strikes in my country, provided that they are free of violence.

I would like to state that the United Front of Workers (FUT) of my country has been received continually by the Ministry of Labour. Moreover, in Ecuador in recent weeks we have held a number of meetings with the FUT leaders, including Mr Mesías Tatamuez, with whom I have a very good relationship. I also have a very good relationship with the President of the Confederation of Workers of Ecuador (CTE), Mr Edgar Sarango, and I have a very good relationship with Mr Richard Gómez of the United Federation of Workers of Ecuador (CUT). We are creating an amicable atmosphere between workers and employers, this is the way the "Government of encounters" proceeds, and evidently we reject the phrase that was used earlier.

Contrary to what the Worker member of Argentina said – namely, that in Ecuador compulsory resignation was established under the previous regime, under a regime different from ours, which now governs Ecuador – resignation cannot be compulsory, it has to be voluntary. It was a different regime from ours which established compulsory resignation by Decree No. 813 in Ecuador 11 years ago: let that be clear. We cannot accept any attempt to blame the Government of President Lasso for this absurd notion of compulsory resignation.

I say the same to the PSI observer regarding freedom of association, that Ecuador has an absolutely democratic Government which accepts other people's opinions, when they are respectful, of course. To gain respect it is necessary to show respect first.

Amicable conduct has resulted in there being practically no labour conflict in Ecuador, except for the cases that always exist in a democratic country such as Ecuador. My greetings to Colombia, my greetings to Argentina, because I have referred to the two countries whose statements deserved an adequate, respectful, prudent and timely response from me.

Ecuador will always be respectful of the rights of workers but – and this is the important thing – we also wish to respect the rights of those who do not have jobs. The right to work is the most important human right after the right to life. The right to work is violated in my country and in our countries through the informal workers, the citizens who do not have employment. It is for them that we are striving, with respect for all the acquired rights of workers, all the trade union organizations which I have met and with which we have conversed. In recent weeks, we held meetings with the FUT leaders and we are discussing a labour law which can involve creating work for those who do not have it, which can repair the damage suffered by Ecuadorians who are living off informal work (known as *tachuelo* or *chamba* in Ecuador) and who, if they do not find work that day, will have little or nothing to eat. It is for them that we are working, not only for workers who are alright.

We defend the rights of workers, whether unionized or not. Incidentally, freedom to organize does exist in Ecuador, in response to somebody who claimed the opposite, but we are concerned with those who are not working, with the seven out of ten Ecuadorians who are either unemployed or underemployed or live in informality. This is the approach that defines the Government's conduct. We will continue to fight for the rights of both non-workers and workers.

Worker members – As a preliminary remark, we note that the Employers' group voices its position regarding the right to strike, so we must therefore do the same and reiterate that for the Workers' group the right to strike is fully covered by the Convention and we reiterate, as well, our support to the Committee of Experts.

Then, we would like to thank the Government of Ecuador for its comments, and we also thank the other speakers for the interventions. However, we must deplore, despite all the words presented by the Minister, the unwillingness demonstrated by the Government of Ecuador to comply with its international commitments and to give full effect to the provisions of the Convention.

We recall that the Committee of Experts has been raising concerns over a number of legal provisions which do not comply with the Convention and some of these issues, like the excessive membership threshold for the establishments of unions, have been pending since 1992. Meanwhile, the laws of Ecuador continue to undermine workers' rights to join and form unions, especially in the public sector, and to hinder trade union activities. Therefore, we call on the Government of Ecuador to amend, as a matter of urgency, the following laws in order to bring the legislation into line with the Convention.

- sections 443, 449, 452 and 459 of the Labour Code, which require an excessive number of workers for the establishment of workers' associations, enterprise committees or assemblies for the organization of enterprise committees and impede the possibility of creating trade union organizations by branch of activity; then section 10(c) of Ministerial Decision No. 0130 of 2013 issuing regulations on labour organizations, which sets compulsory time limits for convening trade union elections;
- section 459(4) of the Labour Code, which requires Ecuadorian nationality to be eligible for trade union office;
- section 459(3) of the Labour Code, which allows workers who are not enterprise committee members to stand for office regardless of what the committee's own statute provides;
- section 11 of the Basic Reform Act, which excludes certain categories of public sector workers from the right to form or join unions;
- the Basic Reform Act, which grants privileges to majority committees of public servants and deprives all other organizations of the possibility to defend the interests of their members; and finally
- Decree No. 193, which allows the administrative dissolution of public service unions.

We have noted from the interventions of the Government its indication that it is currently working with an ILO technical team to reform laws on the creation of trade unions. However, to our knowledge this process is conducted without the participation of trade unions, and we are therefore left to question the Government's commitment to social dialogue. We insist on the fact that these commitments must be elaborated and adopted in full consultation with the most representative trade unions and must strictly abide by the recommendations of the Committee of Experts and the 2019 road map agreed with the ILO.

The Worker members also call on the Government of Ecuador to immediately comply with the ruling of the Provincial Court of Justice of Pichincha of 25 May 2021, which ordered the Minister of Labour to regulate the exercise of the right to freedom of association by branch of activity so as to allow workers from different enterprises to form a union.

Furthermore, the Worker members deplore the general anti-union climate prevailing in the public sector and urges the Government to take immediate action to foster an environment conducive to the full enjoyment of workers' rights to freedom of association. We also call on the Government to proceed without delay to the registration of the National Federation of Education Workers (UNE). We think there have been some misinterpretations of certain words,

which we deplore, and we think that the best thing is to continue dialogue at the national level to clarify and to really understand each other with what has been said instead of trying to solve it here. We strongly urge the Government of Ecuador to give effect to the road map presented in December 2019 by the ILO technical assistance mission.

Employer members – I thank the Minister from Ecuador for the information and my colleague from the Workers' group for the discussion, to which we have listened with great attention, in relation to both the concerns of the Workers and the explanations provided by the Government. We have focused, in particular, on the form of the proposal to provide a national and particularly a tripartite response for the adaptation of Ecuadorian legislation to the precepts of the Convention, as just indicated by my Worker colleague.

It appears to us that this case has been examined enough in the Committee on various occasions for it now to be time for the Government and the social partners to take action. We trust that tangible steps will be taken very soon in this respect. We repeat that this must be done within the framework of tripartite cooperation involving dialogue in good faith and, in particular, giving rise to a comprehensive discussion of the subject covering the various collective labour law institutions involved so as to achieve a coherent solution.

Account must also be taken of national circumstances, within the framework provided by the provisions of the Convention as a reference for the regulation of the right of freedom of association.

We remind the Government that ILO technical assistance is available, both for the practice and the substance of the social dialogue that is called for to ensure that the law and practice are in conformity with the Convention.

We understand that there must be no reference to strikes in the conclusions of the present case. Lastly, we hope that the Government, in consultation with the most representative employers' and workers' organizations, will prepare and send a report to the Committee of Experts before 1 September 2022 on the situation of the dialogue and the solutions proposed by the Government and the social partners.

Conclusions of the Committee

The Committee took note of the oral and written information provided by the Government and the discussion that followed.

The Committee noted with regret that no actions had been taken to follow up the technical assistance provided by the Office in December 2019.

The Committee also noted the long-standing issues regarding compliance with the Convention in Ecuador.

The Committee urged the Government to take action to foster an environment conducive to the full enjoyment of the right of workers and employers to freedom of association. The Committee noted that both the Government and the social partners raised the importance of labour law reform. The Committee expressed the hope that the Government would seize this opportunity to bring its legislation and practice fully into line with the Convention in consultation with the social partners.

Taking into account the discussion, the Committee urges the Government to take effective and time-bound measures, in consultation with the social partners, to:

- **ensure full respect for the right of workers, including public servants, to establish organizations of their own choosing, for the collective defence of their interests, including protection against administrative dissolution or suspension;**
- **amend legislation to ensure that the consequences of any delays in convening trade union elections are set out in the by-laws of the organizations themselves;**
- **resolve registration of the National Federation of Education Workers (UNE);**
- **give effect to the road map presented in December 2019 by the ILO technical assistance mission;**
- **initiate a process of consultation with the social partners to reform the current legislative framework in order to enhance coherence and bring all the relevant legislation into compliance with the Convention.**

The Committee invites the Government to avail itself of technical assistance from the Office.

The Committee requests that the Government accept a direct contacts mission.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 communicating information on the application of the Convention in law and practice, in consultation with the social partners.

Government representative – We have noted the conclusions. The State of Ecuador, protecting the right to organize, to appropriate association of various groups, including social, productive and labour groups, always grants powers to the various ministries so that they can formulate public policy, draw up secondary legislation and, precisely, guarantee the rights enshrined in the national Constitution and also of course in international treaties.

In the framework of these powers, the Ministry of Labour, which I have the honour to lead owing to the generosity of President Guillermo Lasso, issued Ministerial Decision No. 130 of August 2013 (Regulations on Labour Organizations). This is the only normative instrument that regulates this practice.

Within the Ecuadorian legal system, in labour matters, we have the Labour Code, which dates from 1938, and the Basic Public Service Act, which regulates labour activities in the public sector. These cover freedom of association for those providing services for both the public and private sectors.

Ministerial Decision No. 130 of 2013, to which I have just referred, in accordance with the provisions of the national Constitution, guarantees freedom of association, I repeat guarantees freedom of association, and regulates the process of establishing unions, the registration of union constitutions, the election of union officers, with ILO Conventions Nos 87, 98, 110 and 141 ratified for this purpose, directly connected with freedom of association and protection of the right to organize and collective bargaining.

With regard to organizations of rural workers and their function in economic and social development, the Ministry of Labour is constantly seeking to improve their products. Thus, the "open-door" Government has held meetings with the trade union federations in Ecuador, with the aim of reaching a technical and legal consensus.

As the Minister of Labour, I have received with respect all the trade union leaders, all the trade union organizations, on many occasions, creating and providing this amicable environment which is so necessary to enable workers and employers to hold talks. I chair the

National Labour and Wages Council, and in these meetings, I have seen very positive camaraderie in relation to the workers or their representatives and the representatives of the employers.

What we are seeking is to promote, regulate and construct, with all social bases, an updating of regulations, always seeking to guarantee the rights that benefit not just one sector of our country but the whole collective and the promotion of social principles.

This Government, which has been in office since May last year, seeks to participate constantly in dialogue round tables with all the sectors involved in the building and improvement of standards, as well as in the international assistance which supports us with the aim of preserving compliance with workers' rights, creating fruitful and lasting social dialogue. With this dialogue we seek to create standard-setting projects that are sustainable and satisfy the social needs of the parties involved in this work.

We anticipate a steady path ahead with social dialogue, proposals for benefits for all social actors and organizations, and that we will be able to present to you all the advances made in a social dialogue that drives human-centred recovery to build an Ecuador of opportunities.

El Salvador (ratification: 1995)

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

Discussion by the Committee

Government representative, Minister of Labour and Social Welfare – El Salvador is a founding Member of the International Labour Organization and we believe in the founding values and principles of the Organization, the essential purpose of which is to achieve peace in the world. Our Constitution establishes the obligation of compliance with ratified international Conventions. As a Government, we are therefore respectful of international labour standards and we are firmly committed to their progressive implementation.

In the previous session of the Conference, in June 2021, this Committee issued its conclusions, which were adopted by our country and all the necessary action has been taken to give them effect. Our Government diligently set up the Higher Labour Council, through a transparent process, with the support and agreement of employers and workers, who appointed their representatives freely and independently, under the supervision and with the support of the ILO.

Our Government showed clear political will and commitment to the ILO supervisory bodies by receiving the high-level tripartite mission mandated by the present Committee. Despite the fact that it is the responsibility of the State of El Salvador to receive the mission, in accordance with the established schedule and timing, we decided to do so in a tripartite manner in agreement with the Higher Labour Council. This is demonstrated by the preparation of a document, which you received. During its visit, we provided all the information requested by the mission with diligence and transparency, as reflected in the report that it published.

Moreover, it should be noted in passing, that this Minister, the Deputy Minister and the whole directorate of the Ministry attended for the whole week, leaving aside all other ministerial business in El Salvador for which we were appointed, and confining ourselves to attending directly to the high-level mission, conferring upon it the priority and interest of our Government.

The Government of El Salvador, since receiving the report of the high-level mission, has read it and noted its valuable contributions in a constructive spirit of multilateral cooperation, in accordance with social dialogue, tripartite commitments and dedication to a better future for labour and its social benefits.

However, we do not see coherence between the conclusions of the report of the high-level mission and the decision to include El Salvador in the list of cases under examination here, which gives us cause for great concern as it slashes through the credibility, not of ourselves, but of an international organization. The delegates who undertook the mission noted a constructive climate of tripartite social dialogue. They also noted that there are five tripartite bodies in El Salvador, of which four are operational, and have been in constant operation since our Government took office, with a process for the designation of the employer representatives. If a percentage weighting were to be applied, we would therefore say that we are 80 per cent in compliance with the operation of tripartite forums, and that the process is under way to make up the remaining 20 per cent. Accordingly, there will be 100 per cent compliance with the Convention, which was the reason why this Committee decided to include us on the list.

Moreover, if this proportional approach were a criterion for assessment, how many other countries would be on the shortlist? We are entirely certain that, applying this measurement parameter, there would be a large number of countries which do not come up to the same level as ours in terms of compliance with the Convention.

This shows a clear and evident contradiction, the only consequence of which is the loss of credibility of an organization, as no country will believe in a supervisory mechanism such as the high-level mission when there is a clear contradiction, as we have manifestly demonstrated. It is all the more astonishing as in certain neighbouring countries, only a few kilometres from our border, trade union leaders are being intimidated, blackmailed, subjected to extortion and murdered when they attempt to organize, and these countries are not placed on a list that vilifies the image of their country.

In the light of these two observations, as a State, we reach the following conclusion: this Committee does not follow a clearly technical or objective analysis for the inclusion of a country on the list and there is currently no clear process in which all the parties can freely and directly put forward their arguments, the verification of which results in the decision of whether or not they are on the list.

We see the manner in which countries are in violation of labour rights, repress and undermine freedom of association for the productive sectors of the country. And yet, they have experienced lobbying teams in these bodies, especially at the international level, and perhaps this is our problem and our greatest weakness as a country. El Salvador is strong in its respect for the rights of the productive sectors, but weak in the lobbying that is required at the international level in relation to the decisions concerning inclusion on lists.

This contradiction between the conclusions of the high-level tripartite mission and the Committee's decision to include us on the list is not in any way conducive to progress, and indeed runs counter to the constructive spirit of collaboration by disregarding real social dialogue forums.

In light of the above, on behalf of the Government of El Salvador, I wish to express my disagreement with this decision. We consider it outrageous that this Committee has ignored the conclusions of the high-level tripartite mission, which was sent by the same supervisory

body, thereby undermining the credibility of its Members and, moreover, invalidating the efforts that are being made by constituents and the good will noted by the present Committee.

We can therefore see that the inclusion in the list of our country has more of a political than a technical purpose, which would be tragic as it is unworthy of the ILO's supervisory bodies. We urge the present Committee to distance itself as far as possible from this type of political manoeuvre, which damages the image of the ILO supervisory mechanisms, and we must revert to the true historical role of the achievement of world peace that is the transversal objective of the ILO.

We are not someone who has been found along the way, we are one of the founding Members of the ILO. We reconfirm our commitment to the Organization, which is unshakable, despite the human imperfections and political agenda that is manipulated by persons who do not come and see the situation at the national level. The proof of this is that, by decision of President Bukele, our country has recently ratified five Conventions in response to the calls of the working class, calls that had never been heeded in the country. Moreover, El Salvador has never been on lists for not ratifying Conventions. Sadly, one side of the scales is sometimes weighted more than the other. The ratification of these Conventions shows the real political will of our Government to make progress in the adoption and implementation of international labour standards in such areas as social security, maternity protection, collective bargaining, occupational safety, and the elimination of violence in the workplace, although this is only one side of the issue. More ratifications of Conventions are coming, because we have faith in the ILO, even though other bodies do things that detract from the ILO's image.

In conclusion, I trust that this Committee will value these new elements noted by the high-level tripartite mission and the real situation in our country. We are in a new phase of tripartite social dialogue, which is sincere, highly technical and lasting, as we have indicated, with the presence of the social partners. They can also confirm whether or not this has been the approach adopted, as tripartite dialogue has to be frank, sincere, lasting, sustainable over time, and with the commitment to overcome challenges, not those that we have encountered or raised, as our Government has only been in office for three years, but the major historical challenges inherited from previous Governments in the field of labour legislation, which were never highlighted at the international level or resulted in inclusion on the list in view of the great deficiency that existed.

Worker members – We have been asked once again to examine the case of the application of the Convention by El Salvador. Since it was examined at our last session, there has been progress in various areas. As just indicated by the Government, in response to the Committee's conclusions, the Government agreed to receive a high-level tripartite mission. This is clearly something that has to be taken into account and welcomed.

The high-level mission, which took place in May this year, made a series of interesting observations. One example is that the Higher Labour Council is operating once again. Several meetings have been held and, in particular, it has examined the ratification of various ILO Conventions. It also appears to be resolving the issues relating to the integration of the employers' organization, the National Business Council (ANEP).

However, El Salvador is not on our list this year to highlight these areas of improvement, and there remain three problems: the representation of employers and workers on the Higher Labour Council must be on an equal footing, which means that the current vacancies must be filled as soon as possible; the required administrative process for the appointment of workers' representatives continues to be complicated, resulting in the normal functioning of the Higher Labour Council being impeded; and, finally, there continues to be a legal obstacle which makes

the process of the appointment of workers even more complicated, as unions are required by the Labour Code to renew the membership of their governing boards every year. On the one hand, we do not see the reasons for this renewal requirement and, on the other, it constitutes a form of interference in the functioning of the organizations concerned. It should be recalled that Article 3 of the Convention provides that representatives shall be freely chosen. In our view, the requirement for annual renewal is a violation of this freedom.

Finally, it should be noted that, in the case of the organizations representing employers, the period of renewal is two years. All these considerations imply that, despite the progress made, the Government is still not in compliance with the requirements of the Convention.

Employer members – I would like to start by thanking the Government for the report provided to the Committee. We emphasize our concern at the fact that this is the fifth consecutive occasion on which we have had to examine this issue in light of a situation that basically remains the same as when it was examined for the first time, and even that, according to the report of the Committee of Experts, the situation has deteriorated.

We recall with concern that in 2017, 2018, 2019 and 2021, the Committee adopted very specific conclusions, which included the steps that the Government had to take to give effect to the Convention, which is a governance Convention that is very relevant to this Organization.

In consideration of the short time that I have to present a case that we consider to be serious and urgent, with reiterated failings, I invite you to refer to our reports for the years that I have just indicated.

The background to the case includes expressions of deep concern, both by the Committee of Experts and the present Committee, direct contacts missions by the Office, as well as various requests for urgent interventions submitted to the Director-General by the ANEP, the most representative organization of employers in El Salvador, and by the International Organisation of Employers (IOE), concerning interference by the Government in the administration and operation of the ANEP, attacks on its leaders and serious deficiencies in the working of social dialogue and tripartite consultation under very similar conditions, according to the report of the Committee of Experts and the national situation, to those experienced by legitimate workers' organizations.

When we discussed this case in 2019, we expressed the firm hope that the Government that had recently taken office would address the serious situation, with a view to the governability of the country, the promotion of good relations between the social partners and the Government and compliance with the obligations set out in the Convention.

We recall that when the conclusions to the case were adopted in 2019, the Government representative said that they would be included in the Government's list of priorities. These types of encouraging sentiments were also expressed to the high-level mission that recently visited the country. Nevertheless, those previous promises, much to our regret, have not been borne out by the Government's acts. The situation has deteriorated and forms part of a growing general deterioration in democratic institutions and the lack of independence of the authorities, to the prejudice of the system of checks and balances, including the necessary independence of the most representative organization of employers in the country.

For greater clarity and the knowledge of everyone in the room, I will now provide specific information in support of the above.

First, the Government set up the Higher Labour Council in September 2019 for a brief period of several months. This occurred within the context of a presidential order not to meet

the representatives of the most representative organization of employers in the country. It could therefore be said that its establishment had more to do with a government tactic of apparent compliance than any real intention to promote the operation of the Council.

The Government justified its ineffectiveness due to the pandemic crisis and the measures to suspend activities although, on the other hand, it justifies that there was social dialogue through other instances and meetings. There is a contradiction there.

Following this apparent activity, the Government once again set up the Higher Labour Council in December 2021. Nevertheless, the representatives of the most representative social partners deny the existence of effective tripartite consultations and of real social dialogue and indicate that dialogue only occurs with partners who are close to the Government, in violation of Articles 1, 2 and 3 of the Convention.

The Government therefore once again resorts to appearances to evade the supervisory bodies.

Let me explain myself. In a private celebration of Labour Day, on 1 May this year, the Government announced, without having consulted the Higher Labour Council, that it would ratify five Conventions through the Legislative Assembly, as indicated earlier by the Government. The ANEP, which willingly participated in the meetings of the Council for six months, was surprised by the announcement. It immediately wrote to the Government asking for the ratification of those Conventions to be submitted for consultation to the Higher Labour Council, in accordance with the Convention. The ANEP's proposals were not heeded by the Government and, on 16 May, without the consultations required by Article 2 of the Convention and the commitment to work in this way including to the high-level mission, the Legislative Assembly approved the ratification of the five Conventions.

We are not questioning the sovereign will of the Legislative Assembly to approve ratification, but it is serious that the Government is disregarding the provisions of Article 5 of the Convention and social dialogue and tripartite consultation machinery, including what it described to us as a protocol containing guidance on the submission procedure, which it recently indicated had been prepared.

Second, in the middle of the session of the Conference last year, in 2021, the Government of El Salvador reformed the laws governing 23 joint and tripartite bodies through which the President of the Republic attributed to himself the power to appoint and to dismiss the representatives of employers on the boards of those bodies. On his Twitter account, the President of the country, Mr Bukele, announced that he was submitting 23 legislative initiatives to the Legislative Assembly to, and I quote word for word, "remove the ANEP from the boards of independent bodies and so be able to put them to work truly in the service of the people". Since then, the Government has engaged in unfair practices, requiring the resignation of directors of tripartite and joint bodies, in some cases under threat, and appointing directors in accordance with the 23 new laws as amended, in clear violation of Article 4 of the Convention.

In relation to the above, the Committee of Experts urged the Government to repeal "any legal provisions in respect of the above-mentioned 23 autonomous entities that allow the Government the possibility of interfering in the appointment of employers' representatives".

Third, two months after the new President of the ANEP took office, in April this year, the Government has failed to activate the tripartite dialogue mechanisms that existed before the President of the Republic disowned the former President of the ANEP. Interference in the elections of representatives for tripartite consultation and failure to provide credentials to the ANEP is also a flagrant violation of the Convention. The offer made by President Bukele that

everything would return to normal when a new President of the ANEP was elected has not been borne out. It was a false promise, and it was merely a clear act of interference and a flagrant violation of the independence of the ANEP.

Fourth, the employers are not yet participating fully in the Higher Labour Council because the Government has not yet permitted the inclusion of three employers' organizations so that the three partners – the Government, workers and employers – have the same number of representatives. This shows that it is not in compliance with the Convention in law or practice. In this regard, the Committee of Experts urged the Government to ensure full recognition of the President of the ANEP and of this most representative employers' organization in social dialogue and tripartite consultation, as well as during any revision of the Statute of the Council, which has not happened. The representatives of workers have also expressed their defencelessness in relation to the recognition of their representatives and their independence.

And finally, fifth, the Government is keeping up a permanent campaign to discredit the ANEP through radio, television, press and social networks at the highest level, the President of the Republic.

The facts described show the disregard for social dialogue and compliance with the obligations taken on by El Salvador when ratifying the Convention.

As you can see, this is one of the most serious cases of repeated non-compliance with ILO Conventions voluntarily ratified by El Salvador. We hope that the Government will provide the basis for the success of its participation, as it has announced on social networks, through compliance with the content of the Convention and in practice through tangible acts and verifiable results, and not only its word, which unfortunately has not been kept, as has been seen up to now. President, we will be very attentive to the follow-up to this discussion.

Worker member, El Salvador – I am speaking on behalf of the workers' organizations of El Salvador, and it is an honour to address this Committee. As workers, we are convinced of the importance of tripartite social dialogue as an essential element in the building of a more just peace, with decent work, and we recognize the fundamental importance of the ILO and its standards system for the achievement of social justice and global peace.

El Salvador is a country that has suffered social injustice, repression and inequality, which gave rise to armed conflict. Despite the signature of the peace agreements, the underlying causes of the conflict have not been resolved. During the post-war period, we were governed by political elites who impoverished our country, privatized essential services, continued to repress the union movement and enriched themselves at the cost of the poverty and marginalization of the people.

While these Governments were in power, there were deaths of trade union leaders which went unpunished and social dialogue broke down. For many years, we workers did not benefit from any real participation and the economic elites took the major decisions in the country.

We have made progress and as workers' representatives we have opened up spaces through struggles that have liberated us, and our participation in and impact on public policies has been strengthened.

We welcome the establishment of dialogue mechanisms and the reactivation of the Higher Labour Council, following many years of paralysis. The continuation and strengthening of this tripartite dialogue body, which has been called for by the trade union movement for many years, will undoubtedly enable us to achieve important agreements which will make

labour relations more dynamic and enable us to achieve more rights and promote an increase in production in the country.

We welcome the fact that the Government has heeded our historical call to ratify five important international Conventions adopted by this Organization. It should be noted that their ratification was called for by the trade union movement and given effect by the Government. They are the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148), the Collective Bargaining Convention, 1981 (No. 154), the Maternity Protection Convention, 2000 (No. 183), and the recently adopted Violence and Harassment Convention, 2019 (No. 190). With these ratifications, workers are being provided with a tool with which we can demand more and better public policies and legislative reforms in accordance with international standards, which is an unprecedented historical step in our country.

El Salvador is facing many important challenges in relation to labour rights. Years of neoliberal Governments, against the interests of the people, dismantled protective standards, severely restricted freedom of association and adopted laws in their own interests, such as the establishment of bureaucratic processes to make it difficult to register trade unions.

We have favourable expectations of the current political process. The trade union movement has put forward proposals to the Government and the Congress for the reform of the Labour Code to bring it into conformity with ILO provisions, and we are currently in a process of active dialogue, which is making progress in achieving important agreements. We hope to rapidly agree on the final wording for the approval of the new laws.

Our Labour Code and Civil Service Act go back 50 years. They are practically obsolete. It is time to move forward in bringing them up to date.

As workers' representatives, we participated fully in the high-level tripartite mission called for by this Committee, and we recognize the openness and good will of the Government in receiving the mission and ensuring a tripartite reception. The recommendations made by the mission show the progress made and the challenges that remain in the country, but what is most important is that they show the positive prospects for social dialogue in the country.

As workers, we call on this Committee to review and take note of the conclusions of the tripartite mission, the members of which were able to note the progress made. Indeed, if the present Committee had reviewed very carefully and valued the report prepared by the mission, El Salvador would not have had to be included on this shortlist, unless there are other interests which oppose the strengthening of social dialogue.

As workers, we hope to benefit from ILO technical assistance to move forward with the proposed reforms, and we also hope that the Government will give effect to the commitments it has made publicly and that employers will participate in a collaborative manner, leaving aside the selfish accumulation of wealth and political interests. We will make every effort in a constructive manner because our hopes of building a more just country are founded on social dialogue and the strength of workers.

Employer member, El Salvador – We have noted the explanations provided today by the Government of El Salvador. We expressed our optimism three years ago in this Committee that the new Government would make a commitment to comply with international Conventions and submit to the ILO supervisory mechanisms. We were encouraged by the fact that in September 2019 the Government reactivated the Higher Labour Council, but in May 2020, the same Government prohibited all public officials from meeting the ANPE.

In that regard, it was encouraging that the Council was reactivated once again six months ago and is holding public meetings, both of plenary meetings and its board. The Council has recommended the tripartite process for the development of an employment policy, with the participation of workers and employers, and with the technical assistance of the ILO Regional Office. The Government has also consulted the Council in legislative initiatives intended to modify the provision of crèches for workers' children. Discussions have been held and observations have been prepared and presented.

However, to be in compliance with the Convention, it is necessary to resolve at least five situations raised previously by this Committee and the Committee of Experts. With the political will of the Government, these five situations could be converted into a road map which, if given effect, would avoid the country being examined once again in 2023. We employers do not wish to continue undertaking this type of examination. What interests us is an environment that is conducive to investment and the creation of decent employment. We hope that will be possible.

The situations are as follows:

- First, with regard to the interference by the Government in the designation of employers' representatives, the report of the Committee of Experts expresses "deep concern" because many allegations have been made over a long period of interference by the authorities in the processes for the designation of representatives on public tripartite and joint bodies, and that the latest developments demonstrate a worsening of the situation. The Committee of Experts urges the Government to repeal any legal provisions in respect of the 23 autonomous entities referred to above that allow the Government the possibility of interfering in the appointment of employers' representatives. Just one year ago, the Government was amending 23 laws to give itself the right to elect and dismiss employer directors. At that time, in brief, in ten entities, the Government had made arbitrary appointments in violation of the Convention, and in another ten entities the appointments are still pending. In some cases, directors were required to resign early and in others there were cases in which they received threats to make them resign. This resulted in a deterioration of social dialogue in my country, not only because of the arbitrary appointments, but because social dialogue is taking place under the permanent threat of being removed at any time. Only the members of the Higher Labour Council and the National Minimum Wage Board, for which the Ministry of Labour is competent, have been appointed in accordance with the Convention. For real and effective tripartite social dialogue to exist, employers' organizations have to elect their representatives directly, freely and independently, without interference by the Government.

  This is the first point of a road map that we hope the Government will be willing to put into effect.

- Second, the legislation governing the election of members of the Council is defective in that it limits the participation of employers. The Committee of Experts urges the Government to "take the necessary measures to ensure the full autonomy of the ANEP, the recognition … of this employers' organization as a social partner, to allow the full participation of the ANEP in social dialogue through its chosen representatives".

  The second point of the road map would be to prepare and approve clear, objective, predictable and legally binding rules to achieve the full participation of employers in the Council.

- Third, we note with concern that the Government has been submitting initiatives directly to the Legislative Assembly on labour matters without consulting the Council, thereby failing to comply with the national legislation and the provisions of the Convention. Examples include a new Labour Code and Act on labour procedures. Moreover, deputies close to the Government have submitted legislative initiatives. It is not appropriate for the Government to take action on substantive matters without going through the Council.

  The third point on the road map would therefore be to submit the new Labour Code and Act on labour procedures to the Council as a beginning of social dialogue on this subject, and to establish technical commissions for each legislative text.

- Fourth, with regard to the ratification of Conventions, social dialogue is demonstrated through acts, not words, and the serious acts that occurred in May last year have alerted us. Let me explain. The Government, without consulting the Council, during the course of a private celebration of Labour Day, announced the ratification of five ILO Conventions. The Conventions were submitted to the Legislative Assembly, which rapidly approved them two weeks later, without consulting the Council. We are still surprised because the country missed a good opportunity to engage in social dialogue by discussing the Conventions and sending a tripartite recommendation to the Legislative Assembly.

  A fourth point on the road map would be to schedule and discuss, within the Council, the manner in which these Conventions are to be implemented, as well as the Council examining which other Conventions should be ratified in the coming months.

- Fifth, the ANEP lodged a request with the Committee on Freedom of Association two years ago because the Government failed to recognize the President of the ANEP and the ANEP itself as the most representative organization of employers in my country, and then we requested direct intervention by the Director-General on the grounds of fiscal harassment. In this regard, the report of the Committee of Experts notes with "deep concern" that the highest government authorities have refused to recognize the ANEP as the most representative employers' organization in El Salvador. Allow me to inform you that on 4 April of this year, the ANEP elected a new President, who has repeatedly come out in favour of social dialogue as an instrument for building agreement.

  A fifth element in the road map would be for the ANEP to be recognized by the President, ministers and the legislative authority as the most representative employers' organization.

The Council has been established and offers an opportunity that should be taken up by everyone, and we employers will do our utmost to ensure that this is the case.

Government member, France – I have the honour of speaking on behalf of the **European Union (EU) and its Member States**. The candidate country, **Albania**, and the European Free Trade Association country, **Norway**, Member of the European Economic Area, align themselves with this statement. The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights, as safeguarded by the fundamental ILO Conventions and other human and labour rights instruments.

We firmly believe that compliance with ILO Conventions is essential for social and economic stability in any country and that an environment conducive to dialogue, consultation and trust between employers, workers and governments is the basis for solid and sustainable growth and inclusive societies.

The EU and its Member States stand with the people of El Salvador and we are committed to strengthening our cooperation through political and trade ties. The EU–Central America

Political Dialogue and Cooperation Agreement (PDCA) and the provisional application of the trade pillar of the EU–Central America Association Agreement provide a framework for further developing our partnership, including through cooperation on trade, sustainable development and the effective implementation, in law and practice, of the fundamental ILO Conventions.

We take account of the recent steps taken towards compliance with the Convention and we expect social dialogue and tripartite consultation to become fully functional in the country, noting that the case has already been discussed at the last four sessions by the Committee, including as a serious case in 2017.

Last year we welcomed the inauguration, and the first session of the Higher Labour Council in September 2019, and the measures taken by the Government to initiate social dialogue and tripartite consultation and reactivate the Higher Labour Council following the Committee's 2020 report. While noting that Higher Labour Council meetings were frozen throughout 2020 and 2021, we welcome the re-establishment of the Council in the biennium 2021–23 and the creation of a tripartite technical commission to operationalize the Council's agenda.

We welcome the fact that, following the request of the Committee in 2021, the Government finally received the high-level tripartite mission on 2–5 May 2022.

In line with the recommendations of the high-level tripartite mission, and echoing the Committee's calls, we underline that, to ensure the effective operation of the Higher Labour Council, its rules need to respect the autonomy of the social partners, including with regard to the appointment of their representatives. In this context, we note in particular the need to ensure full recognition of the President of the ANEP and of this organization in social dialogue and tripartite consultation, as well as during any revision of the Statute of the Higher Labour Council.

We also reiterate the Committee's call urging the Government to fully respect the autonomy of employers' and workers' organizations, in both law and practice. This includes full respect for the selection of representatives on public tripartite and joint bodies, such as the El Salvador Social Security Institute and the Social Fund. This also includes the Government taking the necessary measures to ensure the prompt delivery of credentials for all organizations and the repeal of any legal provisions that allow any interference in the autonomy of organizations.

We echo the Committee's urgent call for the Government to provide detailed and updated information on the content and outcome of the tripartite consultations, including within the Higher Labour Council, held on all issues related to international labour standards covered by the Convention, as well as the submission of international labour standards to the competent national authorities, in accordance with the ILO Constitution. We once again request the Government to comply with these reporting obligations.

We recall the importance of ILO technical assistance in facilitating compliance with all ratified ILO Conventions and the promotion of tripartism. We also emphasize that the extent and content of such assistance should be defined through social dialogue, for example within the framework of the Higher Labour Council.

We urge the Government to constructively and genuinely honour its commitments to effectively implement in law and practice all ratified ILO Conventions, including Convention No. 144 and the fundamental ILO Conventions.

The EU and its Member States remain committed to joint constructive engagement with El Salvador, including through cooperation projects, with the aim of strengthening the Government's capacity to address the issues raised in the report of the Committee of Experts.

Employer member, Costa Rica – I would like to begin my intervention with an ILO definition according to which social dialogue includes "all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy. It can exist as a tripartite process, or it may consist of bipartite relations …".

The ILO, since its creation, has promoted cooperation between employers, workers and governments, thereby permitting social justice through social dialogue. The Convention ensures the participation of employers and workers at the domestic level in each country. For this reason, the Convention is one of the most important labour standards from the viewpoint of ILO governance.

The Convention clearly provides that representative organizations of employers and workers are those that enjoy the right of freedom of association, a principle which also implies that States shall refrain from interfering in the establishment of such organizations. Employers in Costa Rica, as clearly indicated in previous discussions of this case, consider the existence of interference by the authorities in El Salvador in the processes of the appointment of both employer and worker representatives to public tripartite and joint bodies to be a very bad precedent at the international level. Article 3 of the Convention provides that the representatives of such organizations shall be freely chosen.

If the principal objective of social dialogue is "to promote consensus-building and democratic involvement among the main stakeholders in the world of work", it is difficult to understand why the executive authorities have given themselves the power to remove directors representing employers' organizations from the boards of entities, and moreover establishing discretionary and arbitrary reasons for their appointment through the amendment of 23 national laws. From any perspective, this is a violation of the Convention and the principle of freedom of association.

It is a matter of concern that various fundamental bodies involved in decision-making at the national level do not yet benefit from due representation. Moreover, although as indicated by the Employer representative of El Salvador, the Higher Labour Council and the National Minimum Wage Board are now meeting, it is considered a violation of social dialogue that the corresponding issues are not submitted to those bodies and that employers are not allowed to participate fully.

The correct way of developing tools of all types is through social dialogue, especially in the case of tools such as those referred to by the ANEP, that is draft legislation, such as the new Labour Code and the Act on labour procedures, which are fundamental standards for the achievement of decent work and adequate industrial relations.

We call on the Government of El Salvador to allow the Higher Labour Council to engage in dialogue and to put forward its views on the relevant issues, which are of the greatest importance for the country, so that productivity and competitiveness can be promoted, thereby generating decent work. All of that is basic in a democracy.

Worker member, Argentina – Specific issues arise in this case in which progress can be identified in relation to previous years, while there are still important areas where solutions have not been found. The positive aspects undoubtedly include the recent ratification of five international labour Conventions by the Government of El Salvador, after years of calls by the

trade union movement, which is an important step forward which we emphasize and fully appreciate.

Despite this progress, in relation to international standards and guidance, the labour legislation in El Salvador is outdated, with serious problems in the administration of procedural aspects and disputes arising in the composition of tripartite social dialogue bodies. The Committee of Experts places emphasis on a key issue: the requirement for unions to seek the renewal of their legal status every 12 months in a procedure that is not completed in less than 9 months, and once granted expires almost immediately with the procedure having to be recommenced. All of us here know that delays in legal recognition give rise to difficulties in the exercise of collective trade union rights and are prejudicial to organizations in relation to their responsibility for the management of administrative, financial and institutional issues. We also know that many governments make use of the denial and/or delays in the granting of legal recognition as a means of pressure and discipline against unions which oppose their policies: "quickly for friends", "late or never for opponents". This matter requires attention and an urgent solution by the Government. All that is required is the political will and a computer program to resolve the issue. That is all, so there can be no more delay.

We also note the complaints of difficulties in constituting representative delegations for the Higher Labour Council, although we do so from a distant perspective of the time when the Committee of Experts prepared its report, as we have been informed of significant progress, including the regular functioning of the dialogue body, the reactivation of commissions and broader participation. Much remains to be done, but we see that the right path is being followed and that observable progress is being made.

Finally, we would like to emphasize that during this Conference the Government of El Salvador, through its Deputy Minister, has engaged in discussions with the social partners, criticisms have been smoothed over and agreement has been sought on technical assistance from other governments to overcome the difficulties. This is part of the work that is carried out in this Committee. We must not accentuate rifts or over-emphasize contradiction for contradiction's sake. We need to take advantage of every minute in Geneva for bilateral and tripartite meetings, discussions with the Office, and to seek synthesis and consensus through good faith negotiation.

We hope that in the case of El Salvador the Government will accept the facts and in good time give effect to the commitments made to the social partners and that we will soon be able to note progress and report it to the next session of the Conference.

Government member, Chile – I am also speaking on behalf of **a significant majority of Latin American and Caribbean countries**. We are grateful for the information provided by the Government of the Republic of El Salvador through the Minister of Labour and Social Welfare on compliance with the Convention. We take into account the report issued by the high-level mission that visited El Salvador in May 2022, which was presided over by the delegate of Mexico representing the Government group. The mission was received by Minister Rolando Castro on behalf of the President of the Republic, Nayib Bukele, who considered it to be an opportunity and expressed openness to providing all the information that the mission might request.

The mission was undertaken in accordance with the recommendations made in the conclusions of the Committee in June 2021. The mission noted the establishment and functioning of the Higher Labour Council during the biennium 2021–23, and the creation of a tripartite technical commission to set the agenda of the Council. The report notes the significant progress that El Salvador has made in the promotion of tripartite social dialogue.

All of that is in contrast with the inclusion once again of El Salvador on the list of the 22 countries called upon to provide a report to the Committee.

In light of the above, we welcome the commitment of the Government of El Salvador to give effect to the Convention and we encourage the ILO to continue providing technical cooperation to the Government.

Employer member, Democratic Republic of the Congo – On behalf of the employers of the Democratic Republic of the Congo who value the letter and spirit of international labour standards, it is completely unacceptable for the Government of El Salvador to interfere in the election of employers' representatives, and in particular those of the ANEP, to the General Electricity and Telecommunications Supervisory Board through the Decree of November 2017. It is of little significance that the Government subsequently alleged, in its defence, that the Supreme Court of Justice had handed down a decision setting aside the election of employers' representatives contested by the ANEP. This act is without any doubt a clear violation of Article 3(1) of the Convention, as indicated by the Committee of Experts.

The exclusion of the ANEP from social dialogue by the Government is another case of the violation of the Convention. It offers sufficient proof that there is no real dialogue.

In light of the prevailing situation, it is entirely appropriate for the Government of El Salvador to be able to benefit from ILO technical assistance with a view to promoting tripartism and social dialogue in the country. It is also to be recommended that such technical assistance focuses on the promotion of social dialogue, in particular in the Higher Labour Council, which is very dysfunctional.

Worker member, Netherlands – The report of the Committee of Experts on El Salvador refers to problems arising in the composition and conditions for the participation of unions in tripartite social dialogue bodies, such as the Higher Labour Council.

The recent ILO high-level tripartite mission to the country reports issues and makes important proposals to overcome them. One of the preconditions for the recognition of trade union organizations is the need to comply with certain requirements for the legal recognition of federations and confederations. The tripartite mission noted the legal requirement for the renewal of the trade union executive board and their credentials every 12 months, which is an excessive level of restrictive interference in trade union freedom and independence.

The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), provides that trade union organizations shall have the right to draw up their constitutions and rules, organize their administration and elect their representatives in full freedom.

In addition to the legislation interfering greatly in collective autonomy, in practice there are important delays in the processing of administrative registration processes by the authorities and unjustified refusals of registration, despite all the requirements having been met in good time.

The consequent lack of leadership of trade unions prevents them from participating in the designation of their representatives for the purpose of tripartite consultations.

The refusal to issue credentials has a direct impact on the right of consultation set out in the Convention, which is covered by this observation of the Committee of Experts. This restriction requires the urgent amendment of the Labour Code in El Salvador to remove this heavy obstacle, with a view to allowing trade union independence and granting trade unions the power to freely determine the mandates of their officers through their statutory provisions.

Similarly, the ILO tripartite mission indicated in its final report that the necessary legislative measures should be considered to revise these requirements concerning elections and credentials. It adds, in a view that we share, that unions should be allowed to determine in their statutes the duration of the mandate of their executive bodies.

Finally, it does not appear to be difficult to find an urgent solution to the issue of freedom of association in El Salvador in relation to the determination of trade union representation, which is a key aspect of trade union activities and the development of decent work.

Employer member, Argentina – The employers of Argentina welcome the fact that the authorities of El Salvador have accepted ILO technical assistance and received the high-level tripartite mission, as well as the reactivation of the Higher Labour Council, in accordance with the recommendations of the Committee in 2020–21. However, having read the report of the tripartite mission, issued in May this year, and having heard the information provided by the social partners of the country, we are bound to regret being once again in a session of the Committee in which it is not possible to note consolidated progress in compliance with the obligations under the Convention. Indeed, the information provided by the social partners shows that a number of social dialogue institutions in the country are still paralysed, and that there are undue acts of interference in the establishment and internal affairs of employers' and workers' organizations, disregard for the right of the most representative organizations to elect their own representatives and the refusal to grant them credentials for their participation in the various social dialogue forums.

We note with great concern that the Government of El Salvador has gone ahead with the ratification of a series of ILO Conventions without complying with the requirement to carry out effective prior consultations with the social partners.

The work of the present Committee shows that the recognition of social dialogue and mechanisms that include the most representative workers' and employers' organizations are fundamental factors in the functioning of the machinery for the adoption and review of ILO standards.

The definition of strategic priorities at the national level is a function that must only be carried forward after first identifying the challenges and needs related to the implementation of an international labour standard. The effectiveness of a ratification in a specific country is ineluctably linked to the recognition of the experience and views of the constituents concerning the subject to be regulated and the development of basic agreement on the strategy for the implementation of a Convention in the country.

In the present case, we are confronted by a dual issue, in which not only are the established consultation bodies not consulted, but when they are convened, this occurs in a hostile atmosphere, in which the representative nature of organizations is disregarded or their representatives are not free to express their views.

In light of the discussion, we hope that the Government of El Salvador will adopt appropriate measures to guarantee the necessary conditions for social dialogue in the country and will undertake to establish and operate institutionalized, transparent, predictable and legally binding consultation mechanisms which ensure compliance with the Convention in law and practice, with ILO technical assistance, where necessary.

Worker member, Spain – The workers are observing with hope and expectation the efforts made by El Salvador, particularly in recent months, to promote and give effect to international labour standards, and particularly the provisions of the Convention.

In this regard, it is necessary to emphasize that the ILO high-level mission was able to note last month that the main tripartite social dialogue advisory body in the country, the Higher Labour Council, has been reactivated since 8 December 2021. And it is also important for us to emphasize that on 16 May 2022, the Legislative Assembly of El Salvador ratified five ILO Conventions thereby making progress in improving the protection of the rights of the working class.

However, without overlooking the fact that the reactivation of the Higher Labour Council represents progress in relation to tripartite social dialogue, we workers undoubtedly view with a certain amount of concern the manner in which the legislation in El Salvador maintains an excessive and inappropriate level of interference in the operational independence of trade unions, which prevents them from exercising their right to form part of advisory bodies.

The legal requirement to renew the executive bodies of trade unions every 12 months, with the consequent withdrawal of credentials if it is not carried out in time, combined with delays in the procedures for reviewing credentials, amount to a clear obstacle to the freedom of unions to organize, self-government and participation in social dialogue bodies.

For this reason, we consider that the Government of El Salvador must take further steps to promote social dialogue and must take the necessary measures to remove from the legislation any hint of interference in the election of representatives for tripartite consultations and the provision of credentials.

Government member, Colombia – I would like to refer to two aspects of the case. First, it is important to emphasize that workers' and employers' representatives must be freely chosen and represented on an equal footing, as provided in Convention No. 87 and Article 3 of Convention No. 144.

The Committee on Freedom of Association has indicated on many occasions that it is for workers' and employers' organizations to determine the conditions for the election of their leaders and that the authorities should refrain from any undue interference in the exercise of this right.

For this reason, we note with concern that the Government, on the one hand, continues not to recognize the ANEP as the most representative body of employers in El Salvador and, on the other, that it is still prohibited to meet and convene the ANEP to participate in social dialogue forums.

Second, Article 2 of the Convention refers to the requirement to ensure effective consultations and considers social dialogue to be an essential means of the development of joint proposals by workers, employers and the Government with a view to promoting growth, peace and general well-being. In this regard, to achieve genuine dialogue, and accordingly effective consultations, a climate of trust is required, as indicated by the Committee on Freedom of Association, based on respect for employers' and workers' organizations with a view to promoting stable and solid industrial relations.

We emphasize the importance of the reactivation of the Higher Labour Council and the holding of public meetings over the past six months. Nevertheless, we note with concern that, despite its reactivation, the Government is continuing to submit to the Legislative Assembly very important draft labour legislation, such as the new Labour Code and the Act on labour procedures, without consulting employers or workers.

In light of this, it is necessary to refer once again to the view of the Committee on Freedom of Association in its *Compilation of decisions of the Committee on Freedom of Association* that such

consultations must be held prior to the submission by the Government of draft legislation to the Legislative Assembly or the adoption of labour, social or economic policy.

It is of the greatest importance for consultations to be held in a context of good faith and trust, and for employers and workers to be able to express their views, analysis and proposals in order to achieve real agreement and make progress in improving industrial relations through social dialogue.

In conclusion, we call on the Government, in addition to maintaining the regular meetings of the Higher Labour Council, to undertake to recognize the new President of the ANEP, José Agustín Martínez, with a view to creating a climate of trust, and to allow the ANEP to participate in all tripartite social dialogue forums and hold effective consultations on matters related to the ILO and on all subjects related to national labour and social policies.

Employer member, Honduras – Today we are discussing a very serious case. The violation of the right to social dialogue of the most representative organizations, as is the case of the ANEP in El Salvador, is a threat to social stability, peace and the good governance that must prevail in States. It is also a threat against employment, to which workers are entitled, and constitutes a very serious failure to give effect to one of the fundamental principles of the ILO, namely social dialogue.

We regret that for the fifth consecutive year we are examining the same case. There is no progress to welcome in El Salvador, where the same violations of the Convention are occurring, which I enumerate below:

1. The Government is continuing to appoint directors of tripartite and joint bodies arbitrarily without taking into consideration the provisions of the Convention, and it has adopted amendments to laws which undermine social dialogue, and without taking into account that those amendments have to be repealed, as requested by the Committee of Experts.
2. The Government, the President, the Vice-President and the majority of ministers in the Government still do not recognize the ANEP as the most representative employers' organization in El Salvador.
3. The participation of employers in El Salvador in the Higher Labour Council continues to be incomplete because the Government has failed to adopt clear, predictable and legally binding standards and rules for the appointment of employers' representatives, and in so doing it is once again in violation of the Convention. To date, two months after the election of the new President of the ANEP, the Government has not granted the corresponding credentials.
4. The Government did not consult the Higher Labour Council concerning the Conventions that it is submitting for ratification and the Conventions which have actually been ratified. All of this is in violation of various provisions of the Convention and has given rise to a political climate of uncertainty in relation to development policy and social progress.

In light of the above, we call on the Committee to take effective measures to ensure respect for the independence of the ANEP as the most representative employers' organization so that it can participate fully in the various dialogue and tripartite consultation bodies.

I remind the Committee that social dialogue is only possible when employers' and workers' organizations are able to act independently, in technical terms and with access to information, without fear of any type of reprisal by governments and with the certainty that the consensus and agreements reached through social dialogue will be respected and given effect in practice.

Employer member, Panama – The report of the ILO high-level tripartite mission to El Salvador notes that, as the most representative employers' organization, the ANEP must enjoy effective participation in social dialogue, tripartite consultation and the Higher Labour Council. The members of the Higher Labour Council representing employers and workers must be designated freely by their constituency on an equal footing.

As the most representative organization of employers, the ANEP must be respected and accorded due consideration by all the national authorities, in the same way as for workers. This is nothing new and those of us who have been participating in the ILO for many years have seen how the ANEP, as the most representative employers' organization, participates in this Organization.

El Salvador has ratified the Convention and compliance with all aspects of the Convention, not as a percentage, is an obligation for the country which transcends the mandate of the current Government. Social dialogue and tripartite consultation with the most representative organizations of workers and employers, which is the ANEP, forms part of the values set out in the Convention with which the Government is required to be in compliance, and to which it is not giving effect.

Coming here, and failing to be in compliance with the Convention, but telling us that it is ratifying other Conventions, is like a child telling the teacher that the homework has not been done but giving her an apple. The apple is welcome, but the homework needs to be done. It needs to be in compliance with the Convention and recognize and respect the ANEP as the most representative employers' organization in El Salvador, and not to try to undermine in this Committee the ILO supervisory mechanisms which have shown themselves to be very effective.

Government representative, Minister of Labour and Social Welfare – I am a little shocked that there are two types of countries in relation to this issue. The first is a little like the description given by the Worker representative here, and the other consists of many persons who are not from the country expressing views without focusing on the conclusions of the high-level mission, but who have pulled out exactly the same content and rhetoric as exactly a year ago, as if there had not been progress.

I wish to make it clear that nine months for the delivery of credentials has only happened in special cases, and we are talking about 2 per cent of the trade union movement in El Salvador for which there have been delays, which have been for a maximum of seven or eight months. The others have been delivered in a month or a month and a half, and the very small numbers for which a review was carried out was because, for example, employers indicated on the basis of evidence that they were victims of extortion by those trade union leaders, for which we have the documents. This is not generally the case and is more a matter of administrative and criminal investigations that are being carried out because employers came forward and complained of extortion by such groups, which were not really trade union matters, as they were involved in other issues and were asking for money and other things. These are the only special cases that there have been.

The other matter relates to the most representative organization that we have to recognize, and I wish to indicate that when we brought an end to the Higher Labour Council before establishing the new Council, at that time the Employer Vice-President was engineer Agustín Martínez, who was then Vice-President of the ANEP. The ANEP subsequently organized an election and the current President of the ANEP is the Vice-President of the Council. So, with regard to non-recognition, I do not know what has to be done to recognize him. The forums exist, and there was an eminently democratic election, as a result of which, in accordance with

the established procedure, as I indicated, the current President of the ANEP is the Vice-President of the Council. So I do not see the problem. Perhaps in terms of representativity, the ANEP has some regrets. The occasion on which the ANEP was the most representative was when its President was Elías Antonio Saca, who was catapulted by the ANEP to be the President of the Republic. That was a type of eminently political activism and he ended up as President. Obviously, I believe that was the time that the ANEP was best represented. It might be added that he is a former President of the Republic who has been prosecuted for criminal acts and is currently serving a prison sentence. However, under our Government, the election procedures were fully registered with the appropriate documentation, as demonstrated by the fact that the current President of the ANEP is the current employer Vice-President of the Council.

This is the situation in practice that we can report. I do not understand what more is required for recognition. We have followed the rules that we have, and the Council legally has to hold two meetings a year, and in three months we have already held five meetings of the new Council, and there have been many more bilateral meetings, as we have carried out bilateral meetings and consultations. I do not know what else a State can do. They are in all the forums that are established.

I do not know whether bilateral action comes within the scope of the Convention because the ANEP negotiated the establishment of 20 or 21 bilateral forums with Governments which held office a long time ago, which excluded and historically left out workers' representatives so that they were not represented in the direct negotiations with the Government. We are therefore talking of the creation of 20 bipartite forums in which only the Government and the ANEP came to agreement, but workers' representatives were excluded from them. We are making an effort and we have told the Vice-Presidents representing both workers and employers that they have to be made into tripartite bodies in order to give full effect to the Convention. This is what we are doing, and this is close to what the Employer spokesperson was saying about the new openness in this regard; it is operational but is not tripartite because historically the workers have always been excluded.

The case is of great concern because the ANEP, in conjunction with the employers of Central America, took a public position of not being in favour of Convention No. 190; the Employer spokesperson took part in these decisions. We were not in agreement with this position and now with the intervention of the Employer member of El Salvador, a representative of the ANEP, in May we took the serious historical step of undertaking the ratification. It is very clear to us that the ratification of ILO Conventions is a serious step for these representatives.

We are on the path towards the construction of a new model in El Salvador in which there is justice and equality for all sectors. The pension reform many years ago was not subject to tripartite discussion or examined in councils. It was discussed by deputies, who were corporate deputies who answered to the powers that be and came to bilateral agreements. Today, the Government of the Republic places emphasis on tripartite social dialogue involving all the partners.

We will continue to make every possible effort to build a Republic of El Salvador based on justice, with equality for all the partners. The only difference with the new Government is that at that time, and I can repeat it, when the ANEP occupied the presidency of the Republic through Elías Antonio Saca, the position that I occupy today was held by employer leaders who came here as Ministers of Labour. Moreover, before and afterwards, they have continued being advisers to powerful groups, which they defended. Today we have not come to shift the balance or to exclude anyone. The only one that is still here is the weight of our productive

sector of employers, but they are here under equal conditions counterbalanced by the workers' representatives, and this is the reason why there are so many difficulties.

When they refer to and talk about tweets, I wish to say to them that we have not yet amended the law. The legal system of the country operates on the basis of legislative decrees and executive decrees, not tweets. A tweet is not a legislative or executive decree, and I profoundly regret that they have focused totally on a subject that is a year old, and I do not accept that they are right, not even slightly right, nor do I give them weight in view of the little importance accorded to the subject in the conclusions of the mission that visited El Salvador, to which we gave absolutely all the assistance that was requested.

It is lamentable that there are neighbouring countries in which trade union leaders are being murdered, and those who are appointed to administrative boards engage at night in issuing threats, and even murdering neighbours, and they sometimes become the spokespersons of employers there and at the international level, but who object to collective contracts and do not sign collective contracts. When El Salvador ratified Conventions Nos 87 and 98, they spread the rumour that the international community, and particularly the EU, had exerted pressure through the tariff system.

Now we have ratified five Conventions in response to the explicit requests and the needs of the working class and the productive sector in this country.

We will continue making efforts and working hard. Workers' and employers' representative are welcome and we will continue working.

Worker members – We thank the Government for the clarification. Before setting out our final conclusions, I would like to make a preliminary comment. On behalf of the Workers' group, we would like to draw the attention of the Committee to the fact that the Workers' group notes that a large proportion of the comments made by Employer members during this sitting on the application of the Convention in El Salvador have been outside the scope and content of the Convention that is under examination, and we therefore ask that they are not reflected in the conclusions of the sitting.

In our view, this is not a case of deterioration, and we see certain positive steps that are going in the right direction. The fact that the Government accepted the high-level tripartite mission, and the positive development of certain legislative texts, as well as the approval of the five ILO Conventions, as noted, are in themselves proof of the effectiveness of our Committee's work and its credibility. Nevertheless, we insist that the Government must take the necessary measures to give full effect to the Convention. This involves three measures: first, guarantee the full membership of the Higher Labour Council as soon as possible; second, simplify and facilitate the procedure for the designation of workers' representatives; and third, the provision of the Labour Code which requires the annual renewal of the executive boards of unions would have to be amended.

In general, we call on the Government to give full effect to the recommendations of the tripartite mission.

Employer members – We have listened carefully to all the interventions, and very particularly to that of the Minister. We thank the representative of the EU who clarified the concepts contained in the conclusions of the high-level tripartite mission.

When other speakers referred to it, it appeared to me to be a document with which I was not familiar. It is surprising to us that some consider the ratification of a Convention to be positive even when, however positive it may be, it has been carried out in violation of

Convention No. 144, which is the instrument that we are examining here today. The end does not justify the means. With the clear admission, on the Twitter account of President Bukele, of his systematic intention to exclude the ANEP, which was conveniently not referred to by those who see progress in other statements made by the Government, it is clear that what has been said by the Minister is not in conformity with compliance with the provisions of Convention No. 144.

The facts show the lack of the effective will to apply the law appropriately in practice, in accordance with the provisions of the Convention, despite the conclusions adopted by this Committee in 2017, 2018, 2019 and 2021, despite the seven observations published by the Committee of Experts, despite the many urgent interventions requested from the Director-General of the ILO, and the statements made to the high-level tripartite mission that recently visited the country.

The situation of non-compliance with the Convention by El Salvador is continuous, serious and urgent. In this respect, we urge the Government to: refrain from interfering in the establishment of workers' and employers' organizations and to facilitate, in accordance with the national and international legislation, the due representation of legitimate organizations of employers by issuing the corresponding credentials; refrain from attacking and discrediting the ANEP, the most representative employers' organization, and its leaders; draw up in consultation with the most representative organizations of employers and workers clear, objective, predictable and legally binding rules for the reactivation and full operation of the Higher Labour Council; reactivate without delay effective consultation in the Council and the operation of other tripartite bodies, respecting the independence of the most representative organizations of workers and employers, and through social dialogue, in order to ensure its full operation without any interference; in consultation with the social partners, adopt without delay all the necessary measures to amend the 23 decrees adopted on 3 June 2021 so that they are in compliance with the guarantees set out in the ILO Conventions ratified by El Salvador; continue having recourse to ILO technical assistance; and submit a detailed report on the application of the Convention in law and practice to the Committee of Experts before its next session this year.

In view of the seriousness of the situation described, we call for this case to be included in a special paragraph of the Committee's report.

Conclusions of the Committee

The Committee took note of the oral information provided by the Government representative and the discussion that followed on issues concerning compliance with the Convention. The Committee noted that the Government did not provide any written information to the Committee.

The Committee also took note of the recent ILO high-level tripartite mission that took place in May 2022. The Committee regretted that five ILO Conventions were ratified without consulting the most representative employers' organization.

The Committee noted with deep concern the multiple allegations of interference by the authorities in the appointment of employers' and workers' representatives in public tripartite and joint bodies.

Taking into account the discussion of the case, the Committee urges the Government to:

- **refrain from any aggression and from interfering in the establishment and the activities of employers' and workers' organizations, in particular the National Business Association (ANEP);**
- **ensure the effective operation of the Higher Labour Council (CST) and other tripartite entities, respecting the full autonomy of the most representative employers' and workers' organizations and through social dialogue in order to guarantee their full functioning without any interference;**
- **refrain from unilaterally appointing workers' and employers' representatives for tripartite consultations and institutions, and to develop, in full consultation with the social partners, the appointment procedures of those representatives;**
- **repeal the legal obligation on trade unions to request renewal of their legal status every 12 months and the 23 decrees adopted on 3 June 2021; and**
- **develop a time-bound road map to implement without delay all the recommendations made by the ILO high-level tripartite mission.**

The Committee requests the Government to present a detailed report on the application of the Convention in law and practice to the Committee of Experts before 1 September 2022 in consultation with the social partners.

The Committee encourages the Government to continue to avail itself of technical assistance from the Office to ensure full compliance with its obligations under the Convention.

Another Government representative – On behalf of the delegation of El Salvador, I take note of the conclusions read out in the Committee.

I take this occasion to recall that El Salvador is respectful of the supervisory bodies of the International Labour Organization. However, we regret that the Committee has not examined the written communication that we sent on various occasions as an official reply to the Committee of Experts. We deeply regret that in its conclusions the Committee does not recognize any indication of progress, and that it has not taken note of the report of the high-level tripartite mission that this very Committee sent to El Salvador.

We regret that the Committee has ignored the intervention by the Worker representative of El Salvador. There are five tripartite social dialogue bodies in the country which are operating effectively furthering social dialogue and tripartite consultation in accordance with the Convention.

We regret that the conclusions are drafted in injurious and condemnatory language, far from the elegance and diplomacy that are characteristic of this Committee, and contrary to the ILO's spirit of cooperation.

With regard to the conclusions, with great respect, we express our concern. Is it within the competence of this Committee to tell a State to amend or repeal its internal legislation? That would appear to be beyond its competence.

The Minister of Labour, in his speech to the ILO, stated clearly and categorically that our commitment to the ILO is unshakable, but he also referred to the dignity and sovereignty of States.

We reaffirm our commitment in El Salvador to continue giving priority to social dialogue with all partners and sectors without privileging any specific power group.

Finally, we undertake to analyse the Committee's conclusions.

Fiji (ratification: 1974)

Abolition of Forced Labour Convention, 1957 (No. 105)

Discussion by the Committee

Government representative – The Fijian Government acknowledges the advice of the Committee of Experts. The Public Order Act, 1969, has been in force in Fiji since its independence in 1970 and is in place to ensure that order is maintained in the country and that the safety of the people is not compromised.

Globally, acts of terrorism, racial riots and religious and ethnic vilification have led to countries putting in place legal safeguards. Fiji is no different as we also experienced acts of terrorism in 2000; however, our law did not have the safeguards in place to counter such acts. The Public Order Amendment Act of 2012 remedied this by modernizing the Public Order Act, 1969, to include provisions that effectively counter terrorism, offences against public order and safety, racial and religious vilification, hate speech and economic sabotage.

Employer members – The Convention is a fundamental Convention of the ILO, which deals with the abolition of forced labour. It is a very serious subject that deserves our full attention. The Convention was designed to supplement the Forced Labour Convention, 1930 (No. 29), which Fiji has also ratified. The Convention requires the abolition of the use of any form of forced or compulsory labour in five specific cases. Three of these relate to the use of forced or compulsory labour as political coercion, labour discipline or as punishment for having participated in strike action.

By way of background, Fiji ratified the Convention in 1974. The Committee of Experts has issued five observations on Fiji's application of this instrument in law and practice since 1996. More recently, the Committee of Experts issued observations in 2014, 2017 and 2021.

Turning now to the Committee of Experts' observations regarding Fiji's application of the Convention, the Employer members note the main issue in this case concerns various legislative provisions which may lead to the imposition of penalties involving compulsory labour for activities linked to the expression of political views that are opposed to the established political, social and economic order.

The legislative provisions concerned are:

- section 14 of the Public Order Act, which provides for sanctions of imprisonment for up to three years for using threating, abusive or insulting words in any public meeting space, or behaving with the intent to provoke a breach of the peace, or in such a way that a breach is likely to occur, and provides for the same sanction when a police officer has given directions to disperse or prevent obstruction for the purpose of keeping order in any public space, and an individual contravenes or fails to obey such direction without lawful excuse;
- section 17 of the Public Order Act provides for sanctions of imprisonment of up to ten years for spreading any report or making any statement which is likely to undermine or sabotage, or attempt to undermine or sabotage, the economy or financial integrity of Fiji;
- section 67(b), (c) and (d) of the Crimes Decree, 2009, provides for sanctions of imprisonment of up to seven years for uttering seditious words, printing, publishing selling, offering for sale, distributing or reproducing a seditious publication or importing seditious publications.

The Employer members note that the Government has indicated that the Public Order Act is in place to ensure the safety of people from acts of terrorism, racial riots, religious and ethnic vilification, hate speech and economic sabotage. The Employer members note that Article 1(a) of the Convention provides for a prohibition of using any form of forced or compulsory labour as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.

We also recall that in the 2012 General Survey on the fundamental Conventions, the Committee of Experts observed that national constitutions and other legislative texts in force in almost all countries of the world contain provisions which recognize freedom of thought and expression, the right to peaceful assembly, freedom of association, the right not to be arbitrarily arrested and the right to a fair trial.

The 2012 General Survey goes on to state that, in this respect, the Convention does not prohibit the application of sanctions involving compulsory labour to persons who use violence, incite to violence or perpetrate acts of violence.

The Committee of Experts specified in the 2012 General Survey that only in exceptional circumstances of extreme gravity and for a limited time can a country derogate from this general principle. The General Survey also recalled that when examining the compatibility of national law and practice with the Convention, the offences provided for in the laws against defamation, sedition and subversion are not defined in terms so broad as to give rise to the imposition of sanctions involving compulsory labour as measures of political coercion or as a sanction against persons who have expressed political or ideological opinions.

The Employer members support the Committee of Experts' observations in this regard in relation to Fiji's application of the Convention and we urge the Government of Fiji to bring its criminal law and practice into line with the Convention to ensure that no one is liable for penal sanctions involving compulsory labour, including compulsory prison labour, solely for peacefully expressing political views or views opposed to the established political, social and economic system, including through the exercise of freedom of expression or assembly.

The Employer members also support the request that the Fijian Government provide information on the manner in which the above-mentioned legislative provisions are applied in law and practice.

Worker members – We take note of the last-minute registration of the Government of Fiji, only hours before the examination of the case. We note, with regret, that this late registration has the effect of preventing the members of the Committee from adequately preparing for a full examination of the case today. This will inevitably complicate our discussion today. The Worker members recall the importance of the Committee's mandate which is to provide a tripartite forum for dialogue on outstanding issues relating to the application of ratified international labour Conventions. A refusal by a government to participate in the work of this Committee is a significant obstacle to the attainment of the core objectives of the ILO.

After these preliminary remarks, let us turn to the issue raised by the Committee of Experts.

As already observed by the Committee of Experts in 2014 and in 2017, the legislation in Fiji contains provisions allowing for the imposition of sanctions of imprisonment involving compulsory labour as a punishment for holding or expressing political views, or views ideologically opposed to the established political, social, or economic order.

More precisely, the Public Order Act, as amended in 2012, and the Crimes Decree of 2009 criminalize a number of activities related to the exercise of freedom of opinion and expression and freedom of assembly, and provide for sanctions of imprisonment, while section 43(1) of the Prison and Corrections Act, 2006, provides that every convicted prisoner may be required to undertake labour within or outside the prison, in any activity that may be prescribed by the regulations or by order of the commissioner. With such a penal framework, exercising the most fundamental freedoms constitutes a high risk for workers and their representatives. The list of freedoms criminalized under Fijian law is long and sanctions are disproportionately severe.

Section 14 of the Public Order Act criminalizes the use of threatening, abusive or insulting words in any public place or meeting with a sanction of imprisonment of up to three years. The same sanction can be given for behaving with intent to provoke a breach of peace, or for failing to obey a police officer's direction to disperse.

Section 17 allows for sanctions of imprisonment of up to ten years for spreading any report or making any statement which is likely to undermine or sabotage or attempt to undermine or sabotage the economy or financial integrity of Fiji.

Section 67(b), (c) and (d) of the Crimes Decree, 2009, provides for sanctions of imprisonment of up to seven years for uttering any seditious words, printing, publishing, selling, offering for sale, distributing or reproducing any seditious publication, or importing any seditious publication. The term seditious is not defined and can therefore be applied widely to sanction legitimate activities.

We support the Committee of Experts' concern that these provisions are worded in such general terms that they could lead to the violation of Article 1(a) of the Convention, which mandates Member States to suppress or not make use of any form of forced or compulsory labour as a means of a political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social, or economic system. The mere fact of maintaining this penal framework is all the more concerning as the Public Order Act is regularly being used to arbitrarily refuse permission for union meetings and public gatherings. We also recall that section 13 of this Act provides for sanctions of imprisonment for up to six months involving the possibility of compulsory labour for merely taking part in an unauthorized trade union meeting or demonstration.

The Worker members emphasize, once more, that the Convention protects persons who express political views, or views ideologically opposed to the established political, social and economic system, by establishing that in the context of these activities, they cannot be punished by sanctions involving an obligation to work.

The range of activities protected include the right to freedom of expression, exercised orally or through the press or other communication media, as well as the right of association and of assembly through which citizens seek to secure the dissemination and acceptance of their views. The threats and sanctions of imprisonment and forced labour hang over workers and their representatives whenever they express views contrary to the official position of the Government.

The laws of Fiji severely undermine the exercise of these freedoms and contravene the Convention. This situation calls for urgent action to restore fundamental rights and freedoms and the Worker members call for the revision of the penal provisions, without delay, and in line with the recommendations of the Committee of Experts.

Worker member, Fiji – The Convention puts a spotlight on the law and practice in Fiji through which it can be imposed on any trade union official or any ordinary citizen to carry out

compulsory labour in prison. Currently, the law and practice remain unchanged despite several requests over the past years by the Committee of Experts to the Fijian Government. The law, particularly the Public Order Act, which was amended in 2012, and the Crimes Decree together with the Political Parties' Decree, 2013, in various parts, as reported to the Committee of Experts, vigorously attack trade unions and their officials.

In 2019, I, as National Secretary of the Fiji Trades Union Congress (FTUC), along with ten other trade union officials around the country, was arrested and imprisoned. Similarly, 29 other National Union of Workers' members were put in prison on May Day in 2019. About 2,000 workers were threatened with arrest around the country during the same time by the police. I, as the head of the FTUC, am still appearing in court and have been charged with causing public anxiety when I spoke to the media about the termination of 2,000 workers from the water authority of Fiji.

There are also concerns about police interference in industrial matters and the intimidation tactics that are being used by the police on workers. Let me say that the Public Order Amendment Act gives unlimited powers to the Police Commissioner under section 11(a) of the Decree and gives them control and influence which are generally bestowed upon members of the judiciary in a court of justice. It also gives unlimited powers to police officers to disrupt public or private gatherings and the officer, if the officer considers it a threat to public safety, can use this to intimidate workers at the workplace.

The Government's claim that the purpose of this is to ensure public safety from acts of terrorism, racial riots, religious and ethnic vilification and economic sabotage is a red herring. There has been absolutely no need for such draconian laws in Fiji because there is absolutely no threat that the Government appears to demonstrate. This is all about intimidation and to instil fear in people, and also the part on public sabotage, or sabotage of the economy, is to ensure that unions do not go on strike or protest at all, in any form.

On at least six occasions, the FTUC has applied for permits to protest against the imposition of labour laws that are not in compliance with ILO core Conventions. All such applications have been denied with absolutely no reason given for the denial. My appearances in the courts have been many over the three years and I am on bail. The case is set to be heard in late October. If convicted, there could be a sentence in prison of up to three years, which includes compulsory prison labour.

The Committee of Experts has made repeated requests for the Government to review sections 10, 14 and 17 of the Public Order Amendment Decree and section 67 of the Crimes Decree and to ensure that, in law and practice, fundamental rights are respected. No action has been taken by the Government regarding any of these requests apart from the assurances they have given that they would respect them, which really hold no water anymore.

We recall that the Governing Body of the ILO had decided that a direct contacts mission should visit Fiji in 2019. We are still awaiting the visit from the contacts mission, and I urge this mission to visit Fiji without any further delay.

Government member, France – I have the honour of speaking on behalf of the **European Union (EU) and its Member States**. The candidate countries **Montenegro** and **Albania**, and the European Free Trade Association country **Norway**, Member of the European Economic Area, as well as **Ukraine** align themselves with this statement.

The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights. We actively promote the universal ratification and implementation of fundamental international labour standards, including the

Convention and we support the ILO in its indispensable role to develop, promote and supervise the application of international labour standards and of fundamental Conventions in particular.

As signatories to the Cotonou Agreement, the EU and Fiji have engaged in a comprehensive, balanced and deep political dialogue, covering human rights, including labour rights, as a precondition for sustainable development, economic growth and poverty reduction.

Fiji and the EU also cooperate through the Economic Partnership Agreement applied since July 2014, which commits parties to supporting social rights.

We thank the Office and give our full support for its constant engagement in promoting labour rights in Fiji. We thank the Committee of Experts for the report on the implementation of the Convention in Fiji.

The EU and its Member States are gravely concerned by the reports of sanctions of imprisonment involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system, which is a violation of the provisions of the Convention.

Both the Public Order Act, as amended in 2012 by the Public Order (Amendment) Decree, as well as the Crimes Decree of 2009 are worded in such general terms that may lead to the imposition of penalties involving compulsory labour for peaceful activities, protected under the Convention.

These legislative provisions have also been increasingly used to interfere in, prevent and frustrate trade union meetings and assemblies, as reported by International Trade Union Confederation (ITUC) and the Fiji Trade Union Congress (FTUC).

We fully echo the Committee's call and request the Government to review the Public Order Act and the Crimes Decree to ensure that, both in law and practice, persons who express political views or views opposed to the established political, social and economic system, including through the exercise of their right to freedom of expression or assembly, are not liable to penal sanctions involving compulsory labour, including compulsory prison labour.

We also reiterate the Committee's previous requests to provide information on the manner in which these legal provisions are applied in practice.

The EU and its Member States stand ready to assist Fiji in meeting its obligations and will continue to closely follow the situation in the country.

Worker member, Australia – Sections 14, 15 and 17 of the Public Order Amendment Decree, 2012 and section 67 of the Crimes Decree provide for sanctions of imprisonment for the exercise of civil liberties including freedom of speech, freedom of assembly and freedom of association. Section 43(10) of the Prisons and Corrections Act, 2006, provides that every prisoner may be required to undertake labour within or outside a prison. The effect of these provisions is that trade unionists and others expressing political views and exercising freedom of association, freedom of speech or assembly could be imprisoned and subject to forced labour.

We recall the discussion in 2019 in the Committee which detailed the violations of basic civil liberties including arrests, detentions, assaults and restrictions on freedom of association and the Fijian authority's reliance on the Public Order Act to criminalize legitimate and peaceful trade union activities. Indeed, as this Committee has just heard, the leader of the Fijian Trade Union movement, Mr Felix Anthony, has been arrested and imprisoned numerous times under

the provisions of the Public Order Amendment Decree. This Act is being weaponized by the authorities to crack down on any form of dissent.

We also recall the conclusions from the discussion of Fiji at the Committee in 2019 where the Committee called upon the Government to refrain from anti-union practices, including arrests, detentions, violence, intimidation, harassment and interference and ensure that workers' and employers' organizations are able to exercise their rights to freedom of association, freedom of assembly and speech without undue interference by the public authorities.

We regret that the Government of Fiji, despite these calls from this Committee, has done nothing to reform the Public Order Amendment Decree and ensure that workers can exercise their rights to freedom of association, freedom of expression and freedom of speech.

We urge the Government of Fiji to immediately accept an ILO direct contacts mission, stop the harassment and attacks of trade unionists, uphold fundamental labour standards and reform the laws to ensure that workers are not subject to sanctions involving compulsory prison labour for exercising their fundamental rights.

Worker member, Italy – I am speaking on behalf of the Italian General Confederation of Labour (CGIL) and on behalf of the International Transport Workers' Federation (ITF). As the Committee of Experts has noted in their observations, permission for union meetings and public gatherings continue to be arbitrarily refused in Fiji. Section 8 of the Public Order Act, as amended by the 2012 Decree, continues to be used to interfere in, prevent and frustrate trade union meetings and assemblies. While this itself amounts to a gross violation of the right to freedom of association, section 10 of the Public Order Act stipulates that a person who takes part in a meeting or procession for which no permit has been issued or in contravention of the provisions of the Public Order Act is liable to a prison sentence involving compulsory prison labour. We have just heard this from Mr Anthony actually.

This is where the intersection between the right to freedom of association and the protection of civil liberties becomes critical. The simple fact that attending a trade union meeting could possibly result in compulsory prison labour is an egregious violation of several fundamental human rights.

Given how sections of the Public Order Act have a direct impact on the right to freedom of association, we wish to highlight that freedom of association, as a principle, has implications that go well beyond the mere framework of labour law. As the ILO's supervisory bodies have maintained, in the absence of a system in which fundamental rights and civil liberties are respected, the exercise of freedom of association cannot be fully developed.

Indeed, the common understanding that freedom of association is wholly ineffective without the protection of trade unionists' fundamental civil liberties, was enshrined in a resolution of the International Labour Conference of 1970. This resolution reaffirmed the link between civil liberties and trade union rights, which was already emphasized in the Declaration of Philadelphia, and listed the fundamental rights that are necessary for the exercise of freedom of association.

The Conference resolution from 1970 recognizes that "the rights conferred upon workers' and employers' organizations must be based on respect for those civil liberties which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenants on Civil and Political Rights and that the absence of these civil liberties removes all meaning from the concept of trade union rights".

On this basis, we contend that criminal sanctions carrying penalties of compulsory labour not only amount to gross violations of the Convention that we are discussing today, but also of Convention No. 87, the principles of freedom of association, and wider international human rights law.

To conclude, we urge the Government to amend and repeal the relevant sections of the Public Order Act so as to bring this legislation into conformity with the Convention.

Worker member, United States of America – It is well established by the Committee of Experts and this body, that legislation which provides for imprisonment with compulsory labour for expressing different opinions other than those of the established order is a threat to the free exercise of trade union rights.

The Fijian Government must amend the Public Order Act, particularly section 14, which provides for sanctions of imprisonment for up to three years for using threatening, abusive or insulting words in any public place or any meeting. The Committee of Experts has correctly found that this law is worded in such vague and general terms that it represents an unacceptable threat to the expression of political views or views ideologically opposed to the established political, social and economic order.

The FTUC has demonstrated that the Public Order Act has been used by the Government to arbitrarily deny permissions for union meetings and public gatherings and, more generally, to interfere in trade union affairs.

The Government claims that the Public Order Act is in place to ensure the safety of people from acts of terrorism, racial riots, religious and ethnic vilification, hate speech and economic sabotage. However, it is clear the Government can achieve these goals without trampling on the fundamental rights of workers and others to express political views opposed to the established political order.

We call on the Government of Fiji to revise the Public Order Act in line with the recommendations in the Committee of Experts' report.

Observer, Public Services International (PSI) – One of the issues examined by the Committee of Experts under the Convention is the application of the Public Order Act, as amended in 2012 by the Government's Decree.

The Committee of Experts, for instance, noted that according to section 10 of the Public Order Act, a person who takes part in a meeting or procession for which no permit has been issued or in contravention of the provisions of the Public Order Act is liable to a prison sentence involving compulsory prison labour.

The provision is so broadly drafted and interpreted that it is used against whoever the Government dislikes. Obviously, this has had chilling effects on any fundamental freedom, but mostly the right to peaceful assembly has been arbitrarily restricted with the use of the Public Order (Amendment) Decree 2014, particularly against trade unions.

For instance, the Fijian Government marked May Day in 2019 with the arrest and detention of trade unionists, including the General Secretary of our affiliate, the Fiji Nursing Association, Ms Salanieta Matiavi, other leaders of one of the teachers' unions, and an officer from the National Union of Workers.

The Government has also used this law to harass unionists representing water workers who, at the time, were facing large-scale job losses, having been laid off at the end of temporary contracts.

Previously, the Government cracked down on air traffic controllers who took action after stalled negotiations for pay rises; these workers' jobs were later advertised internationally by the Government.

There is other questionable legislation in Fiji which merges this issue of forced labour and restricting fundamental freedoms. With this, Fiji has perhaps established a world record. It is the only country violating two or more fundamental Conventions with a single set of legislation.

We are disappointed that specific recommendations to amend or repeal these repressive laws by other United Nations bodies as well, were not yet accepted, many of which are based on draconian decrees enacted after the 2006 military coup and are not fit for purpose anymore.

We encourage Fiji to genuinely support basic rights and to bring national legislation into line with international law and fundamental labour standards.

Government representative – I take note of the comments made and I have no further comments on this.

Employer members – The Employers members begin by noting our deep concern regarding the allegations that we have heard today about imprisonment including forced labour while imprisoned over incidents that allegedly involved peaceful activities. As we know, this case appears against the backdrop of the Committee of Experts making repeated requests for the amendment of sections 14 and 17 of the Public Order Act and section 67 of the Crimes Decree. We also note this case takes place against the backdrop of this legislation not being amended and no action being taken in this regard by the Government to remedy the potential sanction of forced labour. We expect this situation to be resolved without further delay. We have listened carefully to the Government representative and the Worker members' views on this case. We believe it bears repeating that forced labour is a serious matter that violates fundamental human rights. While the Convention is not an instrument to guarantee freedom of thought or expression or to regulate questions of labour discipline or strikes; it does prohibit the use of forced or compulsory labour as a means of political coercion, education, or as a punishment for holding or expressing political views opposed to the established political, social or economic system.

After listening carefully to the views expressed by the members in the Committee today, the Employer members also wish to take special note of certain speakers' firm commitment to social partners' ability to peacefully express views related to established political, social and economic systems without penalty, including without penalty of imprisonment and the imposition of forced labour as a key aspect of fundamental rights, including fundamental rights surrounding freedom of association. We expect this position of the speakers will remain consistent throughout our discussion of all of the cases before the Committee on this fundamental issue of the protection of freedom of association.

In terms of the recommendations in this case, the Employer members are of the view that we must urge the Government, without further delay, to amend sections 10, 14 and 17 of the Public Order Act and immediately amend section 67(b), (c) and (d) of the Crimes Decree to ensure that persons who express political views or views opposed to the established political, social and economic system, including through the right of freedom of expression or assembly, are not liable to penal sanctions involving compulsory labour including compulsory prison labour.

The Employer members must urge the Government immediately to provide information on the manner in which these legislative provisions are applied in practice and urge the

Government to submit a report in consultation with the most representative employers' and workers' organizations to the Committee of Experts no later than 1 September 2022.

Worker members – The Worker members thank the Government of Fiji for its extensive response. We also thank the other speakers for their interventions. In view of the last-minute registration for the Government of Fiji and its consequences on our discussion today, the Worker members recall once again the importance of our Committee's mandate to provide a tripartite forum for dialogue on outstanding issues relating to the application of ratified international labour Conventions. It also recalls that the refusal by the Government to participate in the work of this Committee is a significant obstacle to the attainment of the core objectives of the ILO.

Turning to the issue examined in this discussion, the Worker members express their deep concern at the penal framework enforced in Fiji which sanctions with compulsory prison labour, the exercise of freedom of opinion, expression and assembly of workers and their representatives and thus severely tramples these most fundamental freedoms.

As we emphasized in our opening speech, the Public Order Act and the Crimes Decree contravene the Convention and create a climate which is not conducive to the full enjoyment of individual and worker freedoms. The situation calls for urgent action and we support the Committee of Experts in its analysis and recommendations regarding the need to review sections 10, 14 and 17 of the Public Order Act and section 67(b),(c) and (d) of the Crimes Decree to ensure that, both in law and practice, persons who express political views or views opposed to the established political, social and economic system, including through the exercise of their right to freedom of expression or assembly are not liable to penalties involving compulsory labour.

We call on the Government to request the technical assistance of the ILO to resolve this issue swiftly and in conformity with the provisions of the Convention.

Conclusions of the Committee

The Committee noted with deep regret that the Government did not provide any written or oral information to the Committee. The Committee took note of the discussion that followed.

The Committee noted with deep concern the repeated failure of the Government to bring its national legislative framework into conformity with the Convention so as to allow trade unionists to exercise their rights to free assembly and free speech without the threat of penal sanctions involving compulsory labour.

The Committee deplored the systematic use of penal sanctions against workers and their representatives.

Taking into account the discussion, the Committee urges the Government, in consultation with the social partners, to:

- **take effective, urgent and time-bound measures to amend sections 10, 14 and 17 of the Public Order Act and section 67(b), (c) and (d) of the Crimes Decree; and**
- **ensure that, both in law and practice, persons, including trade unionists who express political views or views opposed to the established political, social and economic system, are not liable to penal sanctions involving compulsory labour in line with the Convention.**

The Committee invites the Government to avail itself of ILO technical assistance to effectively implement the Committee's conclusions in consultation with the social partners.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 with information on the application of the Convention in law and practice, in consultation with the social partners.

Government representative – Fiji takes note of the report and would like to convey its sincere thanks to the Committee for the discussion and, likewise, the compilation of this report. It is rather unfortunate, given the time difference at this hour, for my colleagues in the capital to confirm the content of this report, in particular, the first paragraph.

We have taken note, however, of the elements of the report and be assured of our support, in line with our commitment to ILO Conventions. Fiji attaches great significance to the role of the ILO, and we will remain committed to the spirit of the Conventions that we have ascribed to, as well as the content of the report.

We have also taken note of the requests for the visit as well as of the request for the submission of a report, and please be assured of our commitment as well in that regard. We have also taken note of the technical assistance and we will be in touch with the secretariat as to how we can possibly pursue this in the spirt of the report.

Guatemala (ratification: 1952)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Written information provided by the Government on 16 May 2022

The Government has provided the following written information, as well as the government report submitted to the National Tripartite Committee on Labour Relations and Freedom of Association containing data on key indicators updated to 2022 and the letter of 16 May 2022 sent by the Minister to the employers' and workers' representatives on the National Tripartite Committee.

Trade union rights and civil liberties

The Government of Guatemala indicates that, in light of the importance of the initiatives undertaken by the Subcommittee on the Implementation of the Road Map, and the allegations made by workers' representatives relating to the investigation of acts of violence against trade union officials and members, with a view to clarifying responsibilities and punishing both the perpetrators and instigators of the acts; taking fully into consideration the investigations of the trade union activities of the victims; and the provision of rapid and effective protection to all trade union officials and members who are at risk in order to prevent any further acts of anti-union violence; the Government is making great efforts and taking firm measures to enable the trade union movement to develop in a climate free from violence, threats and pressure and so that trade union rights can be exercised in full normality. Among these efforts, the Government recalls that the Office of the Public Prosecutor has succeeded in obtaining convictions since 2007, which has demonstrated a significant increase in the number of cases of murders of trade union officials and members that have been denounced to the ILO being clarified and resulting in convictions, as indicated in key indicator 1 of the road map, as shown in the reports sent to the Committee of Experts on the Application of Conventions and Recommendations (CEACR). Despite the context of the pandemic, with reference to the number of convictions obtained in relation to

the deaths of trade union officials and members, the Office of the Public Prosecutor indicates that of the three cases which are at the stage of oral and public hearings in 2022, the Criminal, Drug Trafficking and Environmental Crimes Sentencing Court of Retalhuleu indicated in May 2022 the commencement of the oral and public hearings for one of the cases, and that it is accordingly envisaged that convictions will continue to be obtained in 2022.

The Office of the Public Prosecutor adds that the Unit of the Office of the Special Prosecutor for Crimes against Judicial Officials and Trade Unionists (FDCOJYS) is continuing to make exhaustive efforts to carry out investigations in accordance with the rule of law, in which it urges workers' representatives to collaborate in cases where the collaboration of trade union officials and members assists in ensuring effective and rapid investigation. The Office of the Public Prosecutor therefore, in accordance with the comments of the CEACR and the recommendations of the Committee on Freedom of Association in Case No. 2609 (communicated by the Government on 30 September, 22 and 25 October and 6 December 2021, 7 and 17 January and 15 February 2022), with regard to: (i) the continued role of the Trade Union Technical Committee of the Office of the Public Prosecutor, indicates that high-level meetings were held on 28 October and 29 November 2021 and 27 January 2022, during which information was provided and interactive dialogue took place with the full participation of trade union representatives, although it was not possible to hold the meeting on 28 April 2022 due to the excuses made by the workers' representatives; (ii) contacting and meeting the complainant organizations to facilitate the identification of all cases of anti-union violence that they reported in their latest communication, indicates that the Office of the Public Prosecutor has organized for workers' representatives since 29 November 2021 weekly meetings with the assignation of the Prosecutor-General of the FDCOJYS on Fridays to deal with related cases, although workers' representatives have not yet attended the meetings; (iii) institutional strengthening, reports a significant increase, as a result of the allocation of the necessary human and financial resources, in the criminal investigation capacities of this prosecution unit in 2022, according to the information provided in the Government Integrated Accountancy System for the Office of the Public Prosecutor, it has a budget of US$605,885.31 (4,645,359 Guatemalan quetzals) which covers the wages of the personnel (91 per cent) and operational inputs (9 per cent); of that, the Office of the Special Prosecutor has benefited from an increase of US$1,697.19 (13,006 quetzals) in its budgetary allocation for operational inputs; in 2021, it was allocated US$52,560.93 (406,994 quetzals) and in 2022 US$54,806.96 (420,000 quetzals); (iv) the investigation of the 35 cases of murder (one repeated) reported by the National Tripartite Committee, it reiterates that in addition it has taken the necessary measures to deal with and provide resources for them, and that seven convictions have been obtained in those cases; and (v) all the cases that continue to be under investigation, in accordance with Instruction No. 1-2015 of the Office of the Special Prosecutor on the security of trade unionists, as a result of which the telephone number assigned to the FDCOJYS to report crimes continues to be operational and is functioning. In addition, the Prosecutor-General has made available to trade union officials and members a telephone number specifically to report crimes committed against trade union officials and members at the highest level to the Secretariat for International Relations, for personalized action; in that regard, reference should be made to two cases reported by workers' representatives in 2022.

With regard to the intensification of the necessary security measures, especially of a personal nature, the Ministry of the Interior provides the logistics and planning to cover and deal with the security requirements indicated by the Office of the Public Prosecutor; in this regard, security measures have continued to be provided, and between 2021 and 15 April 2022 a total of 109 denunciations were received and 119 protection measures provided, including to the President of the National Tripartite Committee and the workers' representative, Carlos

Mancilla, for whom, among others, personal security measures have been provided. Moreover, the President of the Republic of Guatemala has given precise instructions for the launching of the analysis unit on attacks against trade union officials and members with a view to reinforcing the joint declaration made by the Office of the Public Prosecutor and the Ministries of Labour and the Interior.

Legislative aspects

With regard to the tripartite efforts made since 2018 (the letter of 7 March and the tripartite agreement in August), and the draft legislative initiative discussed by the three partners in March and April 2021, the Government of Guatemala has expressed its goodwill for it to be submitted once again to the Congress of the Republic, adapted as a draft legislative initiative based on tripartite consensus, so that the corresponding legislative reform can be made in accordance with its constitutional mandate. The draft is the result of social and tripartite dialogue on the following aspects: (i) the workers' representatives added an introductory paragraph referring to the harmonization of the national legislation with the principles of freedom of association; (ii) the Government proposed that section 12 of Decree No. 7-2017 of the Congress should not be amended, as set out in the proposal forwarded on 7 March 2018, although that has been superseded by the case law of the Constitutional Court and the Inter-American Court of Human Rights, and a technical legislative error, as in the present case, does not prevent compliance with the basic right, among others; and (iii) the employers' representatives, in light of the dialogue, would make another revision, and the appropriate comments will be made. In accordance with the principles of social dialogue and tripartism, the Government has requested the partners to make their comments and/or indicate their agreement with the draft legislative initiative, which have not been received and as a consequence it has not been submitted to the Congress of the Republic as a tripartite proposal. It should also be noted that the Government of Guatemala forwarded the contributions of the partners in communications dated 22 April, 19 September and 31 October 2021, and 24 January 2022, and on 10 January 2022 it called for them to be addressed by the National Tripartite Committee (the recognized and preferred dialogue forum) so that a tripartite consensus proposal can be forwarded to the Congress, and not only by the Government as the State concerned and with the ultimate responsibility for the adoption of legislative reforms taking into consideration the lessons learned and the practical improvements in the submission of draft legislation that has full consensus and that is covered by tripartite agreement. In this regard, the Government trusts that, as a result of social dialogue, tripartism and ILO technical assistance, it will finally be able to submit a legislative proposal that takes into account the national situation and the observations of the CEACR, and which is submitted on a tripartite basis for approval by Congress without further procedures.

Application of the Convention in practice

The Government of Guatemala, having noted the recommendations of the CEACR concerning support within the framework of the technical cooperation programme of the Office and in light of the decision adopted by the Governing Body at its 334th Session, through which the Ministry of Labour and Social Welfare requested the support of the Office to redesign the procedures that had been criticized and develop an electronic tool to facilitate internal access to information on trade union registration, generate reports and manage files. In this regard, it reports that the Ministry of Labour and Social Welfare has registered 17 new trade union organizations between September 2021 and May 2022. Moreover, with regard to dealing with disputes, under the responsibility of the Subcommittee on Mediation and Dispute Resolution, of which the Government is a member, efforts have been made by the General

Labour Inspectorate to establish 64 dialogue round tables in 2021 and 2022 (up to April). In relation to the resolution of disputes, reference may be made to 15 cases in which results have been achieved, including the municipality of Mixco which, notwithstanding the conclusion of the judicial procedure, addressed the issue through the General Labour Inspectorate through a round table and, following 18 dialogue meetings, reinstated nine people, according to the report of 14 December 2021, all in accordance with the call by unions to the General Labour Inspectorate to develop and democratize trade union rights and practices through social and tripartite dialogue.

The Government of Guatemala wishes to indicate that, in relation to the significant increase in the percentage of court orders that have been implemented in practice for the reinstatement of workers subject to anti-union dismissals, in relation to point 7 of the road map on Convention No. 87, the judiciary, in Instruction No. 052-2022/DGL/Orza of 30 March 2022 and its related documents, on the basis of the reports of reinstatements implemented at the national level between September 2021 and March 2022, indicates that there have been 255 cases of reinstatement in practice.

The Government of Guatemala reiterates its commitment to the implementation of the road map as indicated over the past three years, its constant understanding that the most important lesson to be drawn from this process is the need to consolidate real social dialogue in Guatemala and emphasizes that this has been accompanied by constant demonstrations of the political will to give effect to the road map and the results achieved for each of its key indicators. The Government's efforts supported by the ILO technical cooperation programme, as noted by the Governing Body at its 340th Session, and their implementation, have achieved the following results: (1) the functioning of the National Tripartite Committee, with its three subcommittees, as the leading body for social dialogue on labour policy and respect for labour rights, with particular reference to freedom of association and collective bargaining; (2) improvements in the protection mechanisms and enforcement of labour rights, with the support offered by the European Union through which, although it has not yet materialized, it is hoped that the efforts made will be maximized and achieve their potential; (3) the harmonization of the legislation with international labour standards, and particularly ILO Conventions Nos 87 and 98; and (4) the effective promotion of collective bargaining with a view to optimizing and reinforcing a tripartite approach to the harmonization of the legislation with international labour standards.

In light of the above, the Government of Guatemala is maintaining and will continue its firm efforts to create trusted institutions which guarantee trade union practices, freedoms and rights at the national level through social dialogue and tripartite consultation.

Written information provided by the Government on 2 June 2022

1. Background

The Government of Guatemala indicates that, in relation to compliance with the road map under the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the measurement of its key indicators, in accordance with the Tripartite Agreement concluded in November 2017 in Geneva, Switzerland; and by virtue of the documents setting out the procedures of the Committee on the Application of Standards at the 110th Session of the International Labour Conference of the International Labour Organization in Geneva, 2022, CAN/D.1, a document is provided containing information in relation to the above Convention.

The ILO Governing Body is following up the implementation of the road map and, in accordance with its decision at its 340th Session (November 2020), adopted the Technical Assistance and Cooperation Programme and requested the Office to submit an annual report on its implementation at its October–November sessions during the three years of the implementation of the Programme (GB.340/INS/PV, paragraph 114). The first report was submitted to the Governing Body at its 343rd Session in November 2021. The Government therefore considers that it has provided information and will continue providing information within the framework of the Governing Body in full and strict compliance with the decisions of the Governing Body. The Government of Guatemala adds that the institutional efforts for the implementation of the road map can be maximized through the Technical Assistance and Cooperation Programme, and that the efforts that have been made by the State of Guatemala will be maximized and reinforced through the institutions that focus their action on full compliance with the rights of freedom of association and the protection of the right to organize in full compliance with their mandates.

2. Road map

As indicated, there are 11 points measured by 9 key indicators, as follows:

(a) Trade union rights and public freedoms

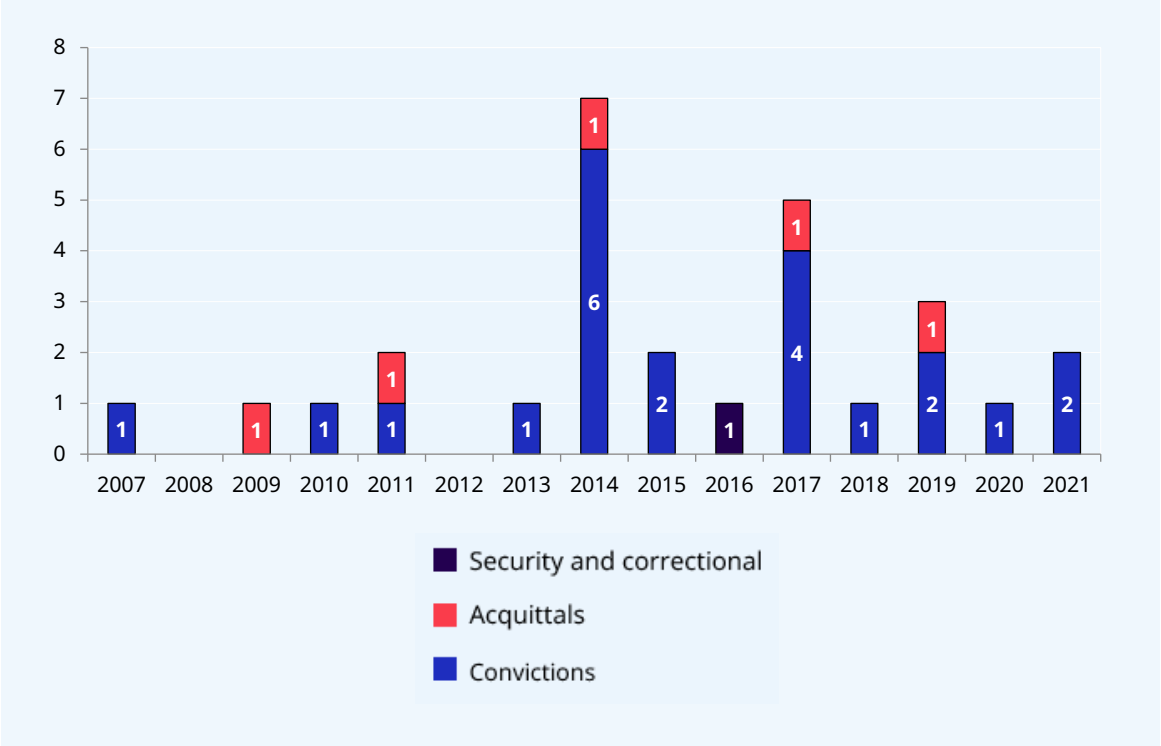
Key indicator 1: Significant increase in the number of cases of murders of union officials and members reported to the ILO that have been investigated and have led to convictions – in relation to points 1 and 2 of the road map.

The Office of the Public Prosecutor, in documents SAIC/G 2021-000957/behedq and SAIC/G 2021-000990/behedq, dated 7 September and 10 September 2021, provided the following information, which details the effect given to this key indicator:

Historical status of cases before the Public Prosecutor's Office	No.
Number of convictions	22
Sentences involving security or correctional measures	01
Number of acquittals	05
Number of cases under investigation by the Special Prosecutor	56
Cases under investigation by other prosecutors	04
Number of cases and/or persons set aside	06
Number of cases at the oral hearing stage	03
Number of cases with arrest warrants pending	07

Based on the above, the Ministry of Labour and Social Welfare provides the following statistical figure.

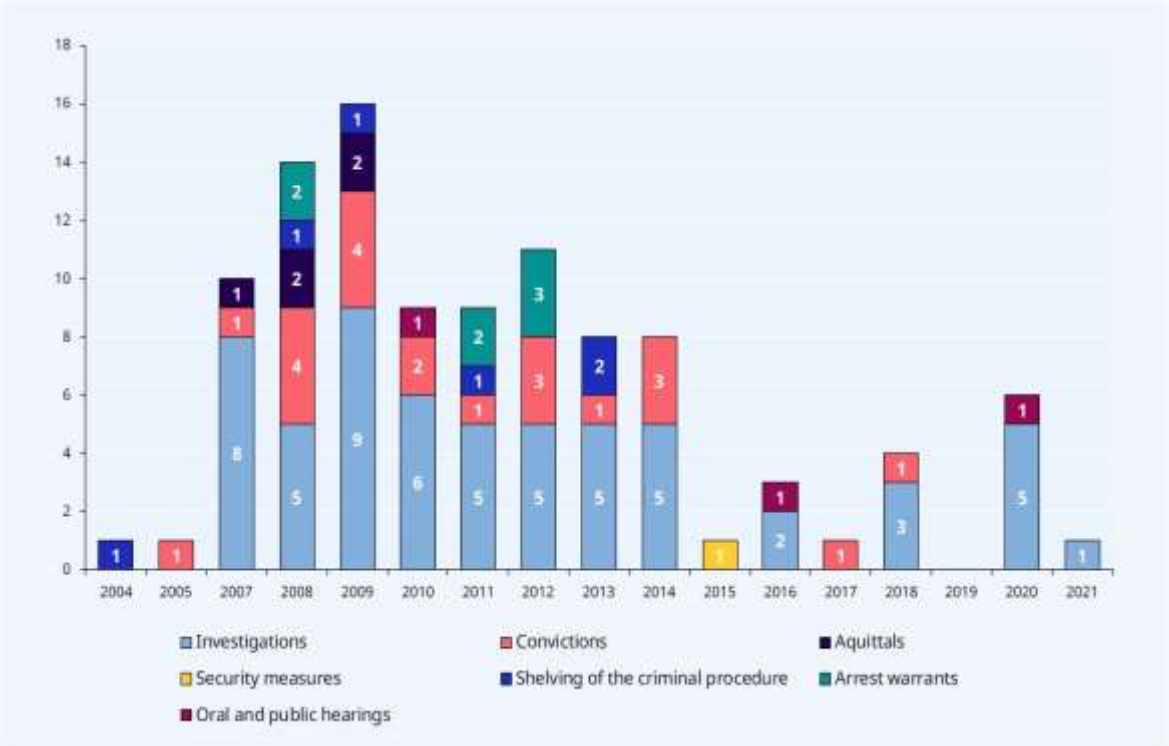
Figure 1. Sentences: Security and correctional measures, acquittals and convictions – Office of the Special Prosecutor for Crimes against Judicial Officials and Trade Unionists of the Office of the Public Prosecutor (2007–21)



Source: Prepared by the International Labour Affairs Unit of the Ministry of Labour and Social Welfare based on information from the Office of the Special Prosecutor for Crimes against Judicial Officials and Trade Unionists of the Office of the Public Prosecutor: 2007 to September 2021.

Between 2007 and September 2021, the trend can be observed of the institutions in the justice system, within their fields of competence, working to undertake more robust investigations of cases and ensure the objectivity of judicial procedures, resulting in judicial decisions being handed down based on due process in the form of convictions and acquittals, which shows that the State is ensuring the application of the law in cases related to the deaths of trade union officials and members, in accordance with the present indicator. The following figure shows the situation each year of the cases reported to the ILO.

Figure 2. Historical overview of the deaths of trade union officials and members – Office of the Special Prosecutor for Crimes against Judicial Officials and Trade Unionists of the Office of the Public Prosecutor (2004–21)



Source: Prepared by the International Labour Affairs Unit of the Ministry of Labour and Social Welfare based on information from the Office of the Special Prosecutor for Crimes against judicial Officials and Trade Unionists of the Office of the Public Prosecutor: 2004 to September 2021.

Notes: * In 2008, there were 4 convictions, 2 of which related to the same case: Lucy Martínez Zúñiga. Similarly, there has been 1 conviction and 1 arrest warrant in the case of Miguel Ángel Ramírez Enríquez, for which reason the 2008 column totals 14 cases, even though there were 12 cases in 2008.

* In 2009, there were 2 sentences for the same case, of Adolfo Ich Chamán, with 1 acquittal and 1 conviction, for which reason the 2009 column totals 16 cases, while there were 15 cases in 2009.

* In 2010, the 2 convictions were for the case of Bruno Ernesto Figueroa. There was a public oral hearing in this case, for which reason the 2010 column totals 9 cases, even though there were 7 cases in 2010.

* In 2012, there were 3 convictions, 2 of which were for the same case of Luis Ovidio Ortiz Cajas, and the other was for the case of José Ricardo Morataya Lemus, for which reason the 2012 column totals 11 cases, when there were 10 cases in 2012.

** The number of cases with pending arrest warrants are included in the number of cases under investigation by the Special Prosecutor.

*** Of the cases under investigation in this table, 3 relate to those in which there were 1 or more sentences in the same case, and which are still under investigation to determine other responsibilities.

The State of Guatemala informed the Subcommittee on the Implementation of the Road Map at meeting 03-2021 on 18 May 2021 and in document 304-2021, with further information being provided to the Subcommittee in ordinary meeting 04-2021 and in document MISU-ws 325-2021, dated 23 September 2021, as indicated in the above table, of the sentences handed down in cases involving the deaths of union officials and members, of which 16 were for perpetrators, 5 for instigators and 3 for perpetrators and instigators.

Key indicator 2: Conduct, together with the relevant trade union organizations, of risk assessments for all threatened union officials and members and the adoption of appropriate protection measures – in relation to point 3 of the road map.

The Ministry of the Interior, in document No. DM-2300-2021/GRRM/jmt-ss, of 8 September 2021, followed by document No. DM-1141-2022 of 22 April 2022, provided the following information: from 2021 until 15 April 2022, a total of 109 denunciations were received and 119 protection measures granted, including for the President of the National Tripartite Committee, Carlos Mancilla García, for whom personal security measures were granted. In relation to inter-institutional coordination, the Office of the Public Prosecutor indicated in document FDCOJS/G 2022-000151/wzvrdc, dated 26 May 2022, that the Office of the Special Prosecutor for Crimes against Judicial Officials and Trade Unionists has launched at least 11 further investigations in addition to the 9 reported at the beginning of May 2022 to investigate and shed light on cases of intimidation denounced by the President of the National Tripartite Committee, with a view to determining the identity of those responsible for the acts reported and their motive.

(b) Legislative aspects

Key indicator 4: Drafting and tabling before Congress of a bill, based on the comments of the CEACR, ensuring the conformity of national legislation with Convention No. 87, and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – in relation to point 5 of the road map.

With regard to the tripartite efforts made since 2018 (the letter of 7 March and the Tripartite Agreement in August), and the draft legislative initiative discussed by the three partners in March and April 2021, the Government of Guatemala has expressed its goodwill for it to be submitted once again to the Congress of the Republic, adapted as a draft legislative initiative based on tripartite consensus, so that the corresponding legislative reform can be made in accordance with its constitutional mandate. The draft is the result of social and tripartite dialogue on the following aspects: (i) the workers' representatives added an introductory paragraph referring to the harmonization of the national legislation with the principles of freedom of association; (ii) the Government proposed that section 12 of Decree No. 7-2017 of the Congress should not be amended, as set out in the proposal forwarded on 7 March 2018, although that has been superseded by the case law of the Constitutional Court and the Inter-American Court of Human Rights, that a technical legislative error, as in the present case, does not prevent compliance with the basic right, among others; and (iii) the employers' representatives, in light of the dialogue, would make another revision, and the appropriate comments will be made.

(c) Application of the Convention in practice

Key indicator 5: Significant increase in the percentage of reinstatement orders actually implemented for workers, victims of anti-union dismissals – in relation with point 7 of the road map.

The Labour Management Department of the Judicial System, in communication 292-2021/DGL/Orza, of 14 September 2021, and its updates up to 2022, provided the following information.

With reference to reinstatements and their location, the Labour Management Department of the Judicial System, in document No. 052-2022/DGL/Orza, dated 30 March 2022, and its updates, and in the recent document No. 066-2022/DGL/Orza, dated 30 May 2022, indicates that in 2021, in accordance with the final data provided by the Judicial Information, Development and Statistics Centre (CIDEJ), in document 331-2022/CIDEJ of 30 May 2022, 727 persons were reinstated, of whom 75.93 per cent were in the Department of Guatemala,

and 24.07 per cent in 13 departments of the Republic of Guatemala. In 2022, the Labour Management Department reports 188 actual reinstatements.

Key indicator 6: Review and resolution of conflicts by the Committee for the Settlement of Disputes before the ILO in the Area of Freedom of Association and Collective Bargaining – in relation to point 8 of the road map.

With regard to this key indicator, the Government of Guatemala reiterates that the action is the responsibility of the Subcommittee on Mediation and Dispute Resolution. The Government, as a concerned party, further indicates that it has focused its efforts on the establishment of at least 67 round tables in 2021 and 2022 (up to the end of May 2022). In relation to dispute resolution, it may be noted that positive results have been achieved in 15 cases, including in the Municipality of Mixco, where a dialogue round table has been established through the General Labour Inspectorate, which has held 18 meetings with satisfactory results, including the reinstatement of 9 workers (according to the report of 14 December 2021 of the General Labour inspectorate). Among the successful cases, the Government wishes to refer to the dialogue round tables in the municipalities of Aguacatán y Cuilco, Huehuetenango; Morales, Izabal; San Cristóbal Totonicapán, Totonicapán; Retalhuleu and San Felipe y Champerico, Retalhuleu; and San Pedro y Malacatán, San Marcos.

Key indicator 8: Unimpeded registration of trade union organizations in the Trade Union Register of the Ministry of Labour and Social Welfare.

The General Directorate of Labour (DGT) indicated in document No. 374-2021 MRGE/LASC, dated 16 September 2021, document No. 102-2022 DGT-LASC/Napl of 29 March 2022, and document No. 167-2022 DGT-DISH/Napl, dated 1 June 2022, that by the end of 2021, 57 trade union organizations had been registered in the Public Trade Union Register of the Ministry of Labour and Social Welfare of Guatemala. Moreover, in documents Nos 148-2022 DGT-DISH/Napl of 12 May 2022 and 164-2022 DGT-DISH/Napl of 30 May 2022, the DGT indicated that during the course of 2022 (up to 30 May), 12 trade union organizations had been registered in the Public Trade Union Register.

Key indicator 9: Trends in the number of applications for registration of collective agreements on working conditions, with an indication of the industry concerned.

The General Secretariat of the Ministry of Labour and Social Welfare, in document No. 388-2022 SG/MNAL/arp, dated 12 May 2022 and its attachments, indicates that in 2021 and 2022 (up to 1 June as the date for the provision of information for the supplementary report to the Committee on the Application of Standards), indicates that 18 agreements have been approved. The Government of Guatemala also requested technical assistance and support from the ILO on collective bargaining in relation to the observations and direct requests made by the CEACR in a workshop on collective bargaining and social dialogue, focused on public employees in the government sector, held on 23 and 24 May 2022, with the support of the consultant Alexander Godínez Vargas, and the participation of representatives of the following related institutions: the National Association of Municipal Authorities, the Comptroller-General of Accounts, the Office of the Public Prosecutor, the Ministry of Public Finance, the National Office of the Civil Service, the judicial system through the Labour Management Department and the Ministry of Labour and Social Welfare.

Discussion by the Committee

Government representative, Minister of Labour and Social Welfare – I am grateful for the forum provided for Guatemala to address you in this esteemed plenary, to provide

information on the attention that the State of Guatemala has been giving to the observations referred to by the Committee of Experts, as stated before the Committee on Freedom of Association and the Governing Body, pursuant to the decisions made by this important body at its 334th, 337th, 340th and 343rd Sessions, held in 2018, 2019, 2020 and 2021, respectively. I therefore take the liberty of emphasizing that Guatemala has provided information, and will continue to do so, on the progress made on the different points of the road map.

With regard to the additional measures adopted by the Government in the context of implementing the road map, I am accompanied today in person by the judges of the Supreme Court of Justice and in virtual format by the Public Prosecutor's Office. We have joint responsibility for the implementation of actions that enable compliance with the road map; we have jointly assembled and submitted in a timely manner to this esteemed Committee the additional information referred to in document D.1.

I must emphasize that the Public Prosecutor's Office, responding to the recommendation of the Committee on Freedom of Association in its 387th Report in November 2018, has constantly increased its budget and, according to its communication of 10 May 2022, the Office of the Special Prosecutor for Crimes against Judicial Officials and Trade Unionists has a budget of US$1,288,252 for 2022. We can thus see the high level of importance and commitment of the State with regard to the urgent actions being undertaken by the national investigating authority to carry out investigations which are immediate, independent, exhaustive, efficient and impartial in order to obtain justice in cases relating to our trade union leaders and members, showing that since its creation in 2011 to date, with over ten years of operation, not only has the category of sectoral prosecutor's office been enhanced but its budget is 12 times greater than it was at the outset.

The Public Prosecutor's Office has duly worked on all the cases that have been brought before it. It points out that one case is already at the public oral hearing stage, and in another case relating to events in Coatepeque (Quetzaltenango) a timely and relevant prosecution request is being brought before the court. It is hoped that it will be possible for these cases to be judged promptly in a public oral hearing, together with two other cases with a prosecution position. We thus expect to obtain four more rulings in addition to the 28 on which Guatemala has been providing information and thus continue to show, as established by key indicator 1 of the road map, the significant increase in the number of cases of killings of trade union officers and members reported to this Organization which have already been elucidated and have resulted in a ruling or a conviction.

Hence the Government of Guatemala shows and reiterates its full availability, with the assigned human resources, a strengthened budget and useful, timely and appropriate coordination actions, to be able to continue providing evidence of implementation of points 1, 2, 3 and 4 of the road map regarding the life and physical integrity of the trade union leaders and members for whom the State of Guatemala is responsible, and that it will continue to maximize the efforts needed to demonstrate emphatically its compliance.

Furthermore, I must point out that the Ministry of the Interior, by instruction of the President of the Republic, Mr Alejandro Giammattei, signed Ministerial Order No. 288-2022 of 3 June 2022, last Friday, and this was published today in the *Official Gazette*. This relaunches the operation of the authority responsible for analysing attacks on trade union officers and members, with the analysis focusing this time on our trade union officers and members.

With regard to legislative aspects, I must reiterate that in order to give impetus to the proposed Bill whose content encompasses tripartite agreements which have already been reached, taking account of the national situation, with a view to reflecting trends in legal

studies and jurisprudence, we have worked on a tripartite basis in two plenary meetings of the National Tripartite Committee, together with its Subcommittee on Legislation and Labour Policy, held in March and April 2021. I take the liberty of pointing out that, as the State concerned, we understand perfectly that we have ultimate responsibility for seeking the legislative reforms taking into consideration the lessons learned and the best practices in submitting proposals to the National Congress. However, we are awaiting the reactions of the constituents to the latest observations of the Government to give continuity to the discussion and the search for consensus regarding the final draft, which we have no doubt can be achieved in 2022. In this regard, we have sought, and I will continue seeking, space in the National Tripartite Committee to ensure that addressing legislative reforms is a constant feature of tripartite dialogue in this forum. However, the legislative authority is aware of our international commitment as a State and so in due course, when this reform is ready, another hearing will be requested so that, as soon as the proposal is submitted in the form of a Bill, it will be placed on the agenda and the tripartite constituents will be received to take part in dialogue and the process will continue until the actual reform is implemented.

With regard to the application of the Convention in practice, I would like to state that we have made significant progress with regard to reinstatement rulings. The judiciary, represented today by its judges, together with the Public Prosecutor's Office and the Ministry of Labour and Social Welfare, have strengthened the space for inter-institutional coordination to respond to the workers' concerns in specific cases. Accordingly, in 2021 a total of 727 reinstatements were effected, with 75 per cent relating to the Department of Guatemala and the remaining 25 per cent to the other 13 departments in Guatemala. In 2022, the Labour Management Department reported 188 effective reinstatement proceedings. Furthermore, the Ministry of Labour undertook an exhaustive audit of its registers and reports the registration of 69 trade unions between 2021 and May 2022. Support was requested from the ILO, both for the redesign of key processes and the construction of an IT tool which we are awaiting. We are sure that this will streamline internal access to information on trade union registration and generate reports and the handling of files so that the whole process will be more expeditious, as is the case for the implementation of an inter-institutional workshop on collective bargaining and social dialogue, a forum in which stakeholder institutions already took part.

I am pleased to state that on 24 May 2022 the subject of the implementation of the road map and key indicators was addressed at the level of the Government Cabinet. I raised the challenges and proposals for implementation with the other Cabinet members and the President himself, fixing as a regular proposal the institutional efforts for the effective implementation of, and prompt compliance with, the road map. In this regard, it was requested that: (i) government institutions should continue complying with the reinstatement orders issued by the competent judge; (ii) personal protection measures should be adopted for members of the trade union movement in situations of risk, like those that were promptly adopted in the regrettable cases of threats to Mr Carlos Mancilla, the National Tripartite Committee President; and (iii) the request to approve the body responsible for analysing attacks on trade union officials and members which, as I mentioned previously, was accepted.

I emphasize that we recently held a constructive meeting with the Director of the International Labour Standards Department and with the national and international tripartite constituents, to whom we reiterate our satisfaction at the strengthening of the National Tripartite Committee and its subcommittees, forums which we consider to be vitally important in the development of dialogue, in which comprehensive joint solutions can be found to the labour dynamics of our country, as well as an ongoing implementation of the road map, in

accordance with the Convention. In these forums we have expressed our views, we have listened to the views of others regarding the challenges to be faced, and we all share the concern of achieving full compliance with the road map and key indicators in the shortest time possible.

We have no doubt that the technical cooperation and assistance programme, requested of the Office by the Governing Body at its 334th Session, will contribute to the sustainability of the current social dialogue process and drive progress in the application of the road map. The aim is that this programme, approved by the Governing Body at its 340th Session of November 2020, can function rapidly, adding to the own efforts and funds supplied by the Office, and with those which we hope will come from the European Union this year. We are already grateful for this, which without any doubt, together with social dialogue and tripartism, will reinforce not only the legislative proposal but will also intensify institutional efforts to implement the road map, while not forgetting to emphasize that to this will be added the Guatemalan State's own efforts through the institutions that focus their actions on the full respect for the right to freedom of association and protection of the right to organize, in full alignment with the scope of its powers.

Furthermore, we are grateful for the time and support of the international social partners, the ILO, the Office for Workers' Activities (ACTRAV) and the Office for Employers' Activities (ACT/EMP) for the consolidation on this path of social dialogue and the ongoing application of the Convention in practice.

In this regard, and with a view to a democratization and reinforcement of the exercise of respect for labour rights in Guatemala, it has been proposed to us, the tripartite constituents in my country, technical support deriving from the balanced application of the technical assistance and cooperation programme. It is my pleasure to say that we are once again grateful for the support offered and we consider that the exchange of experience and knowledge can promote the decision adopted by the Governing Body at its 334th Session, paragraph 401(b), firmly calling on the Government of Guatemala, the Guatemalan social partners and the other relevant public authorities, with the support of the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC), and the technical assistance of the Office, to elaborate and adopt legislative reforms that fully comply with point 5 of the road map.

I must emphasize that, aware of the responsibility of the Government with respect to the implementation of the road map and its key indicators, its commitment remains unlimited, being strengthened by addressing the concerns of the sectors, seeking to provide an institutional response that reaches the highest levels of efficiency and focuses on giving attention to our trade union leaders and members.

In reality this is a country which, despite receiving a massive shock to its economy, maintains its unlimited commitment and determination as a State to comply fully with all national laws and the international commitments relating to individual and collective labour rights, and to continue a dialogue focused on actions that enable the creation of decent work and sustained and sustainable inclusive economic growth.

Worker members – Five years after the last examination of the case, the Committee is once again being called upon to review the application of the Convention in Guatemala, a country which holds the dismal record of having appeared before the Committee on 19 occasions with regard to the application of the Convention.

The Government of Guatemala has not acted systematically in response to the serious observations and recommendations of the ILO supervisory bodies. Exactly ten years ago, the Workers' delegates presented a complaint under article 26 of the ILO Constitution for the establishment of a Commission of Inquiry with regard to non-observance of the Convention. Our complaint was finally closed in 2018, and a three-year technical cooperation programme was adopted, entitled "Strengthening of the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards". The main objective of this initiative is precisely the protection and promotion of labour rights with a special focus on action against anti-union violence and impunity.

However, and we note this with great regret, no substantial progress has been made to put an end to acts of anti-union violence, including the murders of numerous trade union officers and the situation of impunity related to it.

The Government of Guatemala states that it carried out 55 risk assessments with regard to members of the trade union movement during 2020, with 1 personal security measure and 47 perimeter security measures. In 2021, a total of 19 risk assessments for members of the trade union movement were carried out, with 15 perimeter security measures adopted. These measures are far from being satisfactory; on the contrary, violence against workers and trade union leaders has not decreased. Between 2020 and 2021, 9 union leaders and members were murdered.

In respect for their memory, the Worker members wish to mention their full names: Gerson Hedelman Ortiz Amaya, member of the Municipal Development Institute Workers' Union; José Miguel Alay, member of the Workers' Union of the University of San Carlos; Héctor David Xoy Ajualip, member of an enterprise-level workers' union; Julio César Zamora Álvarez, member of a dockworkers' union; Ludim Estuardo Ventura Castillo and Cinthia del Carmen Pineda Estrada, of the Education Workers' Union of Guatemala (STEG); Misael López, Fidel López and Medardo Alonzo Lucero, members of the Chorti Nuevo Día Federation of Peasant Farmers' Organizations, and Carlos Enrique Coy, member of the Verapacense Union of Peasant Farmer Organizations (UVOC).

Each of these brutal crimes remains unpunished. Countless other trade union members and their families continue to be victims of attempted murder, violent assault, death threats, intimidation and harassment.

In the meantime, there have still been no convictions for the vast majority of the numerous recorded murders of members of the trade union movement. The Government is not fulfilling expectations and commitments entered into when undertaking investigations and proceedings, failing to perform actions as basic as gathering the testimonies of family members and witnesses, or omitting aspects of ballistic analysis, in cases involving anti-union crimes. As a result of these deficiencies, at least 105 murders have still not been resolved in judicial terms.

The extreme degree of violence which pervades the whole of society, aggravated by the lack of action by the Government as regards investigating and prosecuting anti-union crimes and protecting trade unionists, cannot go on being tolerated and calls for firm and immediate action.

Freedom of association cannot be exercised if human rights, especially the right to life and personal safety, are not fully respected and safeguarded. The Government of Guatemala cannot carry on evading its responsibilities. It needs to be reminded of its commitments under international standards, including in the context of the current technical cooperation

programme, and its obligations towards its population to ensure a climate free of violence, pressure or threats.

The situation in the country is made worse by the long-standing gaps in the national legislation, which de facto deny workers their basic labour rights: section 215(c) of the Labour Code, which requires a membership of "50 per cent plus one" of the workers in the sector to establish a sectoral trade union; sections 220 and 223 of the Labour Code, which establish the requirement to be of Guatemalan origin and to work in the relevant enterprise or economic activity to be eligible for election as a trade union officer; section 241 of the Labour Code, under the terms of which strikes have to be called by a majority of the workers and not by a majority of those casting votes; section 4(d), (e) and (g) of Decree No. 71-86, which provides for the possibility of imposing compulsory arbitration in non-essential services and establishes other obstacles to the right to strike; sections 390(2) and 430 of the Penal Code and Decree No. 71-86, which establish labour, civil and criminal penalties in the event of a strike by public officials or workers in certain enterprises and the exclusion of various categories of public sector workers (hired under item 029 and other items of the budget).

Despite the repeated requests of the various ILO supervisory bodies, the Government of Guatemala has not made any tangible progress to bring the legislation into line with the Convention. The Worker members urge the Government to amend the legislation in consultation with the social partners and in accordance with the Convention.

Nor has there been any progress on the long-standing issue of the registration of trade unions. According to the information provided by the Government, more than one third of requests to register a union reviewed in the last two years have been rejected and a significant number of requests are still being processed many months after they were submitted.

Nor has the Government made the slightest effort to comply with the reinstatement orders for workers who have been victims of anti-union dismissals.

Lastly, the Government has not made any progress in disseminating the awareness-raising campaign on freedom of association and collective bargaining in the country. On the contrary, the media constantly attack trade union leaders and their organizations. Since the article 26 complaint procedure was closed, the Government has not shown the slightest willingness to fulfil the commitments entered into under the 2013 road map.

The Worker members are extremely concerned at the persistence of anti-union murders and other acts of violence connected with the victims' union activities, at the climate of widespread impunity in the country and at the total absence of progress or even evidence of the Government's willingness to act, despite multiple and repeated calls from the various ILO supervisory bodies and the Governing Body and in spite of ILO technical assistance.

We demand that the Government take immediate, decisive and effective measures to protect the life and physical integrity of all trade union leaders and members and workers, to streamline investigations into anti-union crimes and to punish the perpetrators. We also expect the Government to bring the legislation into line with the Convention in consultation with the social partners and without further delay.

Employer members – We would like to begin by saying that we too are moved and touched by acts that involve the loss of human lives; in this case those of trade union leaders and activists.

This is a matter that we have been addressing for quite some time. The distinguished representative of the Workers already mentioned that a complaint was submitted in 2012 under article 26 of the ILO Constitution and was closed in 2018.

However, in the course of the follow-up evaluation by the Governing Body in 2013, a memorandum of understanding at the highest level was approved with the ITUC supporting that process; in 2014, it was agreed to adopt a road map; in 2015, nine key indicators were specifically included as follow-up to the road map; in 2017, a tripartite agreement was reached on four of the six legislative topics which the Workers' representative has just mentioned; in 2018, the National Tripartite Committee was established which, inter alia, reached some additional complementary agreements, with three subcommittees discussing various aspects, including one dealing with specifically international matters.

At the closure of the complaint, it was finally agreed from 2020 to have a technical assistance programme and, in particular, the Governing Body requested a follow-up to this programme for the evaluation of the road map indicators. Indeed, these aspects resulted in the approval of the programme for three years. Lastly, reports were presented at the November 2021 meeting on the implementation of this cooperation and these technical assistance programmes.

Furthermore, since 2005, the Committee on Freedom of Association has been addressing allegations of serious and worrying acts of violence against trade union leaders and members. In Case No. 2609, which was last examined in October 2021, we are evaluating acts that occurred between 2004 and 2021, namely murders and killings of members of the trade union movement.

We are deeply moved as is only natural. However, regarding the developments on the road map, elements should be objectively noted with regard to specific actions by the various institutions in Guatemala. As regards the number of murders, some judgments have been issued recently in which we note – and it is not the information that we would ideally like since we would like to have specific details of all the cases – that there have been 22 convictions; 1 conviction with security and corrective measures; 5 acquittals; and 56 cases which are with the Public Prosecutor's Office and 59 with other branches of the prosecution service. In addition, there is another series of data, which include investigations that have been archived because of the death of suspected perpetrators of the crimes that were due to be investigated.

Certain legislative matters are also pending. Even though agreements have been adopted, as I mentioned, additional steps need to be taken in the Congress of Guatemala so that a tripartite agreement can be adopted in the form of a law in that country.

Also, as regards mechanisms for prevention and for the protection of union leaders, 119 protection measures have been adopted in the last two years. Although this is probably not sufficient, it does show concrete action in providing individual persons with protection programmes. This includes, in particular, the distinguished Workers' representative of Guatemala, who, we are aware, is under a special protection scheme to provide him with all necessary guarantees.

With regard to labour inspection, we have recorded the fact that since 2017 regulations have been issued by the National Congress adopting new systems for the application of penalties and improving individual ways of gathering statistics and, in addition, strengthening institutions related to labour inspection.

Similarly, regarding the various road map indicators, we can see with regard to rulings handed down by labour tribunals that reinstatement has been sought for workers who have

been the victims of anti-union dismissals and that there were 761 reinstatement proceedings in 2020, 727 in 2021, and 188 so far in 2022.

At the same time, there is a second awareness-raising campaign regarding freedom of association which is under way, following up on the first one. We all hope that through the Subcommittee on the Implementation of the Road Map there can be concrete implementation and follow-up to this indicator.

In addition, with regard to the unobstructed registration of trade unions, in 2021 a total of 57 organizations were registered and during 2022, 2 more organizations have been registered with legal personality.

As regards the approval of collective agreements, in 2020 a total of 13 agreements were approved, with a further 18 in 2021 and 2022.

Finally, regarding the road map indicators, we note the technical assistance programmes that are being implemented and through which there is specific action in tangible areas. I already referred to the functioning of the National Tripartite Committee. It would be good to know much more about its activities, in particular the attitudes of the different tripartite actors, the public authorities, the employers, but also the workers in relation to the smooth functioning of this organization.

Moreover, we know that the mechanisms for the protection of labour rights have been improved; there have been more activities on the part of the judicial authorities. Efforts are being made to bring the legislation into line with international standards, as a result of four of the six specific points which the Committee of Experts asked to be amended. Some of these referred to strike action; we have nothing particular to say on this subject.

Lastly, effective collective bargaining has been promoted, as borne out by the data regarding the registration of the approved agreements. In this regard, we see that there has been an evolving process which is insufficient, in which institutional operations in Guatemala need to be reinforced. In particular, we think it would be relevant to have joint action by these authorities to strengthen existing institutional activity in these dialogues, so that further progress can be made.

In conclusion, the Governing Body will undertake evaluations in the next two years with regard to these indicators precisely which makes it a competent body for following up on these subjects.

Employer member, Guatemala – We are grateful for the information provided by the Government of Guatemala, reporting on progress made regarding the implementation of the road map adopted on a tripartite basis in 2013.

First of all, I would like to speak of the topic of the greatest concern: namely, the acts of violence and the follow-up to the investigations into the cases of violent death. We start from the basis that the loss of any life is reprehensible; it cannot be tolerated for any reason whatsoever, whether or not it is related to the trade union activity of the victim.

Years ago, the figures reported showed little variation. However, for some time an interesting trend has been visible in the results that have emerged: they seem to indicate that there has been political will on the part of the State, which has been reflected in government departments dealing with these cases.

We would like to emphasize that, according to investigations into convictions and acquittals so far, in no case has an anti-union motive been established. Indeed, the motives have been seen to include personal issues, gang activity, theft, road accidents, extortion,

marital problems and real estate problems, as reported to the Subcommittee on the Implementation of the Road Map. This is understandable in the context of violence unfortunately being experienced by our country, which in 2021 was ranked among the 15 most violent countries in the world according to international organization indicators. Official figures indicate over 60,000 murders in the last decade alone. We reiterate our condemnation of such facts, but it seems appropriate to us to list the motives on account of the reiterated finger-pointing in this room on this subject in previous years.

Moreover, it seems important to mention that the vast majority of these cases date back many years, which makes their judicial resolution quite complicated. Nevertheless, we note from the figures presented that there have been positive results showing that there has not been any anti-union persecution in Guatemala, as indicated to the Tripartite Commission on International Labour Affairs by the Commissioner against impunity in Guatemala after analysing the cases reported in this forum.

Furthermore, the political will to act can be seen in the fact that the mechanisms of prevention, protection and reaction against threats and assaults against trade union leaders are active and producing results.

We trust that such a course of action will help to resolve the situation faced by Mr Carlos Mancilla, President of the National Tripartite Committee, with whom we express solidarity.

Moving onto legislative matters, we work from the basis that over a number of years bipartite and tripartite agreements have been reached to amend the legislation as requested by the Committee of Experts, specifically the Penal Code, the Act on the unionization of state workers and the Labour Code. As regards the latter, even though no agreements were reached regarding some sensitive subjects for workers and employers, at least there was agreement on the direction in which such reforms should go. All of this was reported to our Committee and considered an important milestone.

We note with concern, on the one hand, that the agreed reforms have not made progress in the National Congress and, on the other, that the National Tripartite Committee has not been able to move forward in dealing with the pending reforms.

Genuine willingness is required from all those involved in the National Tripartite Committee to achieve concrete results. Some self-criticism on this last aspect would be appropriate, and I speak in a personal capacity as a member of the National Tripartite Committee. I wonder whether we have done enough to convince the legislative authority to approve the initiatives that we have submitted? Have we been proactive in the discussion of the pending reforms? Have we addressed the substantive themes of the National Tripartite Committee? Or, on the contrary, have we wasted time on irrelevant discussions, including merely formal ones relating to aide-memoires?

We trust that the outstanding topics, such as the establishment of trade unions by branch of activity and representativeness for negotiating collective agreements on conditions of work will be discussed and, hopefully, be the subject of tripartite agreement. This should be treated as a priority by the National Tripartite Committee, which should review its agenda placing this subject at the top.

A good example of such results being achievable can be seen in the legislative reforms enabling the General Labour Inspectorate to fulfil its mandate to ensure the effective application of the labour legislation, which were introduced by the National Congress by Decree No. 7 of 2017 in response to an agreement between the social partners.

Ultimately, we, the social partners, must commit to moving forward – this is how we see it. We have been doing this for many years and accordingly we are devoting our efforts to the social dialogue forums, the institutional round tables and other ad hoc initiatives with the aim of implementing the road map indicators and giving effect to the comments of the Committee of Experts.

Worker member, Guatemala – First and foremost, we would like to thank the Workers' group for its demonstration of support and solidarity for the workers of Guatemala, with regard to ending the violence against trade union leaders and ensuring respect for the lives of the people of Guatemala, for the rule of law, for the application of prompt and due justice and the full validity of human and labour rights, freedom of association and collective bargaining. In the same way, we express our solidarity with our working comrades, men and women, in Latin America and the whole world, who, like us, are the victims of callous violence and murder, without any supreme power being there to overcome this, so that there can be peace and social justice in our countries.

The Autonomous Popular Trade Union Movement and the global unions of Guatemala, with regard to the complaint concerning non-observance by Guatemala of the Convention, submitted by delegates to the 101st Session (2012) of the International Labour Conference under article 26 of the ILO Constitution and as follow-up to the road map adopted by the Government of Guatemala in 2013, would like to make the following points.

The ongoing serious violations of freedom of association which have been occurring for years in Guatemala not only have a profound effect on labour relations but they also call into question the validity of democracy itself and human rights in the country. A ferocious anti-union campaign is being driven by employer and state sectors seeking to portray trade union organizations as being responsible for lawlessness, corruption and the economic crisis suffered by the majority of Guatemalans. Clear evidence of this is provided by the press campaign in which the leaders of the unions, including autonomous and global unions, are generally – and directly – disparaged and discredited. Certain persons connected to the employer sector are behind this.

These anti-union actions prepare the ground and result in events which seriously endanger the integrity of trade unions and their members. It is by no means a coincidence that many of our comrade union leaders and their families are receiving death threats. Regrettably, when the trade union movement calls on the competent authorities to intervene in order to preserve the safety of citizens, we are reproached with being bad citizens for merely requesting attention and protection against these attacks, which often culminate in murders committed with total impunity. The figures for violence against trade unionists in Guatemala are conclusive, with over 100 murders recorded in recent years, counting only those which have been reported to the Special Prosecutor at the Public Prosecutor's Office.

With regard to labour rights, many workers have been dismissed for attempting to organize as a union, but reinstatement orders are not implemented by the employers in the majority of cases, and this genuine disregard incurs no consequences in terms of sanctions or enforced implementation. Multiple ministerial obstacles continue as regards the registration of new unions, as they do for the approval of collective agreements adopted by employers and workers. Lastly, and without having exhausted the list of problems, the Government of Guatemala is issuing a circular whereby collective bargaining in the public sector is practically prohibited.

The problem does not stop with the extreme seriousness of the murders, threats, surveillance and other forms of physical violence: there is an unrelenting impunity which the Government is incapable of ending.

The Public Prosecutor's Office has presented reports to the Governing Body on the status of investigations into some of the murders of trade unionists. These documents merely corroborate the technical incapacity and lack of political will to investigate the murders of our trade union comrades. The vast majority of cases are not making progress in procedural terms, and in those cases where there are new developments, in general they involve acquittals or the closure of investigations. In other words, total impunity.

Moreover, the outcomes of the road map agreed at the ILO have been absolutely insufficient and have not represented any significant changes regarding freedom of association in the country. The Government has failed to implement the road map, thereby disregarding the value of tripartism. Furthermore, the solution put forward by the ILO with respect to violence against trade unionists has been ignored.

Nor has the Government complied with the repeated observations of the ILO supervisory bodies concerning the need to bring its law and practice into line to respect the provisions on freedom of association and collective bargaining contained in the respective international Conventions ratified by Guatemala.

Recurring references are made to the willingness to engage in dialogue but on many occasions not even the tripartite forums on international labour Conventions are respected.

We are bound to note with regret that being a trade unionist in Guatemala is just as dangerous now as it was nine years ago, when the road map was signed.

Therefore, notwithstanding the reiteration of our commitments to making every possible effort to implement the pledges of the road map and, in general, to give effect to the rights of working people, we, the trade unions, request this Conference to call on the State of Guatemala to take specific action to guarantee the rights established in the Convention, and also in the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), on account of its nature and convergence.

In light of the above, we, the trade unions, will insist on the need to establish a Commission of Inquiry for Guatemala, just as we stated in the complaint already submitted several years ago.

Government member, France – I have the honour of speaking on behalf of the **European Union (EU) and its Member States**. The candidate countries **Montenegro** and **Albania**, and the European Free Trade Association country, **Norway**, Member of the European Economic Area, align themselves with this statement.

The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights, such as the right to organize and freedom of association.

We actively promote the universal ratification and implementation of fundamental international labour standards, including Convention No. 87. We support the ILO in its key role of developing, promoting and supervising the application of ratified international labour standards and of the fundamental Conventions in particular.

We wish to recall the commitment made by Guatemala, under the trade and sustainable development chapter of the EU–Central America Association Agreement, to effectively implement in law and practice the fundamental ILO Conventions.

Notwithstanding the closing of the complaint by the 334th Session of the Governing Body three years ago, the EU and its Member States continue to follow very closely the effective implementation of the Convention in law and practice, including the technical cooperation programme, and remain engaged with Guatemala on labour issues.

Tripartite consultations and meaningful, effective social dialogue are essential foundations for the application of fundamental principles and rights at work.

On the basis of the most recent report of the Committee of Experts, we strongly regret that, despite discussions at the International Labour Conference and in the Governing Body, the existence of the National Tripartite Committee, and technical assistance provided by the Office, there has been a lack of tangible progress in the implementation of the Government's commitments with respect to the effective implementation of the Convention since the closure of the complaint.

While duly noting the information provided by the Government and recognizing the importance of the initiatives called for by the Subcommittee on the Implementation of the Road Map, we remain deeply concerned at the persistence of serious acts of anti-union violence, including murders of trade union officials and members, as well as the related situation of impunity. Effective protection of trade union officials and activists needs to be ensured to prevent any further acts of anti-union violence. In the absence of efforts to strengthen the prevention, protection and response mechanisms in respect of threats and attacks against trade union officials and activists, this regrettable situation is likely to continue, if not to become worse. In this regard, we call for effective investigations and prosecutions of the perpetrators and instigators of these acts.

We once again urge the Government to adopt, without delay, the legislative reforms that were submitted by tripartite consensus to the National Congress in order to fully comply with the Convention and implement the road map. We note with concern the continued challenges related to the process of trade union registration.

In connection with the above, we emphasise the importance of the effective implementation of the recommendations evolving from the technical assistance provided, including the dissemination of awareness-raising campaigns on freedom of association and collective bargaining.

We are happy to announce that, in the framework of the bilateral programme providing support for decent employment, the EU endorsed an agreement with the Government and the ILO only two weeks ago. As a result, the Ministry of Labour and Social Welfare and other state institutions and social partners are supported in fulfilling the commitments included in the road map.

The EU and its Member States will continue to follow and analyse the situation and remain committed to close cooperation and partnership with Guatemala in the fulfilment of all its obligations under the ILO Conventions, with a specific focus on the fundamental Conventions such as Convention No. 87.

Government member, Chile – I am making this statement on behalf of **a significant majority of Latin America and Caribbean countries**. We thank the Minister of Labour and Social Welfare of the Government of Guatemala for the information which he has presented today to this Committee regarding the application of the Convention. We recognize the commitment of the Guatemalan constituents towards strengthening the processes of negotiating and reaching agreements within the National Tripartite Committee and its subcommittees, giving priority to social dialogue and respect for international labour

standards. We invite the Government to intensify its efforts and ensure the progress of the road map to consolidate social dialogue, a task performed so far by the National Tripartite Committee, and to ensure the application of the Convention. We recall that the ILO Governing Body provides an annual follow-up to the implementation of the road map relating to this Convention in the context of the programme to strengthen the National Tripartite Committee in Guatemala for the purpose of the effective application of international labour standards. A significant majority of Latin America and Caribbean countries also recalls the appeal by the Government of Guatemala to donors, during the presentation of the first annual report on the application of the above-mentioned programme in November 2021, to contribute financially and technically to strengthening national resources and efforts intended for its implementation. It is noted that the actions referred to by the Government of Guatemala have been financed with own funds and with funds located by the Office originating from other programmes.

Lastly, we reiterate our concern at the simultaneous use of mechanisms to deal with the same allegations relating to a country which is already under consideration by the Governing Body. We consider that the application of mechanisms could weaken the functioning of the ILO supervisory bodies.

Employer member, Panama – In light of the report of the Committee of Experts and after hearing and analysing the Government's reply and detailed explanations reporting on progress made in relation to the road map adopted on a tripartite basis, a process which, as Central American citizens and employers, we have followed with interest, we note with concern the situation of insecurity suffered by Guatemala, which affects trade union leaders and members and the general public.

The personal safety and physical integrity of every person has no price. Enabling national and even regional social and economic development is fundamental for creating a climate of stability in the country. That said, it is important to emphasize that the figures and statistics reported in the criminal proceedings conducted under the principles of judicial independence and due process, which are fundamental under the rule of law, investigated by the Public Prosecutor's Office and conducted in the courts, indicate a large number of rulings in cases of violence which form part of the Committee of Experts' report. In this regard, it is reported that even the budget of the Public Prosecutor's Office has been increased and a Special Prosecutor's Office has been established, which is an indication of great interest in complying with the Committee of Experts' requests and tackling the scourge affecting us.

Furthermore, it is important to emphasize that social dialogue and tripartite agreements are fundamental for achieving the legislative reforms referred to in the Committee of Experts' report. We know that in the past a dialogue was held on the adoption of legislative proposals, and this ground to a halt. However, we consider that it should be resumed as urgently as possible; dialogue is an obligation rather than a right, and here we are all called on to make every effort in good faith for the benefit of the population of the country.

Worker member, Botswana – I have the honour of speaking on behalf of the Southern Africa Trade Union Coordination Council (SATUCC). Any effort at improving the situation of freedom of association in Guatemala is being compromised due to bad faith on the part of the Government.

The SATUCC notes that the Committee of Experts recalled that the Governing Body had requested the Office to develop a technical cooperation programme to boost progress in the implementation of the road map adopted in 2013. The programme entitled "Strengthening of the National Tripartite Committee for the effective application of international labour

standards" provided for annual follow-up reports by the ILO for three years from adoption of the programme. Counter to the objectives agreed upon in the road map, the Guatemalan Government is now denying that the road map's objectives are valid.

One way the Guatemalan Government has invalidated the road map's objectives is by not acknowledging that the workers get representation. It has come to our attention that Guatemala's Ministry of Labour has consulted the ILO on verifying the representativeness of the workers' delegates participating in the National Tripartite Committee. Denial of these labour standards hurts workers by violating their rights to organize and bargain collectively.

The Guatemalan Government's attitude contrasts with the information they provided to the Committee of Experts in which they acknowledged that "the active role played by the National Tripartite Committee was in compliance with the road map".

Questioning the representation of the trade union organizations that are part of the democratic dispensation of labour relations in Guatemala is clear evidence that the commitments made to the National Tripartite Committee are not being fulfilled. This questioning of trade union representation is also a blow to the social partners since it appears that the Guatemalan Government now does not recognize workers as one of the key actors in social dialogue.

The consultation of the Guatemalan Government with the ILO is taking place in a context that fails to comply with the judgments on the reinstatement of workers dismissed for anti-union discrimination and the non-observance of the obligations arising from the agreed upon objectives of the road map.

It beggars belief that, in a country where trade unionists are harassed, killed and threatened for over four decades, its Government decides to open a discussion to decide whether workers are being properly represented or not. This is not a deft strategy at union-busting, it is an unquestionable action being couched in state paranoia. In our region in Africa, our anti-colonial and apartheid experiences tell us that this practice is an act of bad faith and a clear bullying tactic that a conscionable society must stand up against.

Employer member, Honduras – We have listened to the explanations of the Government of Guatemala concerning the progress made in relation to the road map adopted in 2013 on a tripartite basis, a process which we have followed up on as Central American employers.

Guatemala is suffering from a situation of insecurity which affects trade union leaders and members, just as it does the rest of the population. However, the figures seem to support the fact that the authorities of that country, the Public Prosecutor's Office and the courts, are working on resolving the cases of violence described in the report, which we think is worth highlighting.

As employers we condemn any kind of violence, but we need to understand that insecurity can only be resolved with transparent processes that strengthen countries' systems of justice. These processes can take years but we emphasize that, as a result of the tripartite agreements reached in Guatemala, it has been possible to cast light on many of the cases relating to trade unionists in Guatemala, with the conclusion that there have not been any cases of anti-union violence.

On the other hand, we see that the legislative reforms to which the Committee of Experts refers have still not been adopted as bipartite and tripartite agreements exist on several subjects referred to by that Committee. We insist on the need to support and trust in social

dialogue as the appropriate mechanism for the social partners and the Government to provide an adequate response to all the topics raised.

Many of the legislative reforms recommended by the Committee of Experts are dialogue processes which require a great deal of discussion. It should be emphasized that these are already at an advanced stage and so agreements will soon be reached that will result in legislation which is totally in line with the provisions of the Convention.

We are aware of the process which was conducted in the past by the social partners regarding the adoption of legislative proposals. We hear that this dialogue is due to resume on the understanding that all the stakeholders must act in good faith and with a real willingness to reach agreements.

Lastly, we ask this Committee to continue trusting in the efforts made by the workers, employers and Government of Guatemala, because through social dialogue they are reaching favourable solutions which have contributed to combating impunity and thus provide guarantees for exercising the right to freedom of association in Guatemala.

Worker member, Colombia – I am speaking on behalf of the three Colombian trade union confederations, the Single Confederation of Workers of Colombia (CUT), the Confederation of Workers of Colombia (CTC) and the General Confederation of Labour (CGT), who view with immense concern the degree of violation of freedom of association in Guatemala and the serious risk to the lives of union leaders in this country.

The situation of violence and persecution experienced by our fellow trade unionists in Guatemala has escalated to even more serious levels, with impunity and government neglect persisting. Workers have reported the murder of more than 100 union leaders in recent times. On 7 May 2021, Cinthia del Carmen Pineda Estrada, leader of the Education Workers' Union of Guatemala (STEG), was murdered, and other serious acts of anti-union violence were committed in 2020 and 2021. In addition, access to justice for workers has been ineffective and almost non-existent, with only 22 convictions.

We are concerned about the regulatory elements in Guatemala that jeopardize the right to strike and also provide for the possibility of imposing compulsory arbitration in non-essential services; a situation that impedes the right to strike, a fundamental element for the free exercise of freedom of association accorded to organizations under the Convention.

It will be impossible to overcome this burden of the Government's non-compliance with its international obligations when neither before nor now have the necessary conditions and actions been put in place to investigate the murders of the members of the trade union movement and, as the ITUC states, Guatemala is one of the most dangerous countries in which to carry out union activity.

Not heeding the calls of the Committee of Experts and the Committee on Freedom of Association is inexplicable and absurd when lives are at stake. This lack of action and results for the protection of union leaders heightens the possibility of further murders of our colleagues, whose important work to strengthen harmonious labour relations we appreciate.

The persecution and arbitrary prosecution of trade unionists who honourably defend the principles of the ILO and the tenets of the Convention must cease, and we urge, as did the Committee of Experts, that investigations and sanctions be accelerated, as well as protection and guarantees for the exercise of freedom of association and respect for fundamental rights, which cannot provide respite if they are not upheld seriously.

Government member, United States of America – This is the Committee's first time discussing the Government of Guatemala's compliance with the Convention since closure of the long-standing article 26 complaint. We note the Committee of Experts' deep concern regarding the serious and ongoing violation of the Convention. We urge the Government to make meaningful progress on the issues that were the subject of the complaint, in both law and practice, in the almost four years since its closure. We call on the Government to fully implement all outstanding recommendations from the various ILO supervisory bodies, including the 2013 road map. To that end, we urge immediate and effective action to improve investigative processes and increase prosecutions of those responsible for acts of violence and murder against trade unionists; recognize threats, intimidation and harassment against trade unionists as acts of violence; create a safe enabling environment that allows all workers to freely exercise their rights, including the strengthening of mechanisms to protect workers' rights; adopt legislation to bring its laws into line with international labour standards on freedom of association and collective bargaining, including by institutionalizing the National Tripartite Committee and to give effect to the decision on the right to strike reached by tripartite consensus; continue to improve the system for registering trade unions and collective bargaining agreements and for issuing credentials to union leaders; and ensure the timely issuance of notices to employers of workers intent to unionize. This will require the Government to provide the labour inspectorate with additional resources to effectively operate in all regions of the country, particularly in the agriculture and *maquila* (export processing) sectors where labour law violations related to freedom of association and collective bargaining especially persist.

We remain committed to working with the Government to advance workers' rights in the country. We urge the Government to implement these recommendations in close cooperation with the social partners in the ILO.

Worker member, United Kingdom of Great Britain and Northern Ireland – Since 2013, the ITUC has been working in partnership with Guatemala's oldest private sector union. That banana union was, for several years, one of the most persecuted unions in the world, with 12 senior members murdered in the seven-year period, including one leader murdered just five days after meeting with the Ministry of Labour to complain about harassment. None of those murders have ever resulted in prosecutions. Despite this traumatic history, the union was determined to become even stronger, and to establish constructive tripartite dialogue with their previously hostile employers and the Labour Ministry that had failed their colleague.

Their success is a perfect illustration of the fact that the Convention enables other fundamental rights. A report from 2021 showed that the unionized banana workers of the Caribbean coast earned twice as much as their non-unionized colleagues elsewhere. They worked, on average, 12 hours less a week. One notable finding of the report was that 58 per cent of women in non-union plantations faced sexual harassment at work compared to only 8 per cent of women at unionized plantations.

During the COVID-19 pandemic, at unionized workplaces, to respect distancing, unions negotiated special transportation and the safe shift distribution of workers in packing plants. But 85 per cent of banana employment is in the southern region, where wages are lower, conditions of work more precarious, and unions are non-existent.

The stark difference between the two groups of workers puts the unions' achievements at risk. One major banana multinational abandoned five unionized farms in the north and now produces the same amount of fruit once produced on those northern facilities on outsourced – and non-union – facilities in the south. The simple answer – unionizing the south – is impeded

by the violent reaction to the previous attempt to introduce unions. In 2007, labourers from a farm in Escuintla moved to unionize.

Less than a year after the organization's formation, one union leader was shot dead. A month later, the daughter of the union's general secretary was raped by armed men allegedly linked to the management of the plantation. Investigations into these cases have not been solved.

The union collapsed soon after, and no other has yet risen to take its place anywhere in the region. As one online fruit industry publication puts it: "It is simply not credible to conclude that there are no trade unions in the south because there are no injustices or improvements to be made; workers have not formed or joined unions because employers discourage independent trade unions and workers fear reprisals."

The absence of unions in the south is persistent, and the danger has not gone away. Just a few weeks ago, a national trade union leader who had just been involved in a discussion with a southern employer over the possibility of a trade union leadership training school, received death threats, as did his family.

Following this, the union told me the Government's interest in violating their rights, especially in southern Guatemala, has grown overwhelmingly. Employers there fail to comply with the minimum guarantees of the Labour Code and those who try to organize a union are persecuted and fired from their jobs, just because of claiming their rights.

While attempts to destroy the unions in the north failed, they are now able to bring the benefits of collective bargaining to their members. It is clear that for most of the banana industry and across the private sector there are still too many barriers to work, such as freely joining or forming trade unions, and a culture of low pay, long hours, and abuse is thus perpetuated.

Worker member, Mexico – We, the workers of Mexico, express our solidarity with our fellow workers of Guatemala in the light of acts of violence against the leaders of trade union organizations, acts that hurt and violate the principles of the protection of their integrity. We regret that these events have been recurring for more than 20 years, and we urge and request the Government to maintain a rule of law that guarantees the correct application, not only of fundamental labour standards, but also of the basic principles of human rights. At this Conference are our colleagues from Guatemala who have been victims of violence and have received death threats that have been reported to the Public Prosecutor's Office.

Another point of concern is the questioning of the representativeness of the presidency of one of the trade union confederations, an attitude that limits freedom of association and contradicts the attempts to implement a tripartite dialogue to work through the observations of the ILO supervisory bodies.

Although there have been several round tables for dialogue, they have not yielded the expected results, showing that the problems continue to be deep-rooted and systemic. In this regard, we express our concern that these measures fall short, since, although there is a road map, its purpose is to solve the underlying problems and not only to serve for the presentation of reports that may be far from the day-to-day reality for unions.

Violence, attacks by the media and intimidation against trade unionists must end. The correct application of the Convention must be accompanied by measures that guarantee the safety of trade unionists without them being branded as bad Guatemalans for genuinely raising their voices to assert their labour rights.

We believe that it is time to take urgent measures to ensure the protection of labour rights and freedom of association, so it is important that the Government accepts a request for a high-level tripartite mission to analyse on the ground the violations and the conditions that union leaders are enduring in our sister country.

Worker member, El Salvador – We have before us a case of repeated violation of the Convention, which, in addition to the numerous observations received from the Committee of Experts, this Conference Committee discussed in 2011, 2013, 2015, 2016, 2017 and now again. As was said during the discussion of the case of Ecuador, this "is no longer a technical or legal discussion", but a case of the political stubbornness of different Governments over the years.

In addition to the legislative aspects highlighted by the Committee of Experts, and in spite of the data provided by the Government, attacks on trade unionists continue to take place with total impunity. For example, the headquarters of the Union of Workers of the Legislative Body were attacked and set alight, and to date the perpetrators have not been identified. In addition, its union leaders and members of the executive committee, along with other union members, were fired and then criminally prosecuted when they tried to hold a press conference to denounce the unjustified dismissals.

On 17 January 2019, the leaders of the National Union of Health Workers of Guatemala were arrested along with nine other people as part of an investigation for an alleged fraud against the State. The fraud in this case concerned a collective agreement that the now detained concluded with the Ministry of Health in 2013. This collective agreement was the result of a previous negotiation; as such, it contained both rights and obligations for the parties. The Anti-Corruption Prosecutor's Office characterized as fraud an agreement that, in its interpretation, represented a detriment to the State because it was unable or unwilling to comply.

The Government informs that the Office of the Prosecutor for Crimes against Judicial Officials and Trade Unionists continues to carry out exhaustive investigation efforts in compliance with the rule of law and highlights a great investment in security for threatened trade unionists. However, there are currently more than 25 judicial officials, including judges and prosecutors themselves, who are in exile because of acts of intimidation and repression against them for carrying out their work, so not even those who should protect are protected.

In conclusion, we urge this Committee to adopt conclusions that reflect the gravity of this case, and the ILO Governing Body to resume the establishment of a Commission of Inquiry on Guatemala.

Worker member, United States – Once again, the case of Guatemala's long-standing non-compliance with the Convention is under discussion by this Committee. Despite decades of engagement by the ILO's supervisory mechanisms and technical assistance projects, Guatemala trade union leaders continue to place their lives and livelihoods at serious risk.

Since 2005, the Committee of Experts and the Committee on Freedom of Association have been examining a constant stream of serious acts of violence against trade union leaders and members, including numerous murders, the vast majority of which remain in impunity. Despite these efforts, the violence and threats continue with nine more trade union leaders murdered in 2020 and 2021. Earlier we heard about the threats against Carlos Mancilla and his family. This is especially alarming since Mr Mancilla is the President of Guatemala's National Tripartite Committee, which has been tasked with helping implement the 2013 road map.

Beyond the issue of violence, the Government of Guatemala is generally failing to effectively enforce its labour laws related to freedom of association and collective bargaining.

In their filing to the Committee of Experts in relation to this case, the Guatemalan trade unions identified 90 separate cases where employers are violating Conventions Nos 87 and 98 with impunity. These findings track with a 2017 report from an independent arbitration panel which found that Guatemala was failing to effectively enforce its domestic labour laws, as required under the Central America Free Trade Agreement.

As the Committee on Freedom of Association and the Committee of Experts have said many times, "trade union rights can only be exercised in a climate free from violence, intimidation and threats of any kind against trade unionists". Unfortunately, Guatemala continues to fail in this essential obligation.

Accordingly, we once again call on the Government to take urgent action to address threats and violence against trade unionists and comply with the other recommendations contained in the Committee of Experts' report.

Worker member, Spain – We note with deep sadness and disappointment how the work that the ILO has carried out for years in Guatemala for the effective application of international labour standards is being disregarded. Despite the technical assistance offered by the Office and the repeated requests of the Committee of Experts, the Committee on Freedom of Association, this Committee and the Governing Body itself, the Government of Guatemala continues to fail to take the necessary measures to bring its law and practice into line with the provisions of the Convention.

The Government continues to impede the registration of trade union organizations, the enforcement of anti-union dismissal rulings, the development of collective bargaining and the exercise of the right to strike. Likewise, it continues to do little to put an end to the serious situation of violence and harassment suffered by union members and their families.

The trade union movement in Guatemala is suffering an intolerable policy of terror and repression, which has not only been perpetuated over time but has intensified in recent years. Trade unionists are illegally detained and imprisoned; they are kidnapped and murdered; they are singled out, disparaged and publicly exposed by the media, and are exposed to death threats for defending better living and working conditions, as was recently the case for our colleague Carlos Mancilla, to whom we convey our solidarity, support and respect.

Faced with the inaction and indifference of the Government of Guatemala with regard to the repeated and serious violations of the right to freedom of association, it is time for this Committee to provide a firm and forceful response. For this reason, we request the Committee to invite the Governing Body to appoint a high-level tripartite mission to examine the failure of the Government of Guatemala to implement the Convention.

Observer, IndustriALL Global Union – I am speaking on behalf of IndustriALL Global Union, which is an international trade union federation representing more than 50 million workers in the mining, energy and manufacturing sectors around the world, including Guatemala. As mentioned earlier by members of the Workers' group, the fundamental rights of workers are currently being violated in Guatemala through threats and intimidation that seriously hinder the full application of the Convention. Evidently there is a major attack against union leaders that continues on a daily basis as they defend workers' rights.

Here, I would like to mention some concrete examples from the field of how workers cannot exercise freedom of association. A union affiliated to IndustriALL, the Trade Union Federation of Food and Allied Industry Workers (FESTRAS) and one of its rank-and-file members had an eight-year labour dispute with the Guatemalan subsidiary of a Luxembourg-based steel company. A complaint process was initiated before the Organisation for Economic

Co-operation and Development (OECD) because the company refused to recognize and negotiate with the union in Guatemala.

Finally, after eight years, the local union succeeded in registering the first collective agreement on working conditions. Once again, it took eight years to reach a collective agreement during which the workers suffered greatly, as there is no enabling environment in the country to ensure that workers' fundamental rights are respected.

Unfortunately, our affiliate FESTRAS has informed IndustriALL that another of its rank-and-file members continues to face violations of Conventions Nos 87 and 98. In the subsidiary of a multinational company headquartered in the Republic of Korea, the enterprise does not respect the right to freedom of association. Two weeks ago, the company shut down its operations and dismissed a number of workers in an attempt to prevent union membership. It should be added that the Korean enterprise's workers have tried to move to *maquilas* (export-processing enterprises) in the sector. In addition, the subsidiary of the multinational company uses physical and psychological violence, intimidation and threats against the local union. The general secretary of the local union was harassed and received death threats, so her emergency departure from the place where she lived with her young children was organized and she was moved to a safe location.

There is another sector in the Guatemalan economy where freedom of association is virtually impossible, and where there is immense pressure against unions: the *maquila* sector. Workers in the *maquila* sector generally fear that companies may retaliate against them if they decide to join a union. They are often intimidated, threatened, blacklisted and even dismissed.

We therefore urge the Government of Guatemala to take immediate measures to establish an enabling environment for workers to exercise their fundamental right to freedom of association with clear timelines and in compliance with the Convention.

Government representative, Minister of Labour and Social Welfare – I wish to begin by reiterating that the Government of Guatemala deeply regrets the violent deaths of all persons in our country, including trade unionists.

Next, I would like to take this opportunity to say that I have listened carefully and with interest to the interventions of the honourable representatives of the Employers' group, Workers' group and Government group, and to point out that, despite the fact that we have had to overcome the crisis left by the COVID-19 pandemic, in addition to natural disasters such as the Eta and Iota storms, to be tough when it comes to the economy and to monitor those who benefit least from economic growth and still suffer the effects of the pandemic, the Government of Guatemala has maintained and maintains its commitment to redouble efforts to address the observations of the Committee of Experts and to act with determination to improve compliance with the Convention. We also believe that, as referred to at the time before the representatives of the workers and employers, we recognize and reaffirm that it is necessary to focus tripartite efforts on a national approach as a medium- and long-term strategy, which goes beyond the short term with what has been discussed in the ILO supervisory bodies and allows us to obtain sustainable results.

We are aware that the trust-building processes and the results of these processes will take time and may take longer than desired. However, we must continue our efforts to face the challenges ahead of us, such as our recent national history, where there is divergence on certain points. Emphasizing that the most important thing is to prioritize tripartite dialogue, social dialogue and the opportunity that this space offers to the three sectors that make up the honourable National Tripartite Committee, the strength of which is that, beyond reaching

agreements, we can continue dialogue and advancing concrete actions to implement the road map as we have been reporting, efforts that come to fruition, as I have already indicated, through concrete actions, for example Ministerial Order No. 288 of the Minister of the Interior, which by instruction of the President of the Republic, Mr Alejandro Giammattei, was signed on 3 June and published today, thus restarting the operations of the unit for analysing the attacks on trade union leaders and members, through which we focus that analysis on prioritizing our union leaders and members and avoiding any recurrence of regrettable cases such as that of the National Tripartite Committee President, Mr Carlos Mancilla, to whom personal protection measures were rapidly assigned.

In observance of the application of the ILO fundamental Conventions, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Declaration of Philadelphia, respectfully I would like to reiterate the commitment of the State of Guatemala to compliance with international conventions and especially the ILO fundamental Conventions, towards which constant progress has been reported, recalling that the most important lesson that has been obtained from the road map process, which as already mentioned dates back years, and its key indicators proposed by the tripartite actors in 2015, is the need to build trust and consolidate genuine social dialogue for our country accompanied by continual displays of political will that have transcended changes of government and of those who lead each of the institutions that have responsibility for the implementation of the road map and the results for each of its key indicators. This has been reported to the ILO Governing Body and will continue to be reported under the technical assistance and cooperation programme, a provision referred to at its 340th Session in November 2020, in observance of the national tripartite agreement signed in November 2017 in Geneva, Switzerland.

Before concluding, and because I consider that the circumstances warrant it, I would like to refer to one of the points that was previously mentioned, and I would like to reiterate that the Government of Guatemala has at no time attempted to interfere in or question the internal processes of workers' or employers' organizations. It has only attempted to lay the foundations for respecting the principles that underpin democratic institutions, the decisions and internal processes of the organizations in terms of their representativeness in accordance with the principles established in the Convention itself. The State of Guatemala is committed to preventing and punishing any act of violence, especially if it is based on anti-union discrimination.

Our recent history traverses the obstacles imposed by social inequality within the context of a globalized economy and the persistence of historical issues linked to the transition from a society of conflict to a democratic society, which influence credible actions in institutional consolidation that guarantee respect for the fundamental rights of freedom of association and collective bargaining, beginning with the acceptance and practice of the basic aspects that support this system, such as the institutional framework for representativeness of both workers' and employers' organizations.

The true democratic basis for the free and voluntary practice of workers' organizations will only be possible when the strengthening of such organizations, through sufficiently broad affiliation processes, constitutes a practice accepted by society as a mechanism that guarantees the development of democratic social relations and a stable, productive and, above all, inclusive economy. This is the only way that social justice, as a goal of this organization in labour relations and a constitutional principle of the Republic of Guatemala, can be a reality, which means that talking about the subject in a transparent and direct way does not equate to

questioning but implies the need to address the subject as a fundamental part of the democratic processes.

Our beautiful Guatemala is eager to reach tripartite consensus to present solutions to the needs and concerns of the Guatemalan population in the world of work. Undoubtedly, we must recognize the importance of continuing with social dialogue and show signs of humility in requesting help when it is needed. In this regard, I reiterate our firm wish that more countries will contribute financially to the technical assistance and cooperation programme that will surely contribute to the efforts reflected by the Government. I can only encourage my fellow constituents of the National Tripartite Committee to resolve issues related to labour relations and freedom of association, and the countries to support us and the continuation of constructive dialogue and results that will allow us to continue reporting to the ILO Governing Body within the framework of the technical cooperation programme.

Worker members – Regrettably, the replies provided by the Government of Guatemala have not calmed our deep concern at the difficult situation of workers and trade unionists in the country. We also regret that the spokesperson for the Employers' group claims to have seen signs of progress. As long as there is even one murder in Guatemala, it is indecent to speak of progress. The Worker members will never make concessions on this.

The Worker members deplore, in the most robust terms, the Government's lack of will to stand up once and for all against the many anti-union murders and acts of violence and harassment, the situation of impunity surrounding these crimes and the general climate of violence and fear which acts as a strong dissuasive factor against workers freely exercising their right to establish and join unions and collectively defend their interests.

Guatemala has been the subject of many reviews by the ILO supervisory bodies. Despite the recommendations made, the situation in the country is continuing to worsen, with nine trade union leaders and members being murdered in 2020–21. The investigation and prosecution of the many cases of murder are, in the best instances, slow, and in the majority of cases have ground to a complete halt. Other violent anti-union acts, including attacks, death threats and harassment, are simply not investigated by the authorities. In this regard, the Employers' delegates of Guatemala and Honduras have questioned the link between these murders and trade union activities. It is undoubtedly a surprising coincidence that all the persons I referred to in my first intervention were trade unionists.

Guatemala cannot continue to ignore its responsibilities. The seriousness of the crimes committed and the surrounding impunity cannot continue to be ignored and requires urgent, decisive and effective action. Human lives are at stake.

The Worker members resolutely recall that freedom of association cannot be exercised unless human rights are fully respected and safeguarded, and particularly the right to life and personal safety.

We urge the Government of Guatemala, within the context of ILO technical cooperation, to: investigate all acts of violence against trade union leaders and members, including murders, as well as attacks and physical and death threats, intimidation and harassment, with a view to determining responsibilities and punishing the instigators and perpetrators of these acts, taking fully into account the trade union activities of the victims in the investigations; provide rapid and effective protection to all trade union leaders and members who are at risk with a view to preventing further acts of anti-union violence, by increasing the budget for protection programmes for members of the trade union movement so that those who are protected do not have to personally cover the associated costs; eliminate the various legislative

obstacles to the freedom to establish trade unions and revise the procedures for applications for registration; ensure that rulings reinstating workers who have been victims of anti-union dismissals are given effect in practice; adopt the necessary measures for the dissemination of the awareness-raising campaign on freedom of association and collective bargaining in the national media, and immediately refrain from stigmatizing and discrediting union officials, their organizations and collective agreements in the media.

With reference to the many legislative issues raised over the years by the Committee of Experts, the Worker members emphasize that the current legislation is a serious obstacle to the right to establish and join unions in the public sector, at the sectoral level and in small enterprises, which account for the immense majority of enterprises in Guatemala. The legislation also imposes undue restrictions on the right to strike.

We regret the lack of progress in bringing the national legislation into conformity with the Convention and we urge the Government of Guatemala to amend the legislation in consultation with the social partners and in accordance with the Convention and the recommendations of the Committee of Experts. We urge the Government to accept, before the next session of the Committee of Experts, a high-level tripartite mission. And, in view of the seriousness of the issues raised, we call for this case to be included in a special paragraph of the Committee's conclusions.

Employer members – We see significant grounds for making a number of proposals, as I will indicate below. But beforehand, I wish to place emphasis on the reference made in the statement by the Minister to Ministerial Order No. 288, published on 3 June, creating the unit for the analysis of attacks against trade union leaders and members. This seems to be excellent news. Nevertheless, within the context of the ILO, where there are tripartite mechanisms, we would have liked this measure to have included the possibility of the participation of employers' representatives.

Second, we would like to welcome the decision concerning the agreement with the EU, as indicated by the EU representative, on institutional strengthening and the development of programmes, which the Government of Guatemala has already announced.

Third, and I cannot let this pass, I would like to say that noting the progress achieved does not mean that everything has been resolved. It is like a patient who was in intensive care and is moved to special care and then goes home to complete the recovery; it does not mean that the patient is entirely healthy, but that there has been an improvement. And indeed we observe, with all the details that I gave, that there have been improvements. In particular, I would like to recall what the Employer representative of Guatemala said, that over the past decade, according to official figures, there have been over 60,000 murders in Guatemala. We are saddened by all these lives lost, all the lives of workers' representatives, but also probably many other lives, certainly including, although we do not have a list, Guatemalan employers.

The exercise of freedom of association can only take place in an environment free of violence, intimidation and threats of any kind. To achieve this, governments have to ensure that freedoms can be exercised in practice. And, for this reason, we consider that certain proposals have to be made: the first relates to the indication in the report by the Special Prosecutor concerning the organization by the Public Prosecutor's Office since 29 November 2021 of weekly meetings on Fridays for workers' representatives with the Prosecutor-General of the Office of the Special Prosecutor for Crimes against Judicial Officials and Trade Unionists to deal with related cases. And we are informed that up to the date of the report, workers did not attend any meetings.

A first proposal by us is to invite and encourage workers and their organizations to participate in meetings of this type that are being organized by the public authorities in Guatemala.

Second, with reference to acts of violence, which sadden us, we believe that all acts of violence against trade union leaders and members must be investigated to determine responsibilities and punish all the perpetrators and instigators. It also appears to us that effective protection needs to be provided rapidly to all trade union leaders and members who may be at risk with a view to preventing any future acts of anti-union violence.

Third, it seems to us to be important to encourage the Government, within the framework of the technical assistance programme, to develop national dialogue with the most representative employers' and workers' organizations, with a view to making progress and facilitating the procedures for the registration of unions in Guatemala.

Fourth, it seems to us to be important for there to be dissemination in the media at the highest level through a campaign on the recognition of freedom of association and collective bargaining.

Lastly, I wish to note the interest in the Employers' group for follow-up through the Governing Body and the subsequent reports which the Government of Guatemala has undertaken to provide on the implementation of the road map.

Conclusions of the Committee

The Committee took note of the oral and written statements made by the Government representative and the discussion that followed.

The Committee deplored and deeply regretted the persistent acts of general violence and the violence against trade union leaders and members, including murders and physical aggression, and the culture of impunity that prevails in the country.

Taking into account the discussion, the Committee calls upon the Government, in consultation with the social partners, to:

- **investigate without delay all acts and threats of violence against trade union leaders and members with a view to identifying and understanding the root causes of violence, taking into account their trade union activities as a motive, determining responsibilities and punishing the perpetrators;**
- **provide rapid and effective protection to all trade union leaders and members who are under threat by increasing the budget for such programmes and ensure that protected individuals do not personally have to bear any costs arising from those schemes;**
- **eliminate the various legislative obstacles to the free establishment of trade union organizations and, in consultation with the social partners, resolve the handling of registration applications;**
- **ensure that judicial decisions of reinstatement in employment following anti-union dismissals are enforced without delay;**
- **increase the visibility of the awareness-raising campaign on freedom of association in the media and ensure that there is no stigmatization of trade unions, their leaders and collective agreements;**

- **bring national legislation into conformity with the Convention, in consultation with the social partners; and**
- **redouble efforts to fully implement the road map adopted on 17 October 2013, in consultation with the social partners.**

The Committee invites the Government to avail itself of technical assistance from the Office to give full effect to these conclusions.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 providing information on the application of the Convention in law and practice, in consultation with the social partners.

Government representative – I would like to reiterate Guatemala's commitment to continue monitoring compliance with the Convention, and to redouble our efforts not only to continue building a more mature dialogue among the sectors that make up the National Tripartite Committee, but also to show clear signs of the progress which we have made in implementing the road map; and that we can, as a country, build trust among the sectors involved at the national and international levels so that we can see the progress of this commitment, on which we have been reporting, in all the areas that the ILO has indicated to us.

Therefore, we take note of and will address the conclusions that have just been presented in this room.

Hungary (ratification: 1957)

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Written information provided by the Government

As Hungary explained in 2021–22, during the examination of Case No. 3399 before the ILO Committee on Freedom of Association, the implementation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Convention No. 98, were priority considerations in the development of the national legislation under examination.

Hungarian national regulatory frameworks for workers' collective rights are in line with international labour standards. Article VIII(2) and (5) of the Fundamental Law of Hungary guarantees freedom of association, and its article XVII declares the right to collective bargaining and the right to strike. Act VII of 1989 on strikes contains the detailed guarantee regulations accordingly. However, according to its provisions on unlawful strikes, there is no right to strike in certain public administrative bodies performing public service functions. Act C of 2020 on the Healthcare Service Relationship regulates in line with these provisions, which is also permitted by ILO Conventions. (It should be noted here that under article 298(4) of Act I of 2012 on the Labour Code, Hungary's general labour law code, a law may – with regard to sectoral and professional specificities – deviate from the provisions of the Labour Code, and this is also the basis for the establishment of rules that differ from the general rules, such as article 15(10) of the Healthcare Service Relationship Act for healthcare providers subject to the Healthcare Service Relationship Act.)

As has been explained earlier, the sectoral legislation is in line with the *Compilation of decisions of the Committee on Freedom of Association* which, inter alia, provides guidance for a more precise interpretation of Article 6 of ILO Convention No. 98 concerning the application of

the principles of the right to organize and to bargain collectively, and which, in the case of the health sector, primarily considers paragraph 576 as a guide.

On this basis, the right to strike may be restricted or prohibited in the public service for public servants exercising authority in the name of the State; or in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population). ILO Convention No. 98, Article 6, states that: "This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way".

Article 15(1) of the Healthcare Service Relationship Act creates the possibility of reconciling the interests of healthcare providers and persons with a healthcare service relationship, negotiating the settlement of disputes and reaching appropriate agreements – taking into account the principle of safe healthcare provision – with the participation of the Government, the national sectoral interest representation organizations and the national employee interest representation organizations of persons with a healthcare service relationship in a negotiating group of the Health Service Interest Reconciliation Forum (hereinafter referred to as HSIRF). The competence of the HSIRF covers matters relating to the living and working conditions and terms and conditions of employment of persons with a healthcare service relationship working in the health sector.

In Hungary, collective agreements in the health sector used to be very heterogeneous. In drafting the Healthcare Service Relationship Act, the legislator's aim was, among others, to create a transparent, uniform system for healthcare workers and providers in state and municipal healthcare institutions by establishing a healthcare service relationship. For this reason, the heterogeneous collective agreements were replaced by a regulation at the level of legislation, as the implementing decree of the Healthcare Service Relationship Act incorporated the contents of the sectoral collective agreement for most hospitals. Chapter 6 of Government Decree 528/2020 (XI. 28.) implementing Act C of 2020 on the Health Service Relationship – "Specific rules concerning the working time of a person in a healthcare service relationship" – contains the provisions of the multi-employer collective agreement concluded by the National Healthcare Service Centre with the Democratic Trade Union of Social and Healthcare Workers in Hungary, thus facilitating the guaranteed enforceability of provisions favourable to healthcare workers and healthcare providers in a uniform manner, rather than varying from one institution to another.

The Government of Hungary continues to attach importance to and promote the representation of the interests of healthcare providers and healthcare workers and will continue to provide opportunities for the representation of healthcare workers through interest reconciliation forums with the involvement of trade unions.

The approach set out in the Strategic Partnership Agreement between the Ministry of Human Capacities, the Democratic Trade Union of Social and Healthcare Workers in Hungary and the Independent Trade Union of Ambulance Workers serves as a guideline for negotiations and the further development of an appropriate legislative environment.

The Government of Hungary – upholding the commitments made in January 2022 in response to the recommendations of the ILO Committee on Freedom of Association – is currently examining possible directions for the revision of the existing legislation and will continue to ensure that the principle of consultation with the relevant workers' and employers' representative bodies is fully respected in any further planned measures.

It is important to note that there have been no changes to the legislation – particularly in view of the parliamentary elections in April this year, due to which the legislative process has been suspended since the recommendations were made. Nevertheless, the Government will keep the ILO informed of progress in accordance with the recommendations.

Discussion by the Committee

Government representative – I am the newly appointed State Secretary for Industry and Employment at the Ministry of Technology and Industry. I would like to start my intervention by informing the Committee that after the Hungarian Parliamentary Elections in April 2022, the new Government is being formed. The transformation of the government structure is not completed and the employment policy portfolio is undergoing changes as well.

At the meeting of the Committee today, I am representing the Government of Hungary, I would like to ask the Deputy State Secretary for Employment Policy, to present the statement of the Hungarian Government.

Another Government representative – First of all, I would like to confirm the strong commitment of the Government of Hungary to effectively cooperate with the ILO Office as well as to completely fulfil its duties as a Member State of the ILO.

Hungary prepares its national reports on the implementation of ratified Conventions every year. However, regrettably, last year we have sent the reports later than the dedicated deadline. Consequently, the Committee of Experts was not in a position to consider our reports and our comments on their previous notes and observation. In order to avoid this situation, we will make every effort to send our national reports in time in the future.

The national report on the implementation of the Convention, which is the issue of our discussion today, was prepared and submitted to the Office in writing on 5 December 2021. In the report, that was also discussed with the social partners in the National ILO Council, we provided detailed information on the latest developments with the relevant national legislation and reacted to the comments of the Committee of Experts.

Today, in the framework of the Committee, I would like to present these views and comments.

The Committee of Experts has requested the comments of the Government on the observations of the Forum of the Cooperation of Trade Unions and the Public Collection and Public Culture Workers Union regarding the legislative process concerning the status of cultural workers. In this regard, we note that the changes in the world of work over the past 30 years, as well as the differentiation of some professions and the specific regulations governing them, have significantly emptied out the Act on the Legal Status of Public Servants, which in many respects has not kept pace with changes in the labour market and labour law.

As a result, in 2020, the Act on the Transformation of the Legal Status of Employees of Cultural Institutions as Public Servants was adopted (the Act), which converts the status of public servants in the cultural sector into an employment relationship regulated by the Labour Code, thereby creating a uniform legal status and working conditions for them. The new legislation also reformed their wages system, with the guarantee that the overall wage conditions of the employees concerned could not be less favourable than provided before.

Therefore, in parallel with the change of status of employees in the cultural sector, the Government granted cultural professionals a 6 per cent wage increase in 2020 with the aim of ensuring the financial recognition of their work.

Before the decision to change the legal status of employees in the cultural sector was made, the cultural sector made serious preparations for about one and a half years to raise the salaries of professionals employed in the sector to a higher level.

The Government pays special attention to the wage conditions of the employees affected by the legal change. The wage increases introduced in 2020, 2021 and 2022 have contributed to the effective performance of cultural tasks, helped to keep those working in the cultural sector on the career track and helped young people to find a profession in the sector.

I would like to highlight that several discussions were initiated with the involvement of the representatives of the cultural sector regarding this reform, during which it was established that the legal relationship of public servants is a burden for the heads of the institutions and needs to be reformed. On 27 May 2020, the National Council of Public Service and Reconciliation also held a discussion on the Act and the Government provided information on the transition of the legal status and the increase in wages.

Turning now to the issue of the representativity threshold and collective bargaining in Hungary, I would like to inform the Committee of the following.

In connection with the observations on trade union representation and the right to negotiate collective agreements, it should be emphasized that, with the entry into force of the Labour Code in 2012, the regulation of the ability to conclude collective agreements is based on a different concept compared to the previous regulations. Its aim is to simplify the rules governing the collective bargaining capacity of trade unions. To this end, the regulation is based on the threshold of 10 per cent, pursuant to said section of the Labour Code, which constitutes a unified requirement in terms of collective bargaining capacity. The objective was to ensure that a trade union with sufficient support could enter into a collective agreement, and to avoid the fragmentation of interest representation when performing collective bargaining and establishing collective agreements.

Relating to the comment on the legal restrictions on the coalition freedoms of trade unions, we note that the provisions regarding collective bargaining shall be taken into account. Pursuant to said section of the Labour Code, trade unions entitled to enter into a collective agreement may conclude a collective agreement jointly. Accordingly, if more trade unions have collective bargaining capacity with the employer, they shall be entitled to conclude the collective agreement jointly. It means that a legal declaration for conclusion of a collective agreement can only be validly concluded by all trade unions.

The threshold of 10 per cent for each trade union concerned is also a condition for joint collective bargaining, which serves to ensure sufficient support. The Labour Code therefore does not allow the collective bargaining of trade unions with a representation of less than 10 per cent since this would increase the fragmentation of interest representation.

In addition, the Labour Code provides for the right of a trade union federation to conclude a collective agreement with an employer (or several employers) pursuant to a special provision. A trade union federation is therefore entitled to conclude a collective agreement if at least one of its member organizations represented by the employer meets the condition for concluding collective agreements and its member organizations authorize it to do so. Consequently, the Labour Code makes it possible for the trade union represented not to negotiate or conclude collective bargaining with the employer directly, but through a trade union federation to which the trade union represented by the employer belongs.

On the question of whether the representation threshold applies to collective agreements at both the company and sectoral levels, it should be emphasized that the Labour Code does

not regulate the conclusion of collective agreements at the sectoral level. However, according to the relevant regulations of the Labour Code, it follows that in the case of a collective agreement concluded at the workplace, corporate level or by several employers, such as in a sector or subsector, the threshold of 10 per cent applies as a legal condition.

Regarding the comment on the collective bargaining entitlements of the work council, it may be noted that work councils are not entitled to conclude collective agreements. They may conduct works agreements, which can regulate a right or obligation arising from or related to the employment relationship, except for remuneration. The purpose of this provision is to enable the works agreement to at least partially replace collective agreements, thus encouraging the regulatory role of agreements at the workplace level. However, the condition to conclude a so-called normative works agreement is that the employer does not fall within the scope of any collective agreement and there is no trade union representation.

With respect to the observation of the Committee of Experts on the Equal Treatment Authority, we would like to indicate that the function of the Authority was taken over by the Commissioner for Fundamental Rights as of 1 January 2021. Accordingly, the fight against violations of equal treatment is now carried out by a constitutional body with unchanged staff, without compromising the high level of expertise. The Commissioner acts in administrative procedures in matters specified in the Equal Treatment Act, in accordance with the relevant procedural rules.

It is important to emphasize that the Commissioner for Fundamental Rights has taken over all the responsibilities of the Equal Treatment Authority, including its administrative powers. Thus, the Commissioner can take a binding decision and impose sanctions. The relevant sanctions, that have been set in line with the European Union directives concerned, have not changed.

Between 2017 and 2021, the Authority investigated 17 complaints, where the applicant complained that he/she had been discriminated against by his/her employer because of his/her trade union membership or activity. In most cases, the discrimination meant the termination of the employment relationship, and in several cases the harassment of trade union members and a disadvantage related to a benefit was also claimed. There was a case in which the applicant complained that he/she had not been employed by his/her employer because of his/her earlier trade union activity. Decisions on merits were made in eight out of the 17 cases, and no infringement could be established in any of them.

In connection with the competence of the Equal Treatment Authority, it is worth mentioning that it investigates discrimination based on protective characteristics, including the activities carried out in the trade union related to interest representation. However, the Authority does not have the competence to investigate all violations related to worker representation and the right to organize. In these cases, the Authority informs the applicants of the available remedies.

The Committee of Experts requested information on the sanctions and legal consequences determined by the Equal Treatment Authority. According to the consistent legal interpretation of the Authority, the legal consequence of ordering termination of the infringement does not extend to reinstatement in the position. This is clearly subject to judicial procedures in accordance with a certain paragraph of the Labour Code. The Authority may not provide for the payment of compensation pursuant to a certain paragraph of the Labour Code either. The Authority, however, may impose fines and may order the publication of its final decision.

During the procedures before the Authority, the parties may agree on a settlement, which may, where appropriate, provide for the restoration of the employment relationship or financial compensation. The parties shall request the Authority to approve the settlement by a decision. Settlements involving restoration of the employment relationship or compensation approved by the Authority are rare. It is more frequent for parties to reach a settlement outside the procedure and for the applicant to withdraw his/her application.

The period set by the Equal Treatment Act for the administrative procedure assessing the conformity with the requirement of equal treatment is 75 days. Periods of suspension, adjournment of the procedure and the client's omission or delay are not included in this period. The Authority compiled statistics for the year 2017, according to which the average duration of administrative procedures in that year was 157 days, which does not include judicial remedy. Based on experience, the judicial review of an Authority's decision in employment matters usually takes between one to three years.

The Hungarian Government has taken note of the Committee of Experts' observations that specific legislative provisions are needed for prohibiting acts of interference on the part of the employer. As already stated by the Government, we believe that the current legislation, namely the provisions of the Fundamental Law and the Labour Code, ensure that all forms of unlawful intervention against trade unions are prohibited in Hungary. As to the sanctions applicable in cases of intervention against a trade union, the Commissioner for Fundamental Rights may apply the same sanctions as in the case of harming the principle of equal treatment, or a court may enforce the law based on the Labour Code.

Having said this, I would like to assure the Committee that we will consider the observations again and examine the practical experiences of the implementation of the relevant legal provisions.

Finally, the Committee of Experts invites the Government to provide information on the number of collective agreements signed, the sectors concerned, and the proportion of the workforce covered by collective agreements. The regulation of 2004 on the detailed rules for the notification and registration of collective agreements obliges the contracting parties to take note of the conclusion, amendment or termination of collective agreements and to comply with the data reporting obligation relating thereto. The Information System of Labour Relations (ISLR) is the IT support system for notifications in connection with collective agreements and registering collective agreements.

Due to the need for clarifications and updates of the relevant data, which is currently in progress, we could present key information on the collective agreements for the years between 2017 and 2019. These data are included in detail in our report on the implementation of the Convention.

Employer members – We would like to begin by thanking the Government for the information provided here in our Committee session, as well as the written submission sent on 16 May 2022. While this is appreciated, we must also note that the Government did not send its regular report on the Convention to the Office, which led the Committee of Experts to repeat its earlier comments. The Government appears to have some problems with its reporting obligations and we note that the submission that the Government did provide on 16 May 2022 does not seem to be related to the issues raised by the Committee of Experts in its observations under the Convention. Therefore, we trust that the Government will in future send its regular report on the Convention in time and also in line with its stated commitment in its submission to the Committee today. Furthermore, we would encourage the Government to share the

information in writing with the Committee of Experts that it provided to our Committee just now.

Turning to the observations of the Committee of Experts, the Employers note that it contains, among others, requests to the Government for comments and information, including a request for comments on an observation by Hungarian trade unions alleging that a process concerning the status of cultural workers does not take into consideration the obligations of the Convention. A request was made by the Committee of Experts for comments on the observations made by the International Trade Union Confederation (ITUC) alleging acts of anti-union dismissals, as well as the observations made by the Workers' group of the National ILO Council denouncing restrictions on collective bargaining, for instance a 10 per cent representation threshold for trade union entitlement to collective bargaining. The Committee of Experts also requested information on the number of collective agreements signed, the sectors concerned, and the share of the workforce covered by collective agreements.

Taking into account the submissions of the Government, the Employers note that there appear to be two main issues in our discussion today. The first issue concerns sections in the Labour Code regarding compensation for unlawful dismissal of trade union members or trade union officials, in particular section 82 of the Labour Code, which provides compensation not exceeding the workers' 12-month absence pay in the case of unlawful dismissal of trade union officials or trade union members.

Section 83, subsection 1, according to which reinstatement is granted in case of dismissals either violating the principle of equal treatment or violating the requirement for prior consent of the union's higher body before the termination of a union official, and the possibility for the Equal Treatment Authority in such cases to levy fines in the absence of provisions on penalties for acts of anti-union discrimination against union officials and union affiliates in the Labour Code. In this regard, the Committee of Experts, in its observation, noted with interest the Government's indication that a new law, Bill No. T17998, envisages to ensure by way of an amendment of the definition of "worker representative" that, in the event of unlawful termination, union officers also have the possibility of requesting reinstatement. Taking into account the Committee of Experts' observations, the Employers express the expectation that the Government will take the necessary steps to ensure that union officials, union members and elected representatives enjoy effective protection against any act prejudicial to them on the basis of their trade union status or activity, including dismissal, and request the Government to provide information on developments in relation to the adoption of new legislative provisions in this regard.

Further, also taking note of the Committee of Experts' observations, the Employers call on the Government to indicate whether the Equal Treatment Authority could order a reinstatement in a case of anti-union dismissal of trade union officials and members, to provide information on whether the Authority may order compensation and to provide information on the average duration of the proceedings before the Authority related to anti-union discrimination, as well as on the average duration of judicial proceedings. We welcome some of the information answering some of these questions provided by the Government today and encourage the provision of that information in detail in writing before the Committee of Experts' next session.

The second issue concerns adequate protection against acts of interference, which is regulated pursuant to Article 2 of the Convention. While, according to the Government, the Constitution and the current national legislation are sufficient to protect and prevent acts of interference, the Committee of Experts expressed doubt, pointing out that the provisions of

the Labour Code and the Equal Treatment Act do not specifically cover acts of interference designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to place workers' organizations under the control of employers or employers' organizations through financial or other means. Noting this issue, the Employers request the Government to take all necessary measures to adopt specific legislative provisions prohibiting such acts of interference on the part of employers or employers' organizations with express appeal procedures coupled with effective and sufficiently dissuasive sanctions. The Employers consider that the way of implementing the above obligations of Article 2 of the Convention remains within the competence of the Government, as long as the Government ensures effective implementation. The Employers' view is that this flexibility is reflected in Article 3, which reads "Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles". In the Employers' view, "machinery appropriate to national conditions" could mean specific legislative provisions, but it also could mean other measures. Therefore, this flexibility must be taken into account by the Committee of Experts when considering Hungary's application of the Convention.

Given that the Government is of the view that the existing laws provide sufficient protection, it may be useful to hear from the Government on what it bases this assessment. Are there, for instance, court decisions that show that the existing legislation is sufficiently effective in protecting against acts of interference? The Employers note that some comments were made on this issue today and look forward to further analysing the Government's information in this regard. The Employers would appreciate having further information and clarification from the Government on this issue.

Finally, the Employers' group notes that the discussion of this case in the Committee, in our view, demonstrates a lack of social dialogue at the national level, which includes employers in the competitive sector. We note that long-term industrial peace, effective labour relations and the application in both law and practice of the Government's obligations pursuant to the Convention require social dialogue at the national level with the most representative employers' and workers' organizations. Therefore, we would take this opportunity to remind the Government of its obligations in this regard and to encourage effective national social dialogue with the representative employers' and workers' organizations in this respect and in compliance with its international labour obligations.

Worker members – This is the first time this Committee has discussed the application of the Convention in Hungary, which ratified the Convention in 1957. The Committee of Experts' report points out that the Government is not complying with its obligations under the Convention. More so, the Committee of Experts has not received the Government's reports and we must reiterate that the whole supervisory system rests on the timely submission of reports by the Government. So, we urge the Government of Hungary to comply with its reporting obligations in this regard.

The Committee's report raises several repeated and serious violations in law and practice which go to the heart of the protections afforded to trade unions and their members by the Convention. In practice, we find numerous cases of acts of anti-union dismissals, union busting and intimidation in several sectors and several enterprises. Trade union leaders are being dismissed, often during collective negotiations, and anti-union discrimination is rife. Workers lack adequate protection in law against acts of anti-union discrimination, contrary to Article 1 of the Convention. The Labour Code does not contain penalties for acts of anti-union discrimination against union officials and affiliates. While the Government has argued that the Equal Treatment Authority may in such cases levy fines, it has failed to provide the Office with

information with respect to the Authority's competence to order reinstatement and compensation in cases of anti-union dismissals.

Collective bargaining is a right and, together with the right to freedom of association, it enables the exercise of all other rights at work. Without effective and meaningful protection against anti-union discrimination, collective bargaining becomes meaningless. Determining the scope and meaning of the right to collective bargaining under the Convention without its human rights context and the safeguards intended to be afforded to workers when this right is exercised will lead to a race to the bottom regarding terms and conditions at work.

The Committee of Experts has been clear that the Government has to take the necessary steps to ensure that union officials, union members and elected representatives enjoy effective protection against any acts prejudicial to them, including dismissals based on their status or activities. Trade unions, their members and officials must enjoy effective protection against anti-union discrimination.

Moreover, under the current legislation, union officers are not covered by the definition of "worker representative". This definition covers only elected representatives. Accordingly, union officers cannot be awarded reinstatement in their original job in case of anti-union dismissals. The Government has expressed an intention to revise the definition of "worker representative" contained in section 294-1(e) of the Labour Code in order to ensure its application to union officers. We expect that the Government will take the necessary measures in full consultation with the social partners to ensure the legislative revision of the respective provisions of the law.

Workers also lack effective protection in law against acts of interference. The provisions of the Labour Code and the Equal Treatment Act do not prohibit acts designed to place workers under the domination of employers or employers' organizations or to place workers' organizations under the control of employers or employers' organizations through financial or other means.

We recall that Article 2 of the Convention contains a fundamental principle of workers' organizations being able to enjoy adequate protection against acts of interference in their establishment, functioning or administration. And we urge the Government to adopt specific legislative provisions prohibiting such acts of interference and providing for sufficiently dissuasive sanctions.

The right to collective bargaining is also severely curtailed by the representativity thresholds provided in the national legislation. Trade unions with less than 10 per cent representation among the workers cannot negotiate collective agreements, even with respect to their own members. In such cases, national laws permit collective bargaining agreements to be entered into by workers' councils. This undermines the position of trade unions. Besides, the law limits the scope of negotiation to rights arising out of the employment relationship.

In addition, employers have the power to unilaterally modify, annul or extend the scope and content of collective agreements, weakening and undermining every process of collective bargaining. This is clearly inconsistent with the Convention and undermines the effective recognition of collective bargaining as a right.

We must also draw attention to the COVID-19 legislation adopted by the Hungarian Parliament, that is Act C of 2020 regarding healthcare workers and Government Decrees Nos 528/2020 and 530/2020. This regulation is also the subject of the complaint to the Committee on Freedom of Association in Case No. 3426. These regulations were adopted in the midst of the COVID-19 pandemic, but instead of protecting healthcare workers who were

fighting at the frontline of the pandemic, they restrict freedom of association and prohibit collective bargaining. From 1 January 2021, healthcare workers could not conclude collective agreements based on paragraph 15/10 of Act C. Further, all collective agreements in force expired as of 1 January 2021 based on article 6 of Decree No. 530/2020. These provisions seriously violate Article 4 of the Convention, which requires the State to facilitate voluntarily negotiations between the social partners with a view to regulating employment and working conditions by collective agreements.

Generally, the content of collective agreements is freely and mutually agreed between the parties to the agreement, except under special circumstances. Also, Article 4 of the Convention is clear that the machinery for encouraging and promoting the full development and utilization of collective bargaining appropriate to national conditions is the responsibility of the State. The Government must encourage and promote collective bargaining, instead of undermining it, and we call on the Government to repeal the above-mentioned regulations and to restore access for healthcare workers to the fundamental rights to organize and to bargain collectively.

Employer member, Hungary – Hungarian employers, as part of the European and international community of employers, strongly stand for the principles of social dialogue and act to put them into practice. Thus, we think that complying with ILO Conventions is an important foundation of our social dialogue and industrial relations system. Employers regret to realize that Hungary is shortlisted among the serious failures because of failing to comply with its reporting obligations to the ILO and is also on the agenda of the Committee today because of concerns related to the implementation of the Convention. Even though the social partners negotiated the report on the implementation of the Convention with the Government in the framework of the National ILO Council, for some reason the Government failed to submit it to the ILO. As far as we know, the report is ready for submission, and we encourage our Government to approve it and submit it as soon as possible.

After overcoming the changes in the Government based on the elections on 3 April 2022, we believe that national social dialogue is the proper way of treating the cases on the agenda of the Committee today. We would like to draw the attention of the Committee to the fact that employers have not come across the issues covered by the case in the relevant national tripartite forum. When it comes to negotiating the necessary modification of the law, mainly the Labour Code, which is the main legal source of collective rights, the relevant body is the Permanent Consultation Forum of the Competition Sector and the Government. As Members of this entity, we have encountered these issues for the first time here on the agenda of the Committee and in the report of the Committee of Experts. This is a message to our Government and to trade unions as well, if any modification of the law is necessary, employers, as the representatives of the business sector, the Hungarian members of the International Organisation of Employers (IOE), are open to engaging in in-depth negotiations in the relevant form of social dialogue. Even if we have different interests and different opinions regarding the constant cases, we think that speaking today could have been avoided by meaningful national social dialogue, either in the National Tripartite Council or the National ILO Council.

In conclusion, we would like to encourage our Government to intensify national social dialogue on the concerned legal cases and processes, which is a prerequisite for long-term industrial peace. I would like to emphasize again that employers stand for fundamental rights and we are open to negotiate at the national level.

Worker member, Hungary – The case of Hungary on the application of the Convention already has a history which goes back to 2012, when the new Labour Code was adopted. This

new Code decreased the collective rights of workers to the possible minimum level that is regulated in international law, mainly by the ILO fundamental Conventions.

Throughout the years, these minimum level rights have been further weakened in practice as well as in legislation. Our collective rights, such as the right to collective bargaining and social dialogue, the right to protection against anti-union discrimination and the right to strike, are not really promoted and protected in Hungary. There are no effective and dissuasive sanctions set out in law against violations of these rights and even the organization of a new trade union is rather difficult because of the many administrative burdens prescribed by the law to be registered as a trade union.

The aim of the Convention is to support and protect the collective rights of workers, particularly their rights against anti-union discrimination, and to promote collective bargaining.

I would like to highlight some examples of the weakening of collective bargaining possibilities and the current state of anti-union discrimination in Hungary. Concerning the promotion of collective bargaining, according to Article 4 of the Convention, measures have to be taken to encourage and promote the development and utilization of machinery for voluntary collective bargaining. In Hungary, the level of collective bargaining coverage is rather low, as only about 10 per cent of workers are covered by collective agreements. Therefore, the promotion of collective bargaining is sorely needed for us.

Some legal provisions, instead of promoting collective bargaining at the workplace level, which is the traditional collective bargaining level in our country, raise obstacles to the application of this right. Traditionally, in Hungary, several trade unions operate in many enterprises, particularly larger companies.

If these trade unions do not reach separately the representativity threshold to entitle them to collective bargaining, they are not entitled by the law to bargain and conclude collective agreements, even if they form a coalition or a legally formed federation to exceed this threshold together. In this situation, there are no legally recognized trade unions for collective bargaining in the enterprise, even if the trade unions together reach the representativity threshold. The consequence of this, according to the law, is that works councils, instead of trade unions, are entitled to negotiate and agree with the employer on working conditions. This situation weakens the position of and respect for trade unions and undermines their position at the workplace. This regulation does not therefore promote collective bargaining as a traditional right and exclusive prerogative of trade unions.

At the sectoral level, there are currently hardly any collective agreements concluded, which shows that sectoral collective bargaining is also not really promoted.

It was very harmful for trade unions when, in the case of cultural workers and public healthcare workers, there was no social dialogue before the adoption of new laws which basically changed their legal status and affected almost every element of their working conditions. Moreover, public healthcare workers, under the new law, have been deprived of the right to bargain collectively, and have a new legal status as some kind of public servants. However, this new status is a special employment relationship in law, without any rights. Therefore, the total removal of public healthcare workers' right to collective bargaining seriously violates the Convention, as well as Convention No. 87. The Secretary-General of the trade union of cultural workers, the Public Collection and Public Culture Workers' Union, asked many times by letter for a conciliation meeting with the Minister about renumeration and the new draft law, but the request was not answered by the competent Ministry, even though

negotiation was a legal obligation of the Minister, according to the valid law. Only after the adoption of the new status law by Parliament, during Easter holidays, was the text of the new Act sent to the representative trade unions asking their opinion about it. Under these indecent circumstances, only half hour of working time was left for them to analyse the regulations and elaborate their opinion on it. In view of the limitation on the right to collective bargaining in these sectors, social dialogue has a crucial role in the determination of working conditions, and therefore has to be taken very seriously.

During the COVID-19 pandemic, collective bargaining rights were also weakened by the emergency legislation that was also adopted without social dialogue. Concerning anti-union discrimination, according to Article 1 of the Convention, workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Hungarian law does not provide adequate protection against anti-union discrimination for trade union officers, so is not in line with this Article.

The new Hungarian Labour Code, adopted in 2012, modified the regulation of the protection of trade union representatives against dismissal or other detrimental measures imposed on them by the employer based on anti-union discrimination. Without the consent of higher trade union officers to the dismissal, trade union officers cannot be dismissed at all. However, according to the law, a court can replace the higher trade union's consent, if the higher trade union has misused the right. The consequence of this regulation is that the court examines the case, not as an anti-union discrimination case, but what is examined by the court is rather the behaviour of the higher trade union whether it was lawful or whether it engaged in any unlawful action when it refused to agree with the dismissal.

In conclusion, I would like to highlight that there are no real sanctions against the violation of collective rights of workers. We would therefore like to ask the Committee to urge the Government to bring our legislation and practice into line with the Convention and, as it is necessary, we ask for ILO technical assistance too.

Government member, Serbia – The Republic of Serbia has taken note of the report of the Committee of Experts and has listened with interest to the distinguished representative of Hungary on the implementation of the Convention. What we have noticed and what we commend is the constructive approach Hungary is demonstrating in cooperation with the ILO. We would like to underline the argument stated in Hungary's representation that changes in the world of labour require constant adaptation, including in the regulatory framework.

The Republic of Serbia welcomes the guarantees in the national regulatory framework for workers' collective rights, which should meet international labour standards. We reiterate that any change in the legal status of workers should not lead to less favourable conditions. In the case presented by Hungary, Serbia, as a neighbouring country, is pleased to hear that the new legislation has come with reformed and increased wages after consultation with the representatives of the relevant sectors.

We believe that Hungary has taken steps to meet the recommendations made by the Committee of Experts and the Republic of Serbia would like to encourage Hungary to continue open and inclusive social dialogue, as well as its constructive cooperation within the framework of the ILO. We look forward to receiving further reports from the Committee of Experts on the continued implementation of the relevant ILO Conventions.

Worker member, Italy – I am taking the floor today on behalf of the three Italian trade union confederations affiliated to the International Trade Union Confederation (ITUC). We believe that freedom of association and the right to collective bargaining are not only

enshrined in the core ILO Conventions, but also part and parcel of the European Social Model, and that the European social partners are given a unique prerogative by European Union Treaties: they can even participate in co-legislation by jointly submitting European social partners' agreements to be transposed into directives.

We are at a very tragic moment these days when war has come back to the European continent. European Union Member States should do everything they can to promote dialogue and be proud of the high standards for the protection of fundamental rights, including freedom of association, and the enhancement of collective bargaining at all levels.

This is why we are highly concerned about the reiterated lack of action by the Hungarian Government to amend sections 8 and 9 of the 2012 Labour Code and the other provisions highlighted by the Worker spokesperson. This is a long-standing demand by the Committee of Experts, which has so far been ignored. It is unacceptable that free trade union action is undermined by possible allegations of jeopardizing the employers' reputation or their economic interests when exercising industrial action. This undermines freedom of expression, also connected to the over-regulation imposed in light of the COVID-19 pandemic restrictions and is also misused to limit the right to industrial action in many Member States, including in Hungary, where it has been introduced unilaterally and excessively by the Government.

It is also very worrying to note in the Committee of Experts' report that the Hungarian Government has failed again to provide the real numbers of unions denied registration, and we fully endorse the demand for transparency. This is also contrary to the spirit of the European Union Directive, which is being finalized these very same hours, which will further strengthen collective bargaining by requiring, among others, the social partners to jointly draft national action plans to cover at least 70 per cent of the workforce with a collective agreement.

In conclusion, I would like to say that the action by the Hungarian Government so far does not seem to go in this direction. This is why we strongly encourage a sincere dialogue with the social partners, as demanded by the unions and employers in the country, to amend the legislation, as suggested by the Committee of Experts.

Interpretation from German: **Worker member, Germany** – I am speaking on behalf of workers in Germany and in the Nordic countries. We have observed with concern for years now how the right to collective bargaining, guaranteed by the Convention, has been successively and deliberately eroded in Hungary. The labour reforms associated with the radical austerity policy were aimed at deregulation and greater flexibility of the labour market. In this connection, collective labour rights were severely restricted and social dialogue at the national level was largely destroyed.

The number of collective agreements concluded has fallen from 145 in 2006 to ten in 2019. Trade unions are denied effective legal remedies with dissuasive sanctions to defend themselves against interference in their activities.

Inferior working conditions and income have become the Hungarian business model to attract foreign investors. National labour law offers a number of opportunities for employers to adjust working conditions unilaterally to the disadvantage of employees. This deliberate undermining of the procedures for the collective bargaining of working conditions reinforces economic and social dependency and thus the vulnerability of each worker. At a time when workers are particularly weakened by the COVID-19 pandemic, we need strengthened mechanisms, networking and solidarity to carry together what cannot be carried alone. This is what the founding of this Organization aimed at more than 100 years ago, to respect and

promote the rights and freedoms of a collectively organized workforce, which in this way develops the necessary power to negotiate humane working conditions.

The Hungarian labour law reforms in recent years have systematically eroded the foundations of this power. The idea of self-responsibility has become the guiding principle of social policy. Thus, Hungary has become another negative example of everything that is wrong with the idea of "a workfare society".

We therefore call on the Government to immediately amend its legislation, in full consultation with the social partners, and bring it into line with Hungary's obligations under the Convention to create an enabling environment for collective bargaining.

Observer, International Transport Workers' Federation (ITF) – I am speaking on behalf of the ITF, the European Transport Workers' Federation (ETF) and its affiliate the Hungarian Air Traffic Controllers' Union. I wish to raise with the Committee an example of state intervention in collective bargaining resulting in a severe restriction on the principle of free and voluntary bargaining protected under Article 4 of the Convention.

In 2013, the state-owned enterprise responsible for air traffic control concluded a collective agreement with the union. Among other things, the collective agreement stipulated the minimum service requirements in the event of industrial action. This measure, negotiated voluntarily by the parties, provided for mutually agreed service levels, including a service percentage for commercial aircraft and full air navigation services for search and rescue and medical flights. Over the years, these requirements were strictly adhered to by the union in conformity with the collective agreement.

On 27 July 2021, the Government promulgated Decree No. 446 prohibiting industrial action in air traffic control services in the interests of national defence and security. Following a breakdown in negotiations with its employer in the summer of 2021, the union announced its intention to take collective action in full respect of the agreement. Before taking action, the union sought legal assurances from the Metropolitan Court of Justice. The Court ruled that the action would be lawful and recognized the minimum service provisions negotiated between the parties.

Nevertheless, the union did not pursue the action so as not to fall foul of the Decree. This had an immediate impact on the collective bargaining process. The employer effectively withdrew from the collective agreement by refusing to bargain over wages, in violation of the principle of good faith bargaining. The employer has instead resorted to negotiating directly with employees and even rejected a union request for conciliation and arbitration.

While the Decree in question was repealed on 31 May 2022, the minimum service requirements have now been enshrined in Law No. 136. This Law was introduced without providing any compensatory guarantees to air traffic controllers. This, coupled with the termination of the collective agreement, has deprived these workers of two intrinsically linked fundamental rights.

In line with ILO jurisprudence, workers' and employers' organizations must be able to participate in determining minimum services. Where there is disagreement, the matter should be resolved by an independent body. The complete opposite has happened in Hungary. We contend that the Decree and the subsequent Law No. 136 amount to a restriction on free and voluntary collective bargaining, which has completely destabilized labour relations in the sector.

We call on the Government to repeal the relevant sections of Law No. 136 and to ensure that it no longer interferes in free and voluntary collectively bargaining.

Observer, Public Services International (PSI) – I am speaking on behalf of PSI and also the European Public Services Union (EPSU) and our Hungarian affiliates.

In the middle of the COVID-19 pandemic, the Hungarian Parliament adopted legislation that removed collective bargaining and the effective right to strike from health workers in the public sector. Act C on the health service legal relationship and its implementing Decree No. 530, adopted on 6 October 2020 and in force from 18 November 2020, made all collective agreements already concluded with state healthcare workers expire on 1 January 2021, prohibited collective bargaining for health workers in state-owned facilities and made it almost impossible to exercise the right to strike for these workers.

This was not a simple modification of the legislation; the public servant status of healthcare workers was terminated, and all healthcare workers were required to sign a new contract by 1 March 2021, giving them a new legal employment relationship with a so-called "health service status", which deprived them of the rights and benefits that all other public servants enjoy.

At the same time, workers in other state-owned utility companies were set to receive a 15 per cent pay rise over three years. This would be implemented at different rates in different companies with, for instance, national water company employees receiving 4 per cent in 2021, 7 per cent in 2022 and an extra 4 per cent in 2023.

Although this was the object of a complaint filed with the Committee on Freedom of Association, which had already issued recommendations to the Government, I am also bringing the issue to the attention of the Committee on the Application of Standards because, in the written communication submitted by the Government on 16 May, the Government says it has not taken any measures in regard to the recommendations of the Committee on Freedom of Association, and this is a clear example of the situations mentioned by the Committee of Experts in the General Survey that we have discussed, namely the growing precariousness in health and social care work and the cruel conditions that health and care workers have faced during the COVID-19 pandemic.

We think it is disgraceful that this has been done to the workers, the same people who might have saved the lives of friends, family or colleagues of the lawmakers who adopted this law, when at the same time it has been demonstrated by the ILO and other research that collective bargaining played an important role in mitigating the impact of the COVID-19 crisis on employment and on economic activity.

Observer, Education International (EI) – I am speaking on behalf of EI, the global union federation of teachers' unions, which represents 383 unions in 178 countries, including the Teachers' Democratic Union of Hungary (PDSZ) and the Teachers' Union of Hungary (SEH). I will focus on the many, and unfortunately unsuccessful, attempts by unions in the education sector to engage in negotiations with government representatives.

The Committee of Experts notes in its latest report "the excessive limitation of the scope of collective bargaining". Indeed, in the education sector, trade union demands relating to wages, the reduction of the workload in education and measures related to COVID-19 requiring workers in public schools to take leave without pay if they have not been vaccinated against the coronavirus have not been considered by the authorities and no real good faith negotiation has been undertaken.

In October 2020, the Government prevented negotiations between the higher education union and the authorities of a university. In November 2021, it was not possible to conclude any agreements on wage increases, as the Government maintained the increase of 16,500 Hungarian forints (around €45) determined unilaterally.

In January 2022, the Ministry once again, without negotiation, increased the hours of service of teachers by decree. The Secretary of State also declared a strike by teachers to be unlawful, which was overturned by the Court of First Instance on 28 January. Three days later, on 31 January, one teacher in five was protesting against the absence of social dialogue. Several religious schools, vocational training schools and several nursery schools joined the trade union action which, as we know, is the last resort to push governments to negotiate.

On 11 February 2022, the Government issued a new decree prohibiting collective work stoppages in education. The two teachers' unions have appealed to the Constitutional Court against the constitutionality of this decree, which imposes a minimum service.

Government representative – On behalf of the Government of Hungary, we have taken note of the comments made by the members of the Committee and we will take them into due consideration. However, we would like to indicate that we focus our response on the remarks of the Committee of Experts with regard to the Convention. I would like to express my deep regret once again for not being able to send to the Committee of Experts our national reports within the deadline, in which we explain our position in much more detail.

In our final reactions, I would like to emphasize that the Government of Hungary considers effective social dialogue at the national, sectoral and company level as an important element of the world of work. On a legislative level, our fundamental law provides the general framework, as well as guarantees of the freedom of the right to organize. Our national regulatory frameworks for workers' collective rights are in line with international labour standards. Articles 8, 2 and 5 of the Fundamental Law of Hungary guarantee freedom of association and also declare the right to collective bargaining and the right to strike.

Since 2010, we have been working on the development of a more effective framework for social dialogue and a new approach to reconciling interests. The National Economic and Social Council has been operating as the main cross-sectoral institution for social dialogue and a macro-level forum for social consultation for more than ten years. The main aspects of the working methods of the Council are openness, transparency and wide consultation. Additionally, the Permanent Consultation Forum of the Competition Sector and Government was established in 2012 to consult the intentions of employees and employers in the private sector with the Government and to conclude agreements and discuss regulatory proposals.

Reconciliation of the interests of the social partners in the public sector takes place on several platforms at the same time. In matters of sectoral importance affecting the civil service, the competent ministers consult in sectoral consultative forums. A Health Service Reconciliation Forum operates with the participation of the representatives of workers in healthcare service relationships.

Public employees also have their own national-level conciliation forum: the National Labour Council for Public Employees. In addition to this Council, there are other intersectoral and inter-ministerial consultative forums in place to discuss issues related to the living and working conditions of public sector employees. Foremost among these are the Civil Service Reconciliation Forum and the National Civil Service Stakeholder Council. The latter serves as the main national tripartite forum dedicated to discussing common issues and regulations related to the public sector. The effectiveness of the system is clearly demonstrated by the fact

that the forums, both at the national and sectoral levels, have been actively involved in tackling the challenges of recent years.

Well-functioning social dialogue is characterized by the fact that tripartite social forums operated effectively at the national level, even during the pandemic. The Permanent Consultation Forum of the Competition Sector and Government met regularly, holding 24 meetings in 2020, 12 meetings in 2021 and one meeting this year. The National Labour Council for Public Employees met three times in 2020, twice last year and once this year. The National Civil Service Stakeholder Council held three plenary sessions in 2020 and also in 2021, of which two were held with the participation of the National Labour Council for Public Employees. The National Economic and Social Council held four online meetings in 2020 and two in 2021.

At these meetings, the most important measures and initiatives of the Government were discussed, including the budgetary implications of the situation caused by the COVID-19 pandemic, the programmes developed to save jobs and the possibilities for supporting those who became unemployed due to the crisis. At these forums, one of the most important elements of the negotiations is the annual tripartite agreement on the minimum wage with the aim of improving the economic situation of workers. We continuously make efforts to channel the opinions and practical suggestions of the social partners accordingly.

Finally, I would like to emphasize that, in our view, we have succeeded in achieving an inclusive recovery from the COVID-19 crisis with the right combination of well-functioning social dialogue tools and targeted public intervention. The Hungarian Government is committed to continuing and improving the effectiveness of social dialogue so that the social partners can play a meaningful role in economic and social governance in the future too. To this end, the Government is also providing financial and infrastructural support to the social partners, through its own and European Union financial resources. Cooperation and partnership with the social partners are important for us, as the constantly increasing minimum wage and the introduction of significant tax cuts are largely due to the social partners' active, constructive support, on which we will continue to rely in the future.

Employer members – I would begin our closing comments by noting that some of the submissions made by speakers, in the Employers' view, go outside the scope of the discussion of the Convention, and will not be addressed in our closing remarks. We also note in particular one speaker's focus exclusively on the right to strike, which in our view, falls entirely outside the appropriate scope of this discussion regarding the Convention. In addition, we would like to remind all speakers that the mandate of this Committee is to examine government conduct regarding the application in law and practice of international labour standards and we are not present to discuss individual employers' situations or conduct. We would ask that any references to individual employers made by speakers today be struck from the record.

Taking into account the observations of the Committee of Experts, the Employers reiterate our expectation that the Government will take the necessary steps to ensure that union officials, union members and elected representatives enjoy effective protection against any prejudicial acts based on their status or activities, including dismissal, and we restate our call to the Government to provide information on developments in relation to the adoption of the new legislative provisions discussed today in this regard.

We encourage the transparency of the Government in this process and we also note the call by the Committee of Experts to the Government to provide information on whether the Equal Treatment Authority could provide reinstatement as a remedy in cases of anti-union dismissals of trade union officials and members, to provide information as to whether the

Equal Treatment Authority may order compensation, and for the Government to provide information on the average duration of proceedings before the Equal Treatment Authority related to cases of anti-union discrimination.

We call on the Government to provide this information to the Committee of Experts prior to its next session. In addition, as discussed with respect to the issues related to protection against acts of interference, which is regulated by Article 2 of the Convention, the Employers call on the Government to provide further information related to the issue of protection against acts of interference and how this is codified in existing or contemplated new laws.

We appreciate, in closing, the Government's comments today, as well as its stated commitment to social dialogue. The Employers' group calls on the Government to commit itself, in both law and practice, to full compliance with the Convention, and we also call on the Government to commit itself to true national social dialogue with the most representative employers' and workers' organizations, and to provide information on these measures to the Committee of Experts before its next session.

Worker members – We have taken note of the comments of the Government of Hungary and we must emphasize that the Government of Hungary has an obligation to protect international labour standards, including those contained in the Convention. The Workers' group is concerned at repeated violations of the right to organize and collective bargaining in Hungary, in both law and in practice. Instead of prohibiting anti-union discrimination and promoting and encouraging collective bargaining, the laws appear to promote anti-union discrimination and demote collective bargaining, and this situation calls for action.

In line with the requests by the Committee of Experts for information, the Government must provide information on the number of collective agreements signed, the sectors concerned, and the share of the workforce covered by collective agreements.

We urge the Government to immediately take comprehensive action to make the laws in Hungary fully compatible with the Convention. Specifically, we call on the Government: to adopt specific legislative provisions in full consultation with the social partners; to prohibit acts of interference on the part of the employer and make express provision for rapid appeal procedures coupled with effective and dissuasive sanctions to allow trade unions with less than 10 per cent representation among the workers to negotiate collective agreements with respect to their own members; to repeal the provisions allowing workers' councils to conclude collective bargaining agreements where trade unions are present in the workplace; to extend the scope of negotiation beyond the rights arising out of the employment relationship, as it should be left to the parties concerned to decide on the subjects for negotiation; to repeal provisions allowing employers to have the power to unilaterally modify, annul or extend the scope and content of collective agreements; to repeal the provisions of Act C of 2020 and Government Decrees Nos 528/2020 and 530/2020; and to ensure adequate protections in law against acts of anti-union discrimination and make provision for effective and dissuasive sanctions.

We also request the Government to provide information on the average duration of both the judicial proceedings as well as the proceedings before the Equal Treatment Authority related to anti-union discrimination, as requested by the Committee of Experts.

And finally, we would ask the Government to ensure that union officials, union members and elected representatives enjoy effective protection against any acts prejudicial to them, including dismissal based on their status or activities, and to make express provision for rapid appeal procedures coupled with effective and dissuasive sanctions.

To conclude, the Government must make every effort to take the necessary action without further delay and avail itself of the technical assistance of the ILO to ensure that the law and practice in Hungary are fully compatible with the provisions of the Convention.

Conclusions of the Committee

The Committee took note of the oral and written statements made by the Government and the discussion that followed.

The Committee regretted the failure of the Government to report on the application of the Convention to the Committee of Experts.

The Committee noted with concern the significant compliance gaps in law and practice regarding the protection against anti-union discrimination, the scope of collective bargaining permitted under the law and interference in free and voluntary collective bargaining with respect to the Convention.

Taking into account the discussion, the Committee urges the Government, in consultation with the social partners, to:

- **review relevant labour legislation to ensure that the representativity threshold for negotiating collective bargaining is not set in a manner that prevents workers from exercising their right to collective bargaining;**
- **ensure that union officials, union members and elected representatives enjoy effective protection, in law and practice, against any act prejudicial to them, including dismissal, based on their status or activities;**
- **ensure protection in law and practice against acts of anti union discrimination, coupled with effective and dissuasive sanctions;**
- **ensure no undue interference in the establishment, functioning and administration of trade unions; and**
- **provide information on the average duration of both judicial proceedings and proceedings before the Equal Treatment Authority related to anti-union discrimination.**

The Committee requests the Government to avail itself, without delay, of ILO technical assistance, to ensure compliance with the provisions of the Convention in law and practice.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 with information on the application of the Convention in law and practice, in consultation with the social partners.

Iraq (ratification: 1962)

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Written information provided by the Government

The Committee requests the Government to indicate in what manner it ensures that effect is given to the Convention with respect to public officials.

A preliminary draft of an Act on union organization was prepared and considered by the Council of State. The Council returned the draft for discussion by the relevant parties and there was liaison with the ILO on the preparation of a preliminary version of the draft so that it might come into line with the relevant international Conventions and thus be invigorated and returned to legislative force. Under the oversight of the ILO, the Ministry held a workshop concerning the Act attended by all the representatives of the labour unions in Iraq for the purpose of arriving at a definitive version of the preliminary draft of the Act and of seeing that it achieves its proper function in law.

The Government requests the ILO to provide technical assistance in preparing the Act and in trade union capacity-building and promoting the activation of the Conventions relating to union freedom.

The Committee therefore requests the Government to take the necessary measures to ensure that the sanctions actually imposed in cases of anti-union discrimination are sufficiently dissuasive. In this regard, the Committee requests the Government to provide information on the sanctions imposed in practice.

The sanctions that are imposed in practice match those penalties stipulated in the Labour Code, and which include those mentioned in section 11(2); no scope is given for deviation from the provisions of the Labour Code. In light of the existing amendment to the Labour Code (which is under discussion), the matter of sanctions will be discussed with the social partners.

The Committee requests the Government to specify which remedies may be imposed by the Labour Court in such cases, indicating in particular whether the Court is empowered to reinstate the dismissed workers in their positions.

The Labour Code gives workers the right to appeal a severance decision before the severance committee formed pursuant to Instruction No. 4 of 2017.

They may also appeal the severance decision in court within 30 days of being informed of the termination of their service, as per the provisions of section 46(1) of the Labour Code.

A worker is deemed to have waived his right to appeal if he does not submit it within this period. In choosing one of these remedies, he forfeits his right to the other one.

The severance committee's decision may be appealed against in the labour court within 30 days of the worker being informed of the decision.

If the committee or the court finds that the termination of the worker's service is contrary to the conditions for terminating the labour contract as specified in section 43 of the Labour Code, they may order the reinstatement of the worker or the restitution of all wages owed to him since the termination of the work contract.

The Committee requests the Government to provide information regarding the length of the procedure to treat complaints against acts of anti-union discrimination and its application in practice.

The length of the period for the treatment of a complaint lodged by a worker concerning labour disputes over existing rights is in accordance with the application of the provisions of the Labour Code, which is within 30 days of the complaint being submitted as per section 157(4).

If the complaint concerns a collective dispute over future interests, the length of the period specified for resolution of the dispute is up to 48 hours from the date on which the request for this is received, during which an appointment to hear the dispute must be fixed.

The length of the period for settling the dispute is seven days from the expiry of the 48-hour period as per the provisions of section 161(3) and (4) concerning the settling of disputes.

In all the above situations, cases involving labour issues are deemed to be urgent actions, as per section 166(iii).

Three hotlines have also been opened for receiving workers' complaints and forwarding them to the labour inspectorate, which deals with them as a matter of urgency and works to resolve any problem amicably before having recourse to the competent courts. The hotlines have proved to be successful in this regard.

The Committee requests the Government to indicate whether other laws or regulations explicitly prohibit acts of interference and provide for rapid procedures and sufficiently decisive sanctions against such acts, including sanctions pertaining to the establishment of workers' or employers' organizations and to adequate protection against any acts of interference.

Section 22(III) of the 2005 Constitution of the Republic of Iraq states: "The State shall guarantee the right to form and join unions and professional associations and this shall be regulated by law."

It is also stated in the provisions of section 42(1)(k) of the Labour Code that the range of rights afforded to workers includes the "freedom to create and join trade unions".

With regard to information concerning the measures taken or envisaged to promote collective bargaining, the number of collective agreements concluded and in force in the country, as well as the sectors concerned and the number of workers covered by these agreements, there is a specific part of the Labour Code (that is Chapter 15) regulating everything pertaining to collective agreements and bargaining. This chapter defines all the measures for concluding collective work agreements or entering into collective bargaining free from interference by any party (see sections 146–156 of the Code), although it should be noted that, to date, no collective agreements have been concluded or are in force in the State.

Recommendations: Iraq is in urgent need of trade union capacity-building and of promoting the activation of the Conventions relating to union freedom.

Discussion by the Committee

Interpretation from Arabic: **Government representative** – The Government has noted the observations of the Committee of Experts, and I would like to point out the following. My Government has ratified 68 Conventions, including 8 fundamental Conventions. We also ratified Convention No. 98 in 1962, and we are continuing to discuss and collaborate with the Committee of Experts, the Baghdad Office, the Regional Office in Beirut and the ILO in Geneva in order to reach an optimal implementation of these Conventions. I must admit that we are extremely surprised by the inclusion of Iraq on the shortlist.

Iraq, since 2003, has seen major developments and a new Constitution was adopted in 2005. The Constitution is based on the freedom and equal treatment of all citizens without any discrimination, and it guarantees the right to organize in all its forms. Important developments occurred with respect to freedom of expression, the promulgation of a law on political parties, and the holding of elections every four years, whereby members of the Parliament are elected by Iraqi citizens and Parliament consequently appoints the executive.

Following these transformations, however, we faced major challenges and terrorist attacks, which did not distinguish between one category of the population and another and, despite all these challenges, Iraq was able to take important strides to adopt new legislation, which are in conformity with the Constitution and the new era. Thus, Labour Code No. 37 of 2015 was adopted. It provides for the first time for the most representative trade union organizations and allocates an entire chapter to collective bargaining, and occupational health and safety, so as to protect workers' rights in conformity with ILO Conventions. The Code was promulgated with continuous ILO assistance, which eventually led to the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in 2018.

Since Law No. 52 of 1987 is of a general nature and its provisions are not in conformity with Conventions Nos 87 and 98, the Ministry of Labour and Social Affairs called for the establishment of a committee by virtue of a Diwani Order to prepare a new draft law. Thus, Diwani Order No. 18 of 2018 was promulgated, establishing a committee under my chairmanship, with the membership of trade unions, some of which have presented this case to the ILO. But we have to bear in mind that the adoption of a new law needs to go through different stages before its final adoption as a result of the separation between the powers of the State. Thus, work went ahead and a draft law on trade union organizations for workers and employees in Iraq was prepared.

Furthermore, the Ministry has adopted a new policy in dealing with the situation. It has kept the same distance from all trade unions, while waiting for the promulgation of a new law.

With respect to the request by the Committee of Experts to take the necessary measures to ensure that the sanctions actually imposed in cases of anti-union discrimination are sufficiently dissuasive, we would like to recall here that the sanctions imposed are in line with the enacted law, including section 11(2) and, of course, I have to remind you all that this section will be the subject of an amendment once the new law is presented to Parliament, in consultation with the social partners. There is also the Committee's request to specify the remedies which may be imposed by the labour tribunal in such cases, indicating in particular whether the tribunal is empowered to reinstate dismissed workers in their positions.

The Labour Code grants the right to workers to appeal against a termination decision before the Committee on Termination of Service, which was set up by virtue of Instruction No. 4 of 2017, or before the court within 30 days as of the date on which a worker is notified of his/her termination based on section 46(1) of the Labour Code.

A worker would be considered to have rescinded the right of appeal if he/she does not submit it within the deadline and if one of the parties chooses one option he/she loses the right to use the other option.

The decision of the Committee on Termination of Service can be appealed against before the Labour Court within 30 days as of the date of the worker's notification.

If the Committee or Court finds that a worker's termination is different from the reasons for the termination of a labour contract, as specified in section 43 of the Labour Code, it will consequently decide to reinstate the worker and pay him/her full wages for the period since his/her labour contract was terminated.

There is also the request by the Committee of Experts to provide information on the length of the procedure to treat complaints against acts of anti-union discrimination and its application in practice. The periods required by the procedures to treat a complaint submitted by a worker and which concern labour conflicts on existing rights is related to the application

of the sections of the law, which is 30 days as of the date on which the complaint was submitted, as specified in section 157(4) of the Code.

In the case of a complaint which is related to a collective conflict involving future interests, the set period to resolve a conflict is 48 hours so as to identify a date on which to examine the conflict as of the day on which the request was received and seven days to decide on the conflict as of the date on which 48 hours ends to decide finally on the conflict as specified in section 161(3) and (4).

In view of these points, labour cases are considered urgent actions based on paragraph 3 of section 166.

This leads me to the request by the Committee of Experts to indicate whether there are other laws or regulations which explicitly prohibit acts of interference in the process of establishing workers' trade unions or employers' organizations and provide for rapid procedures and sufficiently dissuasive sanctions against such acts of interference. I would like to recall here that in the Constitution of 2005, section 22(III) specifies that the State shall guarantee the right to form and join trade unions and professional associations, and this shall be regulated by law.

This is in addition to section 42(1)(k), which also includes the cluster of rights granted by the Labour Code to workers on their freedom to establish and join trade unions.

With respect to the Committee's request to provide information on the measures taken or envisaged to promote collective bargaining, the number of collective agreements concluded and in force in the country, as well as the sectors concerned and the number of workers covered by these agreements, I would like to bring to the Committee's attention that there is an entire chapter in the labour law, Chapter 15, which includes any matter related to collective bargaining and collective agreements. In this Chapter, all measures are outlined whereby collective bargaining or negotiations can be conducted without any intervention from any outside party, in sections 146–156. It is to be noted here that there are still no collective agreements which have been concluded or are in force in the country.

I would like to point out here that, in order to solve all these issues, negotiations and continued dialogue should take place and of course we would like to avail ourselves of the technical assistance of the ILO.

Employer members – In terms of background details, as we all know, Convention No. 98 is a fundamental Convention. It is classified as up to date, so it is not part of the revision work that the Standards Review Mechanism is looking at. Iraq ratified the Convention in November 1962, which was a long time ago. This case has only been discussed by the Committee once before in 2008, although the Committee of Experts has made 20 observations on this case in the past.

Iraq was discussed in the Committee in 2008, well before it ratified Convention No. 87 in 2017. That discussion focused on the observations made by the International Trade Union Confederation (ITUC) in 2006 and violations of trade union and collective bargaining rights, serious cases of violence and other violations of freedom of association and the views of the Committee of Experts on the new draft Labour Code, which had not yet been adopted.

The Committee in its conclusions noted the Government's statement regarding the ongoing process of reconstruction and the climate of violence in the country. It further noted that the draft Labour Code, prepared with the assistance of the ILO, was presently before the Shura Council, as well as the Government's statement that: (a) it would take the comments of

the Committee of Experts on board before proceeding with its adoption; and (b) that despite the current absence of an appropriate legislative framework governing the right to organize, trade unions were in fact able to carry out their activities without interference.

The Committee also took note of the statement made by the Iraqi Workers' delegate on the difficulties faced in organizing workers and the interference workers' organizations encountered in their activities, including the freezing of trade union assets. The Committee noted similar concerns by Iraqi employers' organizations, observing that a draft Labour Code had been prepared some time ago with the assistance of the ILO; the Committee expressed the firm hope the draft Code would be modified along the lines requested by the Committee of Experts in full consultation with the social partners and would be adopted without delay. In the meantime, the Committee called on the Government to ensure that the laws and practice of the previous regime were no longer applied.

The Committee considered that the application of this Convention and vigorous efforts to develop extensive and meaningful social dialogue were important building blocks in the process of reconstruction ongoing in the country. It hoped that it would be in a position in the near future to observe that all workers, including public servants not engaged in the administration of the State, could fully enjoy the effective protection of the provisions of the Convention.

Welcoming the Government's request for ILO technical assistance, the Committee urged it to accept an ILO technical assistance mission in the near future. That was in 2008.

Moving forward now to 2017. The Committee of Experts noted with interest the approval of the ratification of Convention No. 87 in November 2017. Noting the late receipt of the Government's report, the Committee of Experts also observed that the Government had reported the adoption of the new Labour Code in 2015. The Committee of Experts said it would examine the Government's report and the new legislation at its next session in order to evaluate its conformity with the Convention and ensure that the comments made by the Committee of Experts regarding the previous legislation had been taken into consideration.

This brings us to the present day and the present report. In its observation in the report now before the Committee, the Committee of Experts, with respect to the scope of the Convention, notes that section 3 of the Labour Code stipulates that its provisions do not apply to public officials appointed in accordance with the Civil Service Law or a special legal text, and members of the internal security forces. It requests the Government to indicate in what manner it ensures that effect is given to the Convention with respect to public officials not engaged in the administration of the State who are excluded from the application of the Labour Code.

With respect to Article 1 of the Convention, which provides for protection against acts of anti-union discrimination and sufficiently dissuasive sanctions, the Committee of Experts considers that the amount of the fine provided in section 11(2) of the Labour Code – 1 million Iraqi dinars, which is approximately US$685 – may not be adequate to deter and prevent the repetition of acts of anti-union discrimination. It requests the Government to take the necessary measures to ensure that the sanctions imposed in cases of anti-union discrimination are sufficiently dissuasive and to provide information on the sanctions imposed in practice.

With respect to anti-union dismissal, the Committee of Experts notes that section 145 of the Labour Code provides that when the penalty of dismissal has been imposed on a worker, such a decision may be challenged within 30 days before the Labour Court. It notes, however, that the Labour Code does not specify which sanctions are applicable in the event of an anti-

union dismissal. The Committee of Experts requests the Government to specify which remedies may be imposed by the Labour Court in such cases, indicating in particular whether the Court is empowered to reinstate the dismissed workers in their positions.

With respect to rapid appeal procedures, the Committee of Experts requests the Government to provide information regarding the length of the procedure to treat complaints against acts of anti-union discrimination and its application in practice.

With respect to Article 2, which provides for protection against acts of interference, the Committee of Experts notes that the Labour Code does not contain any provisions which explicitly prohibit acts of interference. It requests the Government to indicate whether other laws or regulations explicitly prohibit acts of interference and provide for rapid procedures and sufficiently decisive sanctions against such acts.

As we have heard from the Government, the Government has responded to all of these requests in writing and we will not therefore repeat the response because we think we heard it very clearly, concisely and comprehensively from the Government. With that, we will turn to my concluding remarks.

To sum up, if we look at the timeline of this case in particular, it is clear that progress has been slow. A Labour Code was drafted in 2003, it was before the Shura in 2008, but not adopted until 2015. Convention No. 87 was ratified in 2017 and this is the first time Iraq's application of Convention No. 98 is in fact being fully examined. It is fair to say that this is a case in which progress has been made but, as in so many cases like this, more needs to be done.

Here, the Employer members note that technical assistance was provided during the process of drafting the Labour Code in 2003 and, looking at the Committee of Experts' observations, it seems possible that some of the guidance provided during the process of drafting the Code was lost in translation and during its subsequent finalization and passage into law. With that in mind, the Employer members urge the Government of Iraq to take note of the Committee of Experts' observations and work with the most representative employers' and workers' organizations to close the apparent gaps between the Labour Code and the basic requirements of Convention No. 98.

If, as it has itself requested, Iraq again avails itself of the technical assistance accessible through the ILO, the Government might find that it is able to complete many, if not most, of the recommended actions in time for a favourable report the next time the Committee of Experts reports on Convention No. 98.

Worker members – Iraq needs to be discussed again in our Committee. This time it is under Convention No. 98. The Committee of Experts' report shows that many difficulties persist in the implementation of the Convention. We have just heard the Government make a number of points and try to make it sound like things are going in the right direction. The reality is quite different. A number of points that have been and will be raised are also related to Convention No. 87, but as everyone knows Conventions Nos 87 and 98 are closely linked and complementary, so it is justified to address them.

The first issue we wish to address concerns the scope of the right to collective bargaining. Indeed, civil servants do not fall within the scope of the Labour Code. However, it is this text that contains the provisions that give effect to Convention No. 98. The consequence is that as things stand, a significant category of workers is deprived of their rights in this area. They include teachers, employees of public enterprises and the decentralized institutions.

In this respect, the Revolutionary Command Council Resolution No. 150 of 1987 states in section 10 that trade unions are limited to the private sector and are not allowed in the public sector. Section 2 of the Trade Unions Organizations Act No. 52 of 1987 includes the same provision. Similarly, several ministerial instructions and circulars prohibit the founding of trade unions in the public sector and prevent collective bargaining. It should be noted that we are talking about a country where the public sector plays an important and vital role.

The second problem we wish to highlight concerns the numerous acts of discrimination suffered by trade union activists. It should be recalled that Article 1(b) of the Convention provides protection for the worker against dismissal or any other prejudice by any other means because of his or her trade union membership or participation in trade union activities.

We must denounce many prejudicial measures taken against workers solely and only because of their trade union activities. Colleagues will discuss specific examples, but I can already indicate that the spectrum of these acts of discrimination is very broad. It ranges from ministerial decisions that exclude certain organizations to individual disciplinary measures taken against trade union activists.

The Government claims that the current legislative arsenal provides for sanctions against acts of discrimination. It also states that legal changes are under way in this regard. The Worker members insist that the changes introduced should result in truly dissuasive sanctions. The judicial process must also offer all guarantees of impartiality, and of course must be accessible. We also ask the Government to collect data on the number of complaints handled, the decisions taken and their consequences.

A careful analysis of the situation reveals the root cause of the acts of discrimination that we are denouncing here. Indeed, we observe that these acts are the result of the Government's desire to organize and maintain a system of trade union monopoly. This results from section 21 of the Trade Unions Act No. 52 of 1987, which provides that the General Federation of Trade Unions is the supreme body for the trade unions. It is clear that the main purpose of the facts and practices reported here is to prevent the emergence of alternative trade union organizations. These acts of discrimination extend to intimidation of peaceful trade union protests. Activists are interrogated by the police and accused of illegal trade union activities.

We strongly recall that respect for freedom of association and the right to organize is incompatible with a climate of violence and intimidation. We call on the Government to make the necessary legislative changes and to guarantee all workers the rights and protections provided by the Convention.

Government member, France – I have the honour of speaking on behalf of the **European Union (EU) and its Member States.** The candidate country, **Albania**, and the European Free Trade Association country, **Norway**, Member of the European Economic Area, as well as the **Republic of Moldova**, align themselves with this statement.

The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights, such as the right to organize and collective bargaining.

We actively promote the universal ratification and implementation of fundamental international labour standards, including Convention No. 98.

We support the ILO in its indispensable role of developing, promoting and supervising the application of ratified international labour standards and of fundamental Conventions in particular.

The EU and its Member States are long-term partners of Iraq. In response to the many challenges Iraq is facing after years of conflict, in 2018 the EU adopted a new strategy for Iraq to support the Government's efforts towards stabilization, reconstruction, reconciliation and development. The EU and Iraq have also signed a comprehensive Partnership and Cooperation Agreement.

We welcome the fact that the Government provided updated information ahead of this meeting.

While taking note of the observations provided, we note with concern the observations of the Committee of Experts recalling the need to remove any obstacles to trade union pluralism, as well as to ensure that the rights in the Convention are applicable to all public servants not engaged in the administration of the State.

With regard to the scope of application of the Convention, we recall that all workers, without distinction whatsoever, including public sector workers, regardless of whether the service is essential, are covered by the Convention. The extent to which the Convention applies to the armed forces and the police is to be determined by national laws or regulations.

With regard to public sector workers, we would like to stress that all other persons employed by the Government, by public enterprises or by autonomous public enterprises are covered by the Convention and should therefore benefit from the guarantees provided for in the Convention. Regrettably, section 3 of the Labour Code does not respect this coverage by excluding all public officials appointed in accordance with the Civil Service Law or a special legal text. We urge the Government to amend the Labour Code so that it is in conformity with the Convention.

The EU and its Member States also draw attention to the importance of protection against acts of anti-union discrimination and take note of the provisions in the Iraqi Labour Code. We echo the call of the Committee of Experts for the Government to take the necessary measures to ensure that the sanctions actually imposed in cases of anti-union discrimination are sufficiently dissuasive.

We ask the Government to provide additional information on the implementation of these provisions in practice, as well as on the remedies that may be imposed in cases of unlawful anti-union dismissal and the length of the procedure to treat complaints against acts of anti-union discrimination.

Finally, in the absence of such provisions in the Labour Code, we reiterate the request by the Committee of Experts to provide information on the legal provisions explicitly prohibiting any acts of interference in the establishment, functioning or administration of workers' and employers' organizations.

The EU and its Member States remain committed to our close cooperation and partnership with Iraq and look forward to continuing joint efforts with the Government and the ILO to improve labour standards for all in Iraq, in particular the implementation of the fundamental Conventions.

Interpretation from Arabic: **Worker member, Tunisia** – Thank you for giving me the floor to discuss the case of Iraq on behalf of the General Federation of Tunisian Workers. We are aware of the trials experienced by the people of Iraq as a result of wars, and then the blockade and finally the murderous conflicts that have led to the loss of millions of workers, their property and livelihoods.

We believe that the procedure for the recovery and development of their trade union rights is part of the process of national reconstruction, the reinforcement of its stability and the development of labour legislation that is in conformity with international labour standards and responds to the claims of Iraqi workers and their trade union movement.

In this regard, the unions have called for the revision of several chapters of Law No. 52/1987 with a view to eliminating all forms of discrimination, ensuring the protection of workers, bringing an end to interference in the internal affairs of trade unions and guaranteeing the right to freedom of association and collective bargaining.

The Labour Code has been revised in order to give trade union members and workers all their rights. We call on the Government to cease all interference with and provide protection for workers. We have noted the information provided by the Government and we see that the efforts made are along the right lines.

It is extremely important to bring an end to discrimination against workers, irrespective of the reason for such discrimination. We call on the Government to repeal the laws which allow discrimination against workers and those that deny them freedom in the exercise of their trade union activities. We ask the Government to give full effect to the Convention and to bring an end to the abusive dismissal of trade union members.

In light of these abuses, we are bound to reiterate our call for the Government to amend the Labour Code and to do that in dialogue with workers' and employers' organizations, and to allow the reinstatement of trade union members who have been dismissed. We reaffirm the need to give effect to all the provisions of the Convention in order to allow trade union pluralism and prevent any interference in trade union activities.

Interpretation from Arabic: **Government member, Egypt** – We have taken note of all the measures taken by the Government to bring its national legislation into conformity with the Convention, as well as its efforts to enact a new law which guarantees freedom of association, trade union pluralism and the absence of discrimination.

We know that Iraq has ratified a large number of Conventions and that it is committed to observing the protection of the civil, economic, cultural, political, social and labour rights of the Iraqi people. We have taken due note of the laws adopted by the State of Iraq which protect the rights of Iraqis, such as Labour Law No. 37 of 2015, which includes an entire chapter on collective bargaining and other provisions which protect workers' rights in the event of termination of service.

In conclusion, we would like to express our appreciation of the efforts made by the Government to bring the legislation into conformity with the provisions of the Convention and we hope that the Committee will recognize the efforts being made by the country in its conclusions and respond to its request for technical assistance.

Worker member, United Kingdom of Great Britain and Northern Ireland – We note that it is the responsibility of governments to create conditions in law and practice in which unions and employers can freely bargain. However, as we have heard, not only does the Iraqi Government provide insufficient disincentives for anti-union discrimination in the workplace, but it actively works against conditions that are conducive to collective bargaining.

We all know of the damage caused by the sense of impunity granted by negligence or collusion of governments in the suppression of free trade union activity. Rather than addressing this imperative, we see the Iraqi Government perpetuating a climate of fear. When thousands of workers in the energy sector demonstrated peacefully to demand their

workplace rights, security forces brutally dispersed the protests. Similarly, another peaceful protest on 14 February ended in violent attacks by the police and the arrest of two trade unionists. In this climate of impunity, one employee at an oil facility was killed by organized crime gangs following continuous attacks against independent trade unions. A ministry terminated the contract of one electricity worker for organizing a protest against job cuts. Six hundred and fifty oil workers were dismissed after seeking collective bargaining and, when they protested peacefully, were beaten by the police with batons. On 31 March, electricity workers protested peacefully about the employment conditions they had tried to raise with management. The subsequent police crackdown left hundreds injured.

In the discussion of the General Report, I noted that a company had weighed the likely cost of punishment for breaking labour laws against future wage savings, and knowingly broke the regulations. How much more likely is such cynical behaviour if a company thinks that, instead of being punished by the Government, it might be applauded. Indeed, recently two leaders of the General Federation of Iraqi Trade Unions (GFITU) who sought collective bargaining, were instead reassigned by their company to jobs they did not want as punishment.

Finally, we note the interdependence of the fundamental principles and, in particular, the centrality of respect for Convention No. 87 in providing the necessary foundations for giving effect to Convention No. 98. By allowing, and indeed propagating, a climate of fear in which anti-union violence is commonplace, the Government of Iraq is undermining the necessary conditions for workers' organizations, free of interference, to engage in collective bargaining, something we hope it will urgently address.

Interpretation from Arabic: **Government member, Qatar** – We listened very carefully to the statement made by the Government of Iraq with reference to the Convention. We wish to state that we appreciate the efforts being made to ensure that Iraq is in compliance with the provisions of the Convention and we note that there is a bill on trade union organization which is currently under discussion with the ILO and workers' organizations. This reflects the Government's keenness to bring its legislation into conformity with the provisions of Convention No. 98, in accordance with the Iraqi Constitution, which guarantees the freedom to establish workers' organizations. We note that the Government is seeking to strengthen the system of complaints mechanisms available to workers so as to enable them to appeal when they feel that there has been discrimination against them.

We support the Government's request for ILO technical assistance in drafting the legislation in question, for capacity-building and to take the necessary operational measures to put into effect the Convention. We also believe that further assistance could help to give effect to other provisions of the Convention. We would commend the efforts that are being undertaken and we believe they should be further supported. We also support the statement made by the Government of Iraq in that regard.

Worker member, United States of America – The American Federation of Labor and Congress of Industrial Organisations (AFL–CIO) has been working with Iraqi trade unions on labour law issues for many years. While there has been some progress in that time, including the 2015 Labour Code, the fact remains that the rights to freedom of association and collective bargaining remain deeply constrained in Iraq.

As noted in the Committee of Experts' comments on Iraq for Conventions Nos 87 and 98, the existence of a trade union monopoly violates these fundamental Conventions. In practice, independent unions are therefore largely unable to build membership and bargain collectively.

On 20 January 2021, the Supreme Judicial Council refused to appoint a judge to oversee the running of the provincial elections of the GFITU, reiterating that the Iraqi Government only recognizes the General Federation of Iraqi Workers (GFIW). One pernicious practice used over the course of many years to frustrate collective bargaining is the issuance of government administrative orders directing ministries to only bargain with the government-approved GFIW. Given the role and importance of the public sector in Iraq, orders to government agencies to refuse to bargain affect a very large number of workers. For example, on 12 October 2020, the Iraqi Ministry of Labour issued Administrative Order No. 11367, instructing government administrative bodies not to deal with unions other than the government-approved GFIW. Following Administrative Order No. 11367, several ministries issued circulars to implement this policy. On 11 July 2021, the Ministry of Electricity issued a directive banning all trade union committees and instructed employees in publicly owned companies not to engage with such committees or face discipline under the amended Penal Code No. 111 of 1999, among other laws.

Clearly much work remains to be done by the Government of Iraq to come into compliance with Convention No. 98.

Interpretation from Arabic: **Government member, Algeria** – The Algerian delegation thanks the representative of the Government of Iraq for the statement on the implementation of the Convention. We take due note of the information provided by the Government representative according to which the reform of the Labour Code, prepared by the Tripartite Advisory Commission, is intended to promote collective bargaining in the public service, protect trade union delegates against anti-union acts, strengthen the dissuasive sanctions to be imposed in the event of anti-union discrimination and interference in the operation of union organizations.

My country also notes positively that the Government remains attached to the ILO's principles with a view to strengthening trade union freedoms and indicates that this commitment will be maintained. These measures clearly show that the new approach in Iraq is well founded, and would gain from greater ILO support, in light of the obligations deriving from the Convention.

We hope that the consultations that are being held on the improvement of protection against abusive dismissals, including anti-union dismissals, will take into account the comments made by the Committee of Experts on the application of Article 1 of the Convention.

Finally, we urge the ILO to provide technical assistance and support to the Government to help it in the process of bringing the law and practice into conformity with the provisions of the Convention. We hope that this assistance will be results-oriented and we consider in this respect that the provisions of the Convention and the comments of the Committee of Experts provide a solid basis.

Interpretation from Arabic: **Worker member, Syrian Arab Republic** – Iraq is a Member of the ILO and as such it respects the Constitution of the ILO. That being so, it has taken the legislative steps required to give effect to ratified Conventions. We consider that the provisions of Convention No. 98 are not in contradiction with the provisions of the Labour Code and are indeed in line with the legislative principles that govern the situation of workers in Iraq.

We believe that all the steps required to give effect to the Convention have been taken. We know that Iraq is now working on new legislation to guarantee trade union pluralism, non-discrimination and the full exercise of trade union rights.

However, the Labour Code contains provisions which guarantee freedom of association and collective bargaining, in addition to providing for other rights which protect workers against termination and their right to join the most representative trade union. We therefore commend Iraq for its efforts to give effect to the Convention and to bring its legislation into full conformity with international labour standards. We believe that the ILO needs to provide further technical assistance to allow Iraq to do even more and ensure the appropriate implementation of the Convention.

Interpretation from Arabic: **Government member, Oman** – We would like to thank the Government of Iraq for the measures taken in cooperation with the social partners to promote the implementation of the Convention.

The Government of Oman would like to recognize the progress that has been made in this area. We also welcome the fact that the Government is of a mind to continue with the implementation of the Convention by bringing its legislation into line with the provisions of the Convention, and we certainly recognize the progress made in the area of legislation, particularly the laws relating to trade union organizations, the Labour Code and a number of ministerial decrees which strengthen Iraq's observance of international labour standards. We also welcome the measures in effect in Iraq, despite the huge post-pandemic challenges and the pandemic which has had an impact on all countries and particularly on developing countries. As you know, Iraq has ratified Convention No. 87, which strengthens freedom of association in Iraq. We would still invite the Government to continue its efforts to protect the rights of workers and promote trade union activities in the country. We hope that the ILO will continue to provide technical assistance to help the tripartite constituents provide and guarantee decent work.

Interpretation from Arabic: **Government member, Morocco** – Allow me to first thank the Government of Iraq for the information and clarifications provided. We commend the Government for the efforts made to respond to the observations and comments of the Committee of Experts. On this occasion, we welcome the efforts made by this Committee for the supervision of international labour standards.

These remarks relate to the need to take measures for the adoption of dissuasive sanctions in the event of anti-union discrimination in the establishment of occupational organizations of workers and employers and to prevent interference in the internal affairs of these organizations.

Having heard the Government's replies to these observations, we note positively that the Government has taken a series of measures in relation to the Convention, including the preparation of new legislation to guarantee the freedom to organize unions, which encourages pluralism and prohibits anti-union discrimination and interference in the internal affairs of these organizations.

We also note that the Government is working to ensure the conformity of the national legislation with international labour standards, including the Labour Code No. 37 of 2015, which explicitly provides for collective bargaining in a chapter covering this subject, and the protection of workers' rights in the event of termination of their employment.

In conclusion, the Government of Morocco supports the position of the Government of Iraq in its cooperation with the ILO with a view to reforming trade union representation, and the Kingdom of Morocco recommends it to pursue its efforts for the adoption of a new law that takes into account the concerns of the workers.

Government member, Pakistan – Pakistan appreciates Iraq's commitment to the implementation of international labour standards. We have taken note of the Government's proposal to enhance its compliance with the relevant Convention in consultation with the ILO. Pakistan welcomes the recommendations of the Committee of Experts and Iraq's willingness to accept capacity-building and technical assistance from the ILO to introduce the necessary improvements in its legislative and administrative framework.

It is the responsibility of every government to create a conducive environment for the well-being and welfare of its people and national circumstances should be respected. In this regard, we are pleased to note that the Government of Iraq is undertaking steps to promote social dialogue with the relevant stakeholders. For the future, we support Iraq's constructive engagement with the ILO and encourage social dialogue in the spirit of tripartite mechanisms that recognize the steps under way to address the existing observations.

Interpretation from Arabic: **Government member, Saudi Arabia** – The delegation of Saudi Arabia, welcomes the efforts that have been made by the Government of Iraq and the measures that have been taken to bring national law into line with the Convention, as well as the efforts for the enactment of relevant legislation in this area. We also welcome the provisions of Labour Code No. 37 of 2015, which is currently in force, and which includes sections that guarantee all rights of workers.

In conclusion, we welcome the fact that the Government of Iraq stands ready to avail itself of ILO technical assistance in order to ensure a better application of the Convention.

Interpretation from Arabic: **Government member, Libya** – The delegation of my country wishes to begin by applauding the efforts made by the Government of Iraq with reference to the Convention. We also commend the Government's efforts to draft new legislation to guarantee freedom of association in the country while eliminating all obstacles to the full implementation of that legislation.

We commend the fact that the Government stands ready to accept further technical assistance from the ILO concerning this Convention, and we think that it is indeed appropriate. We therefore call on the ILO to provide technical assistance to Iraq to ensure that it can give full effect to the Convention and the rights enshrined therein.

Interpretation from Arabic: **Government member, Syrian Arab Republic** – At the outset, allow us to thank the representative of Iraq for having provided the information that we have heard today. With regard to the information provided on the efforts made to apply the provisions of the Convention and the adoption of the necessary measures in this regard, my delegation would like to support Iraq in its readiness to avail itself of ILO technical assistance with a view to the better application of ILO Conventions.

Interpretation from Arabic: **Observer, International Trade Union Confederation (ITUC)** – Our Confederation wishes to underline the importance of the Iraqi Government taking full account of the recommendations made by the Committee of Experts, especially with reference to the Convention. We can confirm that what the Government has said is true. The Government is indeed drafting new legislation on trade union organizations in the country.

In 2018, Ministerial Decree No. 18 was adopted, which launched the process. But we think it now needs to go faster, because we see that today there are still trade unionists being excluded from participation in negotiations that they should be involved in because they are seen as not representing workers in the public sector in particular. And this is an issue in various industries, including the electricity industry, the oil industry, the civil service, as well as other areas. So, what is happening right now is that it is still not possible to have trade unions

in those sectors; it is not possible to have collective bargaining, which is creating serious problems in the country.

We have also seen that many trade unionists have been subject to sanctions. We therefore call upon the Government to repeal Law No. 52/1987 on trade union organizations and also to repeal Decision No. 150/1987 on the matter. We recommend that all legislation that runs counter to the spirit of this Convention should be repealed.

We also recognize that Iraq urgently needs technical assistance from the ILO for trade union capacity-building to promote the application of the Conventions on freedom of association. We need to improve the structure of our Ministry of Labour to allow it to play its rightful role and to allow its staff to play their rightful part in taking the country forward and promoting collective bargaining.

Observer, International Transport Workers' Federation (ITF) – For over a decade, the Committee of Experts has been calling on the Government to remove obstacles to trade union pluralism, which hamper trade union multiplicity and consequently the enjoyment by all workers of the rights protected by the Convention.

While we welcome the Government's indication that Government Decision No. 8750 of 2005 has been repealed, we are deeply concerned that Law No. 52 of 1987 is still in force. This Law effectively establishes a de facto trade union monopoly forbidding the establishment of other unions and federations. While multiple unions operate in the country despite Law No. 52, the effect of the Law is such that the Government favours the official governmental federation, thus marginalizing and excluding from social dialogue initiatives by other workers' organizations. Therefore, the Government continues to exert undue interference in the establishment and activities of independent trade unions, while effectively restricting the right of these organizations to bargain collectively on behalf of their members. These are serious violations of the Convention.

The Government of Iraq has an obligation to encourage and promote free and voluntary collective bargaining under Article 4 of the Convention. There is no conceivable way for this to be done where a trade union monopoly that is not based on any valid representativity criteria continues to operate.

Further, it is clear that any favourable or unfavourable treatment by the public authorities of a particular trade union as compared with others, if it is not based on objective criteria, constitutes an act of discrimination and interference in violation of the Convention.

We therefore call on the Government to repeal Law No. 52 and to promote and encourage free and voluntary collective bargaining in practice so as to ensure full compliance with the guarantees set out in the Convention.

Interpretation from Arabic: **Government representative** – I would like to thank all those who participated in the discussion for their interventions.

The representative of the General Federation of Iraqi Trade Unions made his statement. He criticized the Government's measures and this is an indication that there is freedom, that there are no restrictions on what is being said. But we, on our part, can refute any allegation that free trade unions cannot operate freely, of course within the law, which is what is happening in the rest of the world.

In Iraq, at the Ministry of Labour, we have set up a committee and this committee is chaired by myself, and I continue to work with the Director of and other officials from the International Labour Standards Department on the law, and Mr Ali Rahim, who is the head of

the General Federation of Iraqi Trade Unions, of which Mr Adnan Safar is a member, and who is also a member of the committee which has been set up. The fact that this committee is made up of other trade union organizations by virtue of an order issued by the Council of Ministers and their participation in drafting the new draft law on trade union organization testifies to the non-existence of discrimination and clear recognition of all trade union organizations.

The Government is not party to any trade union conflict. It seeks an optimum application of Iraq's Constitution and of the ILO's Conventions. However, we have encountered special circumstances, such as the fight against terrorism and several political crises, which may have been an obstacle in expediting the promulgation of the law. We, the Government, believe in the right to organize, in pluralism and in non-interference in the work of trade union organizations.

With respect to the right of employees to join trade union organizations, the new draft law grants the right of employees to establish their trade union organizations inside ministries. We have an independent judiciary. In Iraq, we do not have a single prisoner of opinion because the Constitution guarantees the right to freedom of expression and the right to demonstrate. There may be separate incidents of one officer or soldier, but this does not reflect the general policy of the State nor its procedures. We are continuing to work, and we are continuing to dialogue with the social partners. We are also continuing to work with the Office, the Beirut Office and the Baghdad Office. Recently, a workshop was held on the new draft law, attended by the Director of the Baghdad Office, Ms Maha Qataa, and most trade union organizations, including Mr Adnan Safar.

We would like to avail ourselves of ILO technical assistance so as to prepare a new draft law which is in conformity with our Constitution, which is based on freedom, pluralism and the provisions contained in Conventions Nos 87 and 98. I would like to take this opportunity to thank the Office, the Director and other officials from the International Labour Standards Department.

Employer members – We have listened to all the comments that have been made by all the participants this afternoon and I think it is fair to say we have expressed things in different ways, but we are broadly consistent in the views that have been expressed.

One thing worth observing is that Iraq is not unique in the sense that it is one of a number of countries in our memories, in our lifetimes, that have emerged from regimes which were far less democratic than what is in place now. And what they have all experienced, and Iraq has certainly experienced it, is that it is not easy to emerge from that sort of background to come to full forms of democracy. That does not happen in five minutes and the processes and expressions of democracy have to be understood before you can even give effect to them. So we do understand that it has not been easy.

We also understand that the Government of Iraq is committed to upholding the principles of the Convention, that it has recognized that it is not an expert in those things in its own right, and that it has asked for the assistance of the ILO, among others, to do that. That is what a number of countries before Iraq have not done and they have taken longer, so we are seeing a situation where I think we need to say to Iraq: do what you say you are going to do; we accept and you accept that there are gaps in where you need to be to be fully compliant with the Convention, and insofar as the ILO and anybody else is available and willing to give assistance, take that assistance. I think you have asked for it, I think you should receive it and I think you are going in the right direction and, as I said in my earlier remarks, if you are doing these things, it may be that next time we meet we will actually hear of progress.

Worker members – I would like to thank the delegates who participated in our discussion.

The Government of Iraq made reference to a number of issues which do not fall within the scope of the examination of this discussion; in particular, aspects relating to internal affairs of the unions.

The Worker members insist that the Government must ensure the right to collective bargaining for all workers. We call on the Government to: first, repeal section 10 of the Revolutionary Council Resolution No. 115 of 1987. Second, repeal section 2 of Law No. 52 of 1987: as a reminder, these two texts prohibit the establishment of trade union organizations in the public sector. Third, repeal the instructions and ministerial circulars that have the same effect. They must be replaced by provisions that unequivocally guarantee the right to freedom of association and collective bargaining in this sector. Fourth, repeal section 21 of Law No. 52 of 1987 on trade union organizations which provides that the General Federation of Trade Unions is the supreme body for trade union organizations. We call on the Government to adopt legal provisions that ensure trade union pluralism at all levels and guarantee the right to collective bargaining. Fifth, establish a mechanism to effectively and dissuasively combat acts of anti-union discrimination, such as dismissals. And, sixth, stop intimidation of trade union activists by ensuring a climate free of violence against them.

In order to give effect to these elements, we ask the Government to accept a direct contacts mission.

Conclusions of the Committee

The Committee took note of the oral and written statements made by the Government and the discussion that followed.

The Committee noted with concern that there are significant compliance issues regarding the Convention in law and practice with respect to the protection against anti-union discrimination, the scope of collective bargaining permitted under the law, the lack of trade union pluralism, and interference in free and voluntary collective bargaining.

Taking into account the discussion, the Committee urges the Government, in consultation with the social partners, to:

- **provide information on measures taken or envisaged to encourage and promote voluntary collective bargaining, the number of collective agreements concluded and in force in the country, as well as the sectors concerned and the number of workers covered by these agreements;**
- **prohibit acts of undue interference in the establishment, functioning and administration of trade unions and make provision for appeal procedures, coupled with effective and dissuasive sanctions;**
- **undertake legal and practical measures to ensure protection against anti-union discrimination, including through effective and expeditious access to courts, adequate compensation and the imposition of sufficiently dissuasive sanctions; and**
- **take all appropriate legal and practical measures to ensure that trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind.**

The Committee invites the Government to accept an ILO direct contacts mission.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 with information on the application of the Convention in law and practice, in consultation with the social partners.

Kazakhstan (ratification: 2000)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Written information provided by the Government

Regarding further improvement of national legislation to bring it into line with the Convention

In order to modernize the human rights sphere comprehensively, on 9 June 2021, the President of the Republic of Kazakhstan, K.K. Tokayev, signed the Decree on Further Human Rights Measures of the Republic of Kazakhstan. The Decree identified additional new areas of human rights-related government work with a view to ensuring the primacy of the rule of law.

This means that the protection of human rights should be ensured through improvement of the law and existing legal instruments.

On 13 April 2022, the Decree was amended by adding a new area of work – the right to freedom of association.

In order to implement the Decree, the Government has developed a Plan for Further Measures in the Field of Human Rights and the Rule of Law, which provides for "Further improvement of national legislation and law enforcement in relation to trade unions and the resolution of labour disputes, including taking into account the recommendations of the International Labour Organization" (draft Act by the end of 2022, Act by the first quarter of 2023).

In pursuit of this objective, the Ministry of Labour and Social Protection of the Republic of Kazakhstan, together with the social partners, has drafted amendments to a number of legislative acts.

The first is modification of the procedure for state registration of trade unions to the notification procedure.

The notification procedure for registration involves informing the judicial authorities of the commencement of their activities by submitting an electronic notification, which is to be completed on the e-government web portal.

If this rule is adopted, the registering body will not have the right to refuse state registration of the trade union, as stipulated by existing legislation.

The second is to simplify the procedure for putting forward workers' demands in the event of a collective labour dispute.

It is planned to implement this work by amending the Labour Code of the Republic of Kazakhstan in terms of reducing the number of employees present at a meeting (conference) for it to be recognized as quorate, as well as reducing the required number of votes to make a decision from at least two thirds to more than half.

Simplification of this procedure will facilitate the resolution of collective labour disputes within the legal framework.

The third is holding short-term (one-hour) warning strikes.

Through the introduction of this regulation, employees will be given the right to demonstrate the seriousness of their intentions without harming production processes and causing losses to the employer.

This short-term action is expected to encourage employers to come to the negotiating table with no particular implications for either party.

The fourth is that during a strike, employers have no right to replace striking workers participating in a strike organized in accordance with the established procedure.

This regulation is aimed at increasing employers' interest in resolving collective labour disputes.

The fifth is assigning to the employer the obligation to provide premises and create the necessary conditions for holding a meeting (conference) of employees.

The proposed amendments are currently in the process of negotiation.

Concerning the ban on Ms Kharkova and Mr Baltabay from engaging in trade union activities

L. Kharkova's ban on holding leadership positions in public associations and other non-profit organizations expires in November 2022.

L. Kharkova requested the revision of judicial acts by way of cassation.

Her cassation application was initially examined by a Supreme Court judge with a demand to scrutinize the criminal case materials, on the basis of which a ruling was made on 7 November 2018 to refuse to transfer the application of the convicted person for consideration to the court of cassation due to the lack of grounds for reviewing the judicial acts.

On 22 May 2019 and 27 December 2019, L.N. Kharkova's application on the submission by the Chairperson of the Supreme Court on the review of the cassation sentence was returned because there were no grounds for making a submission.

E. Baltabay's ban on holding leadership positions in public associations and other non-profit organizations expires in 2026.

E. Baltabay did not appeal the additional punishment.

Concerning the case of Mr D. Senyavsky

It has not been possible to identify the perpetrators of this criminal offence through a series of investigative and operational measures.

On 10 December 2019, the period for conducting pre-trial investigations into the criminal case was cut short due to the failure to identify the perpetrators of the crime in question.

At the same time, officers from the Shakhtinsk City Police Department are conducting operational and investigative work in order to identify the persons who committed this crime.

Upon receipt of positive information, D. Senyavsky will be notified by the criminal prosecution authorities within the time frame prescribed by law.

Concerning the Congress of Free Trade Unions of Kazakhstan National Trade Union Association

The Association submitted registration documents four times (three times in the period from July 2018 to September 2018, and also in November 2019).

Registration was denied due to the similarity of the name to that of the already registered legal entity, the Association of Legal Entities, the Confederation of Free Trade Unions of Kazakhstan Association, and also the fact that the charter made reference to the legal succession of the now liquidated Confederation of Independent Trade Unions of the Republic of Kazakhstan National Trade Union Association.

None of the comments made in the order of 25 July 2018 have been addressed in any of the subsequent registration applications (17 August 2018, 18 September 2018 and 14 November 2019).

To date, no state registration documents have been received.

Concerning the Industrial Union of Employees of the Fuel and Energy Sector

The trade union has submitted applications five times (21 September, 4 October, 3 November and 23 December 2021, and 11 March 2022) for registration of an affiliate in Atyrau region, which was denied on all five occasions (decisions of 28 September, 11 October, and 20 December 2021, and 11 February and 18 March 2022).

The reason for the refusal was the absence of a seal on the application, incomplete payment of the registration fee, inconsistencies between the affiliate's statutes and the legal entity's charter, as the statutes did not disclose the legal entity's full address.

At the same time, on 30 December 2021, an application was filed for registration of an affiliate in Almaty. However, on 10 February 2022, registration of the affiliate was denied.

On 13 April 2022, a second application was submitted for registration of an affiliate in Almaty. The affiliate was denied registration by the decision of the Almaty Department of Justice of 18 May 2022.

We note that the applicant has the right to re-apply for registration of the affiliate when the breaches are addressed.

Between 2021 and 2022 no other problems with the creation of workers' associations were recorded. The Ministry of Labour has not received any such complaints, including from the social partners.

Concerning the review of article 402 of the Criminal Code

Consideration is currently being given to the decriminalization of article 402(1) of the Criminal Code, which penalizes calls for strike action declared illegal by the court.

It is planned to make article 402(1) of the Criminal Code an administrative rather than a criminal offence. Criminal liability will only apply where incitements to continue a strike declared illegal by the court caused substantial damage to the rights and lawful interests of citizens or organizations, or to the legally protected interests of society or the State or caused mass riots.

The proposed amendments are subject to approval by the public authorities concerned.

Concerning the inclusion of international workers' and employers' associations in the list of organizations providing grants

The Ministry of Labour and the Ministry of National Economy are currently considering the inclusion of a number of international organizations in the list.

At the same time, a review of the procedure for drawing up the list is being considered.

Concerning the enforcement of articles 145 and 154 of the Criminal Code and article 97(2) of the Administrative Offences Code

The Ministry of Labour has conducted an analysis of the law enforcement practice of articles 145 (violation of human rights) and 154 (obstruction of the lawful activities of employee representatives) of the Criminal Code.

Statistical data have shown that in the period from 2018 to 2022, under article 154 of the Criminal Code, two pre-trial investigations were registered (in 2018 and 2021), which were discontinued.

During the same period, no pre-trial investigations were registered under article 145 of the Criminal Code.

Likewise, no cases were recorded under article 97(2) of the Administrative Offences Code.

"In this regard, the Committee requests the Government to amend further section 20 of the Labour Code in consultation with the social partners, in order to bring it into line with the Convention and address inconsistencies in the provisions of the Labour Code referred to above. The Committee requests the Government to indicate all steps taken to this end."

In accordance with labour legislation, workers' representatives are trade unions and their associations, and in their absence, elected representatives – elected and authorized at a general meeting (conference) of workers by a majority vote of participants in the presence of at least two thirds of the employees (conference delegates).

In order to comply with the provisions of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135), labour legislation was amended accordingly in May 2020.

According to the new provisions of the Labour Code of the Republic of Kazakhstan, if the membership of trade unions is less than half of the organization's workforce, workers' interests may be represented by trade unions and elected representatives.

At the same time, collective bargaining between employers and employees without the participation of a trade union is not permitted if a trade union has been established in the organization in question.

The changes have made it possible to strike a balance between the interests of both unionized and non-unionized workers, and to take full account of the views of the entire labour collective, without infringing the rights of trade union members.

In addition, prior to the adoption of these amendments to the Labour Code, their wording was agreed upon with both the social partners and the ILO. The Ministry sent a letter to that effect, to which a positive response was received.

Discussion by the Committee

Interpretation from Russian: **Government representative** – We have been a Member of the ILO for many years and are fulfilling our obligations and have ratified 25 Conventions. In April 2022, we ratified the Part-Time Work Convention, 1994 (No. 175). We also established a road map for the application of Convention No. 87 and, as a part of that work, in 2020 a number of substantial changes were made to the legislation relating to trade unions, including the Labour and Criminal Codes of our country. At the Conference last year, I informed the Committee about these changes and the work that has been done in Kazakhstan. The 109th Session of the Conference made a number of recommendations. I wanted to update you on those. This work was also carried out taking into account the report of the direct contacts mission, which visited our Republic from 4 to 12 May.

I would like to say thank you to the team of the mission, headed by Niklas Bruun and which visited our Republic and issued a number of recommendations. With regard to the recommendations on our country bringing into line legislation with this Convention, we have carried out work to improve our legislation in this area, improving the registration of trade unions and giving trade unions and workers the full right to freedom of association.

We have modernized the area of rights protection, and the President of Kazakhstan has issued a decree on further measures in the area of human rights in the country, defining additional areas of work for the Government in the area of human rights and particularly with regard to securing the supremacy of law, guaranteeing the protection of human rights through the application of law and existing instruments. One of the key areas of work reflected in the decree of the President is the right to freedom of association.

The Government, on 28 April this year, confirmed measures on human rights and the supremacy of law. The Ministry of Labour worked with the social partners to develop amendments to a number of laws. The term for developing these amendments has been defined as the end of this year, and we hope they will then be put before the Parliament. Allow me to talk in more detail about the changes that we have put together with the social partners.

First is the application of the registration measures. It is worth noting here that issues were raised on the registration of individual trade unions, including as legal persons. So, the system with regard to the registration of trade union requires informing the Ministry of Justice by submitting an electronic notification, and what that means is that the registering body will not be in a position, or have a right, to refuse the registration, as is provided for by the legislation currently in force. We hope that individual trade unions will now be able to go ahead with registration.

Second, there is a system of practice in place relating to the claims or demands of workers and strikes. A number of rules have been proposed to improve this system when there are collective labour disagreements. For example, amendments to the Labour Code, reducing the number of workers necessary and a conference for the recognition of such issues, and changing the majority required from two thirds to one half. We hope that this will enable the improved resolution of collective labour disputes.

Third, the decriminalization of issues that have been criminalized in the past, including matters relating to strikes. We have looked at this issue in the cross-sectoral working group with the Public Prosecutor in May this year. The article criminalizing such activities has been removed, and as we move towards improving legislation, we are looking at the question of transposing certain provisions into the format of administrative issues.

Fourth, with regard to the notification of strikes, the introduction of these rules would allow workers to express their seriously held concerns legitimately. So, we hope that it will be possible to carry out such things without negative consequences for both sides.

Fifth, another provision to be brought in is the prohibition of replacing striking workers with other workers.

Sixth, creating the necessary conditions for unions to be able to organize and meet.

With regard to the recommendations to ensure a better basis for the investigation of accusations against trade union members, the Government is looking at this along with the Public Prosecutor. Individual cases do exist and are under consideration by the Ministry of Internal Affairs. The relevant information is being considered, and obviously all relevant bodies will be kept abreast of developments. With regard to the practice of the prosecution of trade union leaders, and three or four cases were mentioned in the report, all those criminal procedures are not linked to legitimate trade union activities, but rather to actual criminal activities. In 2021–22, there were no criminal cases against trade union leaders.

With regard to recommendations 5 and 6, relating to the registration of trade unions directly, I can say that as things stand today, we have in force a joint working group involving the Ministry of Justice, and all potential problems that might arise when associations are registered, including trade unions. It can be considered that the working group contains representatives of the judicial bodies and representatives of trade unions, so any complaints relating to registration can be looked at in this working group, based on the principle of cooperation. The adoption of amendments to legislation is ongoing, as I have said. A number of sectoral trade unions and grassroots trade unions have been registered, and the continuing work to register trade unions as legal persons will continue along with the changes to the law, which I have already informed you about.

I would like to say that in the individual cases, the rejection of registration as legal persons is something that is being looked at in terms of the basis for such decisions, and, as I have said, the law is being reviewed in this area.

With regard to favouritism, we have confederations covering around 3 million workers, around half of the workers in the Republic. We have 56 trade unions, 35 regional ones and around 400 local grassroots trade unions. In the general agreement between the Government and the associations of workers and employers, we agreed to not allow interference in the affairs of these associations. The trade unions are participating actively in the various forums for discussion. We have clearly established the obligation not to allow legal interference by the Government in civil society associations and organizations.

With regard to the changes to employers' organizations, the National Chamber of Entrepreneurs is also being affected by the amendments that we have made, which I have already talked about.

I would like to inform you that in our tripartite work, we have agreed that individual bills will be prepared on trade union organizations. We have given our workers' organizations the mandate to pursue effective social dialogue with employers' organizations and the Government, and this is work that will continue this year.

With regard to international cooperation, I can inform you that changes that we have made to the Law on Trade Unions and the Labour Code will be contributed to by cooperation with international organizations. We received support through the 109th Session of the Conference and the direct contacts mission in May this year, and we will continue to work on

implementing these recommendations. The Government of Kazakhstan will make every effort to further develop social dialogue in the interests of effective labour relations. We will continue with this work and bring our national legislation into line with the provisions of the Convention.

Worker members – Kazakhstan does not seem to have resolved its issues of non-compliance with the Convention, despite the numerous recommendations made and initiatives adopted in an effort to resolve the situation, including the direct contacts mission that was decided upon last year and that took place recently, in May this year.

Once again, we are obliged to note with deep concern that violations of the rights and freedoms enshrined in the Convention remain widespread in practice, despite the legislative amendments made in recent years and the draft amendments announced by the Government.

The time for declarations of intent has passed. The Government of Kazakhstan must now take specific, decisive action to bring a lasting solution to the many problems highlighted; problems that are not minor.

The problems of conformity with the Convention can only be addressed in the light of the country's political context, which is characterized by a democratic deficit that prevents the full exercise of civil liberties, including freedom of association. Indeed, at the start of the year we witnessed the law enforcement authorities' massive, very violent repression of peaceful demonstrations to denounce poverty, extreme social inequality and price increases in Kazakhstan.

It is clear that strict observance of freedom of association and a commitment to genuine social dialogue will offer the guarantees required to resolve the significant inequality seen in the country.

Violence against trade unionists remains rife in Kazakhstan. The Chairperson of a trade union of workers of the fuel and energy complex in Chakhtinsk, Mr Senyavsky, was a victim of such violence in November 2018. This violence is accompanied by the authorities' lax approach to conducting investigations and prosecuting and sentencing the perpetrators. Indeed, no significant progress has been made in this case since 2018.

The same observation can be made in relation to the tragic events that took place in Zhanaozen in 2011 and caused the deaths of 17 strikers and injuries to more than 100 others following the extremely violent repression of strike action.

The maintenance of a climate of impunity for the perpetrators of such violence is extremely harmful and constitutes a major obstacle to the free exercise of freedom of association in the country.

Additionally, the Criminal Code allows for bans on the holding of public offices, including trade union offices, in contravention of the Convention. Ms Kharkova, Chairperson of the Confederation of Independent Trade Unions of Kazakhstan (KNPRK), and Mr Baltabay, leader of the Industrial Union of Employees of the Fuel and Energy Sector and who testified before our Committee several years ago, are subject to that sanction, which constitutes a restriction to their freedom of association.

These two examples illustrate the judicial harassment against trade union leaders that continues to occur in the country.

The use of administrative arrest to hinder legitimate industrial actions is also part of this judicial harassment. We have observed such practices, for example, in October 2021 with the administrative detention of Zhenis Orynaliev, a few months after he was elected Chairperson of his trade union and on the same day as planned industrial action by the union, as well as in

December 2021 with the administrative detention of Saule Seidakhmetova, leader of the Ymit trade union, for ten days for her participation in legitimate action that had been declared illegal by an administrative court.

Other trade unionists are also prohibited from holding any office in a public or non-governmental organization in retaliation for their trade union activity, including Mr Eleusinov and Mr Kushakbaev, leaders of a trade union of workers in the fuel and energy sector.

The Committee of Experts has also noted that the Criminal Code provides for prison sentences for incitement to continue a strike declared illegal by the court. The Government has announced that an in-depth review of article 402 of the Criminal Code will form part of a plan comprising urgent measures to be adopted in the area of human rights, including freedom of association.

Imposing punishment or sanctions for simply calling for a peaceful strike, even a strike declared illegal by the courts, is contrary to the Convention.

The report of the Committee of Experts once more highlights the recurrent problem in Kazakhstan of the procedures for registering and re-registering trade union organizations. Many trade union organizations encounter serious difficulties in a process that should be a simple formality.

We regret to note that, time and time again, these registration procedures are used to hinder the establishment or operation of free and independent trade union organizations, in total contravention of the Convention.

In 2017, the registration of the KNPRK, now the Congress of Free Trade Unions (KSPRK), was withdrawn in retaliation for the Committee's discussion of the case. Five years later, and despite the Government's repeated expressions of commitment to resolving the matter, even before this Committee, that trade union remains unregistered.

The Industrial Union of Employees of the Fuel and Energy Sector was subject to a court decision to suspend its activities, leading to a process to dissolve it. The direct contacts mission was unable to resolve the situation, a fact that it regretted in its report.

Kazakhstan must continue its work, in consultation with the social partners, to ensure the effectiveness, impartiality and independence of these registration procedures.

In that regard, we invite Kazakhstan to review the composition of the permanent working group responsible for examining the issues linked to the registration of trade unions so that independent trade unions may be included.

Lastly, legislation prohibits in principle financial assistance from international organizations of workers. That legislation provides for some exceptions, but under conditions that are much too strict and that greatly hinder freedom of association, in contravention of Article 5 of the Convention.

As we have known and repeated for many years, there is a long-standing failure to recognize fundamental labour rights and freedoms in Kazakhstan.

This is also something that we have witnessed in the events that took place at the start of this year: an environment in which civil liberties, including trade union freedoms, cannot be exercised freely can only give rise to injustice.

It is, therefore, the responsibility of the Government to re-establish an environment conducive to the exercise of these civil liberties and to embark upon a genuine process of

dialogue with the social partners that is able to ensure lasting social peace and pave the way for greater social justice for the population of Kazakhstan.

Employer members – We thank the Government for its report here this morning in the Committee, and for the detailed information provided. We also thank the Government for its submission dated 28 May and have carefully considered all of this information.

We note with particular interest the Government representative's submissions about the changes affecting the National Chamber of Entrepreneurs and its stated commitment to social dialogue.

Our discussion of the case of Kazakhstan in respect of the Convention this year is timely, in order to be able to assess what achievements have been made in the implementation of the Committee's conclusions from last June as well as taking into account the ILO direct contacts mission that took place in early May 2022.

It will be remembered, among other things, that the Committee last year had requested the Government to accept an ILO direct contacts mission before this year's session of the International Labour Conference. The Employer members are pleased that this ILO direct contacts mission to Kazakhstan was accepted and took place at the beginning of May.

We note that the ILO mission was able to meet with all state bodies and persons that it identified as important to meet with. The mission welcomed the Government's readiness and interest in continuing to engage and cooperate with the ILO.

While the ILO mission also noted progress towards conformity with the Convention in legislation and practice, it was nevertheless not entirely convinced that all steps have been taken in this regard. This coincides with the Employer members' assessment of the information contained in the Committee of Experts' report and provided by the Kazakhstani Government. Therefore, I would like to address the outstanding issues from our perspective.

First, a major issue regarding the employers' freedom of association under the Convention in Kazakhstan relates to the creation, by law, of the National Chamber of Entrepreneurs (NCE). It may be recalled that the NCE has compulsory membership and all-encompassing competencies to represent employers which has had the effect of marginalizing free and independent employers' organizations.

A positive step taken by the Government was that it repealed section 148(5) of the Labour Code, which provided for the NCE's authority to represent employers in social dialogue at the national, sectoral and regional levels. So, according to the law, the NCE is not supposed to participate on behalf of employers in social dialogue and collective bargaining.

However, the ILO direct contacts mission found evidence that the Government is still engaging the NCE in social dialogue and that the NCE is still involved in collective bargaining. In other words, legal change has been implemented but this change has not been implemented in practice.

We also note that the issue of the accreditation of employers' organizations in the NCE has not been satisfactorily addressed. That is not, as the Government seems to suggest, just an internal matter of the NCE, which is a semi-state organization.

Employers' organizations, through accreditation, become financially dependent on the NCE and are therefore no longer free in the representation of their members' interests. In our view, the accreditation system should be discontinued. In any case, employers' organizations accredited with the NCE must be considered as part of the NCE's structure and therefore cannot be considered eligible for participation in social dialogue and collective bargaining.

To summarize this issue, the Employers' group calls upon the Government to ensure that the NCE, in line with the law, completely withdraws from social dialogue and collective bargaining and leaves this area of competence to free and independent employers' organizations. The system of accreditation of employers' organizations in the NCE should be discontinued. In addition, to further reinforce the recognition of the freedom of association of employers and their organizations, it may be opportune to adopt regulations that set out the independence and autonomy of employers' organizations and determine the conditions for their eligibility for participation in social dialogue and collective bargaining.

There are also issues of compliance with freedom of association regarding workers' issues where we have failed to see visible progress. In particular, we note the issue of the right of organizations to receive financial assistance from international organizations of workers and employers which is protected under Article 5 of the Convention. To this effect, we note the intention of the Government to consider the inclusion of a number of international organizations on the list of organizations that can provide grants in Ordinance No. 177 of 9 April 2018, and to review the procedure for drawing up this list. We call upon the Government to amend this list and keep us informed of the outcomes of the review of the procedure for drawing up the list.

We note that with respect to the issue of the registration of the Confederation of Independent Trade Unions of Kazakhstan (KNPRK), things do not seem to have progressed. The Government has indicated that none of the comments made in the order of 25 July 2018 have been addressed in any of the subsequent registration applications by the KNPRK and that, to date, no state registration documents have been received. Concerning the refusal of the registration of the Industrial Union of Employees of the Fuel and Energy Sector, according to the Government on 30 December 2021 an application was filed for the registration of an affiliate which was denied. A second application was recently received on 18 May 2022. We also noted the intention expressed by the Minister of Labour and Social Protection to the ILO direct contacts mission to simplify the present registration procedure by either replacing it with a notification procedure or by allowing trade unions to function without registration. This draft law, we understand, should be developed by the end of 2022.

The Employers welcome this plan and trust that there will be a full consultation with the social partners with respect to this new law, which will hopefully be adopted in short order.

In the meantime, we request the Government to continue to find a solution to the issue of the unresolved status of the registration of the KNPRK and the Industrial Union of Employees of the Fuel and Energy Sector.

Finally, we note that the Committee of Experts has rendered a number of comments on section 402 of the Criminal Code, according to which an incitement to continue a strike declared illegal by the Court is punishable by up to 50 days' arrest and in certain cases for up to 2 years of imprisonment. We will not address the Worker members' comments in this regard and we will not comment on the Committee of Experts' observations in this regard or the Government's submissions today as, in our view, there is no basis for making any request to the Government in this regard. As is well known, in the view of the Employers and the Government group of the ILO Governing Body, the right to strike is to be regulated at the national level. This Convention does not contain rules on this, and this point can, therefore, neither be addressed in the conclusions of this case or in any substantive way in our discussion.

Interpretation from Russian: **Worker member, Kazakhstan** – The Federation of Trade Unions of Kazakhstan (FPRK), which is the largest workers' organization of Kazakhstan, has 23 sectoral trade unions and local trade unions, bringing together more than 2 million

members. Alongside our Federation, there are two other republican associations, the Kazakhstan Labour Confederation and Amanat. Together, we are making efforts, and one example of this is a general agreement from 2021–23; all three trade union confederations adopted the same position and submitted/shared a draft to the Committee. The FPRK has always been in favour of unitary action by trade unions and has already supported solidarity programmes for international trade union organizations. We have repeatedly spoken in favour of the position of our colleagues Larisa Kharkova, Dimitri Senyavsky, Erlan Baltabay and others on the overturning of previous convictions and the registration of their respective trade unions. The FPRK is making every effort to apply the principles of the International Labour Organization, including via new legislation.

The Government has drafted and introduced proposals relating to the application of ILO experts and the conclusions of the Committee, and these have been reflected in the law adopted in May. This contains provisions for the members of the trade unions that have been mentioned, ensures international cooperation and support and simplifies the conditions for confirming the status of trade unions when registering with the State.

At the moment, the FPRK is initiating further improvements to these rules, particularly the transition to the notified registration of trade unions, and this is an initiative that is supported by the Government.

Individual national laws have led to improvements in the situation, particularly with regard to article 402 of the Criminal Code. The comments of the Committee of Experts on this issue have certainly been considered. But there is also the issue of the incidents that have led to justified detention. We are looking to further improve the legislation in the country by carrying out, for example, procedures relating to requirements for strikes, strengthening the arbitrational committees' role and increasing the role of trade unions when discussing labour disputes.

The cross-ministerial committee of the Government is further looking into these issues, and shortly the bill will be appearing before the Parliament in Kazakhstan. Furthermore, representatives of the FPRK have made a number of proposals to the bill on safe conditions of work and the protection of workers' rights.

One amendment proposed by us relates to the index linking of wages for short-term employment. We are also continuing our work in the area of technical cooperation with the ILO and the International Labour Standards Department.

In conclusion, I would like to reassure you that the FPRK has always been in favour of constructive dialogue between the social partners in the interest of workers. We are entering a new stage of development of our country and we hope that the ILO will support us with technical assistance with regard to the application of the Convention. Expectations in the country are extremely high, and these expectations should not be disappointed.

Interpretation from Russian: **Employer member, Kazakhstan** – We are aware of the recommendations that have been made last year and this year, and we are seeing certain effects of their application in Kazakhstan. The ILO certainly played a huge role in the improvements that have taken place.

I represent the National Confederation of Employers. Our Confederation underwent fundamental change: strengthening the leadership team; identifying the areas of work; and reviewing short- and long-term objectives.

I would like to say that in these two months the number of members has increased threefold, and work in this area is ongoing. I would also like to thank the direct contacts mission headed by Mr Bruun. All of the issues relating to the legislative changes and other issues raised by the mission are being worked on. We are seeing an independent employers' organization and new laws going before the Parliament. The direct contacts mission identified a number of areas where there are inconsistencies, and these need further work. However, as the Chairperson of our organization mentioned on the occasion of the visit, it is important to continue building a strong and independent employers' organization that can effectively defend the interests of employers.

Our Confederation is working actively together with international organizations and will continue cooperation to develop and strengthen social dialogue in Kazakhstan. Our objectives are very much in line with the overriding objectives of our country, and we all see the need for effective reform in Kazakhstan.

Government member, France – I have the honour of speaking on behalf of the **European Union (EU) and its Member States**. The candidate country **Albania**, and the European Free Trade Association country, **Norway**, Member of the European Economic Area, align themselves with this statement.

The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights, the right to organize and freedom of association.

We actively promote the universal ratification and implementation of fundamental international labour standards, including the Convention. We support the ILO in its indispensable role in developing, promoting and supervising the application of ratified international labour standards, and the fundamental Conventions in particular.

The relationship between the EU and Kazakhstan is governed by the Enhanced Partnership and Cooperation Agreement, which has enabled us to strengthen our bilateral cooperation. With this Agreement, the parties reaffirm their commitment to effectively implementing ratified ILO Conventions and the fundamental ILO Conventions.

While we acknowledge the progress made by the Government in amending parts of its legislation, we are concerned that Kazakhstan has become a recurrent case at the Committee. Conformity with the Convention, both in law and practice, is now being discussed for the fifth time in the last six years. We encourage the Government to swiftly address the outstanding issues in order to comply fully with the Convention.

We once again urge the Government to repeal article 402 of the Criminal Code, which criminalizes calling on workers to participate in a strike that has been declared illegal by a court. This article is incompatible with freedom of association and the Government's responsibility to protect the right of workers and employers to organize their activities, including the right to strike.

Beyond legislative amendments, we call on the Government to ensure that freedom of association, the right to establish organizations without previous authorization and the right to organize are fully respected, both in law and practice. This is cause for concern, also given that the limitation of workers' rights may have been one of the core problems leading to the tragic events of January 2022 that began in the mining town of Zhanaozen.

We note with concern that despite the clear conclusions of the Committee's last discussions, the long-standing issue of the registration of the KSPRK and the Industrial Union

of Employees in the Fuel and Energy Sector has still not been resolved to allow them to enjoy the full autonomy and independence of free and independent workers' organizations to fulfil their mandates and to represent their constituents without further delay. We request that the Government resolve this issue, including through closer engagement with the social partners, in order to find a resolution to the difficulties identified by the trade unions seeking registration, thereby guaranteeing the workers' right to establish organizations without previous authorization.

We note that the Committee on Freedom of Association continues to examine the cases of Mr Baltabay and Ms Kharkova, as well as the case of Mr Senyavsky. The EU and its Member States deplore any violation of the fundamental rights of trade unionists and any act of harassment, intimidation, aggression or imprisonment against them. The absence of effective investigations and judgments reinforces the climate of insecurity and impunity, which are damaging to freedom of association.

We also reiterate that employers' and workers' organizations should not be prevented from receiving financial or other assistance from international organizations of workers and employers, in line with the conclusions adopted last year.

Lastly, the EU and its Member States expect that the concerns raised in this statement will be addressed in the ongoing comprehensive reform processes initiated by the new Administration of President Tokayev. We will continue to follow and analyse the situation and remain committed to our close cooperation and partnership with Kazakhstan.

Interpretation from German: **Worker member, Germany** – I speak on behalf of workers in Germany and in the Nordic countries. In last year's conclusions, this Committee formulated precisely what steps the Government must take to bring its legal situation and practice into line with the Convention. Unfortunately, we are not seeing the Government delivering on what it explicitly promised in its final statement given to this Committee. Of particular concern is the continued criminalization of the activities of trade unions and their members. This Convention guarantees that these activities can be carried out in an environment that respects fundamental civil rights and liberties, for, to quote the Committee on Freedom of Association, "the absence of these civil liberties removes all meaning from the concept of trade union rights". How are trade unions supposed to support workers in dealing with the consequences of the COVID-19 pandemic when their representatives fear arrest and imprisonment at every step!

In October 2021, the police arrested the President of the new Platform Workers' Union on the very day that the new union was planning a strike. In December 2021, the President of the Crane Operators' Union was sentenced to ten days in prison for taking part in an allegedly illegal rally. Trade union leaders and representatives sentenced to prison under dubious circumstances are not allowed to resume their activities even after their sentence has expired.

The President of Kazakhstan has signed a Decree on further measures of the Republic of Kazakhstan in the field of human rights, which also aims to protect freedom of association. The UN Committee on Economic, Social and Cultural Rights stated in November 2021 that the Decree has no practical effect.

The Government stated in its written information of 28 May 2022 to the Committee that an action plan should implement the ILO recommendations by the end of 2022 or the first quarter of 2023. This stalling tactic is unacceptable given the fact that for years we have been discussing the violations of the Convention. We therefore call on the Government to submit to

this Committee specifically what steps it will take to finally and fully implement the obligations under the Convention.

Government member, Türkiye – We thank the Government of Kazakhstan for the information it provided and welcome its willingness to constructively engage and cooperate with the ILO. The Government of Kazakhstan has demonstrated efforts to strengthen and adapt its current legislative framework to bring it into line with ILO standards. We encourage the Government of Kazakhstan to continue to undertake necessary steps in this regard.

We welcome that a direct contacts mission of the ILO visited Kazakhstan in May this year to discuss the implementation of the Convention, and progress in ensuring trade unions enjoy the right to freedom of association was observed by the ILO mission.

We commend the positive steps taken by the Government of Kazakhstan in consultation with the social partners, including its taking into account the observations of the Committee of Experts to amend its internal laws. Recent amendments, such as the transfer of the state registration of trade unions to a notification procedure and the simplification of the procedure for organizing a strike, made by the Government of Kazakhstan in order to bring its national legislation into accordance with the standards of the Convention should be acknowledged.

It should be emphasized that the Government is determined to work on the issues raised by the ILO and the social partners in a spirit of constructive dialogue and is ready to enter into an open discussion on how to further improve the situation with trade unions.

In addition, we are pleased that significant political reform aimed at the further transformation and modernization of the country, including on the protection of human rights and the rule of law, was initiated by the presidency of Kazakhstan.

We believe that Kazakhstan, which fulfils its obligations in the submission of reports related to the ratified ILO Conventions, will continue to work with the ILO and the social partners in close cooperation.

Worker member, United States of America – Unfortunately, since this body last discussed this case last year, the Government of Kazakhstan has continued to arbitrarily deny registration to independent trade unions. For example, the Government still has not addressed long-standing concerns regarding the registration of the Confederation of Independent Trade Unions of Kazakhstan (KNPRK). Starting in December 2021, the Industrial Trade Union of Fuel and Energy Workers of Almaty has had their registration papers rejected on four separate occasions based on alleged irregularities in the paperwork.

Meanwhile, the trade union of workers of the fuel and energy complex of the Almaty region has been denied registration six times and each time for a new reason. While it is true that the Government has established working groups to reform the Labour Code, independent trade unions have been totally excluded from this process. In addition, the Government has continued its campaign of legal harassment against independent trade union leaders; Larisa Kharkova, the former Chairperson of the KNPRK, remains under modified house arrest and is banned from serving as a trade union leader. Several other independent trade union leaders, including Mr Baltabay, remain subject to similar bans.

Despite the efforts of the Committee of Experts and this Committee, it is unfortunately clear that the Government continues to play politics with the union registration process. We call on the Government of Kazakhstan to end its campaign to squash independent trade union activity and fully implement the recommendations contained in last year's 2021 Committee report without further delay.

Government member, Canada – Canada considers Kazakhstan an important partner in many areas of international cooperation.

We note that this is the fifth time in six years that the Government of Kazakhstan has been called to appear before this Committee to discuss its implementation of the Convention.

We welcome the progress made by the Government in responding to some of the recommendations made by this Committee.

We also hope that the political reforms announced in March 2022 will strengthen the universality of human and labour rights and reduce the number of reported incidents of harassment of trade unionists and restrictions on the right to freedom of association and peaceful assembly.

We call on the Government to protect effectively, in law and practice, the right of all persons, including trade unionists, to organize and to participate in peaceful demonstrations.

Canada remains concerned that some trade unions continue to encounter obstacles to their establishment and registration, and that the long-standing problem regarding the registration of the FPRK and the Industrial Union of Employees in the Fuel and Energy Sector remains unresolved.

We therefore call on the Government, in consultation with the social partners, to resolve definitively and without delay the difficulties currently hindering the trade union registration process.

Lastly, we encourage the Government to avail itself of the ILO's technical assistance and to continue to engage with the ILO to ensure full respect for the principles of the Convention.

The Government of Canada remains committed to working with Kazakhstan to that end and as a partner. We support the Kazakh Government's ambitious programme of political reform, and we commend it for continuing its investigations into the events of January.

Government member, United States of America – This Conference Committee has discussed the Government of Kazakhstan's lack of progress to address serious issues of non-compliance with the Convention every year since 2015, except in 2018 when a high-level tripartite mission visited the country.

The Decree on further human rights measures was recently amended to include freedom of association, including the development of a work plan to address long-standing issues. We note plans to amend legislation, including the possible decriminalization of article 402(1) of the Criminal Code, which penalizes calls for strike action declared illegal by the court.

However, significant work remains. We note the dissolution of the Industrial Union of Employees in the Fuel and Energy Sector (ITUFEW) following a court decision to suspend its activities in February 2021. We regret the Government's failure to work with the country's last remaining independent trade union to allow it to stay operational, as their subsequent attempts to re-register were rejected.

We call on the Government to uphold its commitment to respect and promote freedom of association under the Convention, in both law and practice. This requires: respect for the full autonomy and independence of free and independent trade unions and employers' organizations, including by immediately ceasing acts of violence, harassment and interference; eliminating practices and vacating existing orders that prohibit or impose restrictions on trade unionists and leaders engaging in legitimate trade union activities, including those against Larisa Kharkova and Erlan Baltabay; continued engagement with the social partners to address

obstacles in the union registration process, including the removal of geographic requirements for sectoral unions which, in practice, can limit independent oil sector unions concentrated in the western region; the immediate registration of the ITUFEW and the Confederation of Independent Trade Unions of Kazakhstan (KNPRK); further review of section 402 of the Criminal Code to ensure that penalties for calling strike action are not excessive; continued review of the Law on the National Chamber of Entrepreneurs (NCE) to ensure it does not hinder the rights of employers' organizations; and inclusion of the ITUC and the IOE in the list of organizations permitted to provide grants to individuals in the country under Ordinance No. 177. We urge immediate and effective action on these long-standing recommendations. We remain committed to engaging with the Government to advance workers' rights in Kazakhstan.

Observer, IndustriALL Global Union – I am speaking here on behalf of the IndustriALL Global Union that represents more than 50 million workers in the oil, gas, mining, energy and manufacturing sectors throughout the world, including Kazakhstan.

For more than ten years, since the tragedy in Zhanaozen in 2011 where at least 17 people were killed and over 100 injured, without any justice so far, we still do not see any improvement in the situation of trade union rights in the country. And we believe that Kazakhstan continues to avoid fulfilling its obligations under the Convention. And I particularly want to refer to the system of registration procedures which remains complex and serves to prevent the creation of free and independent trade unions.

The Industrial Trade Union of Employees of the Fuel and Energy Sector has reported that its regional branches failed to obtain registration for far-fetched, unfounded reasons on numerous occasions. The registration of the union branch in Atyrau, as was already mentioned, was denied six times and each time with a new reason.

Over 60 large, spontaneous strikes, mainly in the energy and oil sector last year, and the massive protests in January of this year where at least 160 people were killed, clearly demonstrate that the dissolution and oppression of democratic institutions in the society of Kazakhstan leads to tragic consequences.

There is a lesson to be learned from these mass protests. It is the policies and practices, not the external forces, that have provoked the social and labour conflicts strongly suppressed by the police and the security forces. The main lesson is that dialogue with the relevant parties, a commitment to openness and democratic values, social dialogue and collective bargaining at the sector level with trade unions, especially in the sectors which bring Kazakhstan its wealth, are needed to build a sustainable society in the country.

The President of the country has announced steps to strengthen democratic traditions in the country. The referendum on 5 June will consider a vast package of amendments to the Constitution. There is a glimmer of hope; however, all words must be followed by actions.

We once again urge the Government of Kazakhstan to take all the necessary actions to make sure that the country, the Government, complies with the obligations under the Convention.

The union registration procedure must be simplified based on notification by trade unions. Any restriction on union activity must be lifted, and all the charges against union leaders must be dropped, including removing the charges from the records of trade union leaders.

Interpretation from Russian: **Observer, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)** – The issue of freedom of association in Kazakhstan is something that this Committee has returned to numerous times, and the starting point for it was the repressed strike in 2011 in Zhanaozen. A peaceful strike for increased wages took place over a number of months, and it could have finished around the negotiating table with the signing of an agreement or by establishing a list of differences of opinion. That would have been the direct duty of the State – creating the conditions for negotiation as required by the Convention and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Instead of that, armed troops came into the strikers' village on 16 December 2011 and received the order to open fire. Since then, the Government has continued along this path, banning independent trade unions, criminalizing strikes or any independent activities of workers and repressing trade union leaders. This deprives trade unions of their right to freedom of association and the right to organize.

Since our last consideration of this issue, the number of strikes has been increasing. They take place in a number of regions and in a number of industries, and it is worth noting two particular characteristics. Firstly, they are all peaceful, they are well-organized, and their participants participate with a high level of discipline and order, not allowing extremism within their ranks. They show that they are ready for civilized and dignified negotiation. In practically all these instances, these workers are demanding the lifting of restrictions on the establishment of trade unions as required by Conventions Nos 87 and 98.

There is an opportunity in the country today. We hope the Government will use this opportunity, lifting restrictions on trade union rights and particularly on the establishment of the KNPRK. But the situation is still particularly worrying and deserves close and concerned attention from the International Labour Organization.

Interpretation from Russian: **Observer, International Trade Union Confederation (ITUC)** – I represent the Industrial Trade Union of Employees of the Fuel and Energy Sector, which has suffered from the dissolution of the KNPRK. Unfortunately, the Government is ignoring the recommendations of the ILO and dissolving independent trade unions and attempts to register trade unions are not met with success. We are continuing to receive refusals from the Ministry of Justice under false pretexts.

The official registration of trade unions means that if they do not go through that process, it is not possible to participate in collective bargaining, and this leads to social conflicts, including those we saw in January 2022. Protests and gatherings are declared to be illegal, and the dissolution we see of these organizations leads to workers being dismissed if they voice their demands; there is no mechanism to protect their rights, they are denied their rights, there are no collective agreements, and in a sector where profits are high, workers are finding it difficult to make ends meet, particularly in those areas that do produce such high-value, high-profit products. It is necessary to put an end to these attitudes and legalize trade unions, ensuring their protection and giving them rights in the face of their employers, giving my organization, the KNPRK, legal status. All of these are in line with the recommendations of the Committee of Experts and the mission, as well as the provisions of the Convention.

We call on you, members of the Committee, to take the necessary measures to ensure that this happens.

Interpretation from Russian: **Government representative** – First of all, if you will allow me, I would like to thank all of those who have spoken on behalf of Governments and workers' and employers' associations. We welcome your comments with regard to the law and practice in our country.

I would like to say that in order to achieve social peace in our country, the President, in March, addressed a message to the people of Kazakhstan identifying the initiatives for reform with a view to modernizing our country. This reform would establish a basis for a new Kazakhstan. The key elements have already been mentioned, but I think they are worth re-emphasizing. These are political reforms establishing policies through increased democratization and strengthening human rights. In this regard, I would like to say that literally tomorrow a referendum will take place in our country on changes to the Constitution.

The essence of these changes is directed towards the modernizing of the political system and a transition to a presidential Republic with a strong Parliament. This is a system that would strike an optimal balance between the relevant, or relative, institutions in the country and secure the effective governance of Kazakhstan.

In accordance with the instructions of the President, the Government has confirmed the programme for wage increases in the country, and this is a programme that includes a number of systems within the reform, particularly in the social sphere. The Minister has been drafting a social code, including the implementation of a number of initiatives to remove inequality and secure the rights of our citizens. There will be a number of key areas for social protection and it will apply throughout the life cycle of citizens, from birth to old age.

With regard to the questions relating to the criminal prosecutions – once again, I would emphasize that all questions relating to the criminal prosecutions are under the authority of the Public Prosecutor. Such criminal prosecutions are not related to trade union activities. Over the last two years, there have not been any criminal prosecutions with regard to trade union activists. With regard to the Criminal Code and additional penalties relating to specific activities, I would like to say that these additional sanctions are ruled upon by the courts. This is governed by the decree from April this year. At the moment, the format of the cross-departmental committees considering this issue and a number of rules is being proposed to improve the Criminal Administrative Code. This work is being carried out in our Ministry as well; we are making our contribution and are preparing to contribute to it more, contribute to the cross-departmental group on the possible changes to the Criminal Code with the participation of the Public Prosecutor.

With regard to the registration issue, as I have said, there are a number of changes under way which have allowed for an improved capacity for trade unions to represent the interests of their work. There have been no complications that have arisen in these processes. There are individual complications in registering trade unions, and these are looked at on a case-by-case basis, particularly in the working group that we have in the Ministry of Justice, so any complications arising can be looked at, and we can broaden the working group to include representatives of workers and employers.

The changes which will be proposed this year will move towards improving existing legislation on the registration of legal persons, and we hope very much that individual difficulties, of a technical and legal nature, can be resolved and their status as legal persons can be confirmed. We consider the links between employers' and workers' organizations and the ILO. I think it is worth stating here that they are assigned tasks both in the Constitution and within their organizations. The rules that do exist are not obstacles to their participation in international organizations, whether we are talking about training or other activities. There is a list of organizations which carry out beneficial work and all of them are included on this list, and it will be possible to extend this list in order to include further organizations which benefit the interests of workers and employers. The issue of financing from abroad and a ban on that for workers' and employers' organizations is not something that is under consideration.

Allow me, once again, to emphasize that during the direct contacts mission, we informed our international partners that the National Chamber of Entrepreneurs (NCE) does not represent the interests of the employers' organizations. We have been quite clear in this area. The representatives of the NCE have been excluded. We are working exclusively with employers' organizations representing the interests of employers and will continue to raise awareness about the way that the representation of employers' interests works, effectively representing the interests of business, including small business. So, we have worked with our social partners to say that we will be working on a separate bill on employer associations, and this is something that we will be beginning very soon so that we can clearly establish the role and tasks of our employers' organizations.

Once again, allow me to reaffirm my Government's commitment to observing international standards, and we are undertaking all possible efforts to ensure that our law and practice is in line with the provisions of the Convention.

Worker members – We have noted the written and oral information provided by the Government of Kazakhstan, and we thank the speakers for their contributions.

We fear that the Government's stated intentions are not always translated concretely in practice.

Genuine social dialogue is required to remove the obstacles, both legal and practical, faced by trade union organizations in the exercise of their freedom of association.

With regard to the registration and re-registration procedures, we invite the Government to review the composition of the permanent working group responsible for examining the issues linked to the registration of trade unions so that independent trade unions may be included.

In this context, the Government will guarantee the effectiveness, impartiality and independence of these registration procedures and examine, in consultation with the social partners, the actions to be taken to permanently remove the legal and practical obstacles to trade union registration.

In particular, it will also remove the arbitrary obstacles hindering the registration of the KSPRK and the Industrial Union of Employees of the Fuel and Energy Sector.

The reclassification of the formerly criminal act of incitement to a strike declared illegal as an administrative offence does not bring Kazakh legislation into line with the Convention.

The simple act of calling for a peaceful strike should not be subject to sanctions of any kind, whether criminal or administrative, and we call for all sanctions provided for in legislation in that regard to be abrogated.

The Government will also ensure that the criminal sanction that deprives trade unionists of the right to hold any trade union office is abrogated. Moreover, we request that this sanction as imposed upon Ms Kharkova and Mr Baltabay is lifted as soon as possible.

We call on the Government to strengthen its efforts to undertake serious investigations into acts of violence against trade unionists and to prosecute and sentence the perpetrators by means of dissuasive sanctions, particularly in the case of Mr Senyavsky.

Lastly, we call on the Government to lift the ban on receiving financial assistance from international organizations of workers and employers and not to impose any condition that hinders the right to such assistance as set out in Article 5 of the Convention.

It is our understanding that the country is engaged in a process of reform following the tragic events of January this year. The time has come to respond to the root causes of these social tensions in the country. In our view, those causes relate in particular to the serious limitations on freedom of association, the absence of collective bargaining on socio-economic matters and, more generally, the lack of genuine social dialogue.

We would therefore like our Committee to repeat all the recommendations made in previous years, and we call on the Government to implement, as soon as possible, all of those recommendations, as well as the recommendations that we make this year, so that Kazakhstan does not remain a recurrent case.

We encourage the Government to draw up a time-bound plan of action with a view to ensuring that all of these recommendations are implemented. To that end, we encourage the Government to avail itself of ILO technical assistance in drawing up, implementing and evaluating that plan of action, in consultation with all trade union organizations.

In particular, we call on the Government to draw on, in a systematic and ongoing manner, ILO technical assistance in relation to the work of the permanent working group responsible for examining the issues linked to the registration of trade unions.

The Government will submit a full report to the Committee of Experts before its next session and before its March 2023 session on the initiatives adopted to implement the recommendations that it will receive from our Committee.

Employer members – We have listened very carefully to the Government's submissions and all of the interventions that followed.

Taking all of the submissions into account, the Employer members urge the Government as follows: first, we urge the Government to take appropriate measures to resolve the registration of the KNPRK and the Industrial Union of Employees of the Fuel and Energy Sector. We urge the Government to engage with the social partners on issues concerning the registration of trade unions and the challenges faced in this regard. We take special note of the Government's submissions on the issue of the NCE as well as its indication of the intention to create a draft bill regarding employer associations.

We call on the Government therefore to ensure that the NCE, in line with the law, completely withdraws from social dialogue and collective bargaining and leaves this area of competence to free and independent employers' organizations. This system of accreditation of employers' organizations in the NCE should also be discontinued.

In addition, taking into account the Government's submission on its intention to create a bill on employers' associations, we note that to further reinforce the recognition of the freedom of association of employers and their organizations, it would be most opportune to adopt a law or regulation that sets out the independence and autonomy of employers' organizations and sets out the conditions for their eligibility for participation in social dialogue and collective bargaining at the various levels.

Furthermore, the Employer members note that any such drafting of such legislation should be done in consultation with the most representative employers' and workers' organizations.

Furthermore, we urge the Government to consider extending the list in Ordinance No. 177 of 9 April 2018 to cover international workers' and employers' organizations such as the ITUC and the IOE.

Finally, we request the Government to provide its report on the developments in this regard and the measures taken to respond to the issues raised in our discussion today by 1 September 2022.

Conclusions of the Committee

The Committee took note of the oral and written information provided by the Government and the discussion that followed.

The Committee noted the long-standing and persistent nature of the issues and the prior discussion of this case in the Committee, most recently in 2021.

The Committee regretted that the previous recommendations of the Committee had not been fully addressed.

Taking into account the discussion, the Committee urges the Government, in consultation with the social partners, to:

- **ensure that the allegations of violence against trade union members are thoroughly investigated, notably in the case of Mr Senyavsky;**
- **allow an independent investigation of the Zhanaozen events of 2011;**
- **stop practices of judicial harassment of trade union leaders and members conducting lawful trade union activities and drop all unjustified charges, including the ban preventing trade unionists from holding any position in a public or non-governmental organization;**
- **resolve the registration of KSPRK and the Industrial Union of Employees of the Fuel and Energy Sector (STUFECE) so as to allow them to enjoy the full autonomy and independence of a free and independent workers' organization, to fulfil their mandate and to represent their constituents without further delay;**
- **engage with the free and independent employers' and workers' organizations to review issues concerning their registration in law and practice with a view to overcoming existing obstacles;**
- **review the composition of the permanent working group that assesses areas of concern involving the registration of trade unions, so as to ensure the full involvement of independent workers' and employers' organizations in this working group;**
- **refrain from showing preference towards a particular trade union and stop the interference in the establishment and functioning of trade union organizations;**
- **remove any existing obstacles in law and practice to the operation of free and independent employers' organizations in the country;**
- **remove any existing obstacles in law and practice to the operation of free and independent employers' and workers' organizations in the country, in particular repeal provisions in the Law on the National Chamber of Entrepreneurs (NCE) on accreditation of employers' organizations with the NCE;**
- **ensure that workers' and employers' organizations are not prevented from receiving financial or other assistance by international workers' and employers' organizations and extend the list in Ordinance No. 177 of 9 April 2018 to cover international workers' and employers' organizations, such as the ITUC and IOE; and**
- **fully implement the 2018 road map.**

The Committee requests the Government to develop, in consultation with the social partners, a time-bound action plan in order to implement all these conclusions. In order to elaborate, implement and evaluate this action plan, the Committee urges the Government to avail itself of technical assistance from the Office on an ongoing basis in this regard.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 providing information on the application of the Convention in law and practice, in consultation with the social partners.

Liberia (ratification: 1962)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Discussion by the Committee

Government representative – I bring you greetings from the Government of Liberia and extend our gratitude for the level of support accorded us to be present at this hearing. The Government of Liberia considers this representation to be of high importance as it involves Convention No. 87, a fundamental Convention ratified by Liberia. The Government is pleased to respond to the Committee on the following cases brought before this Committee that relate to the Convention.

Case No. 3202: The Government of Liberia would like to inform the Committee that the workers allegedly dismissed for anti-union discrimination were fully reinstated without loss of benefits. This was done through social dialogue; therefore anti-union discrimination could not be established. The Government also requested that the National Health Workers' Association of Liberia resubmit its constitution as recommended by the Committee, which they did. However, the revision of their constitution shows that the association's membership was not restricted to the private sector but included workers subject to the Civil Service Standing Orders. Now we are sending in the request to ensure that the rights of national health workers are protected. The Government, through the Ministry of Labour with assistance from the ILO regional office, organized a three-day conference in November 2018 with social partners to harmonize a decent work plan to cover all workers. The deliberations on the conference recommendations were interrupted by the onset of the COVID-19 pandemic, which shifted the attention of the Ministry of Labour and social partners to preserving existing jobs, particularly in the worst-affected sectors.

Case No. 3081: The Government of Liberia would like to inform the Committee that the investigation into the case of the two workers alleging anti-union discrimination was reopened. The workers were invited to the investigation but neglected to appear after several calls inviting them to the investigation. Now the Government would like to avail itself of the technical assistance from the Office to address the Committee's recommendations to bring Case No. 3081 to a logical conclusion.

Employer members – Just in terms of the background, we are looking at a fundamental Convention, Convention No. 87, an up-to-date Convention ratified by Liberia in May 1962. Observations have been issued in the past in this case in 2017, 2018, 2019, 2020 and 2021, so a fairly consistent series in the last few years.

In terms of the main issues that the Committee of Experts has commented on, the main ones are: the absence of full recognition of the National Health Workers' Union of Liberia; information requested on the legal provisions ensuring that public sector workers enjoy the

rights and guarantees set out in the Convention; a similar request concerning maritime workers; and the need to amend section 45.6 of the Decent Work Act of 2015 to ensure the right to establish organizations to defend their occupational interests is fully recognized for foreign workers both in law and practice.

With regard to the designation of essential services by the National Tripartite Council, the Committee requested information on how such designation operates in practice and asked the Government to clarify whether the President is also bound by the definition of the notion of essential services set out in section 41.4(a) of the Act.

Liberia has ratified 25 Conventions including 6 of the 8 fundamental Conventions, 2 governance Conventions and 17 technical Conventions. Liberia ratified Convention No. 87 in 1962.

We note that the Government of Liberia did not provide any additional written information on this case prior to this hearing. Turning to the Committee of Experts' observations, we note that there are issues concerning the right to strike and related issues which are outside the scope of the Convention. Accordingly, the Employers will not comment on these issues raised by the Committee of Experts and these issues will not be addressed in the conclusions, as is normal practice with that particular issue.

The Committee of Experts noted allegations made by the African Regional Organisation of the International Trade Union Confederation (ITUC-Africa) on the dissolution of a trade union by a state-owned company and the arrests of union leaders. The Employer members note that dissolution of employers' and workers' organizations should be either regulated in the statutes of the organization or be decided by a court. An automatic dissolution by law is not in compliance with Article 4 of the Convention, which provides that workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority. Furthermore, in line with Article 3 of the Convention, it is for employers' and workers' organizations to determine in their statutes the rules and procedures for dissolution when initiated by their members. This must be regulated by law.

Regarding the arrests of trade union leaders, we express concern and support the Committee of Experts' request for the Government to provide full information in this regard by 1 September 2022.

With regard to allegations concerning the failure to grant legal recognition to the National Health Workers' Union, the Government has replied that, since 2018, the Ministry of Health has given functional acceptance of that union as a body representing its members, pending the revision of appropriate national laws. The Employer members request the Government to provide additional information as to other pending allegations raised by this union and to inform on specific steps taken to ensure that this organization can be granted full legal recognition without delay.

With regard to the scope of application of the Convention, the Committee of Experts noted that section 1.5(c)(i) and (ii) of the Decent Work Act of 2015 excluded from its scope of application work falling within the scope of the Civil Service Agency Act. The Government has acknowledged that the Act does not cover workers in the mainstream public sector and indicated that a national labour conference was held in 2018 to create a framework for the harmonization of the Act and the Civil Service Standing Orders. The Employer members invite the Government to provide information on developments in this regard and to detail what legal provisions ensure that public sector workers enjoy the rights and guarantees set out in

the Convention, including provisions drafted or envisaged for enactment and the time frame expected for such enactment.

Furthermore, the Committee of Experts noted that section 1.5(c)(i) and (ii) of the Act also excludes from the scope of its application officers and members of the crew and any other persons employed or in training on vessels. In response, the Government indicated that there is a review on the application of the provisions in Liberia's Maritime Regulations 10-318.2 in line with Liberia's 2022 report on the maritime labour Convention. The Employer members invite the Government to provide detailed information as to how the rights enshrined in the Convention are applied to maritime workers in law and practice.

The Committee of Experts noted that section 2.6 of the Decent Work Act provided that all employers and workers, without distinction whatsoever, may establish and join organizations of their own choosing, and section 45.6 of the Act recognized the right of foreign workers to join organizations. The Government indicated that the right to establish organizations exists for foreign workers and foreign employers, and that there is no prohibition to the establishment of bodies solely composed of foreign workers or employers. On this issue, the Employer members invite the Government to provide information on how section 45.6 of the Decent Work Act ensures the right to establish organizations and to defend their occupational interests is fully recognized for foreign workers both in law and practice.

With respect to the determination of essential services, the Employer members will not comment on this issue, as before.

Worker members – First, we would like to reiterate our position on the right to strike in the scope of the Convention, which diverges from that of the Employer members.

Liberia ratified the Convention in 1962. The last time our Committee discussed this Convention in respect of Liberia was in 1990. The space for trade unions to freely operate in Liberia is closing. The Government is increasingly interfering in trade union activities and failing to comply with its obligations under the Convention in law and practice. We will share with this Committee some examples that raise major concern in this regard.

In November 2019, workers peacefully protested over the Government's failure to pay their allowances and salaries since March 2019. The joint security forces of the Liberian Government, including the Police Support Unit and the Liberia Immigration Service were deployed to break up the protests. Our colleagues reported injuries caused by the disproportionate use of police force to break up the strike.

Between December 2020 and January 2021, some 298 leaders and members of the National Beverages and Industrial Workers' Union of Liberia (NBIWUL) were dismissed by their management, a state-owned enterprise. The local union rightly protested these mass dismissals. In response, the management of the state-owned enterprise announced that it had dissolved the local union for acts incompatible with decency and gross insubordination on the job, indicating that the existence of workers' union leadership is a privilege and not a right.

In June 2021, six workers of the union were arrested and detained at the headquarters of the Liberian national police for four days for carrying out a peaceful protest. In May this year, the General Secretary of the National Health Workers' Union of Liberia (NAHWUL) reported state surveillance of his activities and threats against his life. We are deeply concerned that the Government is increasingly intolerant when workers are exercising their civil liberties and labour rights under the Convention and deplore the use of police brutality to prevent workers from peacefully protesting and engaging in strikes to pursue legitimate trade union activities.

More broadly, we note with concern the numerous acts of anti-union discrimination, the lack of effective remedies made available to workers and the overall unwillingness of the Government to address this situation.

The Government must refrain from undermining the exercise of rights under the Convention. We urge the Government to provide full information to the Committee of Experts regarding the dissolution of the local union by a state-owned enterprise, the use of force by police to break up peaceful strikes and the arrest of union leaders and wrongful dismissal of workers for their participation in strike action.

The next area of concern is the exclusion of some categories of workers from forming or joining a trade union. Firstly, the Government continues to deny NAHWUL legal recognition. The Government has explained that, since 2018, the Ministry of Health has given functional acceptance of NAHWUL as a body representing its members, pending the revision of appropriate national laws. We recall that in 2016 NAHWUL filed a complaint with the Committee on Freedom of Association on these same matters. We regret that, contrary to the Government's information, there has been no progress with respect to the legal status and registration of NAHWUL. The Government must take immediate steps to register NAHWUL as a trade union organization. This cannot be delayed any further.

Secondly, the Decent Work Act of 2015 does not apply to workers covered by the Civil Service Agency Act. Section 1.5(c)(i) and (ii) of the Decent Work Act excludes from its scope of application work falling within the scope of the Civil Service Agency Act. The Government has acknowledged this and though it had indicated that a national labour conference was convened in 2018 to create a framework for the harmonization of the Act and the Civil Service Standing Orders, nothing has been done to ensure that civil servants and public servants can exercise their right to form or join a trade union, a right protected under the Convention. In a recent court ruling, the court decided that associations of public servants are not subject to the Decent Work Act. As such, they cannot be members of the Liberia Labour Congress, the umbrella organization of labour unions in Liberia. The court, therefore, declared that the conference of the Liberia Labour Congress, which was held on 30 March 2022, and in which the Civil Servant Association of Liberia participated, was therefore null and void. This is a major setback for the union movement in Liberia and an interference in the independence of the Liberia Labour Congress. There is no doubt, as has been articulated by the Committee of Experts, that all workers, with the sole possible exception of the police and the armed forces, are covered by the Convention. We again urge the Government to take immediate steps to register the Civil Servant Association of Liberia and to redress any harm caused to the Liberia Labour Congress in this regard.

Thirdly, section 1.5(c)(i) and (ii) of the Decent Work Act also excludes from its scope of application officers, members of the crew, and any other persons employed or in training on vessels. We note that the Committee of Experts requested the Government to indicate how the rights enshrined in the Convention are ensured to maritime workers, including trainees, and to indicate any laws or regulations adopted or envisaged covering this category of workers. Regrettably, the Government has not provided the specific information requested by the Committee of Experts in this regard. The Government must provide detailed information as to how, both in law and practice, these particular rights are ensured to maritime workers, including trainees. In line with the comments of the Committee of Experts, we urge the Government to take any necessary measures, including through the amendment of section 45.6 of the Decent Work Act, recognizing the right of foreign workers to join organizations in order to ensure that the right to establish organizations to defend the occupational interests of foreign workers is fully recognized both in law and practice.

Finally, with respect to the determination of essential services, we note that section 4.1 of the Decent Work Act tasks the National Tripartite Council with identifying and recommending to the Minister services to be considered as essential services for consideration and determination. Though section 41.4(a) of the Act defines "essential services" as those that, in the opinion of the National Tripartite Council, if interrupted, would endanger the life, personal safety or health of the whole or any part of the population, the President of the Republic decides whether to designate any service as an essential service and can apparently do so without recourse to the recommendation of the National Tripartite Committee. So the question here is whether the President is bound by the definition of "essential services" in section 41.4(a). We must reiterate that respect for the rule of law and civil liberties is essential for the exercise of freedom of association and we urge the Government to ensure that the powers of the President to designate any service as an essential service is in line with the Convention.

Government member, France – I am speaking on behalf of the **European Union (EU) and its Member States**. The candidate countries **Montenegro** and **Albania**, and the European Free Trade Association country **Norway**, Member of the European Economic Area, align themselves with this statement.

The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights, such as the right to organize and freedom of association.

We actively promote the universal ratification and implementation of all fundamental international labour standards, including Convention No. 87 on freedom of association. We support the ILO in its indispensable role to develop, promote and supervise the application of ratified international labour standards and of the fundamental Conventions in particular.

The EU and its Member States are long-term partners of Liberia. This partnership is further reinforced in the framework of our cooperation with the African Union (AU) and Economic Community of West African States (ECOWAS), as well as in including Liberia among beneficiaries of the EU's "Everything but Arms" scheme for least developed countries.

We note with concern the observations of trade union organizations with regard to allegations of violations of freedom of association and the right to organize, including the right to strike, and in particular the use of police force to break up peaceful strikes, the arrest of trade union leaders and the wrongful dismissal of workers for their participation in strike action. We support the Committee's call to the Government to provide its response to these allegations.

With regard to the scope of the application of the Convention, we recall that all workers without distinction whatsoever, including public sector workers, are covered by the Convention. The extent to which the Convention applies to the armed forces and the police is to be determined by national laws or regulations.

We echo the Committee's request to the Government to provide specific information on developments in this regard, in particular in relation to public sector workers and maritime workers, including trainees, that cannot be considered to be part of the armed forces or the police. We also ask the Government to provide additional information on the process of designation of essential services by the National Tripartite Council and the President.

We welcome the information already provided by the Government on the Decent Work Act of 2015, but we would also like to underline the Government's obligation to ensure that the

right to establish organizations to defend their occupational interests should also be fully granted to foreign workers, both in law and practice.

The EU and its Member States will continue to monitor and analyse the situation and remain committed to our close cooperation and partnership with Liberia. This cooperation could also include specific technical assistance in the event that Liberia decides to move towards ratification of the two remaining fundamental Conventions not yet ratified, the Equal Remuneration Convention, 1951 (No. 100), and the Minimum Age Convention, 1973 (No. 138).

Worker member, Canada – Liberia's Decent Work Act of 2015 clearly states that it applies to all work performed within the jurisdiction of the Republic. But there is a notwithstanding clause under section 1.5 that excludes work falling within the scope of the Civil Service Agency Act.

Issues affecting all civil servants are addressed through Standing Orders that the Liberia Labour Congress and the Civil Servant Association of Liberia argue are in conflict with article 17 of the Constitution of Liberia, which affords the right to associate in trade unions.

Challenges to the application of the Convention include the refusal to grant legal recognition to the National Health Workers' Union of Liberia, and the court decision that the Civil Servant Association of Liberia is not subject to the Decent Work Act, and thus not able to join the Liberian Labour Council. In these cases, limited judicial interpretations of the Decent Work Act, which focus on the notwithstanding clause exemptions, severely restrict the ability of Liberian workers to exercise their rights to freedom of association.

The Liberian Government, while looking to make public service workers essential services workers, must be aware that classification as an essential service worker does not eclipse the right to freedom of association. Classifying and compiling essential services' lists is a thorough tripartite process that is not to be used as a means to undermine workers' rights and imperil industrial relations.

Further, Liberia is signatory to the International Covenant on Economic, Social and Cultural Rights, of which Articles 6 and 7 protect the right to work and Article 8 protects the rights of workers to form trade unions and to join the trade union of their choice. It is also signatory to the African Charter on Human and Peoples' Rights of which Article 10 guarantees every individual the right to free association.

We call on the Government of Liberia to uphold its obligations under the Convention and universal human rights instruments to ensure workers their right to freedom of association.

Employer member, Democratic Republic of the Congo – On behalf of the employers' group of the Democratic Republic of the Congo, it is incumbent upon us to consider the individual case of a sister country, Liberia, a case that relates to the Convention. We welcome not only the fact that the Decent Work Act of 2015 of this sister country, unless I am mistaken, is the only one in the world that refers directly in its title to the ILO's Decent Work Agenda, but also the fact that, in June 2006, Liberia was the first country in the world to ratify the ILO Maritime Labour Convention.

In considering this individual case, it is appropriate to address the issue of the lack of legal recognition of the National Health Workers' Union of Liberia by the Government, as alleged by the union. There is a development regarding the full legal recognition of this union. At this point, it is incumbent upon the Government to provide the Committee of Experts with additional specific and concrete information on measures taken to grant full legal recognition.

Also, article 1.5(c) of the Decent Work Act of 2015 excludes from its scope a category of maritime workers and trainees. But, contrary to the Government's allegation that the above-mentioned category of workers enjoys the rights set out in the Convention, we fully concur with the position of the Committee of Experts, noting that the Government has not provided additional specific and concrete information sufficiently demonstrating how the prerogatives set out in the Convention are guaranteed to these maritime workers. Accordingly, we urge the Government to do so, in law and practice.

Article 45.6 of the Act does not comply with Article 2 of the Convention and, therefore, needs to be repealed, if not amended.

Finally, it is incumbent upon us to point out that the right to strike is not provided for under the Convention. The Convention was not drafted in this sense by the tripartite constituents at the time of its elaboration and adoption. The legislative history of the Convention is unquestionably clear. The 1948 ILO preparatory report states that the Convention in question concerns freedom of association and not the right to strike. Moreover, during the discussions on the Convention at the 1947 and 1948 sessions of the International Labour Conference, no amendments concerning the right to strike were adopted or even submitted.

Worker member, South Africa – I want to note that the matter before the Committee concerns violations of the Convention by the Government of Liberia. I also note from the Committee of Experts' report that public service employees and maritime workers and others listed in the Decent Work Act of 2015 do not enjoy the right to freedom of association.

I also note that Liberia ratified the Convention on 25 May 1962. From 1962 to 2022, it is about 60 years without public service workers enjoying their rights to freedom of association. Year after year, the Government is here at the International Labour Conference. I just wonder what they think about their own country's compliance.

I also note that in 2015 the Government enacted the Decent Work Act. However, I am surprised to find that there are indecent provisions in the Act, in particular section 1.5(c), which excludes public service and maritime workers in the scope of coverage. What decent work is the Government talking about when certain groups of workers are not allowed to unionize or join federations, and bargain collectively.

We all understand that one of the pillars of the Decent Work Agenda is the promotion and protection of workers' rights. As explained by the workers of Liberia and pronounced by their courts, their rights are being trampled upon. Six days before the commencement of this Conference, on 20 May 2022, a court in Liberia in Montserrado County ruled that public service workers have no rights under the Decent Work Act. So, the Government must tell us where those rights are enshrined.

Let me share some of the best practices from my country, South Africa. We only ratified this Convention in 1996, some 34 years after Liberia's ratification. This was soon after the dismantling of the apartheid regime and its policies in 1994. Both our Constitution and labour laws recognize the right to freedom of association of all workers including public service workers; they all enjoy the right of freedom of association. They have their own trade unions which are affiliated to federations in the country. Our Government went further to accord these rights to soldiers, police and correctional service workers. They also have trade unions that represent them and bargain for their members. These unions are affiliated to federations.

I would therefore like to invite the Government of Liberia and its social partners to visit my country to see for themselves. My call is only for compliance.

Worker member, Ghana – I am speaking on behalf of the Organization of Trade Unions of West Africa (OTUWA). Workers in West Africa are appalled that Liberia remains the only ECOWAS and AU Member State that refuses to recognize the right of public sector workers to freely join or form trade unions of their choosing. To date, the Government cannot advance any genuine justification for taking this action. The instruments of the AU and ECOWAS, as well as those of the ILO, are not expected to be observed in the breach as the Government has continued to do with impunity.

The application of the provisions of the Convention have manifestly demonstrated that the protection and respect of the right to organize and to collective bargaining serve the cause of the national labour market and contribute to labour harmony. It is inconceivable that the Government and its officials, past and present, continue to assume and treat organized workers as threats. These same officials are organized as politicians under political parties' platforms.

This Convention accords governments the task of ensuring the just and effective application of their provisions. It neither arrogates nor accords the Government the power or privilege to whimsically administer the human and labour rights of workers to freely join trade unions. In specific terms, Article 1 of the Convention is emphatic that workers without distinction shall enjoy the rights to freely organize and to use the benefits of association to advance their rights in the world of work. It is immoral, reckless and unacceptable for the Liberian supervisory ministry to accord itself the right to discriminately administer the provisions of this Convention.

At the recently held convention of the Liberia Labour Congress (LLC), some invited guests witnessed with shock the threats issued on the floor of the event by Liberia's Minister of Labour. In an imperial manner, the Minister announced that public sector workers could not take part in the LLC's convention and be elected as officers of the national labour centre. To follow up this naked threat and intimidation, the Ministry failed to nominate the elected LLC leadership as the genuine workers' representatives to this conference. It took the protest of the ITUC-Africa and ITUC to the conference's Credentials Committee to get the Ministry to reverse its decision.

Trade unions are the legitimate representative organizations of working people, reflecting their aspirations and translating their concrete material needs into collective action for change. They are agents for transformative change. We are confident that if the Government changes its attitude towards public sector workers the country will be the better for it. We urge this Committee to call on the Government to take well-measured and timely steps to ensure the genuine application of the provisions of the Convention.

Worker member, France – Serious violations of the Convention are taking place in Liberia in complete contradiction to the commitments made in 2015. Indeed, in June 2015, the President of Liberia signed into law the Decent Work Act, the first labour legislation in the country since the 1950s. This Act marked the second time that this African country had taken the lead in promoting ILO standards. In June 2006, Liberia was the first country in the world to ratify the Maritime Labour Convention, 2006, (MLC, 2006). In 2015, it passed the first labour legislation in the world to explicitly reference the Decent Work Agenda in its title. What is more, Liberia's commitment to the Agenda went far beyond the title of a new law. The law clearly stated its objectives, the first of which was to promote decent work in Liberia. Among other things, this should correspond to an enabling environment for the creation of quality jobs and was supposed to enable workers to exercise their rights at work.

Chapter II, section 2.6, of the pending law explicitly promoted fundamental labour rights, including freedom of association and the right to collective bargaining, specifying that everyone was free to join the organization of his or her choice without prior authorization and that everyone could engage in a strike or lockout in accordance with Chapter 41.

But a closer reading of Chapter 41 of the Decent Work Act of 2015 reveals that significant restrictions on the right to strike were already in place, and the title of that chapter, at 41.2 "Prohibitions on Certain Strikes and Lockouts" is quite explicit.

In addition, the Montserrado Civil Court ruling, issued in March 2020 and reinforced in May 2022, reiterates that the Civil Servant Association of Liberia is not entitled to the rights granted under the Decent Work Act on the grounds that public sector employees in Liberia are not allowed to unionize and their organizations are not allowed to join the Liberia Labour Congress.

With so many restrictions on the Convention, the violations are proven, and the court's judgments confirm this. The Government must therefore comply with the Convention, which it ratified in 1962, and not claim to have made any progress in the area of decent work, given that the observations of ITUC-Africa, received on 31 August 2021, denounce the dissolution of a union by a state-owned enterprise; the use of force by police to break up peaceful strikes; the arrest of union leaders; and the unjustified dismissal of workers because of their participation in strike action.

Worker member, Republic of Korea – I am speaking on behalf of the Workers of the Republic of Korea and the United States of America. First, I want to associate myself with the concerns articulated by my trade union colleagues that the Decent Work Act of 2015 continues to exclude civil servants, employees of state-owned enterprises and maritime workers. Article 2 of the Convention applies to all workers, with narrow exceptions for the armed forces and police.

As noted in the Committee of Experts' report, the Government has so far failed to articulate that existing laws, including the Civil Service Agency Act, to adequately protect the rights of public workers to organize trade unions. The consequences of this legal uncertainty are clear as the National Health Workers' Union of Liberia (NAHWUL) has still not been granted full legal recognition to bargain with the Ministry of Health. This unwarranted delay is particularly shameful given the essential and heroic role health workers played in combating the COVID-19 pandemic.

In the private sector, there are concerning reports that a large multinational tyre and rubber company has been converting employees to "independent contractors", undermining the existing trade union through employee misclassification. We call on the Government to grant full legal recognition to NAHWUL, fully investigate allegations of employment misclassification on its rubber plantations and revise its labour laws in line with the Committee of Experts' recommendations.

Observer, International Trade Union Confederation (ITUC) – I am Edwin B. Cisco representing the Liberia Labour Congress. I am unable to join you at the International Labour Conference because the Government, through the Ministry of Labour, has refused to acknowledge and accept the public sector workers of Liberia as being part of the Liberia Labour Congress so therefore we are denied access to participate in the Conference.

We present compliments and thank you for this opportunity to speak on behalf of the workers of Liberia.

Our country has been based on a foundation of discrimination, in all its political bodies and governance structure. The labour movement is no exception and does bear the brunt of these discriminatory laws preventing public service and maritime workers from organizing or forming unions. This is done under the guise of protecting the State at the expense of the national Constitution, the workers and people of Liberia. Our country, as the oldest African ILO Member State, has clear and explicit constitutional guarantees for workers without distinction to freedom of association. The Convention under discussion today is under serious attack by our Government. I totally agree with the statement of our spokesperson in the findings of the Committee of Experts in its 2022 report. In support of such findings, let me inform this Committee that public sector workers in Liberia who comprise the National Teachers' Union of Liberia, the Civil Servant Association of Liberia and the National Health Workers' Union are denied the right to organize, form unions and affiliate to the Liberia Labour Congress. The Government does this using a discriminatory law called the Civil Service Agency Act. In 2015, the Government passed the Decent Work Act, which provides in its section 1.5(c) that: "(i) except where expressly provided, this Act shall not apply to work falling within the scope of the Civil Service Agency Act as contained in Chapter 66 of the Executive Law or such other law as may be enacted in its place; and (ii) this Act shall not apply to officers, members of the crew, seamen, mariners, greasers, firemen, stevedores, launch drivers, stewards, cooks, laundrymen, and any other persons employed or in training on vessels registered under the provisions of Chapter 2 of the Maritime Law or their employers".

In this respect, public service associations and other categories of workers mentioned in the Act are not allowed to belong to the Liberia Labour Congress. On 27 March 2020 and on 20 May 2022, a court nullified the election of the Liberia Labour Congress on the grounds that the Civil Servant Association of Liberia and the National Teachers' Union of Liberia are not recognized trade unions in terms of the Decent Work Act and so are not eligible to be members of the federation. The court also stated that the election of Mr Moibah Johnson as president of the Liberia Labour Congress is declared null and void and that the Government of Liberia should, through the Ministry of Labour, conduct an election for the workers of Liberia.

As a result of this infringement of our rights, we sought to attend this year's International Labour Conference as delegates. Our case is pending before the Credentials Committee and the Government is empowered to constitute a body to reconduct our elections. This is unacceptable.

The Committee on Freedom of Association has pronounced, similarly, that employers' organizations did not have the status of trade union organizations in the eyes of the national legislation.

I appeal to this Committee to make a conclusion that the Government is violating this Convention. It must amend the Decent Work Act to include public service workers and maritime employees in its scope. The Government must recognize the elected leadership of the Liberia Labour Congress and report to the Committee of Experts on 1 September 2022.

Finally, I implore your Committee to place the Government of Liberia in a special paragraph.

Observer, International Transport Workers' Federation (ITF) – As a proud maritime nation, Liberia plays a critical role in the global shipping industry. The Liberian shipping registry is the world's second largest and is comprised of over 5,000 vessels aggregating over 200 million gross tons. This represents almost 15 per cent of the world's ocean-going fleet.

Therefore, it is particularly important that all national and foreign seafarers, including cadets and trainees, working on Liberian vessels, both domestically and internationally, enjoy full trade union rights under the Convention. As the Committee of Experts and many speakers have noted, section 1.5(c)(i) and (ii) of the Decent Work Act of 2015 explicitly excludes from its scope of application officers, members of the crew and any other persons employed or in training on vessels. There is no justification under the Convention for the exclusion from coverage of this particularly vulnerable occupational category.

In practice, we have observed that over 60 per cent of Liberian-flagged vessels are covered by an ITF-approved collective bargaining agreement and we certainly hope to see even higher coverage in the future. Nevertheless, it is imperative that national law explicitly grants full trade union rights to seafarers.

Under the Maritime Labour Convention, 2006 (MLC, 2006), which Liberia ratified in 2006, the Government must satisfy itself that the provisions of its laws and regulations respect, in the context of the Convention, the fundamental rights to freedom of association and collective bargaining. It is also therefore in this regard that we encourage the Government of Liberia to act swiftly on this matter so as to bring its laws and regulations into conformity with both the Convention and the MLC, 2006.

The ITF would be happy to work with and assist the Government, the shipping registry and the national social partners to rapidly bring about this necessary labour law reform.

Observer, Public Services International (PSI) – I speak on behalf of PSI and its affiliate in Liberia, the National Health Workers' Union of Liberia (NAHWUL).

Despite the Committee on Freedom of Association's recommendations on Case No. 3202, of March 2018, the Government has still not recognized and certificated NAHWUL. Yet, in September 2019, the Government signed a Memorandum of Understanding with NAHWUL, the union they do not recognize. The Memorandum stated that the Ministry of Health would facilitate the granting of legal status to the union and that the union would be considered as a stakeholder when decisions were made affecting health workers. However, none of the items of the Memorandum have ever been respected by the Government.

For instance, during the COVID-19 pandemic, NAHWUL was left out of all planning, as was the case during the Ebola crisis. As a direct result, there was no personal protective equipment, training, medication or properly functioning laboratory, all of which exposed most of our colleagues and patients to health hazards that could have been avoided and prevented.

NAHWUL complained in this regard, which led the Government to issue serious threats against trade union members and the leadership. After finishing a study trip to Germany, in September 2020, NAHWUL's General Secretary, Mr George Poe Williams, facing imminent detention, was not able to go back to the country and has lived in exile ever since. As a result, among the many other obstacles and pains of his life in exile, Mr Williams has not seen his wife and four children since the autumn of 2019 – almost three years and during the pandemic.

I would like to bring the following facts to the attention of this Committee.

By 16 December 2021, a bill to amend the Decent Work Act of 2015 was introduced on the floor of the lower house of the Liberian Parliament, once again ignoring unionization in the public sector. Meanwhile, on 28 February 2022 when the Decent Work Act was being discussed in the Senate, the Senate Judiciary Committee Chairperson, who is also a member of the Committee on Labour denied public sector workers who were invited to the hearing the opportunity to speak, instructing them to go to the court to obtain amendments.

Yet, on 20 May 2022, two weeks ago, Judge Dunbar of the Sixth Judicial Circuit, Civil Law Court B, passed a ruling making it illegal for public sector workers to form unions, citing the Decent Work Act of 2015. We regret that the Government has not made any comments about this development as if it is trying to hide the facts from this discussion.

In addition, the Government is currently in "social dialogue"; this is an irony, with a small group of health workers negotiating under the name of South-Eastern Health Workers' Network. They have requested and subsequently agreed on a salary adjustment. A thing that NAHWUL has called for, for many, many years without obtaining any results.

We deplore these practices; we demand the Government to state before this Committee that it will refrain from harassing and threatening trade unionists, or interfering with trade union affairs, and that it will allow the safe return of Mr Williams to the country. And that it will take the necessary steps in law and practice for the recognition certification of NAHWUL and public sector unions in general.

Government representative – The Government would like to thank the Employer and Worker representatives and all who made comments. The Government takes note and is committed to ensure that all workers within Liberia are covered under the Convention. The Government acknowledges that it is a long journey that would involve the judiciary and the legislature. It has taken a step in getting that done.

The Government would like to note that all workers within the private sector are fully covered by the Decent Work Act of 2015 and have the right to unionize. The Government cannot validate cases mentioned by the Worker representative as it has just been brought to our attention. The Government acknowledged that the Decent Work Act of 2015 excluded maritime workers and public workers but is making efforts to ensure that the law is harmonized.

It is a known fact that Liberia has suffered 15 years of civil conflict and the Decent Work Act of 2015 is a recognition of the ILO Decent Work Agenda. Under post-war economic status, coupled with the pandemic, the Government is making progress in harmonizing the labour law.

Aside from the Decent Work Act of 2015, the Constitution of Liberia has given everyone the right to form associations. Currently, the Liberia Labour Congress has a leadership crisis that has caused the delegation to arrive late at this Conference. The Government has to await a court ruling to complete the delegation. The Government remains independent to attend a conference of the Liberia Labour Congress and is willing to work with any of the parties.

Employer members – We have listened very carefully to the positions of the groups and participants, and we share the views on the gravity of the situation expressed by the majority in this room. In this light, the Employers' group urge Liberia to uphold its obligations under the Convention and in particular it should provide full information on the dissolution of trade unions or a trade union and the arrest of trade union leaders.

It should provide additional information as to other pending allegations raised by NAHWUL and inform on specific steps taken to ensure that this organization can be granted full legal recognition without delay.

It should also provide information on how section 45.6 of the Decent Work Act ensures the right to establish organizations to defend their occupational interests is fully recognized to foreign workers both in law and practice.

It should provide information on legal provisions that ensure that public sector workers enjoy the rights and guarantees set out in the Convention, including provisions drafted or envisaged for enactment and the time frame expected for such an enactment.

Finally, it should provide detailed information as to how the rights enshrined in the Convention will ensure maritime workers are protected in law and practice.

Worker members – We note the comments of the Government and thank all those who took the floor to throw more light on the situation in Liberia with respect to the application of the Convention. We deplore the absence of the Workers' delegates from Liberia to the International Labour Conference.

In light of the comments made by some Employers' delegates during the discussion, the Worker members are bound to recall particularly the long-standing and consistent case law of the Committee on Freedom of Association and the comments of the Committee of Experts which confirm that the right to strike is an essential component of the right to freedom of association.

We have raised the serious violations with respect to the Government's application of the Convention in law and practice. The Government must take urgent steps, in full consultation with the social partners, to bring its law and practice into line with the Convention. In particular, we call on the Government to:

- ensure that all workers are able to exercise their labour rights under the Convention in an environment of respect for civil liberties, including freedom of association, freedom of expression, peaceful assembly and protest without interference and fear for their personal safety and physical integrity;
- ensure that trade union leaders and members are not jailed for engaging in trade union activities and that threats against trade union leaders are fully investigated and the perpetrators duly punished;
- put in place measures including dissuasive sanctions to ensure that employers will not be able to dissolve trade unions and that trade unions can only be dissolved by a judicial authority and only as a last resort for serious violations of law;
- register the National Health Workers' Union of Liberia (NAHWUL) as a trade union organization without further delay and provide additional information to the Committee of Experts on any pending allegations as well as information to the Committee on Freedom of Association concerning Case No. 3202;
- review the Decent Work Act and any other related legislation to ensure that all workers, with the sole possible exception of the police and the armed forces, are able to exercise the right to form or join a trade union of their choice; in particular, ensure that public sector workers and civil servants enjoy the rights and guarantees set out in the Convention;
- provide information to the Committee of Experts on provisions drafted or envisaged for enactment and the time frame expected for such an enactment;
- review the law to ensure that officers, members of the crew and any other person employed or in training on vessels are able to exercise their rights under the Convention, and provide information to the Committee of Experts on how the rights are ensured to maritime workers, including trainees;

- review section 45.6 of the Decent Work Act to ensure that the right to establish organizations to defend their occupational interests is fully recognized for foreign workers, both in law and practice;
- review the Decent Work Act to ensure that a designation of essential services is done in line with the Convention;
- provide information to the Committee of Experts on measures taken and results achieved to provide adequate remedies to workers who are victims of anti-union discrimination, especially measures for reinstatement.

The Government must provide information to the Committee of Experts by 1 September 2022 on all the measures being taken to comply with its obligations under the Convention, and any developments in this regard.

We call on the Government of Liberia to avail itself of an ILO advisory mission to ensure that it brings its law and practice into compliance with the Convention.

Conclusions of the Committee

The Committee took note of the oral information provided by the Government representative and the discussion that followed. The Committee regretted that the Government did not provide any written information.

Taking into account the discussion, the Committee urges the Government, in consultation with the social partners, to:

- **ensure that all workers are able to exercise their labour rights under the Convention in an environment of respect for civil liberties, including freedom of association, freedom of expression, peaceful assembly and protest without interference and fear for their personal safety and bodily integrity;**
- **ensure that trade union leaders and members are not jailed for engaging in trade union activities and that threats against trade union leaders for their activities are fully investigated and the perpetrators duly punished;**
- **enact measures, including dissuasive sanctions, to ensure that trade unions can only be dissolved by a judicial authority, only as a last resort for serious violations of law;**
- **resolve the registration of the National Health Workers' Union of Liberia (NAHWUL) as a trade union organization without further delay and provide additional information on any pending allegations;**
- **review the Decent Work Act and any other related legislation to ensure that all workers, including foreign workers, are able to exercise the right to form or join a trade union of their choice; and**
- **ensure that public sector workers enjoy the protection of the freedom of association rights under the Convention.**

The Committee invites the Government to avail itself of technical assistance from the Office.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 providing information on the application of the Convention in law and practice, in consultation with the social partners.

Government representative – The Government of Liberia takes note of the Committee's conclusions and would like to assure the Committee that its report will be submitted to the Committee of Experts as scheduled.

The Government would also like to assure the Committee that it will continue to ensure that no trade union or association leaders and members are jailed for engaging in union or association activities. If there is any case of such that has not been brought to our attention, we ask that it be done for speedy investigation.

The Government acknowledges that there is a typical issue of conflict of law between the Convention, the Civil Service Act, and the Decent Work Act of 2015. These three instruments carry equal strength of statute. In all jurisdictions where a conflict of law continues, either the court of law or the legislature can resolve it. In the case of Liberia, no party submitted this issue before a court of competent jurisdiction through a petition for judiciary judgment. Also, neither has any party petitioned the national legislature for an amendment to any of the reference laws. However, what is regularly noted is an internal fight for leadership within the Liberia Labour Congress. What is alarming and unacceptable is that conflicting factions always try to align with the Government of Liberia in or with outside influence as taking sides in the leadership struggle.

The rule of law is the only mechanism through which this issue should and can be resolved. Therefore, the Committee resolution to register the National Health Workers' Union of Liberia (NAHWUL) as a trade union organization ignoring judicial proceedings is prejudicial to the working of the National Tripartite Council. Now, the Government of Liberia requests ILO assistance to play a further role in the governance for national management in social cohesion of the Liberia Labour Congress.

As a Government, we will support these reforms but not directly as to avoid being seen as compromising the independence of the Liberia Labour Congress. Gratitude is extended to the Committee for its continual understanding and support.

Malawi (ratification: 1965)

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

Written information provided by the Government

(i) ***undertake, in cooperation with the organizations of workers and employers, an evaluation of the existing legal framework on sexual harassment and, in particular, to amend the definition of sexual harassment in section 6(1) of the Gender Equality Act of 2013 to explicitly include hostile work environment harassment;***

The Government of Malawi notes the recommendation to amend section 6(1) of the Gender Equality Act (Cap 25:06) to explicitly include hostile work environment harassment. The Government will consult the relevant stakeholders to consider the recommendation.

(ii) ***identify the initiatives taken to date to prevent and address sexual harassment in the public and private sectors, and the procedures and remedies available to victims, with a view to identifying existing gaps and risk factors and designing effective interventions to strengthen the protection of women workers against sexual harassment;***

The Malawi Human Rights Commission (MHRC) is the public institution charged with the implementation of the Gender Equality Act. To this end, the MHRC has been undertaking a

number of activities as part of the implementation of the Act. The work undertaken so far includes:

(a) Development of a model sexual harassment policy and its popularization to promote widespread adoption or adaption as the case may be, both by public and private establishments.

(b) Implementation of a situation analysis on sexual harassment in the formal and informal sectors.

(c) Development of Sexual Harassment Guidelines for use as establishments work on the development of their policies which take longer to finalize, especially in the public sector.

(d) Support for 21 institutions of higher learning to develop sexual harassment guidelines between 2021 and 2022.

(e) Capacity-building training courses for both public and private sector establishments on prevention and tackling sexual violence and harassment. Over 20 institutions benefited from such training courses between May and November 2021.

(f) Monitoring of compliance with the Gender Equality Act, in particular sections 6 and 7, by conducting an audit of sexual harassment policies in 60 institutions between November 2021 and April 2022. Advice was provided to institutions that did not have a policy in place.

(g) Investigation of 23 cases of sexual violence and harassment recorded between January 2021 and April 2022. Of these, 12 have since been concluded.

The Department of Human Resource Management and Development (DHRMD), for its part, is responsible for the implementation of the Gender Equality Act within the public service. The Department has a dedicated Gender Unit that conducts sensitization on an ongoing basis as part of its normal programmes.

Regarding the court cases in England concerning Malawi's tea sector, the Government has not been able to get sufficient facts to assist in addressing the alleged violation in the reported claims. Efforts to identify the victims to help with information that could assist in devising well-informed interventions by the Government have so far been unsuccessful. The claims against Eastern Produce Malawi Limited and its parent company based in the United Kingdom, Camellia, were settled in an out-of-court settlement without admission of liability on their part. Being a confidential settlement which was not disclosed to the Government, the Government has requested the British High Commission in Malawi and Eastern Produce Malawi Limited to assist in gathering information regarding the claims. The claim against PGI, the parent company of Lujeri Tea Estates Limited, is continuing only against the parent company. Hopefully, this case will provide more information during the full trial. The foregoing notwithstanding, the Government will continue to enforce the Gender Equality Act, including in the tea sector which happens to be one of the leading sectors in tackling gender-based violence and sexual harassment. Tea was the first sector in Malawi to adopt a sector-wide sexual harassment policy entitled "Tea Association of Malawi Gender Equality, Harassment and Discrimination Policy." The sector-wide policy was adopted in 2017 and all tea companies in Malawi are implementing the policy. All managers of the tea companies and the leadership of the Plantation and Agricultural Workers Union (PAWU), as well as the rank-and-file members of PAWU, have been trained on gender-based violence and sexual harassment.

Some major developments and activities that have been undertaken since the adoption of the tea sectoral policy which was launched during the International Women's Day commemoration held at Thyolo Sports Club in March 2017 include the following:

(i) Establishment of the office of a Gender Equality Coordinator at the Tea Association of Malawi Limited (TAML) Secretariat. The Coordinator provides technical leadership and support to the TAML and its members regarding the implementation of the TAML gender policy and gender mainstreaming in the tea industry.

(ii) Translation of the policy and its guidelines into the local language in 2019 and printing and distribution of copies to all tea estates for greater access by the majority of estate employees, who have low levels of education.

(iii) Establishment of a Women's Welfare Committee (WWC) in every estate, which acts as a safe space where women discuss issues affecting them. Issues requiring management intervention are subsequently referred to the management of the respective estates for action.

(iv) Establishment of a Gender, Harassment and Discrimination Committee (GHDC) in every tea estate. The GHDCs are mandated to receive harassment and discrimination complaints, deliberate on them and recommend to estates' disciplinary committees the disciplinary actions to be undertaken.

(v) Formulation of sectoral Gender Equality, Harassment and Discrimination guidelines which elaborate the complaint handling procedure. In addition, the guidelines stipulate what estates ought to do to effectively promote gender equality and equity and address harassment and discrimination in their workplaces.

(vi) Implementation of awareness-raising campaigns focusing specifically on sexual harassment in employment and occupation on an ongoing basis in line with the sector's policy.

(vii) Training on gender equality and sexual harassment for all employees in the tea industry, supported by different partners, including IDH–The Sustainable Trade Initiative, World University Service of Canada (WUSC) and the ILO.

(viii) Women leadership training: The aim is to equip women with leadership skills as well as mentorship skills so that they can mentor fellow aspiring women leaders and help their employers identify women eligible for promotion to leadership roles in their respective workplaces.

(ix) "Gender Learning and Sustainability" symposium, which has become an annual event since 2019. The aim of the activity is to foster dialogue amongst the TAML, its partners and the Government in order to assess progress made and reassert priorities for institutionalization of gender equality across the tea industry.

(x) Annual sector-level commemoration of International Women's Day as part of raising awareness on gender equality and sexual harassment. The commemoration brings together all players in the tea sector and the Government. The TAML's industry-wide GHD policy provides minimum standards for the sector, and individual estates are always urged to do better.

As a result, at the individual estate level, the following measures are in place:

(a) Availability of a variety of grievance-reporting modes, which include use of anonymous complaint boxes, hotline (in the case of Eastern Produce), email addresses, women safeguarding supervisors, workers' rights adviser, Women's Welfare Committee, Gender, Harassment and Discrimination Committee, line managers, any member of the Human Resources department and general managers. Each estate has an elaborate grievance-handling mechanism that ensures confidentiality (Lujeri has engaged an external

international consulting firm to support them with the grievance-handling process). Eastern Produce (EPM) has created a Gender & Welfare Office. In this regard, a gender expert was recruited in 2021 to promote employee welfare and gender equality in all EPM operations.

(b) Inclusion of a briefing on the policy as part of the induction programme for all newly recruited employees.

(c) Regular participation of estate management and employees in gender equality events such as "16 days of Gender Activism". Tea is actually one of Malawi's leading sectors in addressing workplace violence and sexual harassment.

The report of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) purporting widespread gender-based violence and sexual harassment in the tea sector has, therefore, come as a big surprise, especially to the tea sector itself. The Government categorically disputes the IUF's inference that "... the fact that the workers' complaint was made public and dealt with through a law firm based in the United Kingdom indicates that the established procedures in Malawi at the local and national levels are inadequate for victims of gender-based violence in the workplace who are seeking to achieve justice and to ensure an end to sexual harassment on tea estates". This is totally untrue and unfounded. In the first place, the complainants never made any attempt to report their complaint locally. Furthermore, the complaint was never made public, at least in Malawi.

Malawi has one of the most robust, open and independent justice systems. Malawi's constitutional court judges have won the 2020 Chatham House Prize in recognition of their "courage and independence in the defence of democracy". Countless cases of gender-based violence and harassment are reported to the authorities, notably the Malawi Human Rights Commission, Ministry of Gender, Ministry of Labour and Malawi Police Service, as well as to non-governmental human rights organizations, among others. Some have ended up in our courts. One recent high-profile case that was successfully prosecuted involved Mota Engil, an international construction company.

Everyone, including the IUF, knows why the tea-sector cases in Malawi are being heard in a court in the United Kingdom. The answer is simple: Leigh Day, which is prosecuting the case, is a UK-based law firm and our case is not the first for Leigh Day to prosecute outside the jurisdiction from which it arose. That is the character of the Leigh Day law firm. The details of the victims and the compensation paid to them are never disclosed, making it extremely difficult for governments to follow up. Regarding the IUF's report on the dismissal of 11 managers and supervisors for sexual harassment-related misconduct, the Government carried out an independent investigation and found a gross distortion of facts.

To begin with, no joint investigation of cases of sexual harassment was ever undertaken by the TAML and PAWU during the stated time or indeed at any time. No specific estate has been mentioned in the report but our investigation suspects it could be the Lujeri Tea Estate, where disciplinary hearings took place in April 2021 following the findings of a routine investigation undertaken by the company itself using an independent international firm, Ethical Trade Consultancy. Only two cases of sexual harassment were identified and properly dealt with within the complaint and the disciplinary frameworks of Lujeri and the laws of Malawi. Surprisingly, even PAWU has disowned the IUF report. The Government welcomes another delegation from the IUF to double-check their facts. We also welcome any credible and well-meaning organization, including the ILO, to come and independently verify the facts as reported by the IUF.

(iii) ***provide information on the results of the evaluation and the actions envisaged as a follow-up;***

The Government acknowledges that there is room for improvement in a number of areas. The Gender Equality Act and other gender-related national legal frameworks that predate the Violence and Harassment Convention, 2019 (No. 190), need to be reviewed to bring them in line with the Convention. I am pleased to report that, with financial support from the ILO, a local consultant is already on the ground to assess gaps in the legal framework as part of broader measures for tackling workplace gender-based violence and harassment more effectively. The Government is also desirous of ratifying Convention No. 190 and looks forward to ILO technical support, with the Organization's wealth of expertise and experience in this area. More information will be provided once the consultant has completed her work. The Government would like to assure the Committee that we will work closely with the social partners and other relevant bodies in dealing with this matter. We have in fact already started the collaboration as this report is the product of tripartite-plus consultations that took place on 11 May 2022.

(iv) ***increase the capacity of the competent authorities, including labour inspectors, to prevent, identify and address cases of sexual harassment in employment and occupation, including on tea plantations;***

The Malawi Human Rights Commission (MHRC) is strengthening its inspectorate unit through training. Training for labour inspectors in the Ministry is ongoing and the next training programme is scheduled to be conducted in June 2022, with technical support from the ILO. One of the items on the training programme is concerned with detecting and addressing cases of sexual violence and harassment. The tea sector has been purposely targeted.

(v) ***continue undertaking awareness-raising campaigns in collaboration with the social partners;***

As explained above, the MHRC, the Department of Human Resource Management and Development (DHRMD) and the Tea Association of Malawi Limited (TAML), as well as individual tea companies, have been conducting awareness campaigns. The Ministry will be joining together with the partners.

(vi) ***provide information on the adoption of the Sexual Harassment Workplace Policy pursuant to section 7 of the Gender Equality Act and its implementation;***

The MHRC, as per its mandate, reviewed draft policies of institutions submitted to the Commission for the purpose of checking consistency with the Gender Equality Act as a quality assurance measure. Ten draft policies were reviewed between November 2021 and April 2022. The institutions concerned include: the Ministry of Forestry and Natural Resources, Malawi Police Service, National Youth Council, Electricity Supply Corporation of Malawi Limited, Sunbird Tourism PLC, Old Mutual Limited (Malawi) and the DHRMD. The policy for DHRMD covers the entire civil service and was validated on 18 May 2022, after which it is due to be submitted to the Government (the Office of the President and Cabinet) for consideration by the end of 2022. The draft policy has accompanying guidelines to facilitate implementation of the policy.

(vii) ***consider amending section 6(1) of the Gender Equality Act to ensure that the term "reasonable person" in the definition of sexual harassment no longer refers to the harasser, but to an outside person.***

The Government of Malawi notes the recommendation to amend the definition of sexual harassment under section 6(1) of the Gender Equality Act (Cap 25:06). However, we would like

to draw the Committee's attention to the principle of "reasonable person" in Malawian law. "Reasonable person" is a common law standard used as an objective test by courts in Malawi in both civil and criminal law. "Reasonable person" is appropriate for the reason that it offers an objective test that goes beyond the harasser. We look forward to further engagement with the Committee to elaborate on how the concept of "reasonable person" is interpreted under Malawian law.

In conclusion, the Government wishes to register its disappointment with the whole approach of the IUF on this matter for the deliberate distortion of facts to paint a grim picture of the situation in our tea sector when that is not the case. We are further disappointed that the IUF never bothered to share its report with the Malawian Government. It was left to the ILO to share its copy of the report on 11 May 2021, a day after the stakeholders' consultation meeting. We suggest that in future the ILO should be strict in ensuring that such reports are furnished in good time to all the parties concerned.

Discussion by the Committee

Government representative, Minister of Labour – The Government of Malawi notes the observations of the Committee of Experts and wishes to respond as follows. On the recommendation to amend the definition of sexual harassment, under section 6(1) of the Gender Equality Act (GEA), we find the use of the term "reasonable person" in the definition appropriate for the reason that it offers an objective test that goes beyond the harasser; that is to say, looking at the circumstantial evidence surrounding the harasser's conduct. However, we welcome further engagement with the Committee to elaborate on how "reasonable person" is interpreted under Malawian law in order to reach a common understanding.

We do not rule out an amendment to this section to clarify the law so as not to leave anyone behind, or not to leave any doubt.

The Government of Malawi also notes the recommendation to amend the same section, to explicitly include "hostile work environment harassment". The Government will consult relevant stakeholders to consider that recommendation.

The Government of Malawi takes gender-based violence and harassment in the workplace very seriously, that is why section 7 of the GEA requires employers to come up with workplace policies for the elimination of sexual harassment in their workplaces. There is also a dedicated public institution, the Malawi Human Rights Commission (MHRC), that is charged with the overall responsibility of implementing the Act. Among other functions, the MHRC promotes, protects and enforces the GEA in Malawi. It also educates the masses, including workers and employers, on gender-based violence and harassment. The Commission has also developed a model sexual harassment workplace policy and workplace sexual harassment guidelines, which it is popularizing for widespread adoption by enterprises.

There are also a number of civil society organizations working in the area of gender rights. These are organized under an umbrella body, the NGO Gender Coordination Network, and are very active in championing gender rights. They work very closely with relevant government institutions including the Ministry of Gender, the Ministry of Labour, the MHRC itself, the Malawi Congress of Trade Unions (MCTU) and its affiliates and the Malawi Police Service.

Regarding the report of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) on cases of gender-based violence and harassment in the tea sector in Malawi, it should be noted that the tea sector, under the Tea Association of Malawi Limited (TAML), has a sexual harassment policy in place which was

adopted in 2017. Since then, a lot of awareness-raising across all levels of employees, ranging from top management down to estate labourers at the lowest level, has been conducted and is continuing. Individual tea estates have their own workplace programmes. Some estates have even engaged gender specialists to support their enterprise-based gender programmes.

In short, addressing sexual harassment in the tea sector has been institutionalized. You may wish to know that from time to time the Ministry of Labour conducts inspections to these estates and I have personally been on several of them and one of the things that I have noted was the fact that even community members were aware of the systems and structures that have been put in place by these tea companies to address gender-based violence and harassment issues.

An independent investigation was conducted by the Ministry of Labour, for which I am the Minister responsible, to verify the IUF report. To our disappointment, the IUF report has been found to be a gross exaggeration and distortion of the situation on the ground. This case was escalated without any discussion whatsoever at national level and neither were the tripartite players engaged.

In the first place, the Plantation and Agriculture Workers Union (PAWU), which is reported to have conducted joint investigations with the TAML that purportedly led to the dismissal of 11 managers and supervisors on sexual harassment-related misconduct, denied ever having participated in such an exercise. PAWU also denied knowledge of the purported dismissals. The Ministry's investigations only established two cases of sexual harassment on one tea estate. These two cases came to light following investigations by an independent international firm, Ethical Trade Consultancy, that the tea estate hired to assist in investigating cases of misconduct by estate managers and workers.

Despite several requests, the Malawi Government has not been furnished with any details of the report or the reported sexual harassment court cases in the United Kingdom. As such, therefore, we are unable to comment much on the same or use information therefrom to address the problem. We understand that there was a confidential out-of-court settlement to the tune of £3 million but, as the Government, we are not aware of how much of the settlement money went to the purported victims.

We are also keen to find out who the victims are, because in Malawi, once the court orders anonymity, every party to the proceeding would be bound by that order. In that regard, therefore, not even the media can risk contempt-of-court charges. However, information is needed to assist in addressing any gaps that may exist, whether in the law or in procedures.

The inference by the IUF that the established procedures in Malawi at the local and national levels are inadequate for victims of gender-based violence in the workplace is blatantly wrong and quite unfortunate. The fact of the matter is that the UK-based law firm in the case prefers prosecuting cases in the United Kingdom for its own convenience. In the case of the Malawi tea sector, the court cases are proceeding only against UK-based parent companies of the two Malawi tea companies, which successfully submitted a challenge to be excluded on the basis that Malawi has competent courts and a world-renowned judicial system with massive abilities to successfully try these cases locally. The claimants' allegations that there is a real risk of lack of justice in Malawi through the courts are therefore both incorrect and unfounded.

There are numerous cases of sexual harassment being handled by our courts at the moment and some that were concluded, which may attest to this point. One recent famous case involved an international company, whose judgment can be accessed online, and another

one involving the State against the Inspector-General of Police and others. In both cases, judgment was delivered in favour of the women. It is therefore on this basis that the Malawi Government predicts that the court in the United Kingdom will dismiss the claim on the basis that the United Kingdom is not the proper forum for bringing sexual harassment claims that allegedly happened in Malawi. We therefore strongly believe that there is no risk of injustice if the cases were to be heard in Malawi.

Individual tea estates have a number of reporting channels for sexual harassment cases, including committees specifically established for this purpose, with the awareness-raising that has been going on since 2017 when the tea sector adopted a sector-wide sexual harassment policy. Sexual harassment cases are being reported to the estate authorities and dealt with through internal procedures of the estate and, where appropriate, escalated to the courts. The cases remain few, though, and are not at the scale portrayed by the IUF in its report. Had it not been for the exaggeration and distortion, it is my considered opinion that Malawi did not at all deserve to be double footnoted.

The foregoing notwithstanding, the Government of Malawi welcomes an ILO mission and any credible institution to come and conduct independent investigations to establish the true extent of gender-based violence and sexual harassment in Malawi's tea sector. We promise to cooperate fully with anyone. The IUF is also welcome to make another visit for the purpose of double-checking facts on the ground.

In conclusion, the Government of Malawi will continue to enforce the GEA. The Government also acknowledges that there is room to improve measures for preventing gender-based violence and harassment in the workplaces, protecting the victims and addressing a whole range of issues on violence and harassment in the workplace. To this end, the Government of Malawi undertakes to continue working very closely with the social partners. The Government recognizes that the GEA may require reviewing in light of the Violence and Harassment Convention, 2019 (No. 190), which the Act predates. The Government is further seriously considering initiating the process of ratifying Convention No. 190 in order to enhance measures for preventing and addressing violence and harassment in the workplace. In this regard, therefore, the Government would appreciate the ILO's technical support.

Worker members – This is the first time that our Committee is discussing the application of Convention No. 111 with respect to Malawi. Malawi ratified the Convention in 1965. The gaps in the existing legislation, the systematic and serious violation in practice and the harmful impact on victims, including the irreparable damage caused by sexual violence and discrimination, justifies the fact that this case is being discussed as a double-footnoted case. In addition, the institutional weaknesses identified in the report clearly demonstrate the failure of the Government of Malawi to comply with the Convention. Malawi's Constitution prohibits discrimination against women on the basis of gender. In 2013, the GEA was enacted to prohibit and provide redress for sex discrimination, harmful practices and sexual harassment. However, as the report shows, women workers in Malawi are exposed at work to rape, sexual assault, sexual harassment, coercion and discrimination by male workers. We deplore the systematic sexual violence and harassment in Malawi, including the rape, assault and discrimination suffered by women workers on tea and macadamia nut plantations. In 2019, a case was filed in a London court on behalf of 36 Malawian women who had suffered gender-based violence and harassment, including rape and sexual harassment while working on tea estates in the Mulanje and Thyolo districts in Malawi. In 2021, a similar case was filed, also in London, on behalf of 31 Malawian women who had been subjected to sexual harassment, sexual assault, coerced sexual relations and rape, spanning a period from 2014 to 2019, while

working on tea plantations and macadamia nut orchards in southern Malawi. The continued and systematic nature of these violations reveal deep institutional weaknesses in holding perpetrators to account, including by prosecutors, courts, labour inspectors, employers in the private and public sectors, and victim protection authorities. According to reports, the companies claim that they have adopted sexual harassment policies that were accessible to all employees, and frequently reviewed. If any such policies exist in practice, the hostile and intimidating workplace environment prevented the majority of the victims from reporting the abuse for fear of losing their jobs or suffering retaliation from their abusers.

A similar challenge appeared to exist with the judiciary. In one case in 2021, the Malawi courts ruled in favour of an employee who had been sexually harassed. However, these are few and far between. It is clear that women in general face challenges and obstacles accessing the courts in Malawi. For example, according to the statistics cited by a judge of the High Court of Malawi, only 6.4 per cent of cases (358 out of 5,553) filed in the Industrial Relations Court between 2012 and 2015 were filed by women applicants.

According to Article 8 of the Universal Declaration of Human Rights, referred to in the Preamble of the Convention, everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him [or her] by the Constitution or by law. We see an urgent need to review the extent to which women access the courts in Malawi, in sexual harassment cases in particular.

Let me now cover anti-sexual harassment laws, and specifically the definition of sexual harassment contained in section 6(1) of the GEA of 2013. This definition says that sexual harassment is unwanted conduct of a sexual nature in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated. Already in 2019, the Committee of Experts requested the Government to amend this definition to ensure that the term "reasonable person" in the definition of sexual harassment no longer refers to the harasser but to an outside person. Further, the Committee of Experts recommended that the definition of "sexual harassment" should explicitly include hostile work environment harassment. The Government must implement the Committee of Experts' observations without further delay. The incomplete definition in the GEA is a major setback in fighting gender-based violence and limits women's access to justice in cases of sexual harassment. Furthermore, we know that section 7 of the GEA obliges the Government to ensure that employers have developed and are implementing appropriate policies and procedures aimed at eliminating sexual harassment in the workplace, which shall entitle all persons who have been subjected to sexual harassment at work to raise a grievance about its occurrence and be guaranteed that appropriate disciplinary action shall be taken against perpetrators. This section also calls for a designated person, outside of line management, who could be approached by a person who has been subjected to sexual harassment for confidential advice and counselling. As the current court case litigated in the United Kingdom demonstrates, immediate action is needed to ensure that employers comply with the requirements enshrined in section 7 of the GEA. At the same time, the Government should immediately increase the capacity of labour inspectors to prevent, identify and address cases of sexual harassment in employment and occupation. In doing so, the Government should ensure that labour inspectors are gender-responsive, recognizing that women are disproportionately exposed to discrimination and violence at work. This can be achieved through the recruitment of more women labour inspectors and by introducing gender equality indicators for inspection. Businesses must themselves take up their obligations to respect labour and human rights at the workplace seriously.

Sexual harassment is a violation of the fundamental human right to non-discrimination. The Government of Malawi has failed to comply with the prohibition of discrimination in employment and occupation, including sexual harassment, contained in Convention No. 111. The Committee of Experts has concrete and practical requests for the Government of Malawi. The Government must take immediate and practical measures in line with these comments to ensure and implement a zero-tolerance policy towards gender-based violence, including sexual harassment. We welcome the intentions announced by the Government in the additionally provided information – that the GEA and other gender-related national legal frameworks that predate Convention No. 190 need to be reviewed to bring them into line with this Convention, including the desire to ratify Convention No. 190.

Employer members – This case involves the examination of the application in law and practice by Malawi of Convention No. 111. This is a fundamental Convention which Malawi ratified in 1965. The case is double footnoted. It is being examined by this Committee for the first time, although the Committee of Experts has previously made two observations, in 2019 and 2020.

The basis for the latest observation and the case coming before this Committee is mainly the allegations by the IUF that there is widespread sexual violence in the tea industry in Malawi and that the local legal framework is inadequate to address it and provide protection to female workers, as court action was initiated in the United Kingdom against Malawian companies and their associated companies in the United Kingdom.

The Committee of Experts noted these allegations from the union with serious concern and called on the Government to, among other things, conduct a gap analysis of the legal framework, identify initiatives taken to eliminate sexual harassment, provide information on the results of the evaluation, improve the capacity of competent authorities to address sexual harassment, continue with awareness-raising campaigns, provide information on the adoption of the sexual harassment and workplace policy in line with section 7 of the GEA, consider amendments to section 6(1) of the GEA to ensure that the definition of "reasonable person" goes beyond the harasser, as well as broaden the definition of "sexual harassment" to explicitly include hostile work environment harassment.

We thank the Government for the comprehensive information provided on 16 May 2022, which was also elaborated on by the representative of the Government of Malawi here today. This relevant and up-to-date information helps the Committee in consideration of the case.

We note that the Government disputes the allegations made by the IUF and that the Government has made efforts to establish the details of these allegations. We wonder, however, whether the Government has engaged or not the most representative employers' organization in the country, the Employers' Consultative Association of Malawi (ECAM), in this regard.

The Government has highlighted a number of initiatives that are being undertaken by the Malawi Human Rights Commission (MHRC), the Department of Human Resource Management and Development (DHRMD), and employers in the tea plantations. These include, among others, assistance to public and private entities with their workplace harassment policies, awareness campaigns, targeted training for management and general staff in the tea plantations, and inclusion of sexual harassment policies as part of induction programmes for new staff, as well as consultation with social partners to consider amendments to the GEA, especially section 6.

We also note that the ILO is already providing financial and technical assistance to Malawi, which has enabled work to be undertaken to analyse any gaps in the national legal framework with a view to possibly ratifying Convention No. 190. We further note that the Government has also requested ILO technical assistance in respect of the Committee of Experts' recommendation to amend the definition of "reasonable person" to extend it beyond the harasser. We trust this assistance and engagement at the national level will lead to the harmonization of Malawi's legislation with international standards.

The Employer members accordingly encourage the Government to continue addressing the legal issues with technical assistance from the ILO as far as necessary and to consult with its social partners. The Government is also encouraged to keep the Office informed of progress in this regard.

Worker member, Malawi – The Malawi Congress of Trade Unions (MCTU), which is the most representative organization of workers in Malawi, has noted the basis of the case relating to findings of the IUF report on issues of sexual harassment prevalent in the tea sector and possibly in other sectors in Malawi. We have also taken note of the attempt by the Committee of Experts to raise issues as regards gaps in our laws in order to address challenges of sexual harassment in the tea sector and possibly other sectors too.

The MCTU could have appreciated it if this case had also been discussed at a national level before it was escalated to this level. However, we acknowledge the position taken by the Malawian Government in response to the issues raised in the findings of the IUF report and the identified legislative gaps. Our prayer in this regard is that the Government of Malawi should endeavour to mobilize the tripartite partners, including our employer counterparts, to find common ground and take bold decisions to find lasting solutions to these emerging issues. It is true that this situation is in conflict with Convention No. 111 and the Safety and Health in Agriculture Convention, 2001 (No. 184).

We draw our strength from the guidelines provided by Convention No. 190 which would guide in crafting favourable legislation to tackle the challenge of violence and sexual harassment in the workplace. Therefore, we cannot bury our heads to reality and raise procedural and technical issues instead of taking bold steps towards ratification and domestication of Convention No. 190. We are confident that the ratification and domestication of Convention No. 190 will comprehensively address the identified technical misunderstandings in our legislation and align our legislation to international standards.

In this light, we use this opportunity as a workers' organization to request support from the ILO towards the ratification and domestication process of Convention No. 190 as a starting point and perhaps undertake more research and scale up awareness measures in this regard.

Employer member, Malawi – The Employers' Consultative Association of Malawi (ECAM), as the national employers' representative body, is involved through its affiliate, the Tea Association of Malawi Limited (TAML), in implementing initiatives in the tea industry to promote a decent and safe work environment for all workers, including women. ECAM has noted the IUF report about cases of gender-based violence and harassment in the tea sector in Malawi and wishes to respond as follows.

At the international level, Malawi is a State party to several international human rights instruments, including those that are under the auspices of the ILO which deal with workers' rights. To this end, the Government of Malawi ratified Convention No. 111, which it takes seriously. At the national level, Malawi, among others, has enacted the following laws: the Constitution of the Republic, the GEA of 2013, the Employment Act and the Labour Relations

Act, which, among others, prohibit and criminalize discrimination and sexual harassment in the workplace and also provide statutory aggravated grievance-handling mechanisms. In the tea sector, the tea industry has over 60,000 employees at the peak period, comprising both permanent and seasonal employees, 30 per cent of whom are women. The industry is the second biggest formal employer after the Government.

The TAML is an affiliate of ECAM and it is the representative body for all employers and producers in the tea industry in Malawi.

The tea industry has a gender equality, harassment and discrimination policy in place, which came into force in 2017, and all members have adopted this. The policy and guidelines comply with the requirements of the GEA and provide efficient and effective grievance-handling mechanisms. All 60,000 employees in this sector have since been trained and oriented on the policy, including its grievance-handling mechanisms. The industry has established at estate level various working committees which include women's welfare committees and gender harassment and discrimination committees, which receive complaints, deliberate on them and recommend redress. The tea industry has continuing awareness-raising programmes for all employees at all levels.

ECAM and the TAML continue to work with different partners, including the ILO and IDH – The Sustainable Trade Initiative, to promote workers' rights including in relation to violence and harassment.

It has already been pointed out that the tea industry is inspected by the Government of Malawi through the Ministry of Labour. The latest inspection was done under the leadership of the Honourable Minister of Labour. For an industry with over 60,000 workers, if such cases exist, they remain few and not on a scale that has been portrayed by the IUF in its report. These are identified and sanctioned by laws.

In conclusion, ECAM denies the allegations of rampant sexual harassment in the tea industry. ECAM remains committed to improve measures for preventing gender-based violence and harassment, including adequate protection of victims. ECAM is also working with the investment climate reform facility to carry out a gap analysis that will provide evidence-based responses to challenges that exist at this point and would appreciate ILO technical support.

Lastly, ECAM recognizes the right of the IUF to report the matter through the ILO. It seriously notes with concern that it was not consulted or informed of the issues as a social partner at the national level prior to the report that was submitted to the ILO. Good faith entails that the social partners should be consulted at a national level.

Government member, France – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The candidate countries **North Macedonia** and **Albania**, and the European Free Trade Association countries **Iceland** and **Norway**, Members of the European Economic Area, align themselves with this statement.

The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights.

We actively promote the universal ratification and implementation of the fundamental international labour standards. We support the ILO in its indispensable role to develop, promote and supervise the application of ratified international labour standards and of fundamental Conventions in particular.

The principle of equality and non-discrimination is a fundamental element of international human rights law. In the EU founding treaties and the constitutions of the EU Members, the prohibition of discrimination is a core principle. Convention No. 111 is the translation of this fundamental human right to the world of work, employment and occupation.

The EU and its Member States are long-term partners of Malawi. This partnership is further reinforced in the framework of our cooperation with the African Union (AU) and the Southern African Development Community (SADC), as well as in including Malawi among beneficiaries of the EU's "Everything but Arms" scheme for least developed countries.

We are gravely concerned about observations of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) describing the systemic problem of gender-based violence and harassment, including rape and sexual harassment, on tea plantations faced by women mainly employed under seasonal, and hence precarious, contracts. We are also alarmed by reports of women being subject to sexual harassment in agriculture and other sectors.

We take note of the efforts to investigate the cases of sexual harassment on tea plantations, but fully share the IUF's concern that the existing legal framework, as well as current initiatives, are not sufficient to eradicate gender-based violence and sexual harassment on tea plantations.

We urge the Government, in line with the Committee's report, to undertake, in cooperation with social partners, an evaluation of the existing legal framework on sexual harassment and, in particular, to amend the definition of "sexual harassment" in section 6(1) of the GEA of 2013 to explicitly include hostile work environment harassment, as well as increase the capacity of the competent authorities, including labour inspectors, to prevent, identify and address cases of sexual harassment in employment and occupation, including on tea plantations. In addition, the procedures and remedies available to victims should be improved significantly in order to achieve justice. Prevention measures and awareness-raising campaigns on sexual harassment in employment and occupation, made in collaboration with the social partners, should also be strengthened. Given the seriousness of the issue, we also encourage the Government of Malawi to avail itself of ILO technical cooperation.

The EU and its Member States stand ready upon request from the Malawian Government to provide technical assistance to address the matters raised by the IUF. Malawi remains one of the priority countries covered by the EU and UN Spotlight Initiative, a multi-year partnership to eliminate all forms of violence against women and girls launched in September 2017. Under this initiative, Malawi has already benefited from over US$28 million in funding focused on a comprehensive prevention strategy that addresses the structural gender-based violence issues and links to sexual and reproductive health and rights.

The EU and its Member States remain committed to our close cooperation and partnership with Malawi and look forward to continuing joint efforts with the Government and the ILO.

Government member, Mozambique – The Government of Mozambique would like to thank the representative of the Government of Malawi for the clarification provided regarding the issues raised by the Committee of Experts on the implementation of the Convention. The information delivered in this session demonstrates the respect that the Government of Malawi has for this Committee and its commitment to fully answering the questions raised. The Government of Mozambique congratulates the Government of Malawi for showing openness with regard to clarifying the scope of the concepts contained in the Malawian GEA and for

actions it has been taking to address sexual harassment in the workplace in general, and in the agricultural sector and the tea industry in particular. The Malawian Government is committed to working with its social partners to promote the protection of workers and recognizes that there is still room to improve its interventions in the prevention of violence and harassment in the workplace.

As a demonstration of this commitment, the Government of Malawi indicated that the ratification process for Convention No. 190 is under way. In this context, the Government of Mozambique recommends ILO technical assistance in creating the conditions for the effective implementation of this Convention after its ratification.

Employer member, Botswana – First of all, we must acknowledge the seriousness and importance of women, both at society level and especially in the workplace. Sexual harassment, indeed, does not have a place anywhere in our society. Every nation must strive for the protection of women and promotion of equality, equal opportunity and pay at work, and their safety, most importantly.

However, we have three observations on this case that we want to put across. First of all, the issue of dialogue, the need for technical assistance to establish, strengthen and promote the national structures, especially dialogue, to ensure that the tripartite structures are not a zero sum, must be emphasized here. Indeed, in the words of our Director-General, who is just ending his term of office, this is quite necessary.

The case in point demonstrates that there has not been any form of engagement or dialogue between the parties – which indeed cuts across the very fabric of our existence as the ILO.

Regarding the serious violations of the nature alleged by the workers' association, the Government and employers alike must unite to establish the veracity of such allegations and ensure that they are dealt with correctly and decisively.

We observe that there has been the enactment of the GEA in Malawi, which is in itself a huge milestone towards achieving the very equality we want to promote if there is to be any inadequacies that are to be found. The tripartite actors must be the first to collectively engage to make sure that improvements are realized in the national structures of Malawi.

Substantive issues – it appears from the brief we have received that substantive issues have not been satisfactorily approached in this matter. These substantive issues, if put forward openly, should form the basis for improvement on procedures, policies and laws to prevent future recurrences. Most importantly, it appears from the brief, that the Government has done a lot in terms of awareness campaigns, investigations and other interventions; this in itself is commendable and must be applauded. We must be seen both in actions and perception to be respectful of the sovereignty of the local, independent dispute resolution mechanisms. In this case, it shows that internally we have not exhausted all measures to get to the bottom of these issues.

Social dialogue must be encouraged for the parties concerned to engage meaningfully on the matter and in this case, it would appear that there has not been any meaningful engagement at sectoral and national levels. We must only escalate issues to an international stage when these local remedies are either non-existent, ineffective or wilfully ignored and in this case, I see little effort from the parties to follow the said national guidelines and structures. It is not convincing here that the local remedies have not been thoroughly put to the test, thoroughly exhausted and have dismally failed.

Lastly, we note and observe that this matter has been double footnoted by the Committee of Experts in the classification status. Rightly so, because of the serious nature of the violations of women's rights which we appreciate. But on the basis of what has been submitted so far on the floor in different forums, the classification has been a bit excessive. In this case, we firmly believe that this can be resolved at a national level and not at the stage where we are now.

Government member, Zimbabwe – The Government of Zimbabwe appreciates the interventions made by other delegates, especially the Workers' and Employers' groups. It also appreciates the information submitted by the Government of Malawi on the measures taken to address sexual harassment in general as requested by the Committee of Experts. Furthermore, it appreciates the measures that Malawi has been implementing to address sexual harassment against women in the tea industry with particular reference to policy guidelines and the establishment of committees mandated to deal with such issues, among other initiatives.

We note that tripartite constituents within the subregion had the opportunity to discuss the issues which form the subject of the discussion of today during the SADC employment and labour sector meeting held in March 2022. In the deliberations during the said SADC meeting, the ILO Decent Work Team in Pretoria offered to provide technical assistance through the engagement of the social partners in Malawi with a view to finding a solution to the issues in question at national level.

Accordingly, we submit that the social dialogue framework in Malawi assisted by the ILO Pretoria Decent Work Team should be given the opportunity to engage and establish an agreed framework in dealing with the issues under discussion.

Government member, United Kingdom of Great Britain and Northern Ireland – I am speaking on behalf of the **United Kingdom** and **Canada**. The United Kingdom and Canada strongly support the imperative to end sexual harassment and violence in all its forms in the workplace. We firmly stand for individual freedom, humanity and dignity, including the rights of women and girls. The United Kingdom and Canada welcome efforts in Malawi to fight sexual harassment and promote gender equality.

Effective safeguarding in both the public and private sectors are prerequisites for service delivery and economic development. We encourage all stakeholders in Malawi to intensify these efforts and encourage Malawi to request technical assistance from the ILO to further address these issues.

The United Kingdom and Canada are supportive of the existing work of the Malawi Human Rights Commission (MHRC) in this area and will look forward to engaging with the Government of Malawi, its institutions, social partners and the private sector through ILO mechanisms to address these concerns.

Government member, Zambia – The Government of Zambia notes the information supplied by the Government of Malawi relating to the various observations of the Committee of Experts. Zambia takes special notice of Malawi's legal system and understands that it is a common law jurisdiction and that the term "reasonable person" is an unequivocal and well-understood principle to infer the requirement for the application of an objective assessment or standard when used.

Zambia takes note of Malawi's commitment towards upholding tripartism to enhance protection of workers while acknowledging that there is scope to progressively and completely eradicate violence and harassment in the workplace. Zambia especially notes the information, with admiration, that the Government of Malawi has initiated the process of ratifying

Convention No. 190 and implores the ILO to provide Malawi with the support it desires in this regard.

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

We would also like to draw the attention of the Committee to the provisions of Article 3 of the Convention, which provides that promotion of the acceptance and observance of the national policy for eliminating 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 underline here is that this is a shared responsibility which requires discussion with the social partners.

We have had occasion to consider the information that has been provided by the Government of Malawi before the resumption of the sitting of this Committee as posted on its web page and the new information that has been presented by the Honourable Minister today. From the information supplied, we have taken note that, both through legislative and national policy instruments, Malawi has endeavoured to implement the Convention in both law and practice.

We also get the sense that the Government has serious intentions directed towards the full implementation of the Committee's comments. The Government indicates being amenable to initiating the requisite consultative engagements with regard to those recommendations requiring legislative reforms and is availing itself of the ILO's technical assistance in this respect and other areas of concern.

With the level of flexibility that has been demonstrated by the Government of Malawi, this delegation is of the considered view that technical assistance and support must be provided to the Government in order to address the areas of concern at a national level.

Worker member, Zimbabwe – I would want to highlight that this case was double footnoted, hence its automatic selection for discussion by this Committee. The double footnote alone speaks volumes regarding the fact that the Government of Malawi has not been sincere for years in taking measures to address issues of discrimination in employment and occupation and, in particular, matters to do with sexual harassment and gender-based violence against women.

Allow me to highlight some of the social, human and economic impacts of sexual harassment. When someone is sexually harassed, it leaves them feeling extremely threatened, humiliated and patronized. This also creates a threatening and intimidating work environment that makes the harassed person scared to even go back to work. The social and human costs of sexual harassment can be very high and, in the worst cases, women have committed suicide. Some families have divorced, creating problems for children. In all cases, it makes victims' lives difficult, and it is even worse if the matters have received publicity.

The society we live in tends to frown upon victims and at times victims are blamed or accused of having started it. Women who are harassed are always made to feel at fault, and if they complain they may be dismissed or lose promotion prospects at the workplace or even be forced to resign.

Sexual harassment also has a detrimental effect on the workplace itself. As it affects workers' morale, it makes them less efficient. Harassed people also suffer from mental stress and in countries like Malawi, where there is limited support or where there are weak or non-existent systems, it is quite crucial that the issue be looked at holistically.

If we are talking about decent work, then we must not allow acts of sexual violence in our society, as these deprive people of their dignity. Sexual violence and all forms of gender-based violence are a threat to equality, a threat to equal opportunities and a threat to safe, healthy, and productive working environments. We need to protect the dignity of our workers and stop creating threatening, hostile, insulting, humiliating or offensive situations in the workplaces.

Sexual harassment constitutes a violation of human rights and I call upon the Government of Malawi to go further than what they have done to implement the recommendations of the Committee of Experts and create an enabling environment for its workers and the people of Malawi. And it is quite crucial that they also set an example for the SADC region itself.

Although this discussion is centred only on Malawi, I would also want to buttress the importance of this discussion to be mentioned throughout the African region, where these problems of gender-based violence and non-compliance with the Conventions exist, and I hope the recommendations of this case will guide the entire SADC region and others beyond it.

Lastly, I call for the ratification of Convention No. 190 and its full implementation in the SADC region.

Worker member, Brazil – Sexual harassment and violence against women is a devastating blow to the personal and professional lives of millions of workers all over the world. It is unfathomable and reprehensible that the Government of Malawi is not taking seriously its obligations in that regard or the recommendations of the Committee on the matter.

For example, in a previous observation, the Committee asked the Government, among other things, to take the necessary steps to implement the strategy on equality and diversity in the public service management policy, and particularly to adopt legislative, executive and administrative measures to that end.

To that end, the Committee's report this year notes that the Government has stated, among other things, that the Public Service Act is being reviewed in light of the GEA, in collaboration with the Malawi Human Rights Commission (MHRC). In that regard, the Committee asked the Government to provide information on the outcome of the review of the relevant legislation on the public sector and the actions taken in this respect. In its written information of 16 May 2022, the Government reports that the MHRC has reviewed the draft policies of various institutions to check consistency with the GEA. One of policies reviewed was that of the Department of Human Resource Management and Development (DHRMD), which covers the entire public service, which was validated on 18 May 2022. However, the Government does not explain or provide information about the review of the aforementioned Public Service Act. The Government must explain this point and, if it has not already done so, it must amend the Public Service Act to conform with the standards established by the GEA. In addition, in its written information of 16 May 2022, the Government, referring to the recommendation from the Committee of Experts, states that it will amend the definition of harassment in section 6(1) of the 2013 GEA and consult with the relevant stakeholders to consider the recommendation. However, we recall that the Committee made this recommendation back in 2014, so more than seven years have passed since then without the Government taking any steps at all. This appears to demonstrate that the Government is not

taking either its international obligations or the recommendations of the Committee seriously. In these circumstances, how can we be expected to take the Government of Malawi's latest promises seriously.

On the other hand, it is a positive sign that the Government also wishes to ratify the Violence and Harassment Convention, 2011 (No. 190), and is looking forward to ILO technical support. We hope that this support will materialize and that, in consultation with the social partners, this Convention is ratified and implemented in practice. This too requires a firm and genuine commitment from the Government to allocate sufficient financial resources to ensure the effective implementation of Convention No. 190 in practice.

Observer, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) – In August 2021, the IUF, together with five national unions of Malawi which are affiliated to us – representing workers in the hotel, food, catering, tobacco, sugar, commercial, industrial and plantation sectors – jointly submitted an observation to the Committee of Experts bringing its attention to the fact that gender-based violence and harassment was endemic in tea plantations in Malawi. Women workers are the most affected and they are then unable to exercise their rights under the Convention.

This observation was grounded on information from union members, reports, research papers and the material made public by the local and international media proving that sexual harassment is widespread in the country's tea sector. There is massive evidence of the problem. I will quote just one more recent item.

On 27 May 2022, in an interview with the Malawi News Agency, the Head of Coordination and Capacity Building of the National AIDS Commission said that in tea estates issues of sexual abuse are high. "Reports indicate that trading sex for favours is one of the factors contributing to high transmission of HIV and AIDS in different workplaces", he added. Following this statement, a representative of the Tea Association of Malawi Limited (TAML) said: "It is unfortunate to note that sex for work is still rampant in the estates".

These are the voices from Malawi.

The situation described concerns not only tea workers; workers in agriculture and other sectors are also subject to gender-based discrimination, violence and harassment. But I have to make a clarification. We never produced a report. We have never produced a public report and it is wrong to consider our internal submission in this way; basically, workers decided to exercise the right in this case to bring the issue internally into the ILO system for discussion. But it was not an attempt to publicly accuse the Government of anything. It was an offer to start a dialogue.

We welcome the response of the Government, which explains in detail the efforts undertaken in the country to deal with the issues of discrimination. We appreciate the stated commitment of the Government to continue working in this direction. We believe that this is the right attitude for the country, whose economy is heavily dependent on the supply of tropical commodities for the international market.

Nevertheless, we remain convinced that these initiatives of the Government and the existing legal framework are not sufficient to eradicate the systemic problem of gender-based violence and sexual harassment on tea plantations.

We regret to note that the response provided by the Government contains a misunderstanding of the intentions of the unions and does not cover the critical areas where immediate action needs to be taken with a view to eliminating discrimination.

The women victims deserve justice and security. A person aggrieved because of sexual harassment need not exhaust internal procedures before civil proceedings can be instituted. The Government has an obligation to provide security for the victims and their families; but in this case the Government failed even to establish the names of victims.

Sexual harassment is a challenge for the tea sector and, in this context, we would like to repeat our request for independent research to better understand the causes of gender-based violence on tea plantations, including work arrangements and non-standard forms of work which make women vulnerable.

Finally, we believe a tripartite meeting is needed with assistance from the ILO to engage all parties, including companies and unions, in the development of sectoral policies for the elimination of gender-based violence and discrimination.

Government representative, Minister of Labour – We maintain our position that the phrase "reasonable person" refers to an objective bystander and not the harasser, as intimated in the report, and I want to explain a little bit regarding our position.

The considered view of the Government of Malawi is that, contrary to the Committee's observation, the term "reasonable person" is appropriate for the reason that it introduces an objective test in reference to an outsider, not the harasser. The term "reasonable person" is used by the courts in Malawi, in both criminal and civil cases. Reference to the harasser as proposed by the Committee would introduce a subjective test approach to proving the offence under section 6(1) of the GEA. The subjective test standard would require that the prosecution should prove the harasser's real state of mind at the time of the commission of the offence, while the objective test would look at the circumstantial evidence surrounding the harasser's conduct. Using the subjective test, a defendant can escape liability by simply showing that they did not intend to commit the offence. The objective test looks at the risk that the defendant took in pursuing their chosen step. It is thus easier to prosecute an accused person using the objective test than using the subjective test which the Committee prefers. Accordingly, sexual harassment can be decisively dealt with using the "reasonable person" test currently employed by section 6(1) of the GEA, as opposed to the harasser's standpoint as suggested by the Committee. We, however, welcome any engagement so that we come to a common understanding of the interpretation; that may include adding clarity to this section.

The two cases commenced in a foreign jurisdiction cannot be used as evidence to conclude that there is rampant and widespread sexual harassment in the tea industry. The claims remain as an allegation because, at the present time, these have not been proven, nor has a judgment been issued by the court in the United Kingdom. Hence, at present, the allegations in the cases remain unproven, and this cannot reasonably form the basis for concluding that consequently there is widespread sexual harassment in the industry.

Secondly, apart from the reference to the cases, no evidence or information on research or studies has been presented to the Government of Malawi, or its social partners, to substantiate the assertions being made by the IUF. We therefore maintain that the assertions by the IUF are a gross exaggeration, unfounded, incorrect, untrue and devoid of reality on the ground.

Regarding the judicial system, the courts in Malawi are internationally renowned and, in 2020, a total of 25 of our constitutional judges received the Chatham House Award. Such international recognition would not have been awarded if our judicial system was inadequate as alleged. Additionally, the conclusions claiming the inadequacy of our judicial system, which was manifestly bypassed in this case, should have been reached after efforts to get justice from

that system on the issue at hand had failed. Secondly, the low numbers of women litigants are not surprising considering that, in percentage terms, women employers are fewer than men. However this, in itself, does not prove that the judicial system in Malawi is inadequate.

Regarding the exhaustion of national dialogue platforms, we join the Malawi Congress of Trade Unions (MCTU) and the Employers' Consultative Association of Malawi (ECAM) in asserting that such allegations should have been discussed at national level with all the social partners because, as the Government, we believe in social dialogue. Only if we had an impasse or a stand-off, only then should the matters have been escalated to this Committee. The case in question is continuing, and the courts have not made yet a ruling.

The tea industry has over 60,000 employees. It is the second largest employer in Malawi. I cannot begin to explain the impact of the industry on our economy and my submission to your Committee today is that the Government of Malawi will do everything it can to ensure that the rights of all workers, especially women, are safeguarded.

Regarding information on the victims, the Government of Malawi does not have any information regarding the victims, but we only heard that about £3 million, if it is not dollars (US$), was awarded to the victims, but we do not know how much of that money was allocated to the purported victims, and so we cannot make any comment in that regard.

Employer members – The Employer members welcome the views shared by the delegates on this case. We note with concern, however, that the allegations which form the basis for today's discussion were never brought to the attention of the social partners, especially the Employers' Consultative Association of Malawi (ECAM). We believe this Committee should emphasize the importance of affording national structure and processes the opportunity to consider and remedy any allegations of breach of employees' rights.

From the information submitted by the Government and ECAM, the judicial system in Malawi clearly has the capacity to address any issues of alleged workplace harassment and violence. Accordingly, we invite the Government to continue addressing the compliance issues in close consultation with the most representative employers' and workers' organizations and, where necessary, with technical assistance from the ILO, and to keep the Office informed of progress achieved.

We also encourage the Government to continue all other efforts in Malawi to ensure the protection of men and women against sexual harassment and hostile work environments.

Worker members – We note the comments of the Government of Malawi. Applause cannot silence the Committee of Experts' observation and its classification of this case as a double-footnoted one. The Government of Malawi has an obligation to respect international labour standards, including with regard to the prohibition of discrimination in employment and occupation and sexual harassment, as contained in the Convention. The Worker members are very concerned that women workers in Malawi are not protected from rape, sexual assault, sexual harassment, coercion and discrimination in the workplace and that they do not enjoy effective access to remedies in Malawi. These horrific cases and their persistence indicate that the established procedures in Malawi at the local and national levels, while seeking to achieve justice and to ensure an end to sexual harassment on tea estates, are inadequate for victims of gender-based violence in the workplace. The situation calls for immediate action, and instead of being defensive, the Government of Malawi should cooperate. We call on the Government to undertake, in cooperation with the organizations of workers and employers, an evaluation of the existing legal framework on sexual harassment, and of the procedures and remedies available to victims, including a review of the extent to which women have access

to the courts in Malawi. Such a review should aim at identifying existing gaps and risk factors and should result in designing effective intervention to strengthen the protection of women workers against sexual harassment. Such an assessment should then contribute towards reforming the judiciary, if needed, and increase access to the courts for women so that they can assert their rights, and also their access to remedies, including compensation. We call on the Government to seek ILO assistance to increase the capacity of the competent authorities, including the labour inspectorate, and to prevent, identify and address cases of sexual harassment in employment and occupation in line with the Convention. We urge the Government to adopt a gender-responsive approach to labour inspection. We also call on the Government to take immediate and active measures in accordance with section 7 of the GEA to ensure that employers have developed and are implementing appropriate policies and procedures aimed at eliminating sexual harassment in the workplace, which shall entitle all persons who have been subjected to sexual harassment in the workplace to raise a grievance about its occurrence and have the guarantee that appropriate disciplinary action will be taken against perpetrators. The Government should also provide information on the adoption of the sexual harassment workplace policy pursuant to section 7 of the GEA and its implementation.

Lastly, the Government should continue undertaking awareness-raising campaigns in collaboration with the social partners and it should provide information on the results of the evaluation and the action envisaged as a follow-up. The Government of Malawi must implement in law and practice the concrete and practical comments of the Committee of Experts contained in the report.

Conclusions of the Committee

The Committee took note of the written and oral information provided by the Government representative and the discussion that followed.

The Committee noted with deep concern the trade unions' allegations of systematic sexual violence and harassment of women, including the rape, assault and discrimination suffered by women workers on tea and macadamia nut plantations.

Taking into account the discussion, the Committee urges the Government to take all necessary measures, in consultation with the social partners, to:

- **ensure existing legislation on sexual harassment is in line with the Convention;**
- **organize dedicated tripartite discussions on the issue of sexual harassment and violence in the workplace with a view to taking further practical and concrete measures to ensure the effective protection of workers in this regard in law and practice;**
- **ensure effective access to and the effective functioning of national judicial and non-judicial mechanisms that consider allegations of breach of workers' rights on grounds of discrimination, including sexual harassment and violence, and provide adequate legal remedies to victims;**
- **continue supporting existing initiatives undertaken by the Malawi Human Rights Commission and the Department of Human Resources Management and Development, including awareness-raising campaigns and the dissemination of the Sexual Harassment Workplace Policy and related guidelines to ensure that employers develop and implement effective workplace harassment policies.**

The Committee urges the Government to continue to avail itself of ILO technical assistance to ensure full compliance with the Convention.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 with information on the application of the Convention in law and practice, in consultation with the social partners.

Government representative – The Government of Malawi notes the observations of the Committee. As a woman and the Minister responsible for labour in the Government of Malawi, I can commit here before the entire Committee that we shall endeavour to promote and protect the rights of all workers, including women workers, from violence and harassment. We reiterate our position as submitted in our oral and written submissions. We will continue to work with our social partners to implement the recommendations made by the Committee. We also welcome the technical support from the ILO and the donor community.

The Government of Malawi will submit its report within the stated timelines.

Malaysia (ratification: 1961)

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Written information provided by the Government

The Government has provided the following written information as well as statistics on the number of collective agreements given cognizance.

Observations of the Malaysian Trades Union Congress (MTUC)

The Government keeps its measures in protecting the rights of employees in the country.

The Industrial Relations Act (IRA) 1967 [Act 177] provides protection against acts of anti-union discrimination in respect of their employment through section 8 and section 59 of Act 177. Section 8 provides procedures for non-criminal union-busting cases whereas section 59 deals with semi-criminal cases.

Currently, sections 4, 5 and 7 of Act 177 provide protections of the rights of workers to form, to join and to participate in trade union activities.

In addition, the Government is in the midst of amending the Trade Unions Act, 1959 [Act 262]. Act 262 regulates the operation of trade unions in Malaysia which generally provides for procedures and processes in terms of registration, cancellation and governance of trade unions. The proposed amendment aims to enhance the rights of collective bargaining power of unions in the country by allowing multiplicity of trade unions establishment as well as allow the existence of more than one trade union in one workplace.

The first reading of this bill has been tabled at Parliament on 24 March 2022. The second reading of this act is scheduled to be tabled in the forthcoming Parliament session.

Ongoing legislative reform

The Government has continued to cooperate with the ILO through the Labour Law and Industrial Relations Reform Project in the holistic review process. The development of the labour law amendments are as follows:

(1) The amendment of the Employment Act, 1955 [Act 265] has been approved by Parliament on 20 March 2022 and has been gazetted on 10 May 2022.

(2) Further, on the development of the amendment of the Trade Unions Act, 1959 [Act 262], the first reading of this bill has been tabled at Parliament on 24 March 2022. The second reading of this act is scheduled to be tabled in the forthcoming Parliament session.

Article 1 of the Convention. Adequate protection against anti-union discrimination. Effective remedies and sufficiently dissuasive sanctions.

Detailed information on the general remedies imposed in practice for acts of anti-union discrimination dealt with through sections 5, 8 and 20 of Act 177 are as follows:

(i) Remedies for anti-union discrimination under section 8 and section 20 of Act 177 are awarded by the Industrial Court based on the facts and merits of each case. The Industrial Court will act in accordance with equity, good conscience and the substantial merits of the case without regard to technicalities and legal form for all cases that have been referred by the Director-General of Industrial Relations under section 8, Act 177.

(ii) Further, in the spirit of tripartism and as stipulated in Act 177, victims of anti-union discrimination may file complaints to the Director-General of Industrial Relations in order for the department to inquire or conciliate or investigate the complaints.

(iii) 35 cases were reported from January 2021 until April 2022 under section 8 of Act 177. Out of 35 cases, 31 (88.57 per cent) have been resolved by the Industrial Relations Department and the average duration of the proceedings is three to six months.

(iv) As for the Industrial Court, the case which has been referred by the Director-General of Industrial Relations under section 8 of Act 177 shall be disposed within 12 months based on the Industrial Court Client's Charter.

Articles 2 and 4. Trade union recognition for purposes of collective bargaining. Criteria and procedure for recognition. Exclusive bargaining agent.

The consultation sessions with stakeholders including the social partners have been done throughout the drafting process for each amendment, including the Trade Unions Act, 1959. As for the process on the amendment of the Trade Union Act, 1959, a total of 72 sessions of engagement, consultation and workshop with social partners have been conducted starting from 2018 to date.

The amendment of the Trade Unions Act, 1959 [Act 262], has undergone the first reading of its bill which has been tabled at Parliament on 24 March 2022. The second reading of this act is scheduled to be tabled in the forthcoming Parliament session.

The Government is of the view that simple majority is a minimum requirement and it shall be maintained in order for a trade union to become an exclusive bargaining agent and the social partners agree with this. Where more than one trade union of workers have been accorded recognition, the exclusive bargaining agent will be determined among themselves or ascertained by the Director-General of Industrial Relations by way of a secret ballot (highest number of votes) as stipulated in the new section 12A of IRA 1967. Section 12A has yet to be enforced and subject to the amendment of the Trade Unions Act, 1959.

In this regard, the amendment of the Trade Unions Act, 1959 [Act 262] has undergone the first reading of its bill, which has been tabled at Parliament on 24 March 2022. The second reading of this act is scheduled to be tabled in the forthcoming Parliament session.

Duration of recognition proceedings

The average duration of the recognition process is four to nine months. The decision on recognition by the Director-General of Industrial Relations may be appealed by the concerned union or employers by way of judicial review.

Migrant workers

Foreign workers are eligible to become members of a trade union and are eligible to hold office upon approval of the Minister if it is in the interest of such union. In addition, Act 177 does not impose restrictions on migrant workers to engage in collective bargaining.

Scope of collective bargaining

The Government maintains its opinion that section 13(3) of Act 177 shall be retained to maintain industrial harmony and in order to speed up the collective bargaining process. Furthermore, the provisions under section 13(3) of Act 177 are not compulsory provisions, since, if both parties agree, they may negotiate the said provisions during the collective bargaining process.

Prior to the current amendment of section 13(3) of Act 177, questions of a general character with regard to promotion only may be raised for matters related to promotion, transfer, recruitment, termination of employment due to redundancy, dismissal and reinstatement and assignment or allocation of duties.

Compulsory arbitration

The amendment on the proviso will be enforced respectively after the amendment of the Trade Unions Act, 1959 [Act 262]. In this regard, the amendment of Act 262 has undergone the first reading of its bill which has been tabled at Parliament on 24 March 2022. The second reading of this act is scheduled to be tabled in the forthcoming Parliament session.

Restrictions on collective bargaining in the public sector

The Government is committed to ensure the welfare of public servants and has recognized collective bargaining at one of the engagement sessions between employers and employees in the public sector. The contents of Service Circular 6/2020 and Service Circular 7/2020 can be accessed through https://docs.jpa.gov.my/docs/pp/2020/pp062020.pdf and https://docs.jpa.gov.my/docs/pp/2020/pp072020.pdf.

Collective bargaining in practice

Statistical information on the number of collective agreements concluded and in force is provided.

Discussion by the Committee

Government representative – In response to the observations raised by this Committee on Malaysia's compliance with the Convention, please allow me to share some feedback with regard to efforts that have been undertaken by the Government of Malaysia, with the view to progressively fulfilling the requirements under the Convention, thus enhancing Malaysia's credibility and integrity at international forums.

In this context, Malaysia wishes to take this opportunity to briefly explain the constructive development of labour law reform with reference to the requirements of the Convention. In

this respect, Malaysia has successfully amended the Industrial Relations Act, 1967, in December 2020. This important development aims to enhance the existing dispute resolution system, as well as to enable any disputes arising to be resolved effectively, and expedite the procedures involved. In addition, an amendment to the Employment Act, 1955, has been gazetted on 10 May 2022, following which the amendments to the Trade Unions Act, 1959, have been tabled in Parliament in March 2022, with the objective to encourage greater participation of workers to join trade unions. In this regard, the Government of Malaysia would like to take this opportunity to record our appreciation for the technical assistance provided by the ILO via the Labour Law and Industrial Relations Reform project.

Malaysia has made a progressive move to enhance the relevant laws in order to be in line with the Convention. The Government, through the Ministry of Human Resources, has conducted a series of engagements and dialogue sessions with the social partners and the relevant authority to deal with the issues holistically. Further, the Government's commitment towards labour law reforms shows the continued commitment to deal with all the allegations made particularly with regard to anti-union discrimination and interference in the recognition process. These measures will resolve matters in relation to any cases reported by the Malaysian Trades Union Congress (MTUC). As such, the Government would like to state that observations made by the MTUC previously have been addressed accordingly. Overall, the journey to resolve the cases is not easy. Out of 21 cases reported, 20 cases have been resolved and the outcome of one case is pending at the Industrial Court. Sharing a case in point is the dispute between one of the nation's largest and most diverse conglomerate companies and the National Union of Transport Equipment and Allied Industries Workers (NUTEAIW); it has been resolved by the decision of the Industrial Court, which was in favour of all the 18 claimants.

In addition, the new amendments provide adequate protection against anti-union discrimination, whereby sections 8 and 20 of the Industrial Relations Act, 1967, provide general remedies for any case of dismissal such as reinstatement, back wages, and compensation in lieu of reinstatement. In relation to this, if there are cases of anti-union discrimination, in the spirit of tripartism and as stipulated in the Industrial Relations Act, 1967, the affected parties may file complaints to the Director-General of Industrial Relations in order for the department to launch inquiries or conciliate or investigate the complaints.

In terms of complaints received by the Department of Industrial Relations, a total of 35 cases were reported between January 2021 and April 2022. Out of 35 cases, 31 cases, which is equal to 88.7 per cent, have been resolved and the average duration of these proceedings is between three to six months. For cases referred to the Industrial Court under section 8 of the Industrial Relations Act, 1967, they will be resolved within 12 months based on the Industrial Court Client's Charter.

To safeguard against employers' interference in the recognition process, specific provisions, which are sections 4, 5 and 8 of the Industrial Relations Act, 1967, are applied. In this context, although section 8 of the Act has been amended, the actual impact on the secret balloting process has not been visible due to COVID-19 restrictions. Thus, the Government is of the view that the effectiveness of the amendment should not be a measuring tool at this juncture.

In addition, the Government has also introduced new provisions in advance especially on the sole bargaining rights under section 12A of the Industrial Relations Act, 1967, to enable a trade union the rights of sole bargaining in cases where more than one trade union has been recognized by the employer. However, the new provision will only take effect after the amendment of the Trade Unions Act, 1959, has been completed. The amendment of the Trade

Unions Act, 1959, has undergone the first reading of its Bill and is expected to be tabled for the second reading in the forthcoming Parliament session. To the point raised by the Committee of Experts with regard to the situation where no union is declared as the exclusive bargaining agent, a simple majority is needed as a minimum requirement to ensure the process has been completed.

With regard to the point raised by the Committee of Experts on the average duration of the recognition process, 54 per cent of cases were resolved from 2018 to 2019 within four to nine months. However, there are also cases that can be resolved within a month if it involves voluntary recognition. In relation to the amendment of section 9(6) of the Industrial Relations Act, 1967, whereby the provision is deleted, the decision on recognition by the Director-General of Industrial Relations could still be applied through a judicial review request.

With regard to the issue of migrant workers, the Government would like to reiterate that they could be members of a trade union and may hold office subject to appropriate processes and approval by the Ministry of Human Resources. As such, there is no specific restriction under the Industrial Relations Act, 1967, for them to engage in collective bargaining. Based on the statistics provided by the Trade Unions Department, in 2019, a total of 13 unions with a membership of 2,874 members, migrant worker members, were registered. The number has increased in 2021, whereby a total of 7,325 migrant workers are registered as members of a trade union. Today, a total of 27,964 foreign workers are members in 16 registered trade unions.

With regard to the request of the Committee of Experts to consider lifting the broad legislative restrictions on the scope of collective bargaining, the Government maintains its status quo in order to speed up collective bargaining processes and maintain industrial harmony.

The Government took note of the comments by the Committee of Experts on the amendment of section 26(2) of the Industrial Relations Act, 1967.

Further, as for the rights pertaining to collective bargaining by public servants, the Government has always been supportive and has made engagements through various avenues. In this respect, the Public Service Department has provided a platform through the National Joint Council and the Departmental Joint Council in order to ensure that the welfare of public servants is heard and taken care of well.

Last but not least, the Government has always taken important steps to improve and address matters related to labour laws as well as reforms. In this regard, we will continue to be consistent in our support via the existing strategic collaboration between various stakeholders, especially the MTUC and the Malaysian Employers Federation (MEF), in ensuring that the ILO's requirements with regard to the Convention are met.

Employer members – This case is about the application in law and practice by Malaysia of the Convention. This is a fundamental Convention which Malaysia ratified in 1961. The case is being discussed this year in the Committee for the fifth time, the last occasion being in 2016. It is a case in which the Committee of Experts has made 20 observations since 1989, the last five times being in 2015, 2016, 2017, 2018 and 2021.

The latest consideration of the case follows the complaints launched in 2019 by the MTUC alleging violations of the Convention in practice, including numerous instances of anti-union discrimination, employer interference and violations of the right to collective bargaining in a number of enterprises. The same or similar complaints were previously raised in 2015 by the MTUC and in 2016, 2017 and 2018 by the International Trade Union Federation (ITUC).

The Committee of Experts' observations relate to the following areas of alleged non-compliance by the Government with the Convention. The first one relates to adequate protection against acts of anti-union discrimination. We recall that Article 1 provides that "workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment".

The Government has indicated that general remedies against acts of anti-union discrimination are dealt with mainly through sections 5, 8 and 20 of the Industrial Relations Act. Cases are referred to the Director-General of Industrial Relations for investigation, inquiry or conciliation, a process which takes an average of three to six months to complete.

Cases referred by the Director-General to the Industrial Court may take up to 12 months to finalize. In addition to the information already submitted by the Government, the Committee of Experts has requested the Government to take measures to ensure that workers who are victims of anti-union discrimination can lodge a complaint directly before the courts in order to access expeditiously adequate compensation and the imposition of sufficiently dissuasive sanctions.

The Committee of Experts also repeated their recommendation for the Government to consider shifting the burden of proof once a worker has made a prima facie case of anti-union discrimination which could be blocking access to appropriate remedies in law.

In this regard, the Employer members invite the Government to continue working with its social partners and, if necessary, with ILO technical assistance to consider measures to improve workers' access to adequate remedies for acts of anti-union discrimination.

The next observation relates to recognition of trade unions for purposes of collective bargaining. In this regard, we recall that Article 2(1) of the Convention provides that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

Further, Article 4 provides that "measures appropriate to national conditions shall be taken when necessary to encourage and promote the full development and utilization of machinery for voluntary negotiations between employers and employers' organizations and workers' organizations with a view to the regulation of terms and conditions of employment by means of collective agreements".

The Committee of Experts noted the complaints by the MTUC and the ITUC that the process of challenging an employer's rejection of a voluntary recognition application by a trade union did not provide adequate protection against interference by the employer. The Committee of Experts also repeated its recommendation that, where no single union has emerged as the exclusive bargaining agent, minority unions should be able to negotiate, either individually or jointly, at least on behalf of their members.

We welcome the information by the Government that it has worked with its social partners to make amendments to the legal provisions governing union recognition, including section 12(A) of the Industrial Relations Act, which deals with the determination of a bargaining agent by a secret ballot by the Director-General. We note that section 12(A) will only enter into force upon amendment of the Trade Unions Act, 1959. Accordingly, the Employers encourage the Government to continue working with its social partners to finalize the legal mechanisms that provide safeguards against any interference in the process of trade union recognition and to address the situation of minority unions where no exclusive bargaining agent has emerged. The Government is invited to inform the Committee of Experts of its progress in this regard.

The next observation relates to the duration of recognition proceedings. The Committee of Experts had previously called on the Government to implement administrative and legal measures to expedite the recognition process. According to the Government, changes have been implemented, including amendments to the Industrial Relations Act, to shift powers relating to union recognition from the Minister of Human Resources to the Director-General of Industrial Relations. The Committee of Experts welcomed the changes in law but inquired whether the deletion of section 9(6) of the Industrial Relations Act would render the decision of the Director-General appealable, which might further delay the process. We accordingly invite the Government to consider this matter and provide information to the Committee of Experts by 1 September 2022.

The next observation is in respect of migrant workers, specifically their ability to stand for trade union office. While the Government's information confirms that migrant workers are not prevented from joining trade unions or standing for office, the information maintains the qualification that it must be approved by the Minister if it is in the interest of such a union. The Committee of Experts has indicated that this situation is not consistent with the Convention and has repeated its call on the Government to take measures, legal and otherwise, to ensure that migrant workers enjoy their full collective bargaining rights. In this regard, the Employers invite the Government to work with the most representative employers' and workers' organizations with ILO technical assistance, if required, to align national laws with the Convention.

The next observation is in respect of the scope of collective bargaining, especially as circumscribed by section 13(3) of the Industrial Relations Act. The Committee of Experts had previously expressed its firm hope that this section would be amended in respect of its broad restrictions to collective bargaining, especially with regard to transfer, dismissal and reinstatement, which are matters known as "internal management prerogatives". According to the Government, section 13(3) was retained in the last round of amendments, except that it has also been amended to now allow trade unions to raise questions of a general character relating to transfers, termination of services due to redundancy, dismissal, reinstatement and assignment or allocation of work.

The Committee of Experts called for information from the Government on the practical implications of the changes, especially the wording about questions of a general character and repeated their recommendation for the Government to lift the broad restrictions on collective bargaining. The Employer members accordingly invite the Government to provide information to the Committee of Experts no later than 1 September 2022. In addition, we advise the Government to continue working with the most representative employers' and workers' organizations to address any provisions that restrict the scope of collective bargaining.

The next observation relates to collective bargaining in the public sector. The Committee of Experts noted some of the restrictions on collective bargaining in the public sector, specifically, the exclusion in terms of section 52 of the Industrial Relations Act. We also note the Government's information that it is committed to protecting the collective bargaining rights of public servants. We also note Service Circular No. 6 and Service Circular No. 7 of 2020 in this regard. We therefore invite the Government to provide information to the Committee of Experts on the working and practice of collective bargaining in the public sector.

A last observation relates to collective bargaining in practice. In the context of low levels of unionization and coverage by collective agreements, the Committee of Experts encouraged the Government to continue providing statistical information on the number of active collective agreements, sectors covered and the number of workers concerned, as well as on any

additional measure taken to promote the full development and utilization of collective bargaining under the Convention. We accordingly invite the Government to continue submitting the statistical data on collective bargaining to the Committee of Experts.

We note that Malaysia is receiving ongoing technical assistance from the ILO through the Labour Law and Industrial Relations Reform project, as well as capacity-building on international labour standards for government officials and social partners. We trust their assistance takes into account the national realities and the evolving nature of the world of work, workers' protection needs and the needs of sustainable enterprises in Malaysia. We also trust that this Committee will be able to see the fruit of these interventions.

Worker members – The Committee is called upon to examine once again the application of the Convention by the Government of Malaysia. During our last review in 2016, the Committee had noted the Government's indication that it was undertaking a holistic review of its key labour legislation: the Employment Act, 1955, the Trade Unions Act, 1959, and the Industrial Relations Act, 1967.

The Industrial Relations Act was amended in 2019, with effect in January 2021, while amendments to the Employment Act were adopted in 2021, and published in the *Official Gazette* a few weeks ago, on 10 May. We take note of these changes. However, we remain concerned that the legislative amendments adopted do not adequately address the long-standing issues raised by the unions and by the ILO supervisory bodies and we note with regret that collective bargaining in Malaysia is still subject to statutory restrictions which run counter to the Convention.

Even when workers succeed in establishing and registering a union, which remains a long and arduous process due to the application of the Trade Unions Act – which is still to be amended – they then have to go through the rigid, lengthy and costly legal process of recognition as a bargaining agent.

First of all, applications for recognition as the bargaining agent must be submitted to the employer who has complete discretion to reject them. In that case, the burden then shifts to the union to report the matter to the Director-General within a prescribed time frame or have its application for recognition considered as having been withdrawn.

The Director-General may demand a secret ballot to ascertain the percentage of workers who show support for the union seeking recognition. This procedure which, by the Government's own admission, still needs to be further reviewed, does not guarantee a fair ballot and does not offer the necessary protections to ensure that employers are unable to gain access to the results. As a matter of fact, it is not the Director-General but rather the employer who decides the time and location of the secret ballot.

For decades, trade unions in Malaysia have raised concerns about this recognition process, which fully rests in the hands of the employers and of the Director-General, allowing undue employer interference throughout the process and depriving workers of representation for the purposes of collective bargaining.

In practice, recognition of the union as the bargaining agent can drag on needlessly for years. Even when a union wins a secret ballot and should therefore be granted collective bargaining status, employers often challenge these results in court, further delaying recognition.

Collective bargaining in Malaysia is further hindered by undue restrictions imposed on the scope of collective bargaining. The current legislation does not allow unions to negotiate

general aspects relating to transfers, termination of services due to redundancy, dismissal, reinstatement and assignment or allocation of work, these being so-called "internal management prerogatives". Amendments introduced to section 13(3) of the Industrial Relations Act, which allow unions to raise questions of a general character, but equally allow the employer to dismiss those questions, fall short of expectations.

To add to this situation, whole categories of workers are denied the right to collective bargaining. In the public sector, unions of public servants are simply consulted and not fully integrated in a process of collective bargaining as mandated by the Convention.

While migrant workers can become trade union members, they can hold trade union office only upon the inappropriate process of approval by the Minister, who will decide on behalf of the union whether it is in the union's interest for them do so. The Committee of Experts has indicated that this condition hinders the right of trade union organizations to freely choose their representatives for collective bargaining purposes.

Finally, protection against anti-union discriminatory measures is virtually non-existent in Malaysia. Complaint mechanisms before the courts are lengthy and can last well over two years, while any remedies applied are inadequate and usually consist of compensation in lieu of reinstatement. We note in this respect the existing restrictions on the subjects of collective bargaining, especially the aforementioned "internal management prerogatives" which impede unions from raising these issues. In practice, anti-union dismissals and other discriminatory measures are frequent.

The Worker members recall that collective bargaining is a right; together with the right to freedom of association, it enables the exercise of all other rights at work. Without effective and meaningful protection against anti-union discrimination, collective bargaining becomes meaningless. Determining the scope and meaning of the right to collective bargaining under the Convention without its human rights context and the safeguards intended to be afforded to workers when this right is exercised will lead to a race to the bottom regarding terms and conditions of work.

The existing legal framework for the exercise of collective bargaining in Malaysia is deeply flawed and it is no surprise that, in this context, the percentage of workers covered by collective agreements is extremely low, standing between 1 and 2 per cent, while the level of trade union density barely reaches 6 per cent and is declining. The ILO supervisory bodies have repeatedly observed over the years that the Employment Act, the Industrial Relations Act and the Trade Unions Act do not comply with the requirements of the Convention.

In examining the situation, they have regularly emphasized to the Government of Malaysia the importance of adopting measures to facilitate the establishment and growth, on a voluntary basis, of free independent and representative workers' organizations and their recognition for the purposes of collective bargaining, and the importance of mutual trust and confidence for the development of harmonious labour relations.

Regrettably these calls have not yet been heeded, and the latest amendments introduced fail to address the long-standing issues raised by both the ILO supervisory bodies and the trade unions.

We urge the Government of Malaysia to review and amend the national legislation in consultation with the social partners and in line with the recommendations of the ILO supervisory bodies to bring it into conformity with the Convention.

Worker member, Malaysia – The implementation of the Convention was also examined in this Committee in 2016 and certain concerns raised by the Committee of Experts have not been addressed. We therefore consider the discussion of this case by the Committee as timely and critical.

Several major national labour acts have gone through amendments and are pending implementation. Among them is the Industrial Relations (Amendment) Act, 2020, which came into force on 1 January 2021, and similarly the Employment (Amendment) Act, 2021, which received royal assent on 26 April 2022 and was published in the *Official Gazette* on 10 May 2022.

Undeniably, the Industrial Relations Act, 1967, does provide some form of protection to the workers and trade unions in Malaysia. However, executive repression and technical and difficult policies and processes prevent workers and trade unions from benefiting even from the minimum protection.

The amendments to the Industrial Relations Act, 1967, move arbitrary ministerial power to the Director-General. The Director-General now decides whether to hold a secret ballot or makes decisions on referring trade disputes to the Industrial Court. Anti-union discrimination and trade union dispute cases are at the discretion of the Director-General. They will not be automatically referred to the Industrial Court, unlike the dismissal cases.

As it is, the Industrial Relations Department must be competent and consistent. In many trade disputes, both parties fail to conciliate. Employers can easily reserve their rights to comply with conciliations or simply refuse to attend the conciliations; even when the employers attend the conciliation, the industrial relations officers merely record statements from both parties, and this is then referred to the Director-General.

Whenever there is an act of intimidation during a secret ballot exercise or unfair dismissal of trade union leaders, the Industrial Relations Department needs to seriously enforce the Act to protect the workers' right to organize.

Another big challenge of trade unions is to undergo a relatively long and complicated secret ballot process. In section 9 of the Industrial Relations Act, 1967, several processes must be followed and it takes many long years to complete the processes as a suitable date, time and location of the secret ballot are left with the employer. Such a practice is not in conformity with the Convention. Some irresponsible employers refuse recognition and challenge the formation of the union even after a secret ballot victory, right up to the highest court of the land.

We want the entire section 9 – claims for recognition – of the Industrial Relations Act, 1967 to be reviewed and amended to make it easier for any trade union to form a new union. There is a need for a secret ballot; recognition should be automatic and given immediately without being subjected to lengthy processes.

We are also still facing a situation where a claimant whose case is brought to the Industrial Court has to go through a lengthy process to get a decision. There are cases that exceed the period of 24 months to get a decision, and most of the decisions do not provide for reinstatement in work but only for compensation in lieu of reinstatement, including for trade union leaders, although this remedy is foreseen in the Industrial Relations Act, 1967.

The processes in the tribunal have also been made technically difficult for workers. By the same token, we also call on the Government to ensure that the President and Chairpersons of the Industrial Court have broad knowledge of trade unionism, social justice and international

labour standards in order to be appointed to the Industrial Court to adjudicate cases, without which workers and trade unions suffer great injustices.

At the same time, a union's locus standi to represent workers can be challenged judicially in court, which may be time-consuming and extremely costly to the trade union, notwithstanding the deliberate violation of the Convention by the employer. Their intention is usually to frustrate the union and they know very well the union has financial constraints.

Section 13 of the Industrial Relations Act, 1967 prohibits trade unions from including six types of proposal in a collective agreement (in relation to transfer, promotion, dismissal and reinstatement of workers) which are purported to be the company's "prerogatives". If such proposals are included, the employer has discretionary power to reject them.

Further, due to the repressive provisions in the Act, trade unions are not allowed to decide the scope of negotiable issues despite having succeeded in the recognition process. For example, workers have repeatedly asked for union security clauses to be included in collective bargaining agreements, but the highest court of Malaysia has decided that such check-off provisions are unenforceable against the employers, as they do not fall under the scope of "trade dispute" as defined in the Industrial Relations Act, 1967.

The amended Industrial Relations Act, 1967, is also denying trade unions from obtaining sole and exclusive bargaining rights. The complexity of the process in the Act will weaken the trade unions' bargaining power, by exhausting union funds in legal battles and delay collective agreements for the workers. This amendment read with the Trade Unions Act, 1959, will be detrimental to the trade union movement in Malaysia.

There are also cases that are brought up to the Industrial Court to seek clarification and ensure that the employers comply with the agreements. Here, we call on the employers as well as the Government to respect every agreement that has been signed between the employers and trade unions, which must be fully complied with.

We see "union-busting" in Malaysia happening rampantly. This is an absolute denial of access to justice and a fundamental breach of the Convention.

Despite recognition under the Employment Act, 1955, and the Industrial Relations Act, 1967, migrant workers face significant difficulties in exercising their rights to freedom of association and collective bargaining. Migrant workers constantly face threats of dismissal and deportation as they fall under close scrutiny of the police. Unethical employers use dirty tactics and manipulate loopholes in laws and policies to find ways to prevent workers from exercising their right to vote.

In Malaysia, the public sector is continuously denying the right to collective bargaining. We urge the Government to ensure that public servants can bargain collectively in conformity with the Convention and with its Service Circular No. 6/2020 and Service Circular No. 7/2020.

Lastly, workers in Malaysia call for drastic reform to the Employment Act, the Industrial Act, the Industrial Relations Act and the Trade Unions Act to ensure that economic development is aligned with social development, including social protection for all workers. The Malaysian Government must take anti-union discrimination seriously and must cease all forms of anti-union legislation and practices. Legislative amendments must be in the interest of developing and protecting trade union rights in conformity with the Convention.

To conclude, we strongly believe that effective and transparent social dialogue is the way to move forward. This is currently lagging behind in Malaysia. Social dialogue has not been conducted for two years but many labour policies and legislative amendments have been

implemented without social dialogue. The Government must hold regular discussions among the tripartite partners within the National Labour Advisory Council in the interests of all, including migrant workers in Malaysia.

Government member, France – I have the honour of speaking on behalf of the **European Union (EU) and its Member States**. The candidate countries **Albania** and **Montenegro**, and the European Free Trade Association country **Norway**, Member of the European Economic Area, align themselves with this statement.

The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights such as the right to organize and collective bargaining.

We actively promote the universal ratification and implementation of fundamental international labour standards, including Convention No. 98. We support the ILO in its key role of developing, promoting and supervising the application of ratified international labour standards and of the fundamental Conventions in particular.

The EU and Malaysia have a close relationship, including through our cooperation in trade and economic issues complemented by our strategic partnership with the Association of Southeast Asian Nations (ASEAN).

While taking account of the information provided by the Government, we note with great concern the apparent tolerance shown by the Government with respect to allegations of anti-union discrimination, employer interference and violations of the right to collective bargaining in a number of enterprises. We echo the Committee's call for the Government to take the necessary measures to address all of the above allegations, including through rapid investigation and ordering effective remedies for the victims and sufficiently dissuasive sanctions on the perpetrators. We look forward to detailed information in this regard.

We welcome the Government's engagement with the ILO Office on the legislative reforms of the main labour laws, including by enacting the Industrial Relations (Amendment) Act (IRA) with effect from January 2021 and by revising the Employment Act and the Trade Unions Act. We see this cooperation as vital for achieving full conformity of these laws with the Convention, including in practice.

We reiterate the Committee's request to the Government to provide detailed information on the amendments to the IRA and their implementation, in order to ensure that workers who are victims of anti-union discrimination can lodge a complaint directly before the courts to obtain the imposition of sufficiently dissuasive sanctions, including the prompt provision of adequate compensation. It is also important to ensure effective protection without placing on victims a burden of proof that could impose obstacles with regard to establishing liability and providing adequate remedies.

Similarly, with regard to the IRA provisions on the criteria, procedure and duration of proceedings on trade union recognition for the purposes of collective bargaining, we call on the Government to ensure, in consultation with the social partners, that the recognition process as a whole provides adequate safeguards to prevent acts of employer interference. We also reiterate the Committee of Experts' call to the Government to ensure the full inclusion of migrant workers in collective bargaining.

We would also welcome more detailed information on the practical implications of the IRA amendments on the scope of collective bargaining, compulsory arbitration and restrictions on

collective bargaining in the public sector, as well as any additional measures taken to promote the full development and utilization of collective bargaining as provided for by the Convention.

The EU and its Member States will continue to follow and analyse the situation and remain committed to their close cooperation and partnership with Malaysia.

Government member, Indonesia – I have the honour to deliver this statement **on behalf of ASEAN**. ASEAN notes the many efforts and initiatives undertaken by Malaysia towards compliance with the Convention on the right to organize and collective bargaining. In this regard, ASEAN congratulates Malaysia on the recent amendment to the legislation, the Industrial Relations Act, and waits in anticipation for the amendments to the Trade Unions Act to be gazetted and come into effect.

Amendments to legislation are a huge undertaking and will require time to see their effect in implementation. ASEAN is pleased to note that Malaysia has placed much emphasis on its domestic labour law amendment, which is being done in a comprehensive and gradual manner. This is important to ensure its sustainability, particularly in the rapid and dynamic world of work.

ASEAN also encourages Malaysia to continue engagement and consultation with the tripartite constituents in a meaningful manner. The improvements made to the labour dispute resolution system, including expediting some of the required processes, are most welcome in light of the disruption caused by the COVID-19 pandemic.

In addition, the safeguard elements and provisions of remedies in the gazetted Industrial Relations Act can be seen as adequate to address observations and concerns on anti-union discrimination. However, ASEAN recommends Malaysia to continue reviewing the provisions to ensure that the full effect of its implementation is in compliance with the Convention.

ASEAN is pleased to note Malaysia's close cooperation with the ILO in the amendment process and believes that this will pave the way towards ensuring full compliance with the Convention. ASEAN believes that Malaysia is at its most opportune juncture to continue its good work in protecting and promoting the rights of workers in which ASEAN gives its full support towards the continuous and sustained implementation of the planned activities.

ASEAN would also like to draw attention to the emerging issues and challenges which affect the traditional labour market and industrial harmony and calls upon the ILO to continue working closely with its Member States to ensure the promotion of decent work to all workers.

Worker member, Republic of Korea – In reference to the Convention and concerns raised by the Committee of Experts regarding remedies to anti-union discrimination, trade unions are suffering due to the excessive powers of the Director-General. Under the amended section 8 of the Industrial Relations Act, the Director-General is authorized to forward unresolved complaints to the Industrial Court for remedies.

This relates to Case No. 3401 referred to in the 397th Report of the Committee on Freedom of Association and concerns the complaint against the Government of Malaysia filed by the National Union of Bank Employees (NUBE).

In 2019, the NUBE lodged two complaints against a UK-based multinational bank in Malaysia for intimidating and attempting to injure workers for participating in pickets and campaigns pursuant to trade disputes. The complaint was filed under sections 39(a) and 59(1)(d) of the Industrial Relations Act, 1967, long before the dismissal of the workers.

The ILO Director-General also intervened directly in this case, urging the Malaysian Government to take swift action to stop the intended dismissal of the union representatives.

But the Malaysian Government did not heed the ILO Director-General's intervention or refer the case to the Industrial Court; only the dismissal case of the workers was referred to the Industrial Court.

However, when the bank lodged a complaint against the NUBE for defamation and to stop the NUBE from picketing, campaigning and lodging complaints to the ILO and the OECD, the Director-General very quickly referred the bank's complaint to the Industrial Court.

He referred the bank's case even though he is fully aware that the Malaysian Federal Court decided that no court should entertain a case against a trade union pursuant to a trade dispute because trade unions have "immunity" from actions in furtherance to a trade dispute under sections 21 and 22 of the Trade Unions Act, 1959.

It is also important to note that the union has written numerous letters urging the Government to take action against the bank for its anti-union activities but the Government failed to act or respond to the NUBE.

The trade union had filed a suit against the Government for "inaction" which has caused 300 workers' complaints against the bank to be left unattended.

"Injustice anywhere is a threat to justice everywhere." The Malaysian Government is an accomplice in union-busting. We call on the Malaysian Government to stop its anti-union practices and undertake to protect workers and trade unions in conformity with the Convention with immediate effect.

Worker member, Japan – I am speaking on behalf of IndustriALL Global Union and the Japanese Trade Union Confederation (JTUC-RENGO). Section 9 of the Industrial Relations Act concerning the secret ballot procedure for trade union recognition was a key concern discussed in this Committee in 2016.

We regret that the amendment of section 9 in 2020 has not brought fundamental changes to safeguard workers from undue interference from employers in the secret ballot procedure. The Government remains reluctant to invoke penal sanctions against employer interference and union-busting practices.

Ten years after the Malaysian Metal Industry Employees' Union (MIEU), in a German multinational company producing copper wire in Pahang, applied for union recognition, the MIEU is still unable to bargain with the employer. The MIEU submitted a claim for trade union recognition in June 2012; the company immediately disputed the union's right for representation.

The company also disputed the competence of the union which had been ascertained by the Director of Industrial Relations and Director-General of Trade Unions and moved the case to the High Court. Even though the Court upheld the Director-General's decision in 2014, the company continued to block each and every step of the proceeding to a secret ballot.

The company reclassified almost all 353 production workers, except 16 of them, under the confidential capacity, in a bid to throw them out from being members of a trade union under section 5 of the Industrial Relations Act. Until the Director-General threatened to file a police report, the company had been blocking the Director-General from visiting the workplace to assess and interview workers.

When the MIEU succeeded in submitting a new claim for recognition in 2019, the company intervened again and supported the registration of an in-house union to undermine the MIEU. The MIEU is still waiting for a secret ballot to take place. This is unacceptable.

Trade union recognition should be simple and automatic after meeting the legal requirements. We urge the Government to continue consultation with the social partners to review section 9 of the Industrial Relations Act, 1967, in order to ensure that workers in Malaysia can meaningfully exercise their rights under the Convention.

Worker member, Switzerland – Our colleagues from the Indonesian Workers' delegation align themselves with this intervention. The Committee of Experts has rightly again raised the issue of foreign migrant workers' ability to becoming members and hold office in a trade union. In its latest response, the Government has simply reiterated that foreign workers are eligible to become members of a union and to hold trade union office "upon approval of the Minister if it is in the interest of such union". This condition in our view hinders the right of trade union organizations to freely choose their representatives for collective bargaining purposes and is thus not in line with the Convention.

Though the law allows migrant workers to join trade unions, there are many cases, such as the example of a multinational tyre manufacturer in Selangor, which excluded migrant workers from Myanmar, India and Nepal from the collective bargaining agreement. A total of 109 migrants could only recover shift allowances, annual bonuses and pay increases worth 5 million Malaysian ringgit based on a court award.

The rights under the Convention are even more remote for migrant workers unable to acquire legal residence status under the very restrictive migration legislation.

It is estimated that in the State of Sabah alone, more than 500,000 migrant workers, mostly from Indonesia, are employed in the palm oil sector. Of these, approximately 70 per cent are undocumented and thus excluded from the possibility of joining a trade union and participating in collective bargaining.

For a long time, only one trade union in the Sabah palm oil sector has been able to organize in only one plantation. One reason for that is that foreigners are not allowed to hold any executive positions in the unions; thus, only Malaysian citizens may act as union organizers. And even though Indonesia and Malaysia share similar vocabularies, most of the migrants only understand basic Sabah–Malay, since many of them still use their mother language based on their ethnic origin.

Another reason is that, according to the Industrial Relations Act, a union is required to prove a majority of membership in a company. The need to organize in almost all estates of one company in different, often very remote, areas at the same time makes the establishment of a new union extremely difficult.

We recognize the efforts of the Malaysian Government and call on it to take all the necessary measures to ensure that all migrant workers can effectively practise their collective bargaining rights and run for trade union office without any restrictions, and to apply the majority requirement at least separately to the different estates of one company in the plantation sector.

Observer, Public Services International (PSI) – The last time we discussed this case, in 2016, this Committee, in its conclusions, requested the Government to: "ensure that public sector workers not engaged in the administration of the State may enjoy their right to collective bargaining". We will all remember as well that the Government representative said at the time that: "… the Government was currently drafting the amendments and had requested ILO technical assistance so as to facilitate the drafting of the amendments and to ensure that they were in line with the requirements of the Convention …". However, despite of these promises, barriers for public sector workers still remain in law and practice after six years.

While provisions have been made for municipal workers to bargain collectively, to date, no enabling regulations, for example, have been adopted to realize this right.

The application of compulsory arbitration in essential services under amended section 26(2) of the Industrial Relations Act, First Schedule, are still broad and deprive public servants not engaged in the administration of the State of the right to freely bargain and resort to industrial action.

Also, we raise concerns over the adoption of Service Circulars Nos 6 and 7. First, these circulars were adopted, paradoxically, without consultation and negotiation with relevant unions in the public service. There is – or there was – an established mechanism to discuss the adoption of new service circulars through the National Joint Council, which did not occur. So these circulars have eroded even more the role of workers' groups in the National Joint Council. Furthermore, these circulars seem to impose new barriers to consultation with public service workers. For instance, union leaders must now receive permission from departmental heads to attend the National Joint Council meetings. While in practice, departmental heads have not restricted attendance to date, the new provisions allow for such restriction.

In addition, Service Circular No. 6/2020 seems to restrict the subject of consultations as well, while Service Circular No. 7/2020 seems to restrict who can be elected to represent the workers in the consultations.

We support the Committee of Experts' view that workers who deliver public services should be allowed to bargain collectively and that simple consultations do not amount to effective collective bargaining.

Therefore, we expect to see fully-fledged collective bargaining rights for public sector workers in the legislation, in line with the provisions of the Convention.

Government representative – The Government of Malaysia would like to record its appreciation for the views and comments put forward by the Committee and respective social tripartite partners. The views and comments highlighted will help us in further improving and enhancing the application of the Convention in Malaysia. The Government of Malaysia would like to reaffirm that we will continue to take appropriate steps in compliance with the Convention.

In this context, it must be stated that Malaysia has been progressively adhering to the observation made by the Committee of Experts, and we will continue to ensure reforms are done with the support of the employers' associations and workers' unions in amending the relevant labour laws to be in line with the Convention. Malaysia takes note of comments raised by representatives from both the Employers' and Workers' groups. In this regard, Malaysia would like to put in perspective that the Government of Malaysia believes in constructive engagement between trade unions and employers' associations, which will ensure that rights are taken care of.

As the process of compliance of standards is subject to many laws in place, Malaysia has always been supportive in amending appropriate laws where needed and we will continue to do so. Among the impacts observed were the amendments with regard to expanding the power of the Director-General of Industrial Relations, and the dispute resolution process has been expedited. Although some of the amendments are in progress, the Government – through consultation, engagement, and townhall sessions – has gathered input from the stakeholders that contribute to the improvement of the process relating to the amendment of labour laws, in particular at this point, the amendments to the Trade Unions Act, 1959.

As for matters raised by representatives through the complaints and disputes lodged in ILO supervisory mechanisms, we take note of the issues raised and we will revert as soon as possible to the ILO. Thus, we value the opinion and views raised by Members.

To address the post-COVID-19 effect on the global economy, the Malaysian economy and the world of work, various initiatives have been implemented using technology platforms. One such initiative with regard to work is the e-Mention to address and expedite matters related to Industrial Court cases. To support all the initiatives, the Decent Work Country Programme (DWCP) was signed in 2019.

The DWCP is jointly developed by the ILO, the Ministry of Human Resources, the Malaysian Employers Federation (MEF) and the Malaysian Trades Union Congress (MTUC) based on the country's specific priorities. This priority is in line with supporting the Decent Work Agenda through compliance with international labour standards, as well as the country's commitment to the 2030 Agenda for Sustainable Development, which focus on three areas, namely: rights at work to protect and promote labour rights; future of work to strengthen national capacity in addressing the challenges of the future of work; and labour migration to improve governance of the migration of labour and foreign workers in the country.

In this regard, the Government would like to record its appreciation to the ILO for its continuous support for the labour law reform in Malaysia, especially through the Labour Law and Industrial Relations Reform project.

Last but not least, we would like to reiterate that the Government of Malaysia has made progressive efforts to enhance the procedure and process on the right to strike and collective bargaining. The Government will contribute and engage with the MEF and the MUTC and other stakeholders from time to time in order to uphold industrial harmony in Malaysia.

With those remarks, I wish to conclude my statement by pledging our full and undivided commitment in order to ensure and safeguard the rights and welfare of workers in line with the obligations under the Convention.

Employer members – We wish to thank the various delegates who took the floor and expressed views that enrich the discussion of this case. We have also noted the information made available by the Government in response to the requests and observations by the Committee of Experts and in this meeting today. We note that the ILO is currently providing ongoing technical assistance and capacity-building to officials of the Malaysian Government and social partners. We trust that this will continue.

We invite the Government to continue working with the most representative employers' and workers' organizations to bring the national laws into full conformity with the Convention, taking into account the national realities in Malaysia, the evolving world of work, including the needs of workers and sustainable enterprises.

On the question of whether there is a legal obligation for employers to negotiate under Article 4 of the Convention, we have noted that the Committee of Experts seems to believe there is, as long as there is no obligation to conclude a collective agreement. The Employers do not agree with this view, given that Article 4 clearly refers to voluntary negotiation. Similarly, the Employers do not agree with the Committee of Experts that compulsory arbitration at the initiative of a workers' organization is in line with Article 4, even if it is meant to achieve the conclusion of a first collective agreement. Again, this is based on the facts that Article 4 contemplates on voluntary collective bargaining.

We trust that the Government will keep the Committee of Experts updated on any progress it makes in its efforts to harmonize its laws with the Convention.

Worker members – The Worker members take note of the changes to the Industrial Relations Act and the Employment Act, which recently entered into force in 2021 and 2022. However, we deplore the fact that, despite the introduction of these amendments, challenges concerning the exercise of collective bargaining rights in Malaysia remain unresolved.

We recall that trade unions in Malaysia have been continuously raising these issues for over 40 years. We recall that collective bargaining is a right which, together with the right to freedom of association, enables the exercise of all other rights at work.

The current legal framework in Malaysia constitutes a severe obstacle to their full enjoyment and exercise and therefore must be revised in accordance with the requirements of the Convention.

The Worker members call on the Government of Malaysia to review and amend the national legislation, specifically the Employment Act, the Trade Unions Act and the Industrial Relations Act, in consultation with the social partners and in line with the recommendations of the ILO supervisory bodies to bring it into conformity with the Convention. More specifically, the Government of Malaysia must ensure in law and practice that the procedure for trade union recognition is simplified and that effective protections against employer interference are adopted; that subjects of collective bargaining are not unduly restricted and it is left to the parties to decide on those subjects; that migrant workers can fully participate in collective bargaining, including by enabling them to run for trade union office; that collective bargaining machinery is fully recognized and promoted in the public sector; and that public service unions can bargain collectively and protection against anti-union discrimination is improved through effective and expeditious access to courts, adequate compensation and the imposition of sufficiently dissuasive sanctions.

We call on the Government of Malaysia to accept a direct contacts mission and we invite the Government to avail itself of the technical assistance of the ILO.

Conclusions of the Committee

The Committee took note of the written and oral information provided by the Government and the discussion that followed.

The Committee noted with interest the amendments to the Industrial Relations Act and the Employment Act, which entered into force in 2021 and 2022, respectively. The Committee noted concern at the complaints of ongoing challenges concerning the exercise of collective bargaining rights in Malaysia and the instances of anti-union discrimination and undue interference.

Taking into account the discussion, the Committee requests the Government, in consultation with the social partners, to:

- **amend without delay national legislation, specifically the Employment Act, the Trade Unions Act and the Industrial Relations Act, in consultation with the social partners, to bring these laws into conformity with the Convention;**
- **ensure that the procedure for trade union recognition is simplified and that effective protection against undue interference is adopted;**

- **ensure that migrant workers can fully participate in collective bargaining, including by enabling them to run for trade union office;**
- **enable collective bargaining machinery in the public sector to ensure that public sector workers may enjoy their right to collective bargaining;**
- **ensure, in law and practice, adequate protection against anti-union discrimination, including through effective and expeditious access to courts, adequate compensation and the imposition of sufficiently dissuasive sanctions.**

The Committee invites the Government to continue to avail itself of the technical assistance of the ILO.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 with information on the application of the Convention in law and practice, in consultation with the social partners.

Myanmar (ratification: 1955)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Written information provided

The information below is submitted by the military authorities. Its publication does not imply explicit or implicit recognition of these authorities as the legitimate Government of Myanmar.

Civil liberties: Regarding the case of an individual, namely Chan Myae Kyaw, and information contained in the report of the Committee of Experts, it is learned that there is no registered organization in Myanmar under the name of Mining Workers' Federation of Myanmar (MWFM). There is no federation-level mining organization and the name Chan Myae Kyaw is also not included in the list of members of basic labour organizations. Therefore, Myanmar is not in a position to identify the individual and more details of the said person are needed.

On 27 March 2021, in Monywa, there were protests in the industrial zone with about 50 people in Thanlar Ward, with about 100 people at the corner of Tharsi Road and Payshisae Road, with about 400 people in the morning and evening, and at the top of Kyaukkar Road and Aung Tha Pyay Road in Myawaddy Ward with about 20 people, respectively. The protests turned violent and rioters attacked the members of the security forces with deadly weapons. No casualties were found from the incidents.

The observation mentioned an individual, namely Nay Lin Zaw, who was allegedly killed. Upon verification, there is no registered organization under the name of AD Furniture Workers' Association, while the Myanmar Industry, Crafts and Services Trade Union Federation (MICS-TUsF) does not register its members. Therefore, Myanmar cannot verify the identity of the individual and more details of the said person are needed. There was no case filed at the police station or at the administrative offices of Nos (23) and (63) Wards, Dagon Township (South), where the industrial zone exists. The AD Furniture industry did not file any case either. No riot control measures were taken by the members of the security forces in Dagon Township (South) on 28 and 29 March 2021.

With regard to the case of Zaw Zaw Htwe, there is no registered organization under the name of the Solidarity Trade Union of Myanmar (STUM). On 14 March 2021, in Shwepyithar Township, the General Administration Office was attacked and destroyed by about 200 rioters

with clubs, swords, slingshots and Molotov cocktails. The members of the security forces applied riot control procedures and Zaw Zaw Htwe from the crowd, a resident of No. (10) Ward, Shwepyithar Township, died of his injuries and a case has been filed at Shwepyithar Township Police Station (Case No. 15/2021).

In connection with 28 individuals who have been facing charges for their unlawful activities, it is learned that they targeted Hlaing Tharyar Township where factory workers are heavily populated and incited the population there by disseminating fabricated news. Accordingly, they were charged under section 505A of the Penal Code at Yankin City Police Station on 22 April 2021 and under section 124A of the Penal Code at Dagon Myothit (East) City Police Station on 14 May 2021. With regard to the Director of STUM, which is not a registered organization, her case was filed at Shwepyithar Township Police Station under section 505A of the Criminal Code on 10 March 2021 and she was detained on 15 April 2021. On 18 October 2021, the State Administration Council granted her a pardon with Order No. 187/2021.

Progress on labour law reform process: The Labour Organization Law (LOL) is being amended taking into account the desires and requirements of the workers and employers to be in line with the real situation of the country by holding meetings of five Technical Working Groups on Labour Law Reform (TWG-LLR) and five National Tripartite Dialogue Forums (NTDFs). As a result of the discussions, the draft law was prepared and shared in advance to the ILO and to employers' and workers' federations. It was discussed by tripartite representatives at the 10th TWG-LLR, 11th TWG-LLR, 12th TWG-LLR and 13th TWG-LLR. The law amending process will be continued. According to the LOL 2011, a total of 2,886 basic labour organizations, 162 township labour organizations, 26 region or state labour organizations, 9 labour federations, 1 labour confederation, 27 basic employer organizations, 1 township employer organization and 1 employer federation, a total of 3,113 workers' and employers' organizations, have been registered as of present.

Regarding the refusal of registration in the report, under section 14(a) of the LOL, it is prescribed as follows: "The Chief Registrar shall scrutinize the particulars contained in the application for registration as a labour organization submitted by the Township Registrar and documents attached whether or not they are true and sufficient and allow or refuse to register by mentioning the reason within 30 days from the day of receipt of such application" and section 14(b) prescribes as follows: "The Chief Registrar shall scrutinize whether or not the particulars contained in the application for registration as the Labour Federation, the Myanmar Labour Confederation and documents attached to it are true and sufficient and allow or refuse to register by mentioning the reason within 60 days from the day of receipt of such application." When the Township Registration Officer scrutinizes the application of a certificate of recognition as a labour organization, if insufficient members and an inadequate number of elected executives are found, the organization is assumed to conflict with any other existing laws and not fall within the jurisdiction of the law. Therefore, the Chief Registrar shall have the right to refuse because of these reasons. However, if the number of members and executives is found to be insufficient, required facts are asked to be provided and certificates are issued without any refusal. Although the second amendment to the Settlement of Labour Disputes Law was enacted on 3 June 2019, there are challenges in implementing some provisions of the Law. In this regard, inputs and advice will be requested from the Arbitration Bodies and Arbitration Council which are exercising the law in practice. The Settlement of Labour Disputes Rules (draft) was discussed with the tripartite representatives to enact as new Rules under the second amendment to the Settlement of Labour Dispute Law. It was also discussed with the responsible officials who are implementing the law in practice to be able to get inputs and advice regarding the difficulties and challenges faced on the ground. In addition, a review of

those discussions and a study of the labour disputes settlement system of Association of Southeast Asian Nations (ASEAN) countries have been carried out and inputs and advice will also be requested from the related bodies.

Regarding the Committee's request to ensure that rights are fully guaranteed to workers in special economic zones, the disputes arising among employers, workers, technicians or civil service personnel are negotiated and conciliated under the Myanmar Special Economic Zone Law (2014) in coordination with the Special Economic Zone Management Committee. If there is any dispute that cannot be negotiated and conciliated by the relevant Special Economic Zone Management Committee, it is settled in accordance with the Settlement of Labour Disputes Law. It is clear that nobody has been targeted for being a trade unionist. As regards the members of trade unions who have been facing charges, this is on account of their unlawful activities, not because of exercising labour rights peacefully.

Updated information has been published in a timely manner via the media, monthly press conferences and diplomatic briefings. However, it is regrettable to learn that the contents of the present report of the Committee of Experts rely on one-sided information from anti-government media and organizations in opposition, and the conclusion of the report was made without duly considering the information provided by the military authorities of Myanmar. Therefore, the military authorities encourage consideration to be given to information that is correct, confirmed and provided by them for a report that reflects the actual conditions of the workers and people of Myanmar so that it can contribute to their betterment.

Discussion by the Committee

The Chairperson – Before beginning our discussion of the individual case, I wish to draw the Committee's attention to the absence of delegates from Myanmar and to recall that this is in line with the decision taken by the Credentials Committee at the 109th Session of the Conference. This decision remains valid as the question of Myanmar's representation in the ILO remains unresolved to date. This issue has been referred back to the Credentials Committee at the present session of the Conference and its report is expected to be presented to the plenary session next week. The Committee is thus faced with an unprecedented situation in which a government is not participating in the deliberations on its case because of a decision taken by the Organization.

Since such a situation is not foreseen in our Committee's current working methods concerning participation in its work, I have consulted with the Officers on the special arrangements to be made by the Committee for the discussion of the case of Myanmar and wish to submit to you the following proposal.

The absence of an accredited delegation from Myanmar should not impede the functioning of the ILO supervisory system and in particular the supervision of ratified fundamental Conventions, therefore, the examination of the individual case should take place, as far as possible, in the same manner as the other individual cases. In this respect, I wish to draw your attention to the fact that the supplementary information submitted in writing by the military authorities in response to the comments of the Committee of Experts has been published on the website of the Committee on the Application of Standards with a clear mention that its publication does not imply the explicit or implicit recognition of those authorities as the legitimate Government of Myanmar. However, Myanmar will not provide information orally to the Committee on the Application of Standards, as no delegate from Myanmar is accredited to participate in the Conference. Consequently, no representative will be able to take the floor and make a statement after the adoption of the conclusions.

(Proposal adopted.)

Employer members – Myanmar ratified the Convention in 1955. However, more than half a century later, the Member State is very far from achieving compliance with this Convention, both in law and practice. The Employer members understand that owing to the urgency and seriousness of the issues involved as well as the likelihood of the irreversible harm and possible deaths, the Committee of Experts have double footnoted this case as a very serious case. The Employer members, at the outset, note that we are deeply concerned about the increasingly violent action of the military junta in Myanmar leading to more victims, more oppression and more harm to society, including for workers, employers and their organizations.

This time last year, the ILC adopted a resolution concerning the situation in Myanmar which called for restoration of the democratically elected Government and also for Myanmar to uphold immediately its obligations under the Convention and to ensure that employers' and workers' organizations are able to exercise their rights in a climate of freedom and safety, free from violence, arbitrary arrest and detention. At the recent March 2022 session, the Governing Body deplored the lack of progress towards respecting the will of the people, democratic institutions and processes and repeated its call for Myanmar to uphold immediately its obligations under the Convention.

Given the severity of the situation, the Governing Body decided to establish a Commission of Inquiry in respect of the non-observance of this Convention and the Forced Labour Convention, 1930 (No. 29).

Turning now to the Committee of Experts' observations, the Employer members note the following issues. First, the Committee of Experts noted with respect to the issue of civil liberties that the military authorities have continued with large-scale lethal violence and continued with harassment, ongoing intimidation, arrests and detentions of trade unionists. We stress that the guarantee of freedom of association pursuant to the Convention, requires as a vital prerequisite the rule of law and the fundamental respect for human rights and civil liberties, in particular the right to personal security, the freedom of opinion and expression, the freedom of demonstration and assembly and the right to protection of property. We noted that there have been allegations of numerous further cases of arrests, attacks on and killings of trade union leaders and trade union members, we also have noted the possible criminal prosecution regarding the exercise of freedom of expression and demonstration and assembly by the Electronic Transaction Act of 2021 and the law on the right to peaceful assembly and peaceful procession of 2016.

In light of the seriousness of the situation, the Employer members call upon Myanmar as a matter of urgency to take all necessary action to restore the rule of law. The Employer members call upon Myanmar as a matter of urgency to fully respect the fundamental human rights and civil liberties necessary for the exercise of freedom of association. Workers' and employers' organizations in Myanmar must once again be able to carry out their activities and functions without threat of intimidation, without threat of harm or imprisonment, and without any other undue restriction. The Employer members would like to stress that sustainable enterprises, investment, the creation of jobs, and the creation and maintenance of prosperity and peace can only thrive in a free environment which includes freedom of association. Turning now to the issue of labour law reform, the Employers note that the membership requirements for the registration of trade unions and the eligibility restrictions for trade union office under the Labour Organization Law, raise compliance issues with Article 2 and Article 3 of the Convention. We expect Myanmar will review these matters in close consultation with the social partners at the national level to ensure full respect for the requirements of the Convention, including Articles 2 and 3, and will provide clarification where necessary and information on action taken in this regard in its next report.

To conclude, the Employer members express serious concern about the ongoing situation in Myanmar and urge the Member State to restore democracy, to restore the rule of law and to restore the civil liberties that are a fundamental prerequisite for the exercise of freedom of association under the Convention. More specifically, the Employer members call on Myanmar as a matter of urgency to first take all measures necessary to ensure full respect in law and practice for the basic civil liberties for the exercise of freedom of association including freedom of personal security, freedom of opinion and expression, freedom of demonstration and assembly, freedom of movement, freedom from arbitrary arrest and detention and the right to a fair trial by an independent and impartial judiciary so that workers' and employers' organizations can carry out their activities and functions without the threat of intimidation, harm, or imprisonment or any other undue restriction.

The Employer members also call upon Myanmar as a matter of urgency to review as soon as conditions permit, the Labour Organization Law within the framework of the legislative reform process in full consultation with the national social partners to ensure that the rights of workers and employers are fully respected under this Convention.

Worker members – The Governing Body at its 344th Session in March 2022 took the unanimous decision to establish a Commission of Inquiry on Myanmar concerning serious violations of this Convention and Convention No. 29. It is our expectation that the discussion in this Committee, as well as the previous discussion in the March Governing Body, will give effective guidance to the Commission in the carrying out of its work and we fully expect that the military regime in Myanmar will allow the Commission to enter the country and to carry out its work unimpeded.

The Worker members take note of the detailed observations made by the Committee of Experts in this case. The situation in the country is indeed extremely dire. The fundamental rights of workers and employers and their physical integrity and freedom is in jeopardy. In many instances irreversible harm has occurred and is ongoing. The Committee of Experts' decision to designate this as a double-footnoted case seems very appropriate.

And indeed, since the decision two months ago to establish the Commission of Inquiry, the military regime has engaged in further violations of the right to freedom of association. For example, on the afternoon of 20 April of this year, members of the Myanmar Labour Alliance, the Confederation of Trade Unions of Myanmar (CTUM), and the Industrial Workers' Federation of Myanmar (IWFM), joined a demonstration protesting the regime. When the short demonstration was over, two union activists Khaing Thinzar Aye and Ei Phyu Phyu Myint hailed a taxi to go back to where they were staying. A military vehicle crashed into their taxi, six soldiers came out, beat them, and arrested them. This shocking attack on two union sisters underscores how serious this situation continues to be.

Workers are abducted and, in some cases, murdered. On 25 May of this year, just before the start of this Conference, two members of a Myanmar workers' union were abducted by the military in the southern Saigon region and killed! And their villages burnt to the ground.

The Worker members join the Committee of Experts in deploring the serious and systematic violations committed by the military junta. We appreciate the important steps that have been taken by some ILO Members States, as well as by some of the social partners, to pressure the junta to desist from its current course but recognize that these actions have so far been insufficient. Clearly, more needs to be done.

We would like to make some observations to underscore the systematic nature of the violation of the Convention and the dire situation prevailing in the country. The Worker

members remind the Committee that since the coup in February 2021, over 1,500 people, including several trade unionists, have been murdered by the military and the police in the context of the demonstrations calling for a return to democracy and in the course of industrial disputes. We feel a profound loss when reading the long list of murdered trade unionists as set forth in Case No. 3405, in the 397th Report of the Committee on Freedom of Association.

We remain in shock at the brutal massacre which took place in the Hlaingtharyar industrial zone in March 2021 when the military opened fire on peaceful and unarmed protestors, including several trade unionists who lived and worked in the zone. The regime's claim that the military has only responded with force to terrorist acts is totally unfounded and misplaced.

We also deplore the issuance of arrest warrants and arrest of numerous trade union leaders and activists merely for having exercised their fundamental rights to freedom of speech, assembly and association. Further the continued threat of violence, and/or arrests has forced many union leaders to flee the country, though many continue to work to sustain their unions from exile.

Further the forced exodus of union leaders and members to the Thai border is contributing to an increasing humanitarian crisis with no systematic effort to regularize their status in Thailand. For security reasons, most cannot return to Myanmar and these unionists come from all unions and all sectors. To make matters worse, the passports of many senior leaders of the CTUM have been revoked leaving some leaders stranded outside of the country, including the Workers' delegates who will speak to the Committee later on today.

The regime argues that the passports were revoked under section 505 of the Penal Code for the crime of treason because the leaders have allegedly spread news to discredit the military and the State Administrative Council. The charges again lack any foundation and are totally misconceived. Trade unions have denounced the military group and called for a restoration of democracy, the exact opposite of treason, as they have not betrayed their country but are in fact defending it and its duly-elected Government.

It is also more than clear that had the leaders remained, there was absolutely no likelihood of due process and a fair trial. Further we know that the military, this year, revoked the citizenship of 11 prominent activists, thus rendering them stateless in violation of international law.

The regime has declared at least 16 unions illegal and has threatened to take legal action against them if they continue with their activity. The police and the military have raided union offices and the homes of union leaders and have seized documents and equipment in response to their participation in strikes and demonstrations calling for the restoration of democracy in Myanmar.

Workers report that factory owners are intentionally and systematically busting unions with impunity in all sectors and unions cannot perform their union activities or duties at the respective workplaces. Effectively, all channels for industrial relations and dispute settlements have been shut down. The arbitration mechanism and labour courts are not being used as parties have lost all faith that these institutions can function effectively in the current context of state repression.

Unions report that industries, such as the garment industry, are taking advantage of the absence of the rule of law to drive down the wages and working conditions guaranteed in law or in established collective agreements. There has been a significant increase in unjust dismissals and factory management are dismissing monthly paid workers and replacing them with day labour. Systematic attacks on healthcare workers and facilities are ongoing across the

country. Similarly, workers in the civil service, public sector and teaching professions are routinely being threatened for engaging in protests calling for democracy activities.

In sum, it is impossible to exercise freedom of association is in the country and least not without significant real risk of arrest or worse. In addition to these most pressing matters, we also take note of the many legislative matters which also create serious concern with respect to the exercise of the right to freedom of association. The Worker members bring these matters to the attention of the Committee though no legislative reform should be undertaken until there is a return to democracy and the duly elected legislature can introduce and adopt the necessary legislation. These laws include the Electronic Transaction Acts adopted on 15 February 2021, the Law on the Right to Peaceful Assembly and Peaceful Procession adopted in 2016, the Labour Organization Law and the Settlement of Labour Disputes Law, and the Special Economic Zone Law which raises concern regarding its contradiction with the full application of the Labour Organizations Law and the Settlement of Labour Disputes Law in the special economic zones.

What we see today in Myanmar is a terrible tragedy. We all had much hope after decades of military rule that, the formal dissolution of the military junta in 2011, and the elections in 2016 would open the door for a process of democracy. Unfortunately, these hopes were destroyed and in 2021 the military coup firmly closed the door on this process. So we are really looking forward to have thorough and formal discussion in the Committee in order to bring this situation back on the right track.

Government member, France – I have the honour of speaking on behalf of the **European Union (EU) and its Member States.** The candidate countries **North Macedonia** and **Albania,** and the European Free Trade Association countries **Iceland** and **Norway**, Members of the European Economic Area, as well as **Georgia** and **Türkiye**, align themselves with this statement.

Since the military coup, the situation in Myanmar has continuously and gravely deteriorated. This act halted the country's democratic transition with disastrous humanitarian, social, security, economic and human and labour rights consequences. We are deeply concerned by the continuing escalation of violence and the evolution towards a protracted conflict with regional implications. More than 1,723 people have been killed, including more than 100 children; over 10,800 are currently under detention and 80 people sentenced to death.

The EU and its Member States stand with the people of Myanmar and with all those advocating for and working towards an inclusive democracy and respect of human rights, including labour rights, civil liberties, and fundamental freedoms. In line with the resolution for a return to democracy and respect for fundamental rights in Myanmar adopted last June, we believe it is vital that tripartite constituents continue to show their joint commitment to the protection of human rights, including labour rights in Myanmar.

The EU and its Member States condemn in the strongest terms the continuing widespread human and labour rights violations and abuses perpetrated by the Myanmar military and security forces across the country, including the unlawful persecution of civil society organizations and its activists, violence against peaceful protestors and arbitrary arrests and detentions, intimidation and harassment, unjustified dismissals, threats and acts of grave violence and torture, including killings, against trade unionists and human rights defenders and acts of sexual and gender-based violence.

We fully share the Committee's calls for all measures to be taken to restore and ensure full respect for the basic civil liberties necessary for the exercise of freedom of association, including freedom of opinion and expression, freedom of assembly, freedom of movement, freedom from arbitrary arrest and detention and the right to a fair trial by an independent and impartial tribunal.

We continue to urge Myanmar to uphold fully and without delay its obligations under the Convention, and to ensure that workers and employers and their organizations are able to exercise their rights without threat of intimidation or harm and in a climate of complete security.

Our calls are even more saddening, as while there were still many outstanding decent work challenges before the coup and serious concerns with regard to freedom of association and forced labour, we had noted some advancements. However, since the 2021 coup, this progress was destroyed by the military and we had to reprogramme our activities.

In order to support workers in the garment sector, our ongoing and planned responsible business conduct projects continue to aim at improving working conditions, promoting labour and environmental standards and reducing labour rights abuses in the garment industry.

The EU and its Member States reiterate our calls for an immediate cessation of all hostilities, an end to the disproportionate use of force by the Myanmar armed and security forces as well as an end to the state of emergency and the restoration of the legitimate civilian government.

We continue to support the Association of Southeast Asian Nations (ASEAN) efforts in finding a peaceful solution to the crisis. We also reiterate our support for the decision of the ILO's 344th Session of the Governing Body to establish a Commission of Inquiry in respect of the non-observance of the Convention in question as well as the Forced Labour Convention, 1930 (No. 29).

Government member, Canada – I am speaking today on behalf of **Canada** and the **United Kingdom of Great Britain and Northern Ireland**.

It has now been over one year since the military coup in Myanmar. The ILO and other United Nations human rights bodies have since presented credible and consistent reports on widespread human rights violations in the country, including violence against workers, trade unionists, labour leaders, and the civilian population at large. The international community has been clear in calling on military authorities in Myanmar to halt this violence, and Canada and the United Kingdom deplore that there has been no progress in this regard.

Canada and the United Kingdom again urge the military to immediately cease violations of international human rights obligations and halt all violence against civilians, including the specific targeting of trade unionists, human rights activists, peaceful protesters, and foreigner citizens. We also urge Myanmar to uphold its obligations under the Convention and immediately and fully implement the recommendations of the Committee of Experts.

More specifically, we call on Myanmar to:

- undertake full and independent investigations into the circumstances of the killings of Chan Myae Kyaw, Nay Lin Zaw and Zaw Htwe and report to the ILO on the investigations' findings;
- release all trade unionists still being detained or imprisoned for having peacefully exercised their trade union rights protected under the Convention, including their engagement in the Civil Disobedience Movement;

- ensure full respect – in both law and practice – for basic civil liberties necessary for the exercise of freedom of association, including freedom of opinion and expression and freedom of assembly; and
- finally, ensure that workers, employers and their respective organizations are able to exercise their rights under the Convention in a climate of freedom and security, without threat of intimidation, violence, arbitrary arrest or imprisonment.

We also call on the international community to protect civilians in Myanmar by halting the sale and transfer of arms, military equipment, material, dual-use equipment and technical assistance to Myanmar's armed and security forces – through state-to-state arrangements or other means. Preventing the military from having access to the weapons and equipment it is currently using to commit such violence is essential.

Lastly, we call on the military to cooperate with the upcoming ILO Commission of Inquiry and allow it to carry out a full and independent investigation of the complaint.

Worker member, Netherlands – I speak on behalf of the Swiss and German Workers' delegation and Building and Wood Workers International (BWI).

One year after the military coup, the Civil Disobedience Movement in Myanmar has continued to grow into a massive movement resisting the military junta. It is the systematic violence that prevents unions and their leaders to exercise their fundamental labour rights. I will now mention some of the most severe examples of repression.

The military uses Penal Code section 505A to charge many workers for their support of the Civil Disobedience Movement, like at least 71 education workers and 864 healthcare workers. By now at least 301 trade union leaders and members from various sectors have been arrested by the military for taking part in the Civil Disobedience Movement. Some of them have been sentenced in military tribunals, including a professor from the University of Yangon, also the President of the University Teachers Association.

Some 400,000 civil servants, teachers and healthcare workers supporting the Civil Disobedience Movement have been coerced to return to work, tens of thousands have been terminated. Railway workers and their families have been forcibly evicted from their dormitories and their homes in the workers' communities were pulled down by the military. Fifty-five trade unionists have been killed by the military in association with the peaceful Civil Disobedience Movement protests. Some have died of COVID-19 infections while in hiding from military arrests.

We are seriously concerned about the wellbeing of Thet Hnin Aung, the General Secretary of the MICS-TUsF and a member of the Mandalay Civil Disobedience Movement Committee. He was arrested on 18 June 2021 and tortured in prison. We demand his release.

The military-led State Administration Council killed trade unionists, de-registered 16 labour organizations, invalidated the passports of trade unionists and revoked the citizenship of dissidents including CTUM's president Maung Maung. The violations are too long to name here. Time is too short.

We strongly condemn the military junta under the State Administration Council for severe repression of Myanmar trade unions' peaceful exercise of their rights for restoration of democracy and freedoms as a condition for social justice.

We demand the unconditional release of all trade unionists, protesters, civilians and political leaders imprisoned under the coup. We call for the respect of workers and civil rights

to freely associate and to strike, for the restoration of the labour organizations and the citizenship rights of the trade unionists.

Government member, Switzerland – Switzerland remains gravely concerned about the current situation in Myanmar. Switzerland continues to strongly condemn the military takeover and calls for the immediate resumption of dialogue and the democratic process aimed at achieving lasting peace and development in the country.

We remain deeply concerned about the serious violations of international law committed since 1 February 2021, which may constitute crimes against humanity and war crimes. The immediate cessation of all violence and respect for international humanitarian and human rights law are essential for a lasting peace. This includes, of course, the fundamental right to freedom of association and the protection of the right to organize as stipulated in the Convention. Employers and workers must be able to exercise their right to freedom of association in a climate of freedom and security.

Switzerland is extremely concerned about acts of intimidation, threats and serious violence, including murder, against trade unionists who have exercised their rights. Full and independent investigations will be necessary to restore justice.

Switzerland is also concerned about the broad and potentially arbitrary interpretation of legislation, such as the Electronic Transactions Act, sections 505A and 124A of the Penal Code, and the law on the right to peaceful assembly and peaceful procession of 2016. Under these laws, a significant number of trade unionists have been detained while exercising rights protected under the Convention.

In conclusion, Switzerland supports the people of Myanmar, the workers and employers, in their quest for democracy, freedom, peace and prosperity. We are convinced that international cooperation is essential for this. Respect for fundamental international labour standards is the basis for this. We urge the military authorities to guarantee these rights, and to resume dialogue and the democratic process immediately.

Worker member, France – The illegitimate authorities in Myanmar have amended a number of laws to expand the powers of the military and further restrict the fundamental rights and civil liberties of the people.

Sections of the law guaranteeing the protection of private life and the security of citizens have been removed, enabling the security forces to arrest and detain workers, trade unionists and citizens.

The Ward or Village-Tract Administration Law has re-established the requirement for the registration of overnight stays by non-locals, guests and visitors. The CTUM has reported that night-time sweeps for union leaders by the military and the police have intensified. The military are searching for union leaders in wards and villages based on a list of names and the enterprises where they work.

The charge of treason, under section 505 of the Penal Code, has been amended to include attempts to incite resistance and restore a civilian government. The prohibition of public gatherings of five or more people and the curfew between 10 p.m. and 4 a.m. for an unlimited period has been extended in accordance with section 144 of the Code of Criminal Procedure.

A cybersecurity alibi bill will have the effect of prohibiting the use of virtual private networks (VPNs). The de facto prohibition of the unrestricted use of VPNs will further hamper freedom of expression and the free communication of trade union leaders with their members

and with international organizations, without fear of being identified, monitored and criminalized.

From the start of 2022, a new ordinance requires citizens of Myanmar to carry and present their national registration card whenever they travel. This new order restricts the freedom of movement and the activities of trade unionists still further, with the specific goal of tracking them down.

On 31 January 2022, the army's National Defence and Security Council extended the state of emergency for another six months. In anticipation of demonstrations to mark the anniversary of the coup d'état on 1 February, the State Administration Council threatened sanctions of up to life imprisonment for public demonstrations, strikes and expressions of support. In the event, a silent strike was successfully organized throughout the country. Demanding a more favourable environment for the exercise of freedom of association and civil liberties has become a crime in Myanmar.

The Committee cannot remain silent in the face of such excesses and strongly condemns them.

Government member, United States of America – The United States shares the Committee of Experts' deepest concerns on the systemic violence against workers and the harsh suppression of civil liberties by Myanmar's military authorities.

Since the military coup, the military regime has killed over 1,800 people and arbitrarily detained close to 14,000 people. At least 290 people have died in detention, and over 600,000 people have been displaced internally and another 36,100 out of the country. Trade unionists have been specifically targeted. Earlier this year, the regime revoked the citizenship of CTUM President U Maung Maung, a former ILO Governing Body member who has long been instrumental in the struggle for democracy and workers' rights in Myanmar.

The regime continues to exploit vague and broad Penal Code provisions to levy treason charges against trade unionists exercising their fundamental labour rights. The military has also banned 16 major labour union organizations, forcing many of their leaders into hiding. Employers, too, report an environment that is not conducive to sustainable enterprises and the exercise of freedom of association.

The military authorities' written submission to this Committee denies knowledge of named victims and the existence of specific organizations the regime has deprived of lawful registration. This is unacceptable.

The United States strongly supports the consensus decision of the Governing Body to establish a Commission of Inquiry to investigate non-observance of ILO Conventions Nos 87 and 29. We echo the Committee of Experts' view that the killing, disappearance, or serious injury of trade unionists requires the institution of independent judicial inquiries to ensure the responsible parties are held accountable. The Commission of Inquiry should investigate ongoing labour rights violations under both Conventions and also provide recommendations to address deficiencies in the country's legal framework for freedom of association and its enforcement.

We look forward to a time when a democratically elected government in Myanmar can reconstitute its tripartite mechanisms for the purpose of ensuring freedom of association is fully protected and promoted under Myanmar law, in line with the recommendations of the Committee of Experts.

Worker member, Australia – I am speaking on behalf of the Australian Council of Trade Unions (ACTU) and the Irish Congress of Trade Unions (ICTU) and the All Indonesian Trade Union Confederation (KSBSI) Indonesia. As the Committee of Experts notes, "freedom of association can only be exercised in conditions in which fundamental human rights are fully respected and guaranteed". It is clear that since the military coup in Myanmar in February 2021, fundamental rights and civil liberties have been under attack:

As of today, the junta has killed 1,876 people. It has arrested, charged or sentenced 10,847 people for participating in the Civil Disobedience Movement, which has been going on for over a year, despite the repression, and at least 1,979 charged workers, trade unionists, activists and protesters have been forced into hiding since the start of the coup. The crimes against humanity committed by the military include murders, persecutions, imprisonments, sexual violence, enforced disappearance and torture. They are systematic and may qualify as war crimes.

Since November 2021, the military has intensified airstrikes and ground attacks in regions where the Civil Disobedience Movement protesters, workers, and trade union activists are taking refuge to avoid arrest. United Nations agencies have confirmed that the military deploys heavy artillery, tanks, helicopters, jet fighters and surveillance drones in ground attacks and airstrikes to indiscriminately kill civilians, as well as to shell and destroy civilian villages, churches and refugee camps.

The military have occupied public hospitals, attacked healthcare workers, damaged, raided and confiscated medical equipment, drugs and oxygen cylinders. More and more healthcare staff have gone into hiding as the military has revoked the licences of doctors and health workers who have joined the Civil Disobedience Movement, and cancelled the business licences of the clinics and hospitals they work in.

The military have attacked freedom of expression and attempted to restrict access to information by cutting access to mobile data at night and ordering internet service providers to suspend wireless broadband services, leaving intermittent fixed line connection as the only avenue to access the internet. Freedom of the press is non-existent, following the cancellation of five independent media licences on 8 March 2021, and the outlawing of organizations documenting the military's atrocities such as the Assistance Association for Political Prisoners Burma for supposedly inciting public panic, riots and harming state stability. The junta has killed at least three journalists and imprisoned 26 journalists since the coup.

These are just a few examples of the violations of civil liberties perpetrated by the military authorities, that show the State Administration Council's complete disregard for human and labour rights. Attacks on workers and civilians and the violations of human rights must cease immediately. The international community must hold the State Administration Council accountable for the gross violations of human rights, including the right to freedom of association; enact sanctions and cease the flow of arms to Myanmar to stop the atrocities; and recognize the National Unity Government as the official and legitimate Government of Myanmar.

Worker member, Japan – I speak on behalf of the Japanese Trade Union Confederation and IndustriALL Global Union. Since the coup d'état by the military in Myanmar, the repression of workers has been unrelenting. The military junta has committed flagrant violations of human rights and trade union rights, including violence, arbitrary arrests and detentions. Hundreds of thousands of workers have lost their jobs in different industrial sectors. In the garment sector alone, more than 250,000 workers lost their jobs. Many garment factories

closed without paying their workers, and employers ignore collective agreements. Whenever workers organize protests, employers bring in soldiers to repress workers.

Freedom of association and the right to organize are under attack. We would like to show specific examples from the garment sector that we are aware of: maternity leaves are denied, and women fear job loss over taking legally entitled leave; a worker lost three fingers at the workplace due to a lack of occupational safety and health measures, he was fired and received only 20,000 Myanmar kyats as compensation for the injury; a factory recruited child labour paying below minimum wage, and child workers are put into hiding when audits come to the factory. At one garment factory, production targets were set high, and if they do not meet the target, workers were beaten to the chest, punched in the ear and hit on the head by the supervisors and managers. Supervisors shouted obscenities at young women workers from the edge of the line. Workers are treated as slaves to meet the target. Young women workers are asked loudly "Are they born by humans or dogs". Women workers feel they are in hell at the workplace.

In a workplace where people can work as human beings and protect their livelihoods, there is always freedom of association, and labour rights are protected. The Myanmar military has brutally taken these rights away from workers and trade unions. The companies involved are complicit in violating the rights under the Convention. Businesses should divest from Myanmar with such hostile environments when freedom of association cannot possibly be respected.

Government member, Australia – Australia condemns, in the strongest terms, the ongoing human and labour rights emergency in Myanmar. The 1 February 2021 military coup has intensified and deepened the already serious human rights situation in the country.

We call on the military to cease all violence and release all those arbitrarily detained, including Australian professor Sean Turnell. We further call on the military to allow immediate and unimpeded access for the delivery of humanitarian assistance for all people in need and to engage inclusive dialogue on a peaceful return to democracy.

The allegations and issues contained in the Report of the Committee of Experts are extremely grave and Australia deplores the lack of any progress to address these. As a Member of the ILO, we urge Myanmar to uphold its obligations under the Convention to protect freedom of association and the right to organize and immediately implement the recommendations of the Committee of Experts.

We affirm our support for the work of the ASEAN and United Nations special envoys and call for the full and timely implementation by Myanmar of the ASEAN five-point consensus, including to cease violence, facilitate humanitarian access and engage in constructive dialogue with all parties.

We urge the military regime to cease impeding the activities of the ILO and other international agencies and civil society organizations in their efforts to safeguard labour rights in Myanmar and to fully cooperate with the upcoming ILO Commission of Inquiry.

Worker member, Italy – I am talking on behalf of the Trade Union Confederation of Workers' Commissions (CCOO). Despite the international pressure and the overall condemnation over the brutality of the Myanmar military dictatorship, the junta continues to perpetrate war crimes and crimes against humanity. The world observes, but we feel we are not doing enough and we are not moving with the necessary speed and strength to defeat the junta and bring Myanmar back under the control of a civil democratic federal government where workers have their fundamental rights respected.

The Burmese trade unions – we heard a lot already – are among the leaders of the democratic opposition and they are a principal and main target. We deplore the junta's decision to suspend their passports and citizenship. This violates the most basic human right. For this reason, today we urge the ILO to work for the immediate release of the leader of the MICS-TUsF and all other unionists still detained for having exercised their trade union rights enshrined in the Convention, and for their participation in the Civil Disobedience Movement. Just as the Committee on Freedom of Association, we call for the repeal of section 505-A of the Penal Code and call for the amendment of section 124A.

The economic sanctions against the military conglomerates decided by the European Union and the United States and other governments are important, but they are not sufficient. There is no more time to wait. Strong multiple and cohesive sanctions on the political, financial and economic interests of the junta should be adopted by the United Nations and governments, including the suspension of the SWIFT codes. Italian unions have been demanding this to the European Union and also to the UN.

Myanmar is facing war crimes and crimes against humanity throughout the country but also profound violation of United Nations and ILO Conventions by multinational companies and brands, among which 61 EU and Italian well-known fashion brands. The respect of United Nations norms and labour Conventions are conditions for maintaining the European Union European Banking Authority Regulation.

To come to conclusion, Italian unions together with the International Trade Union Confederation (ITUC), strongly support the conclusions of the Worker spokesperson and reiterate the call for strong and immediate action to restore the respect of human rights and the rule of law in Myanmar.

Observer, International Trade Union Confederation (ITUC) – I am the executive committee member of the ITUC – Myanmar. I speak about the atrocities committed by the military regime under the coup. Since 1 February 2021, the ITUC and its affiliates support prison visits, for over 30 CTUM members and have suffered four funerals of the Mining Workers' Federation of Myanmar (MWFM), an affiliate of the CTUM. The prison visit includes brother Thet Hnin Aung, the General Secretary of the MICS-TUsF, a Workers' adviser to the International Labour Conference in 2019.

On 27 March 2021, brother Chan Myae Kyaw, a CTUM member, was the first union member to be shot to death. He was a truck driver of a Copper Mine. On 7 December 2021, brother Tint Naing, brother Hein Thu of another Copper Mine, brother Zin Min Tun, brother Win Kaw and brother San Ko of a copper mining Project in Letpadaung were burnt to death in Done Taw village.

On 20 April 2022, sister Khaing Thinzar Aye, sister Ei Ei Phyu, and brother Nyan Sein were arrested in Yangon. On 23 May, brother Moe Gyi, an executive of the Agriculture and Farmers Federation of Myanmar was arrested in Hkhamti, Sagaing region. On 27 May, trade union members brother Chit Thein Zaw and brother Kyaw Nyein of another military and Chinese copper mine joint venture were arrested in Done Taw village. On the way to the police station, they were shot and killed.

On 7 December, military troops burned alive 11 persons near Done Taw village; 5 of them were members of the MWFM union.

The military regime showed that they do not care for workers' rights, human rights or freedom of association. The two extrajudicial killings and the arrest of brother Moe Gyi took place after the ILO Commission of Inquiry was announced at the 2022 March Governing Body.

The burnings and killings of our members are the tip of the iceberg, compared to what is taking place all over the country. The military regime attacks all kinds of workers all over the country. It is crystal clear that any kind of revenue to the regime, from investors, fashion brands, or from the extractive industries, and all the companies' registration fees support the workers' killings in other industries.

The CTUM is encouraged that the Commission of Inquiry is taking place. We will do our best to collaborate with such a Commission.

The extrajudicial killings of our brothers from a joint venture copper mine are on record. The holding companies will be held responsible, as the junta, for the burning alive members of the MWFM union. They will be prosecuted internationally, even before democratization is restored in Myanmar.

Observer, International Transport Workers' Federation (ITF) – I speak on behalf of the ITF and the Korean Confederation of Trade Unions. As we have heard from sister Khaing-Zar, the egregious violations of the Convention committed by the military junta over the past 16 months have made it increasingly dangerous, if not impossible, for trade unionists to operate in full freedom.

Not only have the Committee of Experts double footnoted this case, Myanmar is now the only State in the history of this Organization to be subject to two Commissions of Inquiry, in addition to being the only country to have ever received article 33 sanctions. With such heinous violations of the Convention and other internationally recognized human rights, it is imperative that the business community steps up to the plate.

In this regard, we would like to recall the corporate responsibility to respect human rights and the process of human rights due diligence under Pillar II of the United Nations *Guiding Principles on Business and Human Rights*. Human rights due diligence is of course now reflected in both the *Organisation for Economic Co-operation and Development's Guidelines for Multinational Enterprises* and the ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, with the latter stating that this process should take account of the central role of freedom of association. Human rights due diligence is also firmly anchored in statute in several jurisdictions.

The United Nations Guiding Principles on Business and Human Rights call on businesses to conduct enhanced due diligence to identify, prevent and mitigate these risks and treat them as a matter of legal compliance due to the heightened risks of gross rights abuses associated with operating in conflict-affected areas, as is the case with Myanmar.

Businesses must therefore map the major risks that come with any vacuum in protective host state legislation or practice, such as the abuse of emergency powers following a military coup.

Indeed, earlier this month, the Ethical Trading Initiative advised companies to not only urgently reassess their presence in Myanmar, but to also refrain from making any additional investments and to continue to meaningfully engage with unions with respect to their presence in the country.

The Myanmar Labour Alliance, with the support of global unions, have called on businesses to cease placing new orders and disinvest. This demand is part of the wider call by the Myanmar labour movement for comprehensive economic sanctions.

For companies sourcing from or operating in Myanmar, the question really is whether even enhanced human rights due diligence is sufficient when there is such a dire human rights protection vacuum. Indeed, several leading brands have already withdrawn from the country.

We therefore implore brands and investors alike to follow the call of the Myanmar trade union movement and make a responsible exit now. Now is the time for all supply chain actors to step up.

Employer members – We have listened closely to the contributions of the speakers today and thank the Government and Worker representatives for taking the floor.

We share the general view regarding the gravity of the situation expressed by the majority of the room. The most important issue in our view is the immediate restoration of fundamental civil liberties in Myanmar without which freedom of association and thus compliance with the Convention, quite simply, is impossible. In respecting these freedoms, Myanmar must be guided by the ILO's human-centred approach and focus on the interests, jobs and livelihoods of the people of Myanmar.

In this light, the Employer members continue to urge Myanmar to quickly work to restore democracy and uphold its obligation under the Convention. It is of particular importance to do the following: first, take all measures necessary to ensure full respect in law and practice of basic civil liberties for the exercise of freedom of association, including freedom of personal security, freedom of opinion and expression, freedom of demonstration and assembly, freedom of movement, freedom from arbitrary arrest and detention and the right to a fair trial by an independent, impartial judiciary, so that both workers' and employers' organizations can carry out their activities and functions without the threat of intimidation, harm or imprisonment or any other undue and impermissible restriction.

We also note the importance, when conditions permit, of a review of the Labour Organization Law within the framework of an overall legislative reform process, in full consultation with the national social partners to ensure fully that the rights of workers and employers under the Convention are respected.

Worker members – We thank also all the participants for the interventions which echoed unanimously in this room. Since the 2001 military coup, the International Labour Conference and the Governing Body have spoken in clear and principle terms of the situation in Myanmar, including to call for an immediate restoration of democracy and respect for fundamental rights. Unfortunately, our appeals have not been heeded and instead the situation in Myanmar has only worsened. The Governing Body took decisive action in March 2022 and decided to establish a Commission of Inquiry making Myanmar the first country in the history of the ILO to be the subject of two Commissions of Inquiry and it is still the only country to have been the subject of article 33 measures.

We have heard from the Worker representative from Myanmar, who herself is in exile as the regime revoked her passport, describe in detail the horrors that workers are facing in the country and we extend our full solidarity to her but also to all other workers and trade unionists in the country, who over the last ten years have fought hard to rebuild a trade union movement and to build a consolidated democratic institution and practice. We share both their loss and their resolve to see democracy once again restored to the country.

In light of the observations of the Committee of Experts and the discussion in this Committee, the Worker members deplore the current situation in the country and urge the regime to:

(1) immediately cease acts of violence against workers and trade unionists who are exercising their right to free speech, peaceful assembly and free association, hold those in the police and military responsible for these acts and pay reparations for the victims and their families;

(2) immediately release all workers and trade unionists who have been arrested and detained for exercising their right to free speech, peaceful assembly and free association and cancel any outstanding warrants for the same;

(3) immediately return passports and reinstate citizenship to those trade unionists who have had them revoked;

(4) immediately reinstate the registration of unions whose registration has been revoked and allow trade unions to undertake their activities without interference and without fear of retaliation;

(5) immediately cease all acts limiting the full exercise of the right to freedom of association.

In light of the serious nature of the violations in this case we request the conclusions of this case to be put in a special paragraph of the Committee's report.

Conclusions of the Committee

The Committee deplored the removal of the civilian Government by the military coup in Myanmar on 1 February 2021 and the subsequent declaration of the state of emergency depriving citizens of their civil liberties.

The Committee deplored the total disregard for human rights, civil liberties and the rule of law in Myanmar.

The Committee expressed its grave concern at the lack of progress in restoring civilian rule and the failure of the military authorities to implement:

- **the resolution for a return to democracy and respect for fundamental rights in Myanmar adopted by the International Labour Conference at its 109th Session (2021); and**
- **the decision establishing a Commission of Inquiry adopted by the Governing Body at its 344th Session (March 2022).**

Taking into account the discussion, the Committee urges the military authorities to:

- **fully implement the resolution of the International Labour Conference and the decision of the Governing Body adopted in 2021 and 2022, respectively;**
- **refrain from the arrest, detention or engagement in violence, intimidation or harassment of workers and trade unionists exercising their rights to freedom of expression, association and peaceful assembly, and immediately and effectively undertake independent investigations into these crimes with a view to establishing the facts, determining culpability and punishing the perpetrators, including members of the police and the armed forces, and pay reparations to the victims and their families;**
- **release unconditionally all workers and trade unionists who have been arrested and detained for having exercised their rights to freedom of expression, association and peaceful assembly, and cancel any outstanding warrants for the same;**

- **immediately return passports and reinstate the citizenship to those trade unionists who have had them revoked;**
- **immediately reinstate the registration of trade unions whose registration has been revoked since the military coup;**
- **ensure that workers are able to carry out their trade union activities without interference, and without threats of violence or other violations of their civil liberties;**
- **revoke all decrees and laws introduced by the military authorities following the coup of 1 February 2021; and**
- **ensure that the ILO Commission of Inquiry established by the Governing Body in March 2022 is allowed to enter the country and carry out its mandate freely without interference.**

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

Netherlands – Sint Maarten (ratification: 1951)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Written information provided by the Government

The Government of Sint Maarten has taken note of the direct requests and comments made by the Committee of Experts in its 2022 report.

The Government of Sint Maarten would like to apologize for the delay in submitting the pending reports. This is in part due to the lack of capacity in Sint Maarten as a small island developing State. The Government of Sint Maarten strives to meet its reporting obligations prior to the deadline each year.

Through this letter, the Government of Sint Maarten would like to confirm that the requested pending reports on Conventions Nos 12, 14, 17, 25, 42, 81, 87, 95, 101, 106, 118 and 144 have been submitted by the Government of Sint Maarten to the ILO. Confirmation of receipt was sent by the secretariat of the International Labour Standards Department on 8 April 2022.

The Government of Sint Maarten has also taken note of the observation and direct request made by the Committee of Experts concerning Convention No. 87 due to allegations made by the Employers Council Sint Maarten (hereinafter ECSM) and the Sint Maarten Hospitality and Trade Association (hereinafter SHTA).

The Committee of Experts has requested the Government of Sint Maarten to provide the following information:

(1) to take the necessary measures to review, in consultation with the employers' organizations concerned, the developments mentioned in the Committee of Experts' report concerning Sint Maarten on pages 267–268, in particular as to the establishment and operations of the Soualiga Employer Association (SEA) and its participation in the tripartite Social Economic Council (SER), in order to ensure complete respect for the rights of employers and their organizations to establish and join organizations of their own choosing and to elect their representatives in full freedom, and redress any interference from the public authorities in this regard;

(2) to provide information on the result of the appeal challenging the appointments to the SER made by the SEA;

(3) to reply in full to its other pending comments under the Convention.

As mentioned in the letter sent by the Government of Sint Maarten to the Committee of Experts on 18 May 2021, Sint Maarten seeks not only to uphold the law, but to ensure that the principles of good governance are followed in the common interest of the people of Sint Maarten.

The Government of Sint Maarten has been in constant dialogue with the ECSM and the SHTA. As previously mentioned, the Government of Sint Maarten sought to create a balanced and broad representation in the SER by having all business owners, from both larger enterprises but also SMEs (small and medium-sized enterprises), adequately represented in the SER.

The Government of Sint Maarten hoped that, through the creation of an umbrella organization, all the above-mentioned employers would be able to have adequate representation in the SER. Therefore, the mandate was given to the Chamber of Commerce and Industry of Sint Maarten (hereinafter COCI) to execute the establishment of such an umbrella employers' organization.

The SHTA was also approached by the COCI to be part of the SEA. Employers from the SEA, as an umbrella organization, could then be nominated as representatives from different employer sectors to be appointed to the SER. This would then create the much-needed broad and balanced representation in the SER.

The SHTA was not in agreement and declined to join the SEA. Therefore, the SHTA created its own umbrella organization, the ECSM. Even in doing so, the ECSM has kept the same seats and representation that the SHTA previously had in the SER. The Government of Sint Maarten is of the opinion that the SHTA, now through its umbrella organization the ECSM, has always had adequate representation on the SER, as well as in tripartite consultations. These tripartite consultations are held between the Government of Sint Maarten, employers' organizations and employees' organizations.

The Government of Sint Maarten is of the opinion that both umbrella organizations for employers' organizations, the SEA and the ECSM, are able to have representation in the SER as well as in tripartite consultations. This will achieve greater reflection of all employers on Sint Maarten.

The ECSM/SHTA have contested this framework. Therefore, legal proceedings have been filed by the ECSM/SHTA against the Government of Sint Maarten. The petition by the ECSM/SHTA was regarded as inadmissible by the court in first instance of Sint Maarten. Currently, there is an appeal to the High Court of Aruba, Curaçao, Sint Maarten and Bonaire, Saba and Sint Eustatius. The verdict of the High Court concerning the appointments and representation of employer organizations in the SER will be rendered at the end of May 2022. The Government of Sint Maarten is awaiting the outcome of this decision. When a verdict is rendered in the court of law, it must be upheld by all the parties concerned, unless an appeal is filed.

In relation to the appeal challenging the appointments to the SER made by the SEA, the Government does not observe this as a challenge. In the view of the Minister of General Affairs, the SER is functioning and fulfilling its participatory function for the Government.

Through this letter, the Government of Sint Maarten would like to indicate that the above-mentioned is a priority that Sint Maarten is addressing continuously. The Government of Sint Maarten will continue to dialogue with all parties concerned and hopes that, through the decision of the High Court, the SER will be able to adequately fulfil its role as an advisory council.

The Government of Sint Maarten is able to answer any questions that the Committee of Experts may have regarding the above. Once the High Court decision has been handed down, this can also be shared with the Committee of Experts.

Discussion by the Committee

Government representative – Thank you Chairperson for the opportunity to address the Committee on behalf of the Government of Sint Maarten. Sint Maarten is a constituent State, within the Kingdom of the Netherlands. It is a Member of the ILO through the Kingdom of the Netherlands. As was stated by the Government of Sint Maarten in its letter dated 20 May 2022, which has been made available to this Committee, Sint Maarten has done its utmost to respond to the direct requests and comments made by the Committee of Experts in its 2022 report, meet its reporting obligations and implement and apply the ILO Conventions that are applicable to Sint Maarten, despite our capacity and challenges as a small island developing State.

With respect to the requests and comments of the Committee of Experts, the Government of Sint Maarten wishes to provide context, particularly in relation to the establishment and operation of the SEA and its participation in the Social Economic Council (SER).

The SER is an independent advisory tripartite organization established by national ordinance to provide the Government of Sint Maarten with solicited and unsolicited advice on all important social and economic issues. The SER consists of three representatives of employers' organizations, three representatives of employees' organizations and three independent experts, and all members of the SER have a substitute member. Due to an existing conflict related to the employers' representation in the SER dating back to 2017 and based on concerns raised by the SER Board 2017–20 via the then Chairperson, the Minister of General Affairs decided, based on section 2 of the Business Ordinance of Sint Maarten, to mandate the Sint Maarten Chamber of Commerce and Industry to establish a working group to structure an umbrella employer organization. The intention of the Minister of General Affairs was to ensure a balanced structure with respect to the representatives of the umbrella employer organization, like that of our local umbrella employee organization, the Windward Island Chamber of Labour Unions (WICLU), established in 1997 and also represented in the SER. In so doing, the Chamber of Commerce and Industry installed an advisory committee on its board of directors to further execute the task expeditiously. The advisory committee was able, based on stakeholder engagement and involvement, to complete the establishment of the requested umbrella employers' organization, the SEA. The actions of the SHTA, inter alia, to establish the ECSM, have since been perceived as not respecting the democratic process of the Government as prescribed by national law, namely the Business Ordinance of Sint Maarten, to grant the aforementioned mandate to the Chamber of Commerce and Industry, even though stakeholder consultations with the above-mentioned employers were held. These actions are also perceived as an objection to the intention of the Government to ensure that a broad-based representation of employers is established to ensure we adhere to the international normative framework in this regard.

It is good to mention that the SHTA, which filed a complaint against these plans of the Government of Sint Maarten, has seen a representation growth in the SER, now having two members and two substitutes. The SEA now has one member and one substitute. This is an indication that its influence in the SER has not decreased, which would not be the intention of the Government. As you might be aware, the SHTA has since filed legal proceedings against the Government of Sint Maarten. However, given (a) the stage at which the litigation process now finds itself, and (b) the verdict of the Joint Court of Justice concerning the appointments to the SER, which is expected on 29 June 2022, the Government of Sint Maarten will have to await the outcome of the decision of the Joint Court of Justice in this regard before taking further action.

In conclusion, I would like to emphasize that it is the wish and intention of the Government of Sint Maarten to continuously engage in fruitful tripartite dialogue with the social partners in our country, both within the formal structures that we have, the SER, and beyond. It is my belief that this case has its origins exactly in that intention; to establish cooperation with the country's most representative organizations. If the Government has unintentionally taken steps that could be seen as not being in conformity with the Convention, we would be interested in learning from the ILO about the steps that Sint Maarten could take to address these concerns that have been raised. As a government of a small island developing State, with limited technical capacity in our country, we would welcome technical assistance from the ILO to help us take the necessary steps in this regard.

Worker members – This is the first time that the Committee has discussed the application of the Convention by the Government of Sint Maarten. We note the practice of the authorities in Sint Maarten that affects the right of organizations to elect their representatives in full freedom, which contradicts the principles contained in the Convention. We further note the concerns raised that a governmental agency in Sint Maarten has established the SEA, an umbrella organization to represent employers, including within the tripartite SER.

We note the concern that the SEA is a government creation attempting to establish an employers' representative organization which does not reflect genuine employers' organizations and is being used to marginalize existing employers' representative groups. We stress the importance that should be attached to the right of organizations to elect their representatives in full freedom. We reiterate the observation of the Committee of Experts that it is the prerogative of employers and their organizations to determine the conditions for electing their representatives and to establish higher-level organizations.

The authorities should refrain from any undue interference in the exercise of these rights. We also note that similar observations have repeatedly been made by the Committee on Freedom of Association (CFA). Accordingly, in the view of the CFA, the right of employers' and workers' organizations to elect their own representatives freely is an indispensable condition for them to be able to act in full freedom and to effectively promote the interests of their members. The Worker members call on the Government to ensure respect for the principles contained in the Convention, including the right of organizations to carry out their activities in full freedom.

The Government must take steps to ensure that employers' and workers' organizations can independently and genuinely represent the economic and social interests of their members. The Government must respect the observations of the Committee of Experts and review its actions in this regard. The Worker members further note that in 2017, the Committee of Experts raised serious concerns regarding the exercise of the right to strike of public employees and that these issues remain pending to this day.

The Committee of Experts had noted that section 374(a), (b) and (c) of the Penal Code and section 82 of Ordinance No. 159 of 1964 containing the conditions of service of public servants, prohibited employees, including teachers, from striking under penalty of imprisonment. We note that the Penal Code was reviewed, and a new Penal Code entered into force in 2015. However, it is unclear whether the provisions of section 374 of the former Penal Code, which were in violation of the Convention, have been carried over into the new Penal Code.

We recall that no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike. Legislative provisions which impose sanctions, including sanctions of imprisonment, in relation to the legitimate exercise of the right to strike are contrary to freedom of expression and the principles of freedom of association.

Therefore, the Worker members request the Government of Sint Maarten to ensure in law and practice that public employees can fully exercise their right to strike and repeal any provisions in the legislation imposing penalties.

Employer members – On behalf of the Employers' group, I would like to thank the representative of the Government of Sint Maarten for the explanations provided on developments in the country in relation to respect for the freedom of association of employers. We also appreciate the Government's written contribution.

However, in the first place, we emphasize that Convention No. 87 is one of the ILO's fundamental Conventions and, as such, it must be the subject of particular attention and priority supervision. This is the first time that the Committee has examined this individual case, but it is already the third observation made by the Committee of Experts on this subject.

The report of the Committee of Experts notes the observations of the ECSM and the SHTA. Sint Maarten established the SER by national decree after it obtained its semi-autonomous status in 2010. The SER is a tripartite council, the board of which is composed of three workers' representatives and three employers' representatives, designated by the respective representative organizations, and a maximum of three independent representatives. "Independent" means appointed by the Government, not being a public official and not representing either workers or employers. The decree refers to a periodic examination of the most representative organizations, without setting out the conditions of representativity. The SER is responsible for issuing opinions requested or not requested by the Government on socio-economic matters. For certain legislative changes, it is a requirement to request the opinion of the SER, even if its opinion is not binding.

What are the facts in dispute? Through the Chamber of Commerce, the Government established the umbrella organization, the SEA, a so-called representative organization of employers. The Government explains that the SEA is an umbrella organization responsible for representing employers in a balanced manner, particularly on the SER. Regrettably, neither the Chamber of Commerce nor the SEA reflect a representation that is freely chosen or freely organized by employers. According to the SHTA, which is a member of the International Organisation of Employers (IOE), this political manoeuvre is an attempt to marginalize existing representative groups of employers, in violation of Article 3 of the Convention.

The SHTA has created an umbrella organization of employers with three other representative organizations. This umbrella organization, the ECSM, has raised the issue on several occasions with the Prime Minister. Not being heeded by the Government, the employers were bound to make comments to the ILO concerning the violation of the

Convention, as well as several legal appeals at the national level against the Government's decisions.

The first judicial outcome should be known at the end of June 2022. In the meantime, we regret to note that two of the members of the SER nominated by the ECSM have been prevented from participating in the SER's meetings. These employer members have been informed that they would not be suspended, but suspension would involve following legal procedures. However, the effect is the same. As a consequence, representative employers are no longer informed of what is happening in the SER, except that there is now only one employer member, the one designated by the SEA, which was itself created by the Government.

The current composition of the SER is three workers, three independent members and only one non-representative employer member. In law, in accordance with Articles 2 and 3 of the Convention, employers have the right to establish and join organizations of their own choosing and to elect their representatives in full freedom.

In all circumstances, the Government should refrain from any interference in this regard. Freedom of association is a fundamental democratic principle which applies in full to representative organizations of employers and workers. As explained in the 2012 General Survey, *Giving globalization a human face*, the public authorities must respect freedom of association 100 per cent. The prohibition of any interference by the public authorities includes the prohibition of the creation, in place of the social partners, of a coercive organization or an organization benefiting from favourable treatment.

I will quote two extracts from the General Survey: "Favouritism or discrimination by the authorities in relation to one or more workers' or employers' organizations may take various forms: pressure exerted on organizations in public statements by the authorities; unequally distributed aid; premises provided for holding meetings or activities to one organization, but not another; refusal to recognize the officers of some organizations in the exercise of their legitimate activities, etc. In the view of the Committee, any unequal treatment of this kind compromises the right of workers or employers to establish and join organizations of their own choosing."

Second quotation: "Legislative provisions which regulate in detail the internal functioning of workers' and employers' organizations pose a serious risk of interference which is incompatible with the Convention. Where such provisions are deemed necessary, they should simply establish an overall framework within which the greatest possible autonomy is left to the organizations for their functioning and administration. The Committee considers that restrictions on this principle should have the sole objective of protecting the interests of members and guaranteeing the democratic functioning of organizations."

What does this mean in practice? In its written information of 16 May last, the Government explains that by creating an umbrella organization it hoped to obtain the balanced and broad representation of employers on the SER. However, the objective does not excuse the means that are used, because it is the prerogative of employers and their organizations to determine the conditions for the election of their representatives and to create higher level organizations without any interference by the public authorities and other government organizations.

In conclusion, taking into account all the elements at hand, the Employer members urge the authorities of Sint Maarten to guarantee freedom of association for employers on their territory. The Employer members request the Government to take immediate and effective

measures to ensure, in both law and practice, respect for the freedom of association of employers.

In practice, the Government is requested to consult the employers' organizations concerned regarding the creation and functioning of the umbrella organization, the SEA, and its participation in the SER. In effect, it is necessary to ensure full respect for the rights of employers and their organizations to establish and join organizations of their own choosing and to elect their representatives in full freedom, and to remedy any interference by the public authorities in this respect.

The Employer members also request the Government to provide information on the outcome of the internal judicial appeal challenging the appointment of the employer representatives in the SER.

Finally, to give effect in a constructive manner to the judicial ruling that will be handed down in the coming weeks, it would be useful for the Government to request ILO technical assistance with a view to bringing the national situation into conformity with the Convention.

Worker member, Netherlands – Sint Maarten – This written statement is being tabled due to the fact that, as a Worker representative, I, Stuart Johnson, of the Sint Maarten delegation, will be travelling to Curaçao, and this limits my active participation to virtual participation on this matter.

On Sint Maarten, even though the Government would want to argue that the Convention is fully ratified and implemented, as a Worker representative, I would like to present a number of concerns and challenges that are creating enormous obstacles to the full implementation of the Convention.

The referendum procedure to gain the right to represent workers in the private sector or in a company: challenges are noticeable by workers' organizations when workers seek representation based on the Convention.

Limitation of workers by employers: a vast and extended number of workers on contracts do not have the right to vote in a referendum, since only permanent workers can vote according to the law and regulations.

Abuse of short-term contracts by employers: even though organized workers under the Convention find themselves in constant confrontation with their employers when they exercise their rights as workers to attend meetings called by the union. The latest is that these workers are receiving anything from warning letters to court summonses, together with the union, from the employers or management of companies, and even ministries in the Government.

It is noteworthy that a faith-based government-subsidized school board has included in the employment contract of teachers a clause that would prohibit them from being members of a union. This is a violation of workers' rights under the Convention. These illustrations show that a number of bottlenecks in application continue to contribute to violations against workers in general and their organization in Sint Maarten.

During the pandemic, workers in the private sector had a unilaterally imposed cut in their wages and benefits from 20, 25 and up to 50 per cent. This included various violations of the agreed salaries between employers' and workers' organizations. A 12.5 per cent cut was also implemented for public and semi-public sector workers, which has resulted in protests by workers and their unions from May 2020 until today.

The recommendations:

1. The necessary amendment to guarantee all workers their rights to full representation and active participation in workers' organizations, and to eliminate the "50 per cent plus one" rule as proof.
2. Make collective bargaining also possible for public sector workers, teachers, public sector schools and government-subsidized schools.
3. Control of compliance and sanctions against abuses or violations of the Convention.

Employer member, Germany – Freedom of association under Article 3 of the Convention means that workers and employers can set up, join and run their own organizations without interference from the State or one another. The establishment of a central federation and affiliation to international federations are also protected. The authorities shall refrain from any intervention.

In this case, an umbrella employers' organization was created, not as a result of the will of existing employers' organizations exercising their fundamental right to organize and freely associate, but at the initiative of the Government, which entrusted the Chamber of Commerce and Industry with the task of creating such an umbrella employers' organization. However, it is the prerogative of employers and their organizations to establish higher-level organizations without any interference by the public authorities or other governmental organizations.

To realize the principle of freedom of association in practice requires, among other things, a legal basis which guarantees that these rights are enforced, an institutional framework which can be tripartite or between the employers' and workers' organizations, the absence of discrimination against individuals who wish to exercise their right to have their voice heard, as well as the absence of discrimination between private and public employers.

The Constitution of Sint Maarten provides, in Chapter 2, Fundamental Rights, paragraph 1, article 12, "that the right of association shall be recognized". According to article 16, discrimination on the grounds of religion, belief, political opinion, race, skin colour, sex, language and on any grounds whatsoever shall not be permitted.

The SER provides the Government of Sint Maarten with advice on all important social and economic issues. In the SER, workers' and employers' organizations have a general space for tripartite consultations and social dialogue and to engage with expertise in the field of labour and employment policy.

The association of employers in a central organization is the expression of the freedom of association of employers, as protected by Article 3 of the Convention, and is one of the basic freedoms of workers' and employers' organizations. The State shall ensure its full recognition and application without discrimination between private and public employers, or any kind of marginalization of private companies.

The Government of Sint Maarten should ensure that the national legislation guarantees that this fundamental right of employers' organizations is respected and enforced in practice and shall refrain from any interference in the right of employers' organizations to establish a central federation.

We encourage the Government to avail itself of the technical assistance of the Office in order to ensure the full conformity of national law and practice with Article 3 of the Convention.

Employer member, Colombia – Article 3 of the Convention is clear and provides that: "1. Workers' and employers' organisations shall have the right to draw up their constitutions

and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. 2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof."

In this case, we note that the creation of the SEA as a coordinating organization to represent employers, including on the SER, was not the result of the will of the most representative employers' organizations in Sint Maarten to exercise their fundamental right to organize and associate freely.

The creation of the SEA is a government initiative, which made the Chamber of Commerce and Industry responsible for creating this higher-level employers' organization. Regrettably, neither the Chamber of Commerce nor the SEA have representation that is freely chosen, organized by employers.

This action by the Government would appear to be clearly intended to marginalize the existing representative groups of employers, such as the SGTA, a member of the IOE, in clear violation of the provisions of Article 3 of the Convention.

We encourage the Government to request ILO technical assistance to ensure the full conformity of its law and practice with Article 3 of the Convention.

Observer, International Organisation of Employers (IOE) – Sint Maarten is part of the Dutch Kingdom. Since 10 October 2021, it has been a semi-autonomous country within the Kingdom of the Netherlands. Sint Maarten is governed by its own Constitution, as well as the Kingdom Charter. Ratified ILO Conventions are binding regulations in both Sint Maarten's Constitution and the Kingdom Charter.

Sint Maarten is a small island in the north-eastern Caribbean. Its gross domestic product (GDP) is about 80 per cent dependent on tourism. The period since 10 October 2010 has known great political instability. The lack of fiscal discipline has seen the public debt balloon. Sint Maarten's economy suffered tremendous damage as a result of hurricane Irma in 2017, and in 2020 the COVID-19 pandemic brought a slowly recovering tourism-based economy to a complete standstill.

The Netherlands has made assistance available on both occasions; post-Irma, as a grant administered by a group involving the World Bank; and post-COVID-19, through medical facilities and liquidity support to the public office.

Public debt, already an issue, has ballooned even more and will have to be serviced. In order to receive much-needed liquidity support, one of the conditions set by the Netherlands was agreeing to a far-reaching reform agenda. This agenda includes fiscal and administrative reforms, economic and labour reforms, as well as healthcare, education and social support reforms. The objective is to create a more resilient and sustainable Sint Maarten.

In 2020, the Government of Sint Maarten decided unilaterally to suspend the SER. The reason provided was in order to rebalance employer representation. To achieve that, a mandate was issued by the Government to a government institution to facilitate the establishment of a representative employers' organization.

However, the most representative employers' organizations recognized by the Government were excluded from this process, and the intention was to have the new organization do the employer appointments to the SER.

Not having a lawfully functioning SER has robbed both employers and employees of the forum for social dialogue. Far-reaching decisions have been made in the meantime, on which the social partners have not been heard.

The reform packages are being developed jointly by the Government of the Netherlands and the Government of Sint Maarten. Without proper social dialogue, although both the Netherlands and Sint Maarten have ratified the Convention, neither party is ensuring compliance with the legislation. Neither party is ensuring that the social partners have their rightful place in the process.

It is our sincere hope that, through the application of mechanisms, both Governments, of Sint Maarten and the Kingdom Government, will make use of the available expertise offered by the ILO to ensure that the opportunity is secured for the social partners to have their lawful place in conducting dialogue.

Government representative – In closing, the Government of Sint Maarten would like to thank the members of the employers' and workers' organizations and other Governments for their contributions today. As a young constituent State, we have much to learn from and improve on, and we believe that, with the assistance of you and other countries, we will continue to meet our obligations and ensure that we adhere to ILO standards. The Government of Sint Maarten would like to reiterate that we would appreciate the provision of technical support by the ILO to assist us in meeting our obligations more effectively and efficiently, starting with the upcoming visit of the Director of the ILO Office for the Caribbean.

Worker members – We take note of the comments of the Government concerning the situation in Sint Maarten. We also take note of the interventions of the other speakers, and we note that some of the issues raised fall outside the scope of this Convention and its application. We emphasize that the authorities have an obligation to respect the principles of freedom of association, including the right of organizations to elect their representatives in full freedom, as prescribed by the provisions of the Convention.

The Worker members call on the Government to take comprehensive action to make the laws and practice in Sint Maarten compatible with the Convention.

Regarding the right to strike of public employees, we call on the Government of Sint Maarten to ensure in law and practice that public employees can fully exercise their right to strike and to repeal any provisions in the legislation imposing penalties.

Before concluding, we would like to emphasize issues relating to obstacles to the full enjoyment of the right of workers to freely join and establish unions raised by the Worker representative from Sint Maarten.

We note that the widespread use of temporary contracts by employers constitutes a significant limitation to the right to unionize, as contract workers are not allowed to participate in referendums for the creation of unions. We note in this regard that the threshold set by the legislation – 50 per cent plus one – is excessively high.

We also take note of the employers' practice of imposing clauses in employment contracts prohibiting workers from forming or joining a union. Some employers even go as far as lodging complaints leading to court summons. These practices constitute undue interference in the right of workers to freedom of association.

We reiterate our call for the Government of Sint Maarten to ensure full compliance with the provisions of the Convention.

Employer members – We thank the various speakers and, of course, in particular, the Government of Sint Maarten for the written and oral information that it has provided to the Committee.

In substance, we insist on the fact that the Convention is a fundamental Convention and as such requires particular attention from the ILO, governments and the social partners.

Our position in relation to Sint Maarten is very clear: there can be no compromise concerning the freedom of association of employers. The Employers' group therefore requests the Government to take immediate and effective measures to ensure, in law and practice, that the freedom of association of employers is fully guaranteed on its territory. I repeat, the freedom of association of employers, in both law and practice, must be fully guaranteed on its territory.

In practice, this involves ensuring full respect of the rights of employers and their organizations to establish and join organizations of their own choosing, and to elect their representatives in full freedom, and to remedy any interference by the public authorities in this regard.

In our view, the following action is required for this purpose: first, consult the employers' organizations concerned regarding the establishment and functioning of the SEA umbrella organization and its participation in the SEA; second, provide information on the outcome of the judicial appeal challenging the nomination of employers' representatives on the SER; third, request ILO technical assistance to bring the national situation into conformity with the Convention; and fourth, reply in full to the comments of the Committee of Experts that have been pending since 2017.

We are therefore counting on the positive attitude of the Government to ensure that this case does not come back to our Committee a second time.

Conclusions of the Committee

The Committee took note of the oral and written statements made by the Government and the discussion that followed.

The Committee urges the Government, in consultation with the social partners, to:

- **refrain from any undue interference in the exercise of freedom of association of employers and workers, including any interference through the promotion of organizations that are not freely established or chosen by workers and employers, such as the Soualiga Employer Association (SEA);**
- **consult workers' and employers' organizations with a view to identifying their representatives in the Social Economic Council (SER);**
- **provide information on the outcome of the appeal challenging the appointments of the employers' representatives to the SER; and**
- **bring national legislation into line with the Convention to ensure that all workers, including public sector workers, are able to fully exercise the rights and guarantees under the Convention.**

The Committee invites the Government to avail itself of technical assistance from the Office to bring the national law and practice into conformity with the Convention.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 providing information on the application of the Convention in law and practice, in consultation with the social partners.

New Zealand (ratification: 2003)

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Discussion by the Committee

Government representative – New Zealand has not appeared before this Committee for many years, but we welcome the opportunity to do so. We are fully supportive of the role of the Committee of Experts and this Committee in the administration of the supervisory system. We note the purpose of our appearance today is to provide further information to the Committee about the Fair Pay Agreements (FPAs) system, its objective and aims. We look forward to providing the Committee with the information it requires, and, in due course, learning of its conclusions.

I would like to start by setting out the broader context for FPAs, and how the FPA system interfaces with the Convention.

First, the FPA system is a result of a long, considered and inclusive policy process. It is also subject to further change and development as the legislative process continues over the course of this year.

The key building blocks of the FPA system are based on the recommendations of a tripartite working group, which fully considered the state of New Zealand's labour market and employment systems in terms of collective bargaining outcomes. These systems have generally performed well in creating jobs, ensuring high rates of participation, and delivering some elements of job quality. However, there are masked and entrenched weaknesses, and the gains have not been equally distributed.

In the 1990s, New Zealand moved from a centralized bargaining system to a fully decentralized one, based on individual and enterprise-level bargaining. Collective bargaining coverage used to be around 70 per cent but has dramatically declined to around 17 per cent since then. Multi-employer bargaining, which used to cover over 90 per cent of the private sector workforce, fell to 16 per cent in two years.

Since then, and despite subsequent reforms, there has been increasing evidence of a "race to the bottom" in some sectors. A dramatic fall in unionization rates and a lack of sectoral bargaining both enable businesses to undercut their competitors through low wages, or by shifting risks onto employees without corresponding compensation. Because there is little multi-employer or national collective bargaining, wages come under pressure, and employers have fewer incentives to innovate or raise productivity. This is because they can increase profits by simply reducing wages, rather than adopting other strategies.

Consequently, we have seen a rise in low-paying jobs and poor working conditions. These jobs have not provided working people with sustainable full-time employment or the opportunities to advance. The impacts are evident in New Zealand's stagnating productivity and wage growth, and the gap between them.

The drive for labour market flexibility has also seen increased casualization of work and the growth of labour hire practices, with reduced protections and rights for workers.

These outcomes also disproportionately affect specific population groups, such as Māori, Pacific peoples, young people and people with disabilities, who are over-represented in jobs where low pay, poor health and safety practices, low job security and limited upskilling are significant issues.

Paradoxically, New Zealand employers currently face skills shortages, and are under pressure to hire workers and retain staff. With such a tight labour market, workers should be well-positioned to bargain for better employment terms. Despite this, we see a persistent lack of bargaining power for workers in some sectors.

While all of these factors and weaknesses have drivers outside the labour market, the Government considers the regulation of employment relations to be a key factor. Employment terms in New Zealand are primarily negotiated at an individual level, where there is an inherent imbalance of power between employers and workers. Collective bargaining is primarily conducted at the enterprise level. This has led to under 20 per cent of workers being covered by collective agreements, with unionization around 17 per cent.

Our system does not promote effective multi-employer, or occupational or cross-industry bargaining at levels that might meaningfully reduce the negative effects of:

- low wages and wage growth;
- the decoupling of wages from productivity growth;
- poor labour practices;
- vulnerability; and
- an over-reliance on statutory minimum conditions as the norm, rather than bargained floors of minimum terms and conditions.

This has been our experience over the last 30 years.

To address these issues, a tripartite working group recommended an approach to developing a sectoral bargaining system in New Zealand. They noted it was not possible to simply "lift and shift" the sectoral bargaining models used in other countries because of our particular labour market circumstances and history. The FPA system is based on what the working group recommended, and the current Fair Pay Agreements Bill reflects our particular situation and the factors that have led to it.

A key aim of the FPA system is to drive enduring, transformational change benefiting workers – particularly those in low-paid jobs, or in sectors where collective bargaining does not presently exist or, if it does, is not effective.

FPAs are intended to create a step change following over 30 years of individualized and firm-level bargaining. They will do so by enabling new minimum terms at the industry or occupational level to be set through a process of collective bargaining which may then be improved upon by either further collective or individual bargaining.

The level playing field provided by FPAs should support firms to improve workers' terms and conditions without fear of being undercut on labour costs by their competitors and create incentives to increase profitability or market share through increased investment in training, capital formation and innovation.

We think that FPAs should also improve outcomes for vulnerable workers, in particular those such as Māori, Pacific peoples, young people and people with disabilities, who disproportionately experience poor labour market outcomes.

It is important to emphasize that the FPA system will not replace our current system of collective bargaining under the Employment Relations Act (ERA), it will supplement it. The specific features of the FPA system will apply only to bargaining conducted under that system and not more generally.

I turn now to points raised by the Committee of Experts and others on FPAs.

In terms of initiation, some issues have been raised about how bargaining for an FPA can be started. FPAs can be initiated in two ways.

The first is a pathway through representation where support will be needed from at least 1,000 workers or employers, or 10 per cent of covered workers or employers. While this may be lower than in other countries' systems, this reflects our relatively low levels of union density and collectivization. Setting higher representation thresholds would effectively mean this pathway could not be used.

However, a second pathway is through meeting a public interest test, with statutory criteria that are assessed by an independent regulator. These criteria will include that the workers concerned receive low or inadequate pay or have little bargaining power in their employment. The regulator will be able to hear evidence and submissions from interested parties. The administration of legislative frameworks for collective bargaining by a competent authority is a common and necessary feature of bargaining systems generally.

Given the purpose of FPAs, the Government considers that it is appropriate that workers, through unions, can initiate FPA bargaining and propose coverage for the first time. Bargaining for subsequent FPAs in the same occupation or industry however can be triggered by either employers or workers.

In terms of coverage, FPAs will apply to all employers and workers within the specified occupation or industry. The extension of bargained outcomes to employers and workers not directly involved in the original bargaining is again not a unique feature of FPAs and is also recognized in Article 5 of the Collective Agreements Recommendation, 1951 (No. 91). The Committee of Experts has found that the extension of collective agreements per se is not inconsistent with the Convention.

We know that if the minimum terms resulting from FPAs did not apply to all workers and employers within coverage, they would not achieve their objective of improving labour market outcomes by preventing undercutting and competition on the basis of reducing labour costs.

Again, we emphasize that the point here is to create and set minimum terms and conditions across a sector or industry.

Ultimately, the objective of FPAs is to set these minimum terms and conditions for work in occupations or industries where these cannot be effectively bargained for at present. A collective bargaining process best enables the key issues to be identified, negotiated and hopefully agreed, but this may not be possible. The fixing of FPA terms needs to be seen in this context.

The fixing of terms is not the first recourse when parties encounter difficulties during bargaining. When disputes arise, the parties will have access to independent mediation. If mediation does not resolve the issue, a party may apply to an independent tribunal – the Employment Relations Authority – for a non-binding recommendation. If parties decide not to accept the recommendation, either of them may apply to the Authority for a binding determination that fixes the terms of the FPA.

When fixing those terms, the Authority will be required to first consider what attempts have been made to resolve the dispute. The Authority may direct further mediation, or another process to try and resolve the dispute. Only if all other reasonable alternatives have been exhausted, or a reasonable time period has elapsed, will the Authority then be able to fix the terms.

This is intended to encourage the parties to work through their issues to achieve an agreed outcome if at all possible, reflecting the importance of the broader social outcomes sought by FPAs, and the fact that ultimately it may not be possible to lift minimum terms and conditions across entire occupations or industries without a mechanism to fix terms if bargaining has reached a stalemate.

The Government notes that the supervisory bodies have found fixing terms is permissible in specific circumstances, including "when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities". Given the FPA system will introduce a new form of collective bargaining to New Zealand, the Government also notes the Committee of Experts' comments in its 2012 General Survey on arbitration in cases of a first collective agreement.

There has been one development since we provided our last report to the Committee of Experts in 2021, which is the introduction of a backstop component to the legislation.

Earlier this year, the Government proposed a change to what happens if the threshold to initiate FPA bargaining has been met, but only one side is available to bargain collectively. If this happens, the tripartite partners will first be given the opportunity to step into bargaining on behalf of either workers or employers, depending on where the gap is. If this is not possible, however, bargaining will not take place. Instead, the independent Employment Relations Authority will set the relevant minimum terms and conditions.

This reflects the Government's view that, if the statutory conditions for setting sectoral minimum standards have been met, this should not be prevented by an inability for collective bargaining to take place.

To conclude, I would like to reiterate that the objective of the FPA system is to enhance workers' terms and conditions, where the current collective bargaining system has failed to do so. This addresses 30 years of decentralized and fragmented bargaining, and consequently poor labour market outcomes for groups of workers. These proposals were designed to remedy those gaps, through a long process of tripartite consultation. Ultimately, this system is about setting minimum terms and conditions for work in certain sectors or industries through collective bargaining, insofar as is possible.

FPAs are intended to supplement, but not replace, the current collective bargaining system in New Zealand – which is retained and will continue to operate. FPAs are instead about addressing a particular problem. Beyond this, the existing collective bargaining framework will exist without change. The legislation for FPAs is currently being scrutinized by a parliamentary select committee and is subject to change before it passes.

We look forward to hearing the perspectives raised in this discussion. We will carefully consider any comments made by the Committee in its final report.

Worker members – This is the very first time the Committee has discussed the application of the Convention with respect to New Zealand. New Zealand ratified the Convention in 2003.

Before the Employment Contracts Act (ECA) came into force in 1991, New Zealand relied primarily on collective bargaining and awards to set minimum standards. Overnight, the country's centralized industrial relations system was replaced with a system based on individual employment contracts. In the four years following the introduction of the ECA, collective bargaining coverage halved, falling from about 60 per cent to 30 per cent. Trade union density also declined from 46 per cent to 21 per cent in that period.

Today, collective bargaining coverage stands at 15 per cent, with union density at 18 per cent, making New Zealand one of only three countries in the OECD to have higher trade union density than collective bargaining coverage.

From 1989 to 2021, labour productivity across the New Zealand economy outpaced wages by 76 per cent. The enterprise-based ECA significantly constrained workers' bargaining power and in doing so effectively delinked productivity growth from wage growth. It is therefore no coincidence that during this period New Zealand experienced one of the largest increases in income inequality across the Organisation for Economic Co-operation and Development (OECD). It is against this backdrop that we welcome the Government's legislative initiatives to encourage and promote collective bargaining in line with Article 4 of the Convention.

We note with satisfaction the proposed measures under the Screen Industry Workers Bill which will ensure that all film and television workers, irrespective of employment status, can fully enjoy their rights under the Convention.

Regarding the amendments to the Employment Relations Act (ERA) made in 2018, we welcome the revisions to sections 31 and 33, which strengthen the duty to bargain in good faith, and these amendments require the bargaining partners to conclude a collective agreement, unless there is a genuine reason based on reasonable grounds.

We note too, among other things, that these amendments are aimed particularly at deterring situations where a party is simply in principle ideologically opposed to bargaining, or only engages in surface bargaining.

These provisions do not make settlement mandatory, as good faith bargaining may not always result in a collective agreement. However, it is evident that if the parties are negotiating in good faith, they should be able to provide genuine reasons for not being able to conclude an agreement. As the Committee of Experts has previously noted, the duty to bargain in good faith does not imply an obligation to reach an agreement, but it does contemplate various obligations on the parties, including endeavouring to reach agreement and avoiding unjustified delays in negotiation. Therefore, we believe that the new genuine reason test sufficiently codifies in law the good faith duty under the Convention.

Turning to article 50J of the ERA, we understand that this provision permits the courts to fix the terms of a collective agreement where the bargaining parties have not been able to conclude.

The Government states that this section provides a specific remedy of last resort for a grave breach of the duty of good faith. In such cases, the Employment Relations Authority may make a determination fixing the provisions of the collective agreement if five prescribed conditions are met, including whether the breach was sufficiently serious and sustained as to significantly undermine bargaining.

The provision has only been relied on once in 15 years. In that particular case, the union initiated bargaining in October 2013 and the Authority fixed the agreement in June 2018. The Authority and the court accepted that the employer had met the test of section 50J for a serious and sustained breach. The union tried direct bargaining, mediation, facilitation and even litigation to settle this agreement. The employer obstructed continuously for five years. This case perfectly demonstrates why the intervention of the court as a last resort is needed to address improper practices in collective bargaining. Indeed, as previously held by the Committee of Experts, compulsory arbitration is permissible under the Convention where, after protracted and fruitless negotiation, it becomes obvious that the deadlock will not be broken without some initiative by the authorities.

Let me now consider FPAs. The Fair Pay Agreements Bill was introduced into Parliament on 29 March 2022 and is now going through the parliamentary process. The system proposed under the Bill will bring together employers and unions within a sector to bargain for minimum terms and conditions for all employees in that industry or occupation.

It is aimed at promoting collective bargaining, especially for low-paid and vulnerable workers where union representation has been particularly low. The design of the FPA system was informed by the recommendations of the FPA working group, a tripartite body. The working group was particularly concerned with the race to the bottom within the economy in the absence of adequate minimum standards. Having considered various models, the tripartite working group recommended a system that suits New Zealand's unique social and economic context.

We see the eventual introduction of FPAs as a welcome affirmative measure allowing for the possibility to bargain at upper levels. In doing so, the Government is fulfilling its obligation to proactively promote free and voluntary collective bargaining under the Convention. FPAs will complement the current system of enterprise-level bargaining.

With regard to the initiation of an FPA, either party can and will initiate FPAs, except only in the first instance, when only trade unions can do so. This provision reflects long-standing national practice. Unions can initiate the FPA process by meeting a representation threshold of support of 10 per cent or 1,000 workers in coverage or a public interest test conducted by the Authority, an independent body.

In view of the low union density in the country, these thresholds would meet any test for sufficient representation status. Noting the Committee of Experts' comments on this issue, we trust that the Government will engage in meaningful dialogue with the social partners to consider any open questions relating to the initiation of FPA negotiations.

Indeed, the FPA bargaining machinery is set up precisely to facilitate good faith negotiations with a view to concluding an agreement. Strikes are not permitted under the FPA system and the Fair Pay Agreements Bill requires the Authority to provide comprehensive bargaining support services to support fair pay relationships. On that basis, it is evident that the determination of an FPA by the Authorities is only possible as a last resort and only where a deadlock cannot be broken without some initiative by the Authorities. Indeed, without the possibility to call industrial action, an external intervention may be the only option to break a deadlock, similar to situations where compulsory arbitration is deployed to resolve disputes in essential services where strikes are prohibited.

Once an FPA is adopted, it applies to the entire agreed sector or occupational group. Given the overall aim of the FPA system, it is clear that the absence of any procedure for extension could result in two categories of employees: some of them covered by the agreement and others not, leading to unfair wage competition.

Recommendation No. 91 clearly establishes several principles for the extension of collective agreements, a common practice in multiple jurisdictions, including my own. Therefore, we welcome the fact that FPAs will essentially be declared erga omnes for both organized and non-organized employers and employees within the Agreements' reach. We trust that the Government will accept observations by employers and workers to whom the agreements will be made applicable.

To conclude, if signed into law and implemented effectively, FPAs will finally raise standards for thousands of workers in sectors plagued by low pay, poor working conditions and other vulnerabilities. Companies will also benefit from stronger sector-wide coordination.

FPAs can lead to an upward trend in wages and conditions with no employer being able to undercut their competitors on labour costs.

Employer members – New Zealand ratified the Convention back in 2002 and the Committee of Experts has issued only two observations on the Government of New Zealand's application of the Convention in law and practice, in 2006 and most recently in 2021. Turning to the Committee of Experts' observations, the Employer members take note that the Committee made comments on four issues in this case. We will not comment on the first issue regarding the scope of the Convention or the last issue regarding COVID. In our view, these issues are not relevant to the proper discussion of the heart of the matter in this case.

The Employer members consider the importance of this case focuses on the issue of collective bargaining and FPAs. By way of context, as has been referenced by other speakers, New Zealand introduced the Fair Pay Agreements Bill 2022 to override the Employment Relations Act. The new Bill proposes the establishment of Fair Pay Agreements, FPAs, as we have heard them referred to, which will cover an entire industry or occupation. More importantly, the Bill introduces a system of collective bargaining in which individual employers have no control over the scope, coverage or conditions of employment of workers who are their own employees.

On the first issue regarding the promotion of collective bargaining and the voluntary nature of collective bargaining, the Employer members recall that Article 4 provides that measures appropriate to national conditions shall be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' and workers' organizations with a view to the regulation of terms and conditions of employment by means of collective agreements.

The Committee of Experts noted the detailed observations made by Business New Zealand and the International Organisation of Employers (IOE) indicating that sections 31, 33 and 50J of the Act force the parties to conclude a collective agreement and that the introduction of FPAs will effectively remove the right of freedom of association and to bargain collectively for employers, who will be compulsorily covered by employment agreements for employees, negotiated by organizations of which they are not a member. In particular, sections 31 and 33 require a union and employer bargaining for a collective agreement to conclude a collective agreement unless there is a genuine reason based on reasonable grounds not to. Furthermore, section 50J permits the courts to compulsorily fix the terms of a collective agreement where the bargaining parties cannot reach an agreement.

The Employer members consider that it is clear that both of these provisions impose the duty to conclude and constitute compulsory arbitration upon the parties, contrary to the free and voluntary principle under Article 4 of the Convention. We note that the Government has argued that the amendment to sections 31 and 33 was to ensure that parties genuinely attempt to reach an agreement but will not have to settle if the reason not to do so is based on reasonable grounds. The Government also noted that section 50J does not apply simply when the parties cannot reach agreement over a particular matter or more generally. The Government indicated that section 50J provides a specific remedy of last resort for a serious and sustained breach of the good faith requirement.

The Employer members consider that a requirement to conclude a collective agreement clearly constrains voluntariness and removes it entirely if it is not demonstrated that the genuine reason criterion can be met. Furthermore, these provisions do not provide an employer with the necessary flexibility to bargain collectively. Once bargaining is initiated, the

process mandated by the good faith obligations must be followed to its logical conclusion, no matter how many or few employees may be affected by the outcome.

Ensuring the voluntary nature of collective negotiation is inseparable from the principle of negotiation in good faith if the machinery to be promoted under Article 4 of the Convention is to have any meaning.

In this regard, the Employer members call on the Government to review and amend without delay these provisions in consultation with the most representative employers' and workers' organizations with a view of ensuring that these provisions fully respect the right to bargain collectively in a free and voluntary manner, as enshrined and protected in Article 4 of the Convention.

Regarding the second issue, referencing FPAs, the Committee of Experts notes that the introduction of FPAs covers all employees in an industry or occupation and only allows a union to initiate bargaining processes. In essence, it does not provide employers with any ability to opt out of these agreements and any disputes will go to compulsory arbitration with no right of appeal against the terms that are fixed.

The Employers' group notes that the Government has argued that the aim of the FPAs is to create a new bargaining mechanism to set binding minimum terms at the industry or occupation level. The Government has argued that these will help build on national minimum standards and provide a new floor for enterprise-level collective agreements where an FPA has been concluded, thus improving outcomes for employees with low bargaining power.

The Employers' group notes that compulsory arbitration in cases where the parties have not reached agreement is generally contrary to the principles of collective bargaining. Compulsory arbitration is only acceptable in certain specific circumstances, namely essential services in the strict sense of the term; in the case of disputes in the public service; and/or after protracted and fruitless negotiations; or in the event of an acute crisis.

The Employer members consider the Fair Pay Agreements Bill deeply concerning in that it allows the Government to oversee an entire process of collective bargaining. In effect, this Bill will arbitrarily impose collective bargaining outcomes on hundreds, if not thousands of employers and their employees, whether or not they seek such coverage or are represented by a union or employer organization. In particular, the requirement for compulsory arbitration when no agreement can be reached by the parties is unduly broad and undermines the principle of free and voluntary collective bargaining protected by the Convention.

Therefore, the Employer members urge the Government to provide the Fair Pay Agreements Bill to the Committee of Experts so that it may be reviewed. The Employers also urge the Government to review and amend, without delay, the Fair Pay Agreements Bill, in consultation with the most representative employers' and workers' organizations, to ensure that it is in fact in full compliance with the provisions of the Convention.

I will conclude by noting that the breaches of the Convention – in our view – are serious and significant and, in fact, the Government in its own documents openly acknowledges that it intends to breach this fundamental ILO Convention in the introduction to this legislation and has delayed its responses to the ILO. Furthermore, the proposed FPAs process tramples on workers' and employers' rights of freedom of association and undermines the principle of free and voluntary bargaining enshrined in the Convention.

Worker member, New Zealand – I want to start by emphasizing that FPAs will not be a replacement for, and do not interfere with, regular collective bargaining or individual

bargaining in New Zealand. These are not overwritten as the previous speaker suggested. They are quite separate, and every worker legally employed in New Zealand will continue to need to negotiate an employment agreement, as they always have, whether or not an FPA comes into existence. Nobody can be employed on an FPA because FPAs are not employment agreements; they are simply a set of minimum standards over and above which normal employment agreements are made. To be clear, the existing and undisturbed system of bargaining for employment agreements, under the Employment Relations Act, constitutes the voluntary form of negotiation anticipated by Article 4 of the Convention.

FPAs were informed by a tripartite working group chaired by former Prime Minister and President of the International Labour Conference Mr Jim Bolger. I was a member of the working group and we quickly identified the problems inherent in our current system that is characterized by a complete absence of any industry standards, less than 20 per cent union density and no extension mechanisms. We could see that the logic of our system drives an inevitable race to the bottom for wages and conditions, as firms in an open and competitive economy compete on price first instead of innovation and quality. It became clear that employers that bargain decent collective agreements cannot compete fairly for business in an environment where there are no industry standards and no level playing field and, in this way, we could see that unions and collective agreements have become targets themselves for attack and/or are strenuously avoided by employers who seek to compete against other low-wage non-union firms. Put simply, without industry standards like FPAs, workers, collective bargaining and good employers are all vulnerable and at risk.

Our tripartite working group took on board the OECD's recommendations in its 2018 *Employment Outlook* on "The role of collective bargaining systems for good labour market performance". The OECD recommends a model which combines firm-level bargaining over and above industry standards because this model delivers good employment performance, better productivity outcomes and higher wages compared to decentralized systems, like New Zealand currently has. So, the working group designed FPAs accordingly, recognizing New Zealand's unique characteristics and proposed a system that would "complement, not replace, the existing employment relations standard system".

While Business New Zealand leaders, in an unguarded moment, publicly acknowledged that FPAs will lead to higher wages, their narrative has largely been to misconstrue the nature of FPAs and confuse and conflate them with our existing collective bargaining system – and we have just heard it again from the Employer spokesperson. Employers keep insisting that they will lead to more strikes, even though strikes are not permitted in relation to FPAs. Business New Zealand has said that FPAs are too complicated and insist that the parties will be unable to effectively form bargaining sides. Yet there is clear experience in New Zealand that shows the opposite is true. For example, when the Employment Court recently invited the employers and unions in the care and support industry to negotiate an industry standard for pay equality rates, we quickly, efficiently and effectively organized ourselves into bargaining sides representing over 65,000 workers, not just union members, but 65,000 workers and over 1,000 private and non-governmental organization employers, ranging from multinational companies to small family-owned not-for-profit organizations, and we prepared for negotiations and ratification in exactly the same way that is envisaged in FPAs, and the net result was a milestone settlement that set a new floor for vulnerable woman workers in terms of pay, training and enhanced dialogue between the social partners. Mind you, Business New Zealand was not involved.

Business New Zealand's position is not just confused, it is inconsistent. They have already agreed to two legal mechanisms in New Zealand that the proposal for FPAs emulates very

closely, in the screen industry and the now amended Equal Pay Act. Both of these mechanisms involve a process that is very much like FPAs. They establish minimum standards through employer and union negotiation in the shadow of compulsory fixing and in the absence of a right to strike. Business New Zealand has even misconstrued the process we are engaged in, including here in this room in the Committee. They publicly stated a couple of weeks ago in our biggest daily newspaper that New Zealand was on the ILO list of "worst case breaches". This was even before the shortlist came out warning the public of New Zealand that the ILO may even prosecute New Zealand.

These employer objections to FPAs do not make sense. There is nothing wrong or unusual about minimum industry standards being set that apply to everyone. That is how standards always work. To suggest minimum standards should be voluntary, and employers should be able to opt out, defeats the whole concept of standards and is a nonsense. There is nothing about the Convention which prevents ILO Member States from having laws that allow for the fixing of compulsory minimum standards across industries, provided that voluntary collective bargaining provisions are maintained, as they are in New Zealand, nor is there a problem with the Employment Authority fixing the terms of these standards in the event of a bargaining stalemate when all other options have been exhausted. Member States have industry standards and it is time that New Zealand did the same.

Employer member, New Zealand – As the Employer spokesperson has said, this is a serious case. All the more so, since New Zealand is a founding Member of the ILO and has long been active in upholding ILO standards.

In 2017, the Government announced its intention to introduce FPAs and, in March 2022, the Government introduced the Fair Pay Agreements Bill to give effect to its intention. A tripartite working party developed the framework of the Bill. However, it needs to be said here that the employer members of that group dissented from the views of the majority and do not agree with the overall outcome of that report.

The Bill clearly denies freedom of association and the right to bargain freely and voluntarily to employers and workers because only unions can initiate an FPA. Employers have no say on the first agreement, having met the initiation criteria of either the representative test or a public interest test.

The representative test criteria of 1,000 union members or 10 per cent of the affected workforce are so low as to be farcical and if even these low criteria cannot be met, the union can ask for an FPA on the grounds it will be in the public interest. Following an assessment, the Ministry of Business Innovation and Employment will decide if the public interest test is met, but astoundingly is not required to consult the public. By way of example, there are several hundred thousand clerical workers in New Zealand. Only one union in New Zealand has over 1,000 clerical members, and they will have unilateral rights to establish the conditions of work for potentially hundreds of thousands of clerical workers who are not their members and who will have no effective say in the matter. They cannot opt out and they cannot say they do not want to be involved, and the 29 other unions that cover clerical workers may be cut out of representing their own members.

The initiating unions decide whether the FPA will be an industry or occupation document, and the scope of it.

In the absence of a suitably representative employer bargaining party, unions will be able to take their claim for an FPA straight to the judicial authority, which will fix the terms of an

FPA. In this instance, employers will not be represented at all, and there is no right of appeal against a determination.

The Bill also provides that a second failed or no ratification vote will refer a settlement to the judicial authority, again for determination. This makes an employer vote against an FPA completely meaningless.

In further contravention of the principle of free and voluntary bargaining, the Government will control the process, making it even less free and voluntary. For instance, the Ministry of Business Innovation and Employment will approve the initiation of bargaining for an FPA, assist in managing the process, vet any settlements and translate settlements into legislation.

Since 31 July 2019, the Government has failed to respond to any of the ILO's repeated requests for an explanation of its actions and proposals with regard to FPAs. Indeed, a response that the Government would wait for Business New Zealand to lodge a complaint before responding to any of the concerns raised over the preceding two years suggests a deliberate strategy of avoidance.

The Government has openly acknowledged that it intends to breach the principles of the Convention. The Government actually acknowledged, in a publicly available Cabinet paper, that it will breach principles related to freedom of association, voluntary bargaining and arbitration because it considers this to be necessary to achieve its goals.

It is our view that the Government is effectively thumbing its nose at the ILO supervisory system, because staying true to the system would thwart its aims. Aims that trample on the rights of freedom of association and the right to free and voluntary collective bargaining for individual workers and employers throughout the country. This is of very serious concern.

Any country that is not challenged when it proclaims its intent to breach a fundamental Convention constitutes a serious challenge to the integrity of the ILO supervisory machinery. New Zealand is not just any country. It is a developed, democratic economy and a founding Member of the ILO. We, in this Committee, are the body that upholds the system and ensures its integrity. We must not let such a serious challenge to the system go unanswered. If we do not challenge something so deliberate what is the point of being here?

For the sake of workers and employers throughout New Zealand, and for the sake of the continued integrity of the ILO supervisory system, we urge this house to condemn the actions of the New Zealand Government in the strongest possible terms.

Worker member, Australia – Australia and New Zealand are neighbours, our bonds run deep, and we have long-standing shared histories and approaches in many areas, including workers' rights and our systems of minimum standards and protections.

Australia's industrial relations framework is built on three levels. The first includes basic minimum rights in legislation and a minimum wage. The second, over 100 industry and occupational "Awards" that create minimum standards for specific industries and occupations. These Awards provide a minimum floor on matters from rates of pay, hours of work, shift work and overtime, to things like breaks, leave arrangements and rostering.

On top of this sits a third level, which involves collective bargaining at the enterprise level.

In the past, Australia and New Zealand had in common a comprehensive award system providing an essential minimum floor for the vast majority of workers in both countries. Our paths diverged in 1990, when New Zealand completely abolished their award system.

When New Zealand tore up their industry-specific safety net inequality rose and wages fell. Lacking a set of industry-based minimum standards, New Zealand workers saw their ability to negotiate employment agreements severely weakened, and consequently their standard of living worsened significantly.

Average wages in New Zealand are now significantly lower than in Australia, and this is in part attributable to the lack of a solid safety net. By comparison, Australia has an industry-specific safety net that employers cannot opt out of, as much as they might like to. Australian workers depend on it.

FPAs will fill a gap in the New Zealand system, and we fully agree with the New Zealand Government's view that the FPA scheme creates a much-needed safety net much like our modern award system.

FPAs and Awards have a lot in common. They both provide an important middle layer of protection between statutory minimum-wage fixing and enterprise-level bargaining. They both cover all workers, whether they are union members or not, and they both include provisions for a comprehensive set of terms and conditions.

There is an important difference. FPAs place a greater emphasis on the parties doing everything they can to reach their own agreement long before any invitation is made to an independent third party to fix rates and conditions, whereas the award system is built around a process of compulsory fixing.

In New Zealand's case, employers will only have to bargain in good faith and agreements will be struck. Arbitration only kicks in to ensure vulnerable workers are protected. Which makes it all the more shocking that what appears to be a blatantly political case without merit has been presented to this Committee, when the Committee has such a competing list of extreme cases of standards being breached, in many cases with life and death consequences for workers.

FPAs will serve a comparable function to Awards in Australia, and with them New Zealand's industrial relations system will once again have far more in common with Australia's. Our assessment of FPAs is that they will in fact promote and support collective bargaining and the right for workers to organize.

Minimum standards should never be voluntary. FPAs provide an effective mechanism and are essential in protecting the most vulnerable and lowest paid workers. They should be properly assessed as part of the machinery for fixing minimum wages and conditions and consistent with core Conventions.

Worker member, Samoa – I am proud to speak in support of the New Zealand Government's work on FPAs. FPAs will be important instruments to lead standards of decent work and will be of particular benefit to our specific migrant workers in New Zealand.

Every year, 60,000 people from the Pacific travel to New Zealand under the Recognized Seasonal Employers (RSE) Scheme to work in agriculture and horticulture industries. People from the Pacific value these opportunities and we also want to make sure that the work our people do in New Zealand is decent, safe and fair.

All Samoans and all other Pacific migrant workers in New Zealand are vulnerable. In reality, they cannot possibly engage in effective and fair individual bargaining or collective bargaining under the New Zealand Employment Relations Act and, because New Zealand does not have a set of minimum industrial standards, our people do not receive fair wages and enjoy decent terms and conditions of employment under the RSE Scheme. That is why it is so

important that the New Zealand Government is looking at new ways to raise standards across whole industries.

During the COVID-19 pandemic, when employers were desperate for RSE workers and New Zealand granted limited border exemptions for Pacific seasonal workers, the Government unilaterally imposed conditions requiring employers to pay a living wage of NZ$22 an hour, NZ$2 above the minimum wage at the time. Without that interim measure, these workers would have remained on the minimum wage.

This was an example of the Government using its power as a regulator to raise pay for working people across an industry where the Employment Relations Act mechanisms for bargaining is inadequate. FPAs would use that same power to raise standards for decent work across industries, with mechanisms to give workers and employers a real voice in the process.

By doing this, FPAs will benefit our Pacific migrant workers and all workers in New Zealand. For that reason, I congratulate the New Zealand Government on taking this initiative, which is central to achieving decent work for RSE workers.

Government member, Australia – As a cornerstone of Convention No. 98, Australia respects the rights of countries to implement measures, appropriate to national conditions, to encourage and facilitate collective bargaining between employers and workers. We are therefore pleased to note that New Zealand's Fair Pay Agreements Bill, the subject of our discussions today, has been developed as a recommended outcome of a tripartite working group formed to address labour market challenges unique to New Zealand.

Australia fully supports the objectives of the proposed FPA system, a system that is intended to deliver better living standards for workers and their families and provide an environment that enhances productivity, growth and the sustainability of enterprises.

The Australian Government believes sectoral minimum standards, supplemented by collective bargaining, provides the right balance between a safety net on the one hand, and driving wage growth and productivity on the other. This can only deliver outcomes that are in the best interests of both workers and employers.

We further support the intention of the proposed FPA system to drive enduring, transformational system-wide change for the benefit of workers, particularly those in low-paid jobs, or in sectors where there is low or no effective representation or bargaining.

Australia notes the cooperative spirit in which the New Zealand Government has engaged with the Committee. We encourage all parties to continue to engage constructively through tripartite dialogue to work towards achieving the important objectives of the Fair Pay Agreements Bill.

Worker member, Chile – Collective bargaining has various relevant functions in the world of work, as a social dialogue practice at the enterprise or activity level, a means of improving the living and working conditions of workers and their families and, consequently, achieving labour peace. The bargaining process therefore has to be carried out with good faith by the parties, so that it is not distorted into becoming a mere ritual or formality with which enterprises and their organizations comply in disregard of their obligations towards workers and compliance with standards on fundamental rights.

Accordingly, good faith bargaining requires that, if employers conclude that it is not possible to achieve agreement, there must be objective reasons to ascertain whether they are acting correctly or merely pretending in order to evade their ethical and legal obligations.

There therefore need to be grounds based on genuine reasons and reasonable criteria, which justify and explain the fact that it was impossible to conclude a collective agreement, or a genuine reason that prevents agreement. As such, it is very clear that it is not a requirement to reach agreement or the arbitrary imposition of collective bargaining conditions by the State, but a genuine obligation to make every effort to conclude a collective agreement.

As with any legal requirement, in the event of serious or sustained failure to act in good faith, the labour legislation has to offer a means of ensuring the effective application of the requirement to negotiate in good faith.

For this reason, we also support the supplementary provision in the Employment Relations Act which provides for the Authority to determine the terms of a collective agreement in exceptional cases, and only where there has been a serious and sustained violation of good faith during negotiations. Without this ultimate guarantee, collective bargaining could be impeded by one of the parties, even when it does not have genuine reasons for not reaching agreement, that is, without this guarantee in the legislation, if one of the parties decides to prevent the possibility of reaching agreement it could do so without further consequences.

We therefore share the view of the Committee of Experts when it points out that, within the context of the Convention, the guarantee of the voluntary nature of collective bargaining is inseparable from the principle of good faith bargaining, as the general objective of the standard is the promotion of good faith bargaining with a view to achieving agreement on terms and conditions of employment.

For these reasons, we consider that the legislation in New Zealand is in full conformity with Article 4 of the Convention.

Worker member, Italy – I am speaking on behalf of Italian, Belgian, Dutch, French, German, Irish, Norwegian, Spanish and United Kingdom Workers, as well as on behalf of Building and Wood Workers' International (BWI).

Regarding the case the Committee is discussing today, I would like to once again stress one of the core principles just mentioned by previous speakers included in the Convention, that is the importance of strong and coordinated national collective bargaining systems.

I will quote the Committee of Experts' report, an "uncoordinated system of collective bargaining has been operating in the country since the 1990s", "with collective bargaining coverage at around 17 per cent for the last two decades, down from around 70 per cent 30 years ago. Most collective bargaining is confined to the enterprise level and most bargaining per se happens between individual employers and individual employees." Such a system is simply incapable of producing decent work and social dialogue for the vast majority of workers and can only lead to more injustice and poor labour market outcomes.

Speaking from the Italian perspective and a tradition of industrial relations in which almost 90 per cent of workers are covered and protected by a national industry standard reached through industry-wide collective bargaining, I can only reaffirm that a strong, coordinated and well-functioning collective bargaining system is a precondition – quoting again the Committee of Experts' report – to reduce "the negative factors of low wages and wage growth, the decoupling of wages from productivity growth", as also said by the previous speakers "and poor labour practices vulnerability".

We therefore strongly endorse the swift adoption and implementation by New Zealand of a new FPA, an employment regulatory landscape that provides an effective industry floor that

supports firm-level collective bargaining and, as well, promotes a national well-functioning fair labour market.

Government member, Belgium – Belgium wishes to take the opportunity of the examination of the case of New Zealand to reaffirm its support for the Committee of Experts. The work that it carries out is the cornerstone of the ILO supervisory system. Its independence and impartiality are the basis for its authority.

With reference to the content of the case, Belgium takes note with interest of the explanations provided by the Government.

We wish to emphasize the importance of the role of collective bargaining as an essential element in preventing disputes and ensuring social peace.

Freedom of negotiation is not incompatible with measures and means that encourage recourse to bargaining, and which promote it. Article 4 of the Convention places emphasis in this regard on the need to take into account national conditions in the choice of the most appropriate measures.

Moreover, as indicated by the Committee of Experts, the guarantee of the voluntary nature of collective bargaining is indissociable from the principle of good faith bargaining if the machinery that is promoted in Article 4 of the Convention is to have any meaning.

However, there should be no constraint to conclude a collective agreement.

In conclusion, we wish to emphasize and recall the virtues of collective bargaining in improving the conditions of workers, as well as in the development of enterprises and the economy.

Observer, International Transport Workers' Federation (ITF) – The ITF, as a representative organization of transport workers around the world, is painfully aware of the complete lack of industry-wide standards in New Zealand and its impact on workers across all transport modes. The "race to the bottom" in the country's bus industry, which has caused chaos for workers and communities alike, is instructive.

The transition from industry bargaining to competitive tendering has had a catastrophic impact on wages. The lowest wage payable in the 1990 bus industry award was 66 per cent higher than the minimum wage. Today's lowest rates are scarcely 10–15 per cent above the minimum wage.

All this, despite labour productivity in the transport and logistics sector having grown more than three times the rate of wages. If sector wages had kept pace with labour productivity, the average transport worker in New Zealand would have been $36,000 better off in 2021.

To cite an example of this "race to the bottom" in the bus industry, recently, in New Zealand's capital city of Wellington, 70 per cent of the bus services for the region were put up for tender, in accordance with national regulations.

The company that had been providing the service had a collective agreement in place and so had no chance of winning the tender against new entrants with no collective agreements to honour. As expected, a new company won the tender and the collective agreement allowances for overtime, weekend, night and split shifts were removed completely.

The original provider still had 30 per cent of the bus routes and realized it would soon lose them when these remaining routes came up for tender. So, it sold the company to another entity, which then locked out the drivers to remove the collective agreement allowances.

The Regional Council and the community were horrified at the treatment of these frontline workers and "pandemic heroes". But it should not come as any surprise when there are no industry standards in place. While there are some protections for vulnerable workers during a transfer of undertakings, these do not apply to bus drivers because they are deemed not vulnerable enough. Now, faced with low wages and poor conditions, the industry is unable to attract staff.

To conclude, New Zealand desperately needs to introduce a system to fix minimum standards and we believe that FPAs will provide that.

Observer, Public Services International (PSI) – Just a few days ago, one of our affiliates, the New Zealand Public Service Association, participated in a formal ceremony with the Government and employers to celebrate an equal pay settlement for several thousand clerical and administration workers employed in the New Zealand health sector.

This was the first to be completed under the recently amended Equal Pay Act. What has this got to do with New Zealand's provisions for FPAs you might ask? Well, FPAs and New Zealand's Equal Pay Act are in many key respects identical.

For instance, they both provide for unions and employers to arrange bargaining of a minimum standard on behalf of a whole industry or occupation and to ratify it, subject to a fixing process if negotiations become protracted and they are unable to reach agreement.

There are other similarities as well that I will invite the Committee of Experts to compare, but for time reasons I will skip from my speech today.

There are a couple of differences as well. One is that workers can opt out of the equal pay process, but of course not a single worker has, despite the fact that tens of thousands of workers have settled pay equity minimum standards in the past couple of years. This is because the equity minimum standards in the past couple of years do not impinge on workers' rights in theory or practice – they underpin and strengthen them.

The second difference is that the process set out above and contained in the Equal Pay Act was unanimously supported by the social partners, including Business New Zealand.

Before these pay equity industry standards were set, women workers in New Zealand across industries suffered from downward competitive pressure on their pay and conditions, and companies were able to underpay and undervalue these vulnerable and essential workers.

Unfortunately, the same thing is happening to many other low-paid vulnerable workers in New Zealand because there are not effective industry standards in place, like in many other developed economies. FPAs, like New Zealand's Equal Pay Act, will be critical features of the system, features that are very much in line with the Convention and must proceed unhindered.

Government representative – I would like to begin by noting the range of contributions and comments made and to assure the Committee that we have listened very carefully to all of them, and we will certainly take all of them into account irrespective of the source.

As I mentioned before, the legislation has not yet been passed and is still a matter in progress. I would like to address a few specific points that have been raised.

First, I think to the Employer spokesperson, relating to the application of sections 33 and 50J of the Employment Relations Act. The first point I would like to make is that these provisions are not part of the Fair Pay Agreements Bill. These are completely separate, one relates to the ordinary process of collective bargaining in New Zealand and the other, of course, is a

specialized process which involves collective bargaining in the setting of sectoral minimum terms and conditions.

The Employer spokesperson made some play of the fact that compulsory arbitration is generally incompatible with the principles of voluntary collective bargaining, and that is true. However, the focus here is on the word "generally", and as we all know there are exceptions allowed to those principles, and one of them in particular is around the use of deadlocked bargaining where there is no other option.

Now to recast it in terms of the provisions of the Employment Relations Act, I would like to reiterate that section 33, relating to the duty of good faith, recognizes, in complete compatibility with the views of the Committee of Experts, that really the object of good faith bargaining cannot be separated from voluntary bargaining. If the parties are bargaining in good faith the assumption is that they intend an outcome to result unless this is genuinely not possible, and that prospect is absolutely recognized in our law. The provision for the compulsory fixing of the terms and conditions of a collective in those circumstances needs to be seen as a penalty for a serious and sustained breach of the duty of good faith. So, we cannot see how this impinges on the principle of free and voluntary collective bargaining, unless that principle is completely unconstrained, which of course it is not.

In terms of the use of compulsory arbitration for FPAs, again, the principles apply. Where it is simply impossible to reach any kind of outcome, the use of arbitration is not seen as incompatible.

The Employer spokesperson also noted the other category of the public service, and of course it is entirely possible that FPAs may apply in the public service where the use of arbitration would therefore not be incompatible.

I would like to go back, and I think the point was also made by the representative of the Government of Belgium. The Committee of Experts considers that under the Convention ensuring the voluntary nature of collective negotiations is inseparable from the principle of negotiation in good faith if the machinery to be promoted under Article 4 of the Convention is to have any meaning. The Committee of Experts recalls in this respect that the overall aim is the promotion of good faith collective bargaining with a view to reaching agreement. The Committee observes sections 31, 33 and 50J have not given any rise to any comments in the decade in which they have been in force. The Committee of Experts observes that the Act provides for significant consideration before section 50J can be applied, including rights of appeal to the Employment Court, etc. The Committee of Experts has asked for more information about the use of this provision, noting again that it has only been used once, and we are more than happy to provide information should such cases ever arise in future, and we would hope and expect that they would be extraordinarily rare.

I turn to comments made by the Employer representative from New Zealand, and he has made a number of points. I guess it is true there was a tripartite process and the employers did not agree ultimately with the conclusions, as is their right in any tripartite process. A tripartite process does not necessarily always result in tripartite agreement and we have never said otherwise. We have said that this arose from a tripartite process, but tripartite agreement is another matter. However, the majority of the Committee did recommend the principles and the mechanisms that have been taken up by the Government in the legislation.

Comments have also been made about the Cabinet process, and the point I would like to make here is this: the Government did not go into this process saying we are going to deliberately thumb our nose at the Convention. In fact, if you read through the relevant papers,

and they are publicly available, they mention a careful analysis where, under each heading, whether or not the aspect of the FPAs will engage with the rights and obligations related to the Convention are carefully noted, and again in areas such as compulsory arbitration, although it is noted that these aspects of the legislation could challenge the principle of voluntary collective bargaining they are seen as essential to ensure that enforceable minimum terms are produced at the end of the process. But again, that needs to be seen in the context of what is allowed by the Convention and the use of compulsory arbitration as I have just laid out.

I also take issue, I think, with the comments that the Government is in control of the entire bargaining process. It is not at all uncommon, in fact it would be impossible for any legislatively based bargaining process to not be administered by an agency of the State. That does not mean the Government is directing the bargaining process or the bargaining outcomes, merely that the agencies of the State are administering the processes as set out in law for those outcomes to be negotiated, bargained and achieved, one way or the other.

A couple of points were also made that employers will not be able to control the scope or coverage of an FPA. This is simply incorrect. While a party that initiates FPA bargaining must specify the proposed scope, this can then be negotiated and altered during the bargaining process itself.

It has also been claimed that, if the public interest route, or the public interest test is used, that the public will not be consulted, and I want to clarify that the legislation explicitly allows the regulator to seek public submissions when deciding whether the initiation tests have been met.

I do not want to dwell on issues raised about whether or not the Government has delayed the consideration by the Committee of Experts of this case, or indeed any consideration of the FPA legislation. I will merely note that I disagree entirely. There has been correspondence, certainly between the Organisation of Employers and the Office, to which we were made privy at one point. We then sought engagement with the employers' organization after that point, which proved impossible to achieve, initially due to their inability to meet with us, but I do not want to dwell on that at all.

I think, generally, I will conclude my comments at that point. Again, I reiterate that the legislation itself has not been fixed and I go back again to the overall objectives of the FPA system, as has been echoed I think in a number of the comments made to this point. The point here is that FPAs will serve a specific purpose of setting sectoral minimum terms and conditions where needed to address labour market issues. That involves collective bargaining, but also the setting of minimum terms and conditions on a sectoral basis. This is not uncommon.

The FPA system supplements, but will not replace, the existing collective bargaining framework and all of the rights and privileges and obligations under that continue to exist in parallel. And, of course, when an FPA agreement results in minimum terms and conditions those then may be bargained on top of, and in that process all of these other rights, basically the same as exist currently.

So, the operation of the FPA system will not interfere with our enterprise bargaining system, which will continue to operate in parallel.

I conclude, again, by noting that we remain open and receptive to the Committee's comments and will take all comments made into careful consideration in the finalization of the legislation. I thank the Committee for its attention.

Worker members – We would like to thank the Government for the detailed information provided to the Committee and we also thank all the speakers for their contributions.

To fully realize the potential of collective bargaining, it is imperative that all workers enjoy this right, and we are therefore heartened by the Government's efforts to ensure that screen industry workers can engage in free and voluntary collective bargaining. Similarly, we are pleased to see the Government take concreate action to codify the duty to bargain in good faith, a long-standing principle protected under the Convention.

Indeed, for collective bargaining and its intended labour market outcomes to be successful, both employers and trade unions must bargain in good faith and make every effort to come to an agreement. The reforms in New Zealand in this regard are fully in line with many collective bargaining systems around the world, which recognize the duty to bargain in good faith with the intent to reach an agreement. Also, the ability of the Employment Relations Authority to fix the terms of a collective agreement or an FPA provide a critical backstop without which collective bargaining could be thwarted by parties who can otherwise sustain serious breaches of good faith without sufficient consequence.

In this regard, we note that the ILO supervisory bodies have held that while Article 4 of the Convention in no way places a duty on the government to enforce collective bargaining, it is not contrary to this provision to oblige the social partners, within the framework of the encouragement and promotion of the full development and utilization of collective bargaining machinery, to enter into negotiations on terms and conditions of employment.

An FPA system buttressed by comprehensive bargaining support services is a great example of an upper-level bargaining initiative aimed at offering the social partners every chance to reach settlements. As a number of speakers have highlighted this morning, higher bargaining coverage sustained by sectoral bargaining and extension mechanisms leads to lower wage inequality and hence fewer low-paid employment.

As the OECD publication *Negotiating our way up* highlighted, the best outcomes in terms of employment, productivity and wages seem to be reached when sectoral agreements set broad conditions but leave detailed provisions to firm-level negotiations. This is precisely the path that New Zealand is taking with FPAs, which would set minimum sectoral or occupational standards which can be built on at the enterprise level. This system would also create a level playing field where good employers are not disadvantaged by paying reasonable industry-standard wages.

We trust that the Government will engage meaningfully with the social partners on any outstanding concerns that they may have in advance of the Fair Pay Agreements Bill being adopted, and we also call on the Government to provide the information requested by the Committee of Experts so that it may make further informed observations on the implementation in law and practice of the Convention in New Zealand.

In conclusion, we would like to reiterate the critical importance of the fundamental right to collective bargaining in lifting standards, reducing inequality and creating a level playing field. Together with the right to freedom of association, it enables the exercise of all other rights at work and it is well recognized that the promotion of collective bargaining is not just a stand-alone principle of international labour law. It has been integral to the mission of the ILO itself, since its establishment. Convention No. 98 is intended to serve the purpose, among other things, of promoting collective bargaining, and it is therefore evident that Article 4 is at the very heart of the Convention. For the avoidance of doubt, we would like to re-emphasize our

full respect for the Committee of Experts and its pronouncements with regard to Article 4 of the Convention.

Employer members – We thank the Government representative for his submissions and we also thank all of those that took the floor to speak on this case.

We think it is of particular note that, taking into account the clear divergence of views on the application of Article 4 of the Convention, and more generally the obligations that flow from this Convention, the divergence of views expressed today demonstrates the need for renewed and reinvigorated social dialogue on this issue at the national level.

As we pointed out in our opening statement, Article 4 is based on the premise of voluntary negotiation and it is our view that both sections 31 and 33 specifically include aspects that compel negotiation. Also, in our view, it remains clear, despite the interventions today, that section 50J permits compulsory arbitration to fix the terms of a collective agreement where bargaining parties cannot reach agreement. And while I heard the Government representative talk about exceptions to these general principles, the Employers note that the Committee of Experts has long-standing jurisprudence on the question of compulsory arbitration, and the Committee of Experts itself has recalled that compulsory arbitration in the case where parties have not reached agreement is generally contrary to the principles of collective bargaining enshrined in the Convention. And, in fact, the Committee of Experts' jurisprudence and observations talk about compulsory arbitration being acceptable in certain circumstances; that would be essential services, the public service and after protracted and fruitless negotiations, or in the case of acute crises.

So, there is a landscape in which the Committee of Experts has issued observations on this issue of compulsory arbitration, and it is not quite as simple as the Government representative has suggested.

We do note that the Fair Pay Agreements Bill is in Bill format, and I believe the Government representative talked about the fact that it has yet to be fixed. And, as a result, the Employer members, because this question involves allegations of a breach of a fundamental Convention, and clearly involves very different views between the various groups, we would encourage the Government to re-engage with the social partners with respect to the Fair Pay Agreements Bill to see if there is a way forward that ensures compliance with Article 4 of the Convention.

We would encourage the Government at this stage, since it has the ability to complete the provisions of the Fair Pay Agreements Bill, to work to ensure that any application of the Fair Pay Agreements Bill is purely voluntary, in compliance with Article 4 of the Convention.

We would also ask the Government to submit the Fair Pay Agreements Bill to the Committee of Experts for review and comment so that the Committee of Experts can issue observations to allow further understanding of all of the details in this regard.

Also, the Employer members request the Government to remove without delay the duty to conclude collective agreements from sections 31 and 33 of the Employment Relations Act. As well, the Employers request the Government to remove without delay provisions that permit the courts to fix the terms of a collective agreement as set out in section 50J.

Therefore, we would ask the Government to engage with the ILO on these issues so that it can be sure that it is in full compliance with Article 4 of the Convention and that it submit a report to the Committee of Experts by 1 September 2022 with the relevant information on the application of the Convention in both law and practice.

Conclusions of the Committee

The Committee took note of the oral and written statements made by the Government and the discussion that followed.

Taking into account the discussion, the Committee urges the Government, in consultation with the social partners, to:

- **continue to examine, in cooperation and consultation with the social partners, the proposed new legislation (draft Fair Pay Agreements Bill and the draft Screen Industry Workers Bill) to consider the impact of the proposed legislation and to ensure compliance with the Convention;**
- **prepare, in consultation with the most representative employers' and workers' organizations, a report to be submitted to the Committee of Experts in accordance with the regular reporting cycle on these measures.**

Government representative – New Zealand would like to thank the Committee and its Worker and Employer members. We appreciate the careful consideration you have given in the discussion of our case. We welcome the conclusions, and the Government will continue to consult the social partners as the FPA legislation progresses.

We will, as proposed by the Committee, also report back to the Committee of Experts on FPAs as part of our regular reporting on the Convention.

I would like to conclude by again thanking the Committee for its consideration and note our appreciation for the opportunity to provide information to it and receive its perspectives on this matter.

Nicaragua (ratification: 1967)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Discussion by the Committee

Government representative, Minister of Labour – On behalf of the State of Nicaragua, I refer to the report on the application of international labour standards of 2022 in which the Committee of Experts takes note of the observations of the International Organisation of Employers (IOE), received on 1 September and 25 October 2021, denouncing acts of persecution, intimidation and repression against José Adán Aguerri Chamorro, Michael Healy and Álvaro Vargas Duarte, and requests Nicaragua to provide comments on whether the reasons for their detention are related in any way to the exercise of their functions as alleged employer leaders.

In this regard, the State of Nicaragua indicates that the detention of José Adán Aguerri Chamorro, Michael Healy and Álvaro Vargas Duarte is not related in any way with the activities undertaken by these persons within the framework of their functions as leaders of the Superior Council for Private Enterprise (COSEP).

The content of a report that is not related to and has nothing to do with the objectives of the Convention is unacceptable, as the persons referred to in the report have been investigated, prosecuted and convicted of criminal acts against the people of Nicaragua in accordance with the current national legislation. The State of Nicaragua continues to refute any type of comments on and interference in internal matters that are prejudicial to its sovereignty and the labour stability of Nicaraguan families. In this regard, it calls on the ILO to

move forward in the discussion and seek solutions related to the world of work and the social development of families.

The State of Nicaragua, with reference to the ILO recommendation to amend sections 389 and 390 of the Labour Code, considers that, in accordance with the principle of sovereignty set out in the political Constitution, that is a decision that rests with the people of Nicaragua. The Government of National Unity and Reconciliation, in accordance with the labour legislation, is continuing to strengthen the right to the freedom of unionization of Nicaraguan workers in order to guarantee the full exercise of the establishment of trade unions and their right to organize their activities freely and to formulate their programmes of action, thereby giving effect to the provisions of the national labour legislation, ILO international Conventions ratified by Nicaragua and article 81 of the political Constitution of Nicaragua, under which workers have the right to participate in the management of enterprises through their trade union organizations.

The State of Nicaragua has also been providing timely information, through the corresponding reports to the ILO, on compliance and progress in relation to unionization in all sectors of the national economy.

Finally, we reiterate that the Government of National Unity and Reconciliation has the common objective of restoring the rights of Nicaraguan families, which include the right to labour stability, freedom of association and social peace.

Employer members – We find ourselves in a situation which, in relation to the freedom of the exercise of the rights of association and of expression, has resulted in the arbitrary detention of the highest-level leaders in recent times of the most representative employers' organization in Nicaragua.

This is a circumstance that requires the attention of the present Committee, not only from the perspective of what happens to employers, but also from the general perspective that we have always had in this house of respecting both workers and employers when they organize for the free exercise of their activities.

I will try and provide explanations and I call on Governments and Worker representatives to understand the reason why the Employers' group has considered this to be a matter of enormous gravity and in violation of the deepest meaning of the exercise of the freedoms advocated by this Organization.

The Minister of Labour, whom I thank for her participation and her interventions, has indeed referred to the detention of these distinguished persons.

There are also other persons who are currently arbitrarily detained in Nicaragua. In addition to José Adán Aguerri and Michael Healy, they include Álvaro Vargas Duarte and Luis Rivas, member of the Association of Banks of Nicaragua, and Juan Lorenzo Holmann, former President of the Nicaraguan Development Institute (INDE). Five high-level dignitaries are being detained, and José Adán Aguerri has already been convicted to 13 years of imprisonment for acts which, according to the Government representative, have nothing to do with freedom of association. However, I will show that there are very many reasons which lead to the belief that in practice there is such a connection.

It was through a representation made by the IOE last year that a series of very telling details emerged. First, there is the harassment of these representative leaders. The granting of precautionary measures by the Inter-American Commission on Human Rights, by means of a resolution in which José Adán Aguerri and Michael Healy sought precautionary measures,

precisely because they found themselves in a situation of enormous risk in the exercise of their activities.

On 3 August 2018, the Inter-American Commission on Human Rights decided to seek precautionary measures. On 17 June 2018, 15 armed persons with their faces covered entered the house of Michael Healy, in Chacatilla y Zopilote, and violently took possession of his property. We start to see facts emerging from that time.

Subsequently, there was an attack in the city of Léon on 3 September 2019 against the then President and Vice-President of COSEP. A group of persons close to the Government then wrote messages and graffiti on COSEP premises, with specific threats relating to the legitimate exercise of its activities. They wrote such messages as "conspirators, bosses of unemployment" and other graffiti.

There was then an attack in the city of Léon in 2020 against the President of COSEP. On 25 March 2021, Michael Healy, President of COSEP, on a business trip to examine the system of industrial production and crops, and Mateo Daniel Capitanich, Ambassador of Argentina to Nicaragua, who was among others accompanying him, were the victims of verbal aggression and persecution by civil agents close to the Government.

There were also attacks by the Government and the President's family against employers affiliated to COSEP. And there were acts related to lands being taken over by groups close to the Government, with the purpose of directly intimidating and repressing the private sector affiliated to COSEP. Private lands were seized and invaded in violation of the political Constitution of Nicaragua.

Similarly, in addition to the detention of these employer leaders of COSEP, and specifically the five that I have named, there have been campaigns of vilification and persecution of COSEP and its leaders. A campaign to vilify José Adán Aguerri, the former President of COSEP, has been carried out since 11 June 2021 on account of his activities.

There are a series of graffiti, which I will not detail, but which are well known to the Office through the complaint that we have made.

There are other aspects that we consider it important to highlight relating to limitations on enjoying the benefits of international cooperation. More specifically, Act No. 1040 on the regulation of foreign agents, which is not only of concern to an organization such as the one representing Nicaraguan employers, is applicable to any organization which in any form is in receipt of resources from abroad. It can be applied to non-governmental organizations, and also to unions. There are gigantic restrictions in this respect, which have been referred to by rapporteurs from international organizations as being contrary to international decisions and standards.

There is accordingly a long series of facts referred to by these special rapporteurs, although I only wish to refer to the manner in which they address the matter in their conclusions, in which they indicate that the Act gives rise to serious and fundamental problems of compatibility with the obligations of Nicaragua under international law, as it raises issues with international law in general and human rights in particular.

They urged the Government of Nicaragua to amend Act No. 1040 and to open a public space for discussion and to guarantee that the legislation is in conformity with international standards and the human rights set out therein.

Similarly, on 26 February 2021, the Inter-American Court of Human Rights issued decisions relating to the matters covered by this legislation in which, in particular, it indicated

that the Act that had been approved would impose undue restrictions on persons and associations and might be prejudicial to freedom of association, the right to privacy and freedom of expression.

Views have also been expressed by international and Nicaraguan organizations, which we have set out in detail in our representation.

Finally, we wish to note that there are other aspects relating to the report of the Committee of Experts, including matters relating to strikes, to which we will not refer for the reasons that are well known.

Worker members – This is the first time that we are discussing the application of this Convention by the Government of Nicaragua in the Committee and Nicaragua ratified this Convention in 1967 which is now 55 years ago, a little more than half a century.

We take note with concern of the allegations of arrests and detention of three employer leaders in June and October 2021 and we note that the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have condemned the detention of the employer leaders and have urged the Government to release them immediately.

The Committee of Experts has expressed deep concern regarding the arrest and detention of the leaders. The Committee of Experts has also stated repeatedly that respect for fundamental freedoms, including the safety and physical integrity of persons, the right to protection against arbitrary arrest and detention, and the right to a fair trial, are essential to the exercise of freedom of association.

We must state that respecting the authority, interpretations, observations and requests of the Committee of Experts is a cornerstone of the effective operation of the supervisory system and, in this regard, we must emphasize that the Committee of Experts has recalled that the right to freedom of association is emptied of all meaning if there is no respect for fundamental human rights, the rule of law and civil liberties. We reiterate that detaining employer and worker leaders for activities related in any way to the exercise of their functions as leaders is contrary to the Convention. The Committee of Experts has repeatedly made this observation regarding the Convention.

We urge the Government of Nicaragua to provide the Committee of Experts with all material information regarding the charges brought against leaders, the legal or judicial proceedings instituted and the outcome of such proceedings.

We note from the report of the Committee of Experts that there are pending observations regarding the need to amend sections 389 and 390 of the Labour Code, which provide that collective disputes shall be referred to compulsory arbitration when 30 days have elapsed since the calling of a strike. The Committee of Experts has insisted on the need to amend these provisions. The Committee of Experts is clear that the imposition of compulsory arbitration to end a strike, outside the cases in which a strike may be limited, is contrary to the right of workers to organize freely their activities and formulate their programmes.

We respect the observations and interpretation of the Committee of Experts and urge the Government to take the necessary measures to amend sections 389 and 390 of the Labour Code. This is in order to ensure that compulsory arbitration is only possible in cases where strikes may be limited, such as in cases of conflict within the civil service relating to officials exercising authority on behalf of the State in essential services, in the strict sense of the term, or in the event of an acute national crisis.

We urge the Government to provide information on any developments in this regard to the Committee of Experts as requested.

We also note with satisfaction that the Government of Nicaragua has rolled out various initiatives aimed at promoting the right to organize, guaranteeing workers' rights to freedom of association, removing obstacles through the registration of trade unions, promoting the organization of own-account workers and providing training for trade union leaders.

We note with interest that, as a result of these initiatives, between 2018 and 2021, 111 new trade union organizations were formed affiliating 3,902 workers, and 2,884 trade union organizations were updated that grouped together 222,370 workers. The Worker members welcome the efforts deployed by the Government and the results achieved and urge the Government to continue to implement initiatives and carry out activities for the promotion of freedom of association and the effective recognition of the right to organize.

Worker member, Nicaragua – Once again, I am surprised to be in this Committee dealing with a case that involves my country, Nicaragua. I am surprised because the case raised by the Employers, of a political nature rather than a labour issue, concerns a political matter that has nothing to do with this Committee.

In Nicaragua, there is full freedom to organize within the framework, as in any country, of the standards and laws which govern society. Any person, irrespective of their social position, who commits a crime is liable to prosecution as a punishment, in accordance with the provisions of national laws.

The persons referred to in this case form part of the ideologists of a failed coup attempt which involved murders, kidnappings and torture through *tranques de la muerte* (death roadblocks). We can forgive, but not forget.

These people who are being put forward as innocent saints are responsible for the negative impact on the national economy which resulted in a loss of over US$27,000 million and the laying off in the private sector of 250,000 workers. We cannot forget this.

The persons bringing this case support their allegations with false claims divulged through tools of disinformation which are under the orders of those who consider themselves to be the guardians of the world. This is a subject on the political agenda of the North American administration which is applying the misnamed sanctions and which are resulting in a negative impact on the employment of Nicaraguan workers. For this reason, the claims of the Employer spokesperson must be disregarded.

Since 2007, the Government, through the Ministry of Labour, has placed emphasis on dialogue, agreement and consensus, thereby promoting the settlement of disputes in negotiation forums. This model, which has been given constitutional ranking, was broken by those who are now complaining through their evil anti-patriotic acts and who took the path of destruction and exclusion by renouncing all forms of dialogue, negotiation and consensus.

We workers, with the Government, under the presidency of Daniel Ortega, are subject to economic transformations, enjoy full freedom of trade union action, benefit from the negotiation of collective agreements, negotiate wage increases and follow up occupational safety and health issues through the committees established for that purpose.

We consider that this Committee must address and discuss labour issues, and not issues that are of the nature of political interference. The role of this Committee must not be undermined and it must not be converted into an instrument for interference in the sovereignty and internal affairs of our country.

Today we have re-embarked upon the path to economic growth despite the attempted coup, the pandemic, the devastating effects of two category five hurricanes and the misnamed economic sanctions imposed by the American administration and the European Union. Overcoming the negative impacts on our economy is a result of the efforts of workers, employers and the Government to return to the path of alliance, dialogue and consensus.

As recognized by the Committee of Experts, Nicaragua has provided the information requested by the Office in good time. We know this because we participate in the process of the preparation of the reports through the consultations undertaken by the Ministry of Labour. We are moving forward with a firm and sure step towards total economic recovery, even though external factors are battering our economy and limiting more rapid progress.

We reiterate that there is no reason whatsoever for bringing the case of Nicaragua before this Committee, and there are no justifying grounds or convincing arguments in support of the case. The very fact of bringing in subjects unrelated to the Convention shows that we are right that Nicaragua should not have been responding to false claims in the Committee, and I recall that the Convention does allow us to talk about strikes, even though the Employers do not like it.

Government member, France – I have the honour to speak on behalf of the **European Union (EU) and its Member States**. The candidate country, **Montenegro**, and the European Free Trade Association country, **Norway**, Member of the European Economic Area, as well as **Georgia** and **Ukraine,** align themselves with this statement.

The EU and its Member States are committed to the promotion, protection, respect and implementation of human rights, including labour rights and the right to organize and freedom of association.

We actively promote the universal ratification and implementation of fundamental international labour standards, including this Convention. We support the ILO in its indispensable role of developing, promoting and supervising the application of ratified international labour standards and of fundamental Conventions in particular.

The EU and Nicaragua have had a close relationship. Some of the objectives of the Association Agreement signed between the EU and Central America were to develop a privileged political partnership based on values, principles and common objectives, in particular the respect for and the promotion of democracy and human rights, sustainable development, good governance and the rule of law, and to contribute to inclusive and sustainable economic development, full and productive employment and decent work.

We are deeply concerned by the further deterioration of human rights, including labour rights and living standards in Nicaragua.

We are gravely concerned that, since 2018, the Nicaraguan Government has engaged in the systematic imprisonment, harassment and intimidation of those seeking to stand as presidential candidates, opposition leaders, student and rural leaders, journalists, human rights defenders and business representatives, including through acts of persecution, intimidation and repression against leaders of COSEP and the business sector affiliated with COSEP, as well as the arbitrary detention of employers' leaders without warrants or due legal process. Respect for fundamental freedoms, such as the safety and physical integrity of persons, the right to protection against arbitrary arrest and detention, and the right to a fair trial by an independent and impartial tribunal are fundamental to the achievement of the rights enshrined in the Convention.

We call for the immediate and unconditional release of Michael Edwin Healy Lacayo, Álvaro Javier Vargas Duarte, Luis Rivas, José Adán Aguerri Chamorro and other employers' leaders, as well as all other political prisoners, and for the annulment of all legal proceedings against them, including their sentences. The arrest of employers' leaders for reasons related to the exercise of their functions is a serious violation of freedom of association.

Not only did the Government deprive the people of Nicaragua of the civil and political right to vote in a credible, inclusive, fair and transparent election in November 2021, but it is also continuing to fall short of its own commitments on human rights and fundamental freedoms. Moreover, the Nicaraguan people continue to be deprived of freedom of expression, association and peaceful assembly. Dissenting voices are silenced, more than 200 civil society organizations have been outlawed on flimsy grounds for political reasons, and state repression is unrelenting. We call on the Nicaraguan Government to bring an end to this repression and restore full respect for human rights, including labour rights, including by allowing the return of international organizations to the country.

In addition, we fully support the calls made by the Committee of Experts urging the Government of Nicaragua to review other unacceptable restrictions on freedom of association, including through the amendment of sections 389 and 390 of the Labour Code, which are currently in violation of the right of workers' organizations to organize their activities in full freedom, as well as Act No. 1040 on the regulation of foreign agents. While taking note of the initiatives reported by the Government of Nicaragua for the promotion of the right to organize, we still observe serious violations of the Convention and the fundamental right to freedom of association in law and practice.

The EU will continue to monitor the situation closely and support the people of Nicaragua in their legitimate aspiration for democracy, respect for human rights, including labour rights, and the rule of law.

Government member, United Kingdom of Great Britain and Northern Ireland also speaking on behalf of Canada – The United Kingdom and Canada unequivocally condemn the human rights abuses and violations taking place in Nicaragua. Under President Ortega and Vice-President Murillo, the Nicaraguan authorities are repeatedly and systematically violating international human rights standards and failing to live up to their own country's Constitution. The international community has a duty to hold the Nicaraguan authorities to account for their actions.

The United Kingdom and Canada regret that the ILO reports that no verifiable progress has been made since the report of the Committee of Experts. In particular, in relation to freedom of association, collective bargaining and industrial relations, the United Kingdom and Canada regret that the Nicaraguan authorities are continuing to carry out acts of persecution, intimidation and repression against multiple actors in the business sector.

The United Kingdom and Canada note that the Nicaraguan authorities have still failed to provide any precise information or documentation about the charges brought against employer leaders, the legal or judicial proceedings instituted against them, or the outcomes of the proceedings. The Nicaraguan Administration has also yet to provide comments on the Act regulating foreign agents, and the allegation that it places unacceptable restrictions on freedom of association.

The United Kingdom and Canada have repeatedly called for Nicaragua to fulfil its international obligations, including by respecting the human rights of all its citizens and bringing an end to all repression in the country. We have been vocal in condemning the

Government's constraint of political liberty and have urged the authorities to release immediately and unconditionally all those arbitrarily detained, including political and business leaders, trade unionists, journalists, students, human rights activists and those who participated in peaceful protests, and to cease their intimidation of civil society.

We call on Nicaragua to uphold its obligations regarding this Convention to respect and ensure that workers and employers are able to exercise their freedom of association rights free from fear, violence, arbitrary arrest and detention. We therefore strongly support the ILO in its request for further and more specific information from the Nicaraguan authorities on the right to organize, the promotion of collective bargaining and on collective agreements.

The Chairperson – I see that the Government of Nicaragua has raised a point of order.

Government representative, Minister of Labour – The point of order that we wish to raise is as follows: the subject matter is clear, and these statements that we have listened to, that we have heard, have absolutely nothing to do with the subject of the Convention, namely freedom of association.

Nicaragua has demonstrated, and provided information on, its additional progress in the area of freedom of association in the country. All economic sectors in Nicaragua, both public and private, have the right to freedom of association, and these statements are totally outside the legal order and are not in the spirit of the Convention, and much less of the ILO Constitution and Standing Orders.

We therefore request moderation and a return to the subject under discussion, namely freedom of association.

Government member, Bolivarian Republic of Venezuela – We have noted the Nicaraguan Government's explanation that the individuals involved in this case were detained because they had been prosecuted for acts covered and sanctioned in national legislation and that are unrelated to their activities as employers.

Therefore, given the arguments of the Government of Nicaragua, it should be noted that criminal acts set out and sanctioned in national legislation are not covered by the Convention. We recall that Article 8 of the Convention establishes, clearly and categorically, that freedom of association shall be exercised in compliance with the laws of each country, and that therefore workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land in their activities.

We welcome the existence, as indicated by the Nicaraguan Government, of broad collaboration between the business association and the Government to strengthen its National Plan to Combat Poverty. We cannot overlook the creation, between 2018 and 2021, of 111 new trade union organizations in Nicaragua with over 3,900 members, and the updating of more than 2,800 trade union organizations, covering 222,370 workers.

As always, we call on the supervisory bodies to distance themselves from political considerations since, if they go beyond the limits in their comments, that will undermine their seriousness and credibility and harm the ILO's objectives. This is something that we have affirmed in other forums, and we are concerned at the constant drift in these labour cases towards unnecessary political matters.

The Government of the Bolivarian Republic of Venezuela hopes that the Committee's conclusions will be objective and balanced, with the aim of allowing the Government of Nicaragua to continue making progress and strengthening compliance with the Convention.

Worker member, Argentina – There are two elements to the case under examination. The first relates to the failure of the Government of Nicaragua to comply with the request of the Committee of Experts for detailed information on the reasons for the detention of the leaders of an employers' organization.

The Government contends that the detentions are for criminal reasons, while the employers' complaint indicates they are motivated by their activities as employers in opposition to the Government. The Committee of Experts has logically requested more information so that it can examine the matter.

In our view, it is necessary for the Government to respond to the request of the Committee of Experts without delay and provide further information, including the official judicial report, to give us the necessary information to examine the facts with a better understanding of the events.

The Workers' position is clear: we want truth and justice, always, absolutely always. For this reason, all the information must be clarified by suitable means, and then, with the information in our hands, we will issue an opinion.

All of us here agree that these events are rooted in the 2018 crisis and its subsequent effects. That was a multidimensional conflict that had an impact on the economy, institutions and society in general. The restoration of peace requires a process of dialogue in which all sectors must work together. The social partners, governments and international bodies must cooperate to restore peace and harmony to the Nicaraguan people. We in the labour movement are playing our part in Nicaragua and the region to contribute to this difficult process, and we urge the Employers to do the same, and the Office to provide special support.

The second part of the case addresses technical aspects of labour standards and relates to sections 389 and 390 of the Labour Code, which provide that collective disputes shall be referred to compulsory arbitration once 30 days have elapsed since the calling of the strike. In our view, this provision must be amended in consultation with the social partners. While the Government argues that the regulation has fallen into abeyance, and that it has almost been repealed through lack of use in practice, it must nevertheless be revoked so that it does not become a latent threat.

Lasting peace can be established only through social justice, in accordance with our principles. Let us therefore work together to achieve lasting peace in Nicaragua as part of a process of economic development with an equitable distribution of income.

Government member, Plurinational State of Bolivia – This is a very important issue for my country, the Plurinational State of Bolivia, which respects the trade union freedoms set out in our Constitution, and all women and men workers therefore enjoy the right to organize in trade unions under the trade union principles of unity of union democracy and political pluralism, self-sustainability, solidarity and internationalism. In this regard, we have listened carefully to the information provided in relation to the protection of the right to freedom of association and the efforts that are being made by the Government of Nicaragua for that purpose.

We have taken note of and welcome the efforts made and we encourage the adoption of measures to continue strengthening this aspect.

We emphasize in this regard the establishment of over 100 new trade union organizations since 2021 and the official information that over 4,000 workers have joined unions. We also

note the cooperation that is being mobilized between the chamber of employers and the Government for the implementation of the National Plan to Combat Poverty.

In contrast, we refute references to specific cases that have nothing to do with the implementation of the Convention and which endeavour to use dialogue bodies for political purposes, thereby making it difficult to engage in constructive dialogue for the benefit of all those involved. In this regard, we encourage the Committee to continue working with the Government for the implementation of its obligations deriving from the Convention within the framework of respect for its sovereignty and non-interference in the internal affairs of the country.

My delegation reiterates its solidarity and support for the fraternal people of Nicaragua.

Worker member, Bolivarian Republic of Venezuela – We reject the arguments put forward by the Employers, because this is a political issue, and is not a purely labour matter. Each country applies its own legislation when crimes are committed.

Nicaragua is subject to constant pressure and interference from external powers, which is limiting the entrepreneurship, development and economic growth of the Nicaraguan people.

Through the Bolivarian Alliance for the Peoples of Our America, we note that workers in Nicaragua enjoy all trade union rights. There are no grounds for determining that this principle has been violated.

The Committee of Experts has noted the compliance and progress made in relation to collective agreements in Nicaragua and the provision of information by the Government. The issues mentioned are surmountable and do not appear to constitute a barrier to understanding between the parties.

We therefore stand in solidarity with the country's working class and its people, and we hope that they will continue to make progress towards solutions to the problems that have arisen.

Government member, Cuba – My delegation has taken note of the information provided by the Government of Nicaragua in relation to its national laws and the Convention. The information provided by the Government contains details regarding the exercise of freedom of association in the country.

It should be emphasized that the Nicaraguan Government has maintained communication and cooperation with the Committee of Experts, thus honouring its commitments to the Organization.

Cuba has on several occasions expressed its rejection of the use of ILO supervisory mechanisms to channel allegations of a political nature. We consider that the policies of support to workers implemented by the Government of Nicaragua, a founding Member of the ILO where over the past four years 119 new trade union organizations have been established and 3,902 workers have joined them, must be analysed impartially.

Finally, we reiterate the importance of continuing to promote tripartism and social dialogue in each country in order to promote the spirit of dialogue and cooperation. We hope that the conclusions of the Committee on this debate will be objective, technical and balanced on the basis of the information provided by the Nicaraguan authorities.

Government member, Sri Lanka – The Government of Sri Lanka welcomes the commitment of the Government of Nicaragua to ensure the implementation of the provisions of this Convention. Sri Lanka commends the constructive engagement of the Government of

Nicaragua with the Committee of Experts. Sri Lanka holds that country-specific initiatives should be based on the universal principles of the sovereignty and equality of all States and with due regard for the laws and institutions of the country concerned. We encourage the Committee to engage in a constructive dialogue with the Government of Nicaragua in respect of the matters raised.

Worker member, Cuba – We consider that the representatives of the Employers' group have presented a case that is not related to the full exercise of the right to freedom of association of the Nicaraguan employers who are under investigation for alleged crimes, since freedom of association not only involves other types of freedoms recognized in national legislation, but also has limits in terms of respect for legal process, the Constitution and laws of Nicaragua.

Nicaragua is a sister country in our region that is constantly attacked, threatened and blockaded by imperial policies that cause it to suffer sanctions which damage its economy and the working population, for which reason no social partner can take it upon themselves to destabilize social peace and the well-being of Nicaraguans.

On the other hand, we consider relevant the position taken by the Government of Nicaragua with respect to the exercise of freedom of association and collective bargaining as the strategic principles of the ILO, as the observations contained in the report of the Committee of Experts do not constitute in practice an obstacle to the development of effective social dialogue at the national level or the resolution of the problems that arise in this case.

Nicaragua is a sovereign State that defends the fundamental principles and rights at work of both workers and employers, and which strives for sustainable human development and greater social justice for all.

Interpretation from Chinese: **Government member, China** – We have read attentively the report of the Committee of Experts and its observations on the application of the Convention by the Government of Nicaragua. We thank the representative of the Government for her presentation.

We have noted that the Government has always attached importance to and protected freedom of association and organization. Over the years, the Government has committed to creating a relationship of trust among the members of different unions, promoting and protecting their freedom of association, simplifying the registration procedures for trade unions and offering various training opportunities to trade union leaders. These measures have greatly promoted trade union development. Between 2018 and 2021, 111 trade union organizations were created, joined by 3,902 workers; and 2,884 trade union organizations were completed, covering 222,370 workers. We have also noted that through round table dialogues the Government settles labour disputes between the public and private sectors and this has achieved positive outcomes.

We believe that the review of this case should focus on the status of implementation of the Convention by Nicaragua. The primary mandate of this Committee is to review the status of application of ratified Conventions by Member States, not to interfere in their internal affairs. It is necessary to stress that all governments shoulder the responsibility of maintaining the rule of law and social order and protecting the safety of their citizens in their respective countries.

Unlawful and criminal activities are prohibited in any country. However, if someone violates the law when exercising their rights and affects the lawful rights and interests of other citizens, they shall be sanctioned by law.

We trust that this Committee, when formulating its conclusions, will uphold objectivity and impartiality and reflect the real situation on the ground and progress made by the Government in implementing the Convention in order to encourage them to do better in this regard.

Interpretation from Russian: **Government member, Russian Federation** – The Russian Federation shares the views of the Government of Nicaragua on freedom of association. We think that the accusations against the Government are unfounded. They do not reflect the actual situation relating to the application of the provisions of the Convention in the country where trade union organizations have the right to associate.

Government representative, Minister of Labour – I have listened with great attention to the interventions by the representatives of the Committee, and in the first place I ask very respectfully that the interventions by the representative of the United Kingdom and the representative of the EU are not included in the report. I consider them to be harmful and not in accordance with the spirit of the discussion in this Conference.

The Government of National Unity and Reconciliation welcomes the support for our country expressed by the various delegates and nations in this Committee. The State of Nicaragua once again resolutely refutes the content of a report that does not correspond to the spirit of the Convention and we also refute any comments or interference in internal affairs that are prejudicial to sovereignty, to our sovereignty, and the stability of working Nicaraguan families, as it should be pointed out that the Convention clearly provides in Article 8 that, in exercising their rights, employers' and workers' organizations shall respect the law of the land.

Finally, we reiterate that our Government will continue with the implementation of labour laws, thereby strengthening the right to freedom of association, labour stability, freedom of enterprise, social peace and tripartism.

We ask that the interventions by France, on behalf of the EU, the United Kingdom and Canada are not included in the record as they refer to these matters that are not related to the Convention, as we consider them to be matters that must not be addressed in this Committee.

Moreover, it is important, and also very worrying for us, that the representative of the Employers who is legally accredited to participate and speak at this 110th Session of the Conference has been excluded. We therefore consider that this decision is not respectful and is prejudicial to our family, our men and women workers.

I wish to ask for authorization for the Employer representative to be heard and to speak with all due respect and legitimacy since, as we said, he is duly accredited to participate with full credentials under the ILO Constitution and Standing Orders.

Employer members – I thank very much the distinguished Minister of Labour for her presence in the Committee, but at the same time we are bound to express our deep concern that detailed information has not been provided concerning the detention of the leaders I referred to in order to clarify whether or not it is related to freedom of association. The mere fact that a government says that it is not related is not sufficient. Indeed, on the contrary, this attitude by a government when appearing before this Committee leaves much to be desired.

The attitude displayed by the Government of Nicaragua precisely reflects the unwillingness to listen to arguments that are different from its own line of thought. We see this in relation to the interventions by Governments in this Committee that it has asked to be removed from the record.

And, in particular, by the fact that it wishes to impose an Employer representative.

We have not registered any speaker, and there are many who wish to intervene in this case, and I am precisely the spokesperson for all of them, for all employers, and particularly for the spokesperson that you wish to include on behalf of the Employers: first, he is not registered with this Committee; and second, there is a formal process in the Employers' group at this Conference in relation to the representativity that he claims on behalf of Employers.

So here is also a specific indicator of this attitude.

There is a law, Act No. 1055, with a single section, which I will not read out in full, which speaks of the defence of the rights of the people, and provides that Nicaraguan nationals who call for, exalt or applaud the imposition of sanctions against the State of Nicaragua and its citizens or any act that is prejudicial to the highest interests of the nation, shall be considered traitors against the fatherland and shall be liable to exclusion from public office and elected office and shall be liable to criminal prosecution.

However, Act No. 1040 on the regulation of foreign agents, in section 14, also provides that natural persons or associations of Nicaraguan or other nationality who act as foreign agents shall, under penalty of legal sanctions, refrain from intervening in matters, activities or issues relating to domestic or foreign policy.

Nicaraguans cannot speak of domestic policy, such is the restriction of thought that exists in Nicaragua.

With respect to Article 8 of the Convention, to which the Minister referred, she forgot to mention the second paragraph, which provides that: "The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention." In Nicaragua, the law is being used to undermine the freedoms of employers, but we call on workers to understand that the same can happen to them if they do not follow the ideological lines set by the Government.

In 1989, which was the last occasion on which this case was examined by the Committee, the Employer spokesperson said that it had been examined almost every year since 1981, and it seems as though it was yesterday, with the same Government and the same current President.

The leaders of employers' organizations, and particularly COSEP, have been systematically detained, gagged, imprisoned and murdered.

Thirty years later the same is continuing to happen. This is an extremely serious matter.

Freedom of association totally lacks meaning when civil liberties do not exist. The rights conferred upon workers' and employers' organizations are based on respect for civil liberties, such as the safety of the person and freedom from arbitrary arrest and detention.

The detention of employers' leaders for reasons related to legitimate advocacy constitute a serious violation of their rights and of freedom of association.

We want to begin by calling on the Government to facilitate social dialogue in the presence of the ILO. It is fundamental to rebuild processes of trust and to follow the pathways for putting forward the claims of the social actors.

We ask this of all States, but in particular we are making this request to Nicaragua.

We demand the immediate release of Michael Healy, Álvaro Vargas Duarte, José Adán Aguerri, Luis Rivas and Juan Lorenzo Holmann. We also call for the repeal of Act No. 1040 on the regulation of foreign agents and Act No. 1055 on the defence of the rights of the people to

independence, sovereignty and self-determination, which restrict the exercise of freedom of association and freedom of expression.

Finally, it is necessary for a high-level mission to visit the country and observe the situation directly. In conclusion, in view of the elements that we have heard, and particularly the Government's reply, it is necessary for the conclusions on this case to be included in a special paragraph.

Worker members – The Worker members have taken note of the information and of the responses provided by the Government and we have also listened carefully to all the speakers and their valuable interventions. A frank and open discussion with parliamentary language is essential for the good functioning of our supervisory system. As we expressed in our opening speech, our group takes note with concern of the allegations of the arrest and detention of three employer leaders and the necessity for freedom of association, which includes respect for civil liberties, the rule of law and respect for due process.

We urge the Government to provide all the information requested by the Committee of Experts in this regard, including the legal or judicial proceedings instituted and their outcome. We also urge the Government to amend the labour law to ensure that the right to strike is fully respected in line with the Convention and the observations of the Committee of Experts and, in particular to: amend sections 389 and 390 of the Labour Code; and also amend Act No. 1040 on the regulation of foreign agents, adopted on 15 October 2020; and address the allegations that several sections therein place unacceptable restrictions on freedom of association.

Regarding the efforts deployed by the Government to protect and promote the right to organize, we note with interest the results achieved between 2018 to 2021 and we urge the Government to continue to implement initiatives and carry out activities for the promotion of unionization and the protection of the right to form and join unions.

The Chairperson – The Government member of the United Kingdom as asked to be able to exercise the right of reply to the intervention by the Government of Nicaragua.

Government member, United Kingdom – The United Kingdom thanks Nicaragua's Minister of Labour and other distinguished delegates for their comments throughout this discussion. The United Kingdom would like to respectfully request that the statement by the United Kingdom and Canada be recorded in full for the benefit of the Committee. The statement was fully in line with the remit of the Committee and this discussion regarding Nicaragua's compliance with the Convention.

Conclusions of the Committee

The Committee took note of the written and oral information provided by the Government representative and the discussion that followed.

The Committee deplored the persistent climate of intimidation and harassment of independent workers' and employers' organizations.

The Committee noted with concern the allegations of the arrest and detention of employer leaders.

Taking into account the discussion, the Committee urges the Government, in consultation with the social partners, to:

- **immediately cease all acts of violence, threats, persecution, stigmatization, intimidation or any other form of aggression against individuals or organizations in connection with both the exercise of legitimate trade union activities and the activities**

of employers' organizations, and adopt measures to ensure that such acts are not repeated;

- **immediately release any employer or trade union member who may be imprisoned in connection with the exercise of the legitimate activities of their organizations, as is the case of Messrs Michael Healy, Álvaro Vargas Duarte, Jose Adán Aguerri, Luis Rivas and Juan Lorenzo Holmann;**
- **promote social dialogue without further delay through the establishment of a tripartite dialogue round table, under the auspices of the ILO, that is presided over by an independent chairperson who has the trust of all sectors, that duly respects the representativeness of employers' and workers' organizations in its composition and that meets periodically;**
- **repeal Law No. 1040 on the regulation of foreign agents, the Special Law on Cybercrimes, and Law No. 1055 on the Defence of the Rights of the People to Independence, Sovereignty and Self-determination for Peace, which limit the exercise of freedom of association and freedom of expression.**

The Committee recommends that the Government avails itself of ILO technical assistance to ensure full compliance with its obligations under the Convention in law and practice.

The Committee also recommends that the Government accept a direct contacts mission to complete a fact-finding mission with full access related to the situation of violation of trade union rights of workers' organizations and of employers' organizations' rights as soon as possible to allow the ILO to assess the situation.

The Committee requested the Government to submit a report to the Committee of Experts by 1 September 2022 communicating information on the application of the Convention in law and practice, in consultation with the social partners.

Government representative, Minister of Labour – The Government of Nicaragua has listened carefully to the conclusions of the Committee on the individual case of Nicaragua concerning the alleged violation of the Convention.

First, the State of Nicaragua reaffirms its total disagreement with the Committee's decision not to allow the duly accredited Employer representative of Nicaragua to speak at the 110th Session of the International Labour Conference.

Furthermore, the Government of Nicaragua requested on 6 June 2022 an amendment to the draft minutes of the discussion of the case of Nicaragua in relation to certain inappropriate language used by the representatives of France on behalf of the EU, and of the United Kingdom and Canada. This request was not taken into account by the Committee.

It is very striking that the conclusions include references to intimidation and harassment of workers' organizations, which are totally false, particularly since at no time were any accusations made by the Nicaraguan workers' organizations or the Worker spokesperson.

In conclusion, and in light of the above, the Government of Nicaragua once again totally rejects the conclusions adopted by the Committee as being politicized, interfering and disrespectful, and not in keeping with the real situation. Moreover, the conclusions bear even less relation to the content and spirit of the Convention, which Nicaragua has been complying with and reporting on in a timely manner to the International Labour Organization.

Nigeria

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1961) and Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)

Written information provided by the Government

On Article 1 of Convention No. 26 dealing with the scope of minimum wage, we note the Committee's observation on section 4 of the new National Minimum Wage Act 2019 on the exclusion of some categories of workers and which states that the reduction of the minimum size of establishment to which the national minimum wage applies, from 50 to 25 persons, was a decision adopted by the Tripartite Committee on the National Minimum Wage, after an extensive consideration of our national conditions and practices. It may also be noted that establishments employing less than 25 persons are usually in the informal economy and it is hoped that with the recent emerging focus on the informal economy, especially from the social protection perspective, the issue of scope of coverage may be revisited in the next review of the National Minimum Wage Act.

On Article 4(1) of Convention No. 26 dealing with the system of supervision and sanctions and the Nigeria Labour Congress (NLC) observations on non-compliant states in the Federation, we state that by the provisions of Item 34 of the Legislative Powers in the Nigerian Constitution, the matter of prescribing the national minimum wage for the Federation, and any part thereof, resides with the Federal Government on the Exclusive Legislative List. Accordingly, the four states yet to commence the payment of the national minimum wage are being monitored jointly by the state labour offices of the Federal Ministry of Labour and Employment in the states concerned, and the National Salaries, Incomes and Wages Commission, to ensure compliance. In this regard, the provisions of sections 12 and 13 of the National Minimum Wage Act 2019 on monitoring, compliance and enforcement cover the steps to be taken by a worker or trade union on non-compliant employers to ensure social justice and equity. It should also be noted that during the minimum wage fixing, the newly established standing Tripartite Committee machinery included the representative of the State Governors' Forum and they are therefore part of the process that gave rise to the new national minimum wage.

On Article 2 of Convention No. 95 on the protection of wages of homeworkers and domestic workers, we state that the practice of homeworking is not quite prevalent in Nigeria in terms of employment relationships. Homeworkers are usually self-employed workers found mostly in the informal economy and are engaged to work on a contractual basis with a beneficiary of their services or labour. Domestic workers are more common in household employment relationships and hence the emphasis of the reviewed Labour Bill on Domestic Workers.

We also note the Committee's observations on Articles 6, 12(1) and 7(2) of Convention No. 95 and reiterate the commitment of the Government to ensure the protection of workers' freedom to dispose of their wages by ensuring non-compulsion on how, where and when such wages are expended and also protects and promotes periodicity of payment of wages. Sections 2, 3 and 6 of our extant Labour Act guarantee this freedom and non-exploitation of workers' wages. Integrated labour inspection enables supervision and application of sanctions where a breach is indicated and workers also have the right to bring a complaint against any erring employer(s) to the Federal Ministry of Labour right from the district labour offices, the

state labour offices, the regional labour offices, and to the Minister of Labour and Employment. In a further bid at strengthening and reinforcing measures to ensure regular payment of wages, we intend to utilize the machinery of the National Labour Advisory Council (NLAC) with membership comprising all 36 states of the Federation and Federal Capital Territory to drive home the need for protection of wages. The Committee is further assured that section 35 of the extant Labour Act, which had been moribund, has been reviewed during the National Tripartite Labour Bill Reviews which had the ILO Regional Office for Nigeria, Ghana, Liberia and Sierra Leone in attendance.

On the provisions of Article 14 on the provision of information on wages before entering employment and wage/pay statements, we state that section 7 of our extant Labour Act enjoins an employer to make available to an employee or worker a written statement specifying the particulars of that employment, including the rates of wages and method of calculation thereof, as well as the manner and periodicity of payment. Payslips are given to workers and are available on request retrospectively to ensure that workers are acquainted with the structure and nature of their wages.

We would like to conclude by stating unequivocally that Nigeria has, by the provisions of the National Minimum Wage Act, established the Tripartite Committee on the National Minimum Wage as a statutory national minimum wage-fixing machinery. The Tripartite Committee consists of representatives of Government, organized labour and private sector employers on equal representation with a "plus" factor consisting of representatives from the informal economy. Also wage protection is of great concern to the Government and is within the mandate of the Federal Ministry of Labour and Employment, with state labour offices in the 36 states of the Federation and the Federal Capital Territory, as well as regional offices in the six geopolitical zones in the country. The workers are also accorded a "voice" by extant labour laws to lodge labour complaints on any infringement up to the National Industrial Court and Appeals Court, where need be.

Discussion by the Committee

Government representative – We thank the Committee for this opportunity to present our comments on the observation made by the Committee of Experts on the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), and the Protection of Wages Convention, 1949 (No. 95).

The Government of Nigeria ratified Convention No. 26 in 1961, and Convention No. 95 in 1960. We would like to note with thanks the observations made by the Committee of Experts on the minimum wage-fixing machinery and protection of wages covered by Conventions Nos 26 and 95, respectively.

On Article 1 of Convention No. 26, dealing with the scope of the minimum wage, we note the Committee of Experts' observation on section 4 of the new National Minimum Wage Act 2019, which deals with the exclusion of some categories of workers, and we wish to state that the minimum size of establishments to which the national minimum wage applies has been reduced from 50 to 25 persons – because, in the last Minimum Wage Act, the number of persons for exclusion was 50, which has now been reduced to 25 persons. This was a decision adopted by the Tripartite Committee on the National Minimum Wage after an extensive consideration of our national conditions and practices. It may also be noted that the establishments that employ less than 25 persons are usually in the informal economy, and it is hoped that with the recent emerging focus on the informal economy, especially from the social

protection perspective, the scope of coverage may be revisited in the next review of the National Minimum Wage Act.

On Article 4(1) of Convention No. 26, dealing with systems of supervision and sanctions, and the Nigeria Labour Congress observations on non-compliant states in the Federation, we state that, under the provisions of Item 34 of the Legislative Powers in the Nigerian Constitution, the matter of prescribing the national minimum wage for the Federation and any parts thereof resides with the Federal Government on the Exclusive Legislative List.

Accordingly, the four states which have yet to commence the payment of the national minimum wage are being monitored jointly by the state labour offices of the Federal Ministry of Labour and Employment in the states concerned and in the National Salaries, Incomes and Wages Commission, in order to ensure compliance. In this regard, the provisions of sections 12 and 13 of the National Minimum Wage Act 2019 on monitoring, compliance and enforcement cover the steps to be taken by a worker or a trade union against non-compliant employers, to ensure social justice and equity. It should also be noted that during the minimum wage fixing, the newly established standing Tripartite Committee machinery included the representatives of the State Governors' Forum, and they are therefore part of the process that gave rise to the new national minimum wage.

Similarly, on Article 2 of Convention No. 95, on the protection of wages of homeworkers and domestic workers, we would like to state that the practice of homeworking is not quite prevalent in Nigeria in terms of employment relationships. Homeworkers are usually self-employed workers found mostly in the informal economy and are engaged to work on a contractual basis with the beneficiary of their services or labour. Domestic workers are more common in household employment relationships, hence the emphasis of the reviewed Labour Bill on Domestic Workers.

We also note the Committee of Experts' observations on Articles 6, 12(1) and 7(2) of Convention No. 95. I reiterate the commitment of the Government of Nigeria to ensure the protection of workers' freedom to dispose of their wages by ensuring non-compulsion on how, where and when such wages are expended, and to protect and promote the periodicity of payment of wages.

Sections 2, 3 and 6 of our extant Labour Act guarantee this freedom and non-exploitation of workers' wages. Integrated labour inspection enables supervision and application of sanctions where a breach is detected, and workers also have the right to bring a complaint against any erring employer or employers to the Federal Ministry of Labour. This process starts from the district labour offices to the state labour offices, the regional labour offices and to the Minister of Labour and Employment.

In a further bid to strengthen and reinforce measures to ensure the regular payment of wages, we intend to utilize the machinery of the National Labour Advisory Council with membership comprising all 36 states of the Federation and the Federal Capital Territory, to drive home the need for protection of wages. The Committee is further assured that section 35 of the extant Labour Act, which had been moribund, has been reviewed during the National Tripartite Labour Bill Reviews, which had the ILO Country Office for Nigeria, Ghana, Liberia and Sierra Leone in attendance.

On the provisions of Article 14 of Convention No. 95 on the provision of information on wages before entering employment and wage statements, we further want to state that section 7 of our extant Labour Act enjoins an employer to make available to an employee or worker a written statement specifying the particulars of that employment, including the rates

of wages and method of calculation thereof, as well as the manner and periodicity of payment. Further to this, payslips are given to workers and are available on request retrospectively to ensure that workers are acquainted with the structure and nature of their wages.

We would like to conclude by stating unequivocally that Nigeria has, by the provisions of the National Minimum Wage Act, established the Tripartite Committee on the National Minimum Wage as a statutory national minimum wage-fixing machinery. The Tripartite Committee consists of representatives of Government, organized labour and private sector employers with equal representation, with a "plus" factor consisting of representatives from the informal economy. Also, wage protection is of great concern to the Government and is within the mandate of the Federal Ministry of Labour and Employment with state labour offices in the 36 states of the Federation and the Federal Capital Territory, as well as regional offices in the six geopolitical zones in the country. The workers are also accorded a voice by extant labour laws to lodge labour complaints on any infringements with the National Industrial Court and Appeals Court, where the need arises.

Employer members – This case involves the application in law and practice by Nigeria of Convention No. 26 and Convention No. 95. These are both technical Conventions which Nigeria ratified in 1961 and 1960, respectively. Although the case is being discussed in the Committee for the first time, this is the third observation by the Committee of Experts on these Conventions since 2001. We note that the Committee of Experts dealt with Conventions Nos 26 and 95 in a consolidated comment.

The Committee of Experts raised two issues of concern under Convention No. 26. First, under Article 1 of the Convention: "Each Member of the International Labour Organisation which ratifies this Convention undertakes to create or maintain machinery whereby minimum rates of wages can be fixed for workers employed in certain of the trades or parts of trades (and in particular in home working trades) in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low."

The Committee of Experts noted that Nigeria's National Minimum Wage Act did not cover in its scope all workers in need of protection. The Committee of Experts requested the Government to rectify this in the context of the next review of the national minimum wage and provide information on progress made in this regard. On this aspect, the Employer members note the information submitted by the Government that the scope of coverage of the national minimum wage has already been reviewed following a decision adopted by the Tripartite Committee on the National Minimum Wage, by reducing the size of covered establishments from 50 to 25 employed persons.

We also note the Government's commitment to revisit the scope of coverage in the next review of the National Minimum Wage Act. We accordingly invite the Government to provide information to the Committee of Experts on this matter, in consultation with the most representative employers' and workers' organizations.

The second issue of concern relates to Article 4 of Convention No. 26, specifically, the observations by the Nigeria Labour Congress that some states were reluctant to apply the law on the national minimum wage. The Committee of Experts invited the Government to comment and indicate how it ensures the application of the national minimum wage at all levels, including at the state level. In this regard, we welcome the Government's comments that national minimum wage matters are the competence of the Federal Government under the Nigerian Constitution, and that measures at both federal and state levels have been undertaken to monitor the four states that are yet to start paying the national minimum wage. We therefore invite the Government to continue working with the most representative

employers' and workers' organizations to ensure that all states in Nigeria comply with the obligations in terms of the national minimum wage.

Turning now to Convention No. 95 on the protection of wages. Article 2 of the Convention states: "1. This Convention applies to all persons to whom wages are paid or payable. 2. The competent authority may, after consultation with the organisations of employers and employed persons directly concerned, if such exist, exclude from the application of all or any of the provisions of the Convention categories of persons whose circumstances and conditions of employment are such that the application to them of all or any of the said provisions would be inappropriate and who are not employed in manual labour or are employed in domestic service or work similar thereto. 3. Each Member shall indicate in its first annual report upon the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation any categories of persons which it proposes to exclude from the application of all or any of the provisions of the Convention in accordance with the provisions of the preceding paragraph; no Member shall, after the date of its first annual report, make exclusions except in respect of categories of persons so indicated. 4. Each Member having indicated in its first annual report categories of persons which it proposes to exclude from the application of all or any of the provisions of the Convention shall indicate in subsequent annual reports any categories of persons in respect of which it renounces the right to have recourse to the provisions of paragraph 2 of this Article and any progress which may have been made with a view to the application of the Convention to such categories of persons."

We note the Government's comments that homeworkers are not a prevalent phenomenon in Nigeria, except in the informal economy, and that emphasis is on domestic workers in the reviewed Labour Bill. The Employer members accordingly invite the Government to continue working to finalize the review of the Labour Bill, taking into account the national realities and in consultation with the most representative employers' and workers' organizations. The Government is also invited to provide information on progress in this regard to the Committee of Experts before 1 September 2022.

With respect to Articles 6, 7(2) and 12(1) of Convention No. 95, the Committee of Experts called on the Government to revise section 35 of the Labour Act, which allows the Minister of Labour to authorize deferred payment of up to 50 per cent of workers' wages until completion of their contracts. This provision is inconsistent with workers' freedom to dispose of their wages and with the requirement of payment of wages at regular intervals.

The Committee of Experts also called on the Government to indicate the measures taken to ensure that workers are not exploited when procuring goods and services from their employers.

We welcome the Government's indication that there are various protections in law and practice that ensure workers' freedom to dispose of their wages at will, guarantee regularity of payments and protect them against exploitation. The Government also stated that section 35 of the Labour Act was reviewed during the National Tripartite Labour Bill Reviews.

The Employer members, therefore, call on the Government to provide information in this regard to the Committee of Experts by 1 September 2022, including a copy of the reviewed section 35 of the Labour Act.

In respect of Article 14 of Convention No. 95, we note that the Convention states: "Where necessary, effective measures shall be taken to ensure that workers are informed, in an appropriate and easily understandable manner – (a) before they enter employment and when

any changes take place, of the conditions in respect of wages under which they are employed; and (b) at the time of each payment of wages, of the particulars of their wages for the pay period concerned, in so far as such particulars may be subject to change."

The Committee of Experts noted provisions of the Labour Act that were inconsistent with the requirements to inform workers of the applicable wage conditions before they enter employment, as well as for wage statements to be issued to them at the time of each payment. We note the Government's information that section 7 of the Labour Act satisfies the requirements by requiring a written statement of employment particulars to be given to the employee, including rates and methods of calculation of wages, as well as the manner and periodicity of payment.

We would welcome, in this regard, information from the Government on whether the Labour Act provides that all this information be given to workers before they enter employment.

Finally, the Employer members invite the Government to continue working with its social partners when harmonizing national laws with Convention No. 26 and Convention No. 95, taking into account the national realities in Nigeria, including the needs of sustainable enterprises.

Worker members – This is the first time this Committee is discussing the application of Convention No. 26 and Convention No. 95 in Nigeria.

Nigeria ratified these instruments in 1961 and 1960, respectively, as was already mentioned by the Employer members. However, the existing legal provisions contradicting international labour standards on minimum wage fixing and protection of wages demonstrate the failure of Nigeria to fully comply with Conventions Nos 26 and 95.

First, minimum wage coverage still does not extend to several categories of workers. Workers in establishments employing less than 25 persons; workers paid on commission or on a piece-rate basis, as well as workers in seasonal employment such as agriculture, are still excluded from the scope of the National Minimum Wage Act despite its revision in 2019.

We urge the Government to extend the minimum wage coverage to the categories of workers currently excluded who are in need of such protection, and to take measures to ensure equal remuneration for men and women for work of equal value, including with regard to minimum wage coverage.

The Worker members are also concerned about the lack of adequate systems of supervision and sanction. We note that the Nigeria Labour Congress reported to the Committee of Experts that governments at the state level are reluctant to implement the law on the minimum wage. We must point out, as highlighted by the Committee of Experts, that each Member which ratifies a Convention of the ILO must take the necessary measures by way of a system of supervision and sanctions to ensure that the employers and workers concerned are informed of the minimum wage rates in force. The Government must provide further information on how it ensures that the national minimum wage is applied at all levels.

We call on the Government to ensure that state governments respect national minimum wage laws, in line with its obligations under both Conventions, and to put in place a system of supervision and sanctions to enforce its application at all levels.

The Worker members further note gaps in the protection of wages of homeworkers and domestic workers. These two categories are still excluded from the provision of the Labour Act

and therefore their wages are not protected. The Government must finalize the legislative reform in this area by extending the relevant protection to these two categories of workers.

Additionally, we urge the Government to implement earlier recommendations of the Committee of Experts and to revise provisions of section 35 of the Labour Act that allow the Minister of Labour to authorize deferred payment of up to 50 per cent of workers' wages until the completion of their contract. We remind the Government of the principle contained in Articles 6 and 12(1) of Convention No. 95 that workers should enjoy freedom to dispose of their wages and regular payment of wages. We call on the Government to revise the above-mentioned provisions of the Labour Act accordingly.

We also note that section 6(1) of the Labour Act still provides that the Minister of Labour may, after consultation with the state authority, give approval to an employer to establish a shop for the sale of provisions to his workers. We call on the Government to ensure that section 6(1) is revised to be fully compliant with Article 7(2) of Convention No. 95, which requires that, where access to stores or services other than those operated by the employer is not possible, goods are sold, and services provided, at fair and reasonable prices and for the benefit of workers.

In several states in Nigeria, wages of workers are not paid regularly. We note that wage arrears have become an issue of great concern for workers. We urge the Government to address this issue without further delay by taking the necessary measures such as reinforcing supervision and strengthening sanctions and to provide all the relevant information to the Committee of Experts. In addition, we note that section 7(1) of the Labour Act still provides that rates of wages and methods of calculation and periodicity of the payment shall be communicated to workers not later than three months after the beginning of their employment and that the Labour Act does not provide for wage statements to be issued to workers at the time of each payment. This is contrary to Convention No. 95. The Government must ensure that workers are informed before they enter employment and when any changes take place of the conditions in respect of wages under which they are employed, in accordance with Article 14(a) of Convention No. 95.

We recall the importance of ensuring proper minimum wage fixing and protection of wage systems in accordance with Convention No. 26 and Convention No. 95.

Worker member, Nigeria – We have carefully read the report of the Committee of Experts concerning our country relating to Convention No. 26 and Convention No. 95. We warmly welcome and appreciate the message from the Committee of Experts. We shall make efforts to speak to it by providing additional pieces of information and contexts to assist the job of this noble Committee.

Nigeria is a federal system with a central Government and autonomous governments at state and local levels. Concerning the governance arrangements, labour issues, including the minimum wage, are contained in the Exclusive Legislative List. Federated states have latitude in designing and implementing similar arrangements that do not reduce or degrade centrally legislated positions. The process that led to the subsisting national minimum wage adoption fulfilled the laid down legislation and procedures with all the relevant social partners and stakeholders. We can confirm that the Federal Government has since made, and continues to make, reasonable efforts to implement the National Minimum Wage Act 2019.

However, we have continued to witness deliberate actions from some state governments from paying this minimum wage of 30,000 Nigerian naira. Sadly, this same wage has come under severe battering by the combined effects of COVID-19, rising inflation and the

devaluation of the Nigerian currency. The minimum wage currently stands at US$72 per month. Sadly, four states have not commenced the implementation of the minimum wage, while Abia State (south-east Nigeria) owes workers as much as 18 months of unpaid salaries. This is heartless. Nigerian workers wonder what other adjectives could describe such actions.

The Nigeria Labour Congress wishes to affirm that, to the credit of the Federal Government, it has advanced funds to defaulting state governments to offset their unpaid wages. Unfortunately, several of these states hoarded the advanced funds rather than pay wages to starving workers.

This brings us to the issue of enforcement of the National Minimum Wage Act 2019. This Committee should prevail on the Federal Government to demonstrate genuine intentions to apply the Act's rules concerning default in payment of the minimum wages. Where workers' wages have been denied or misappropriated, we have not seen any effort or resolve to bring erring states and other entities to justice.

We have also witnessed that labour inspection and wage administration is weak. It is hampered by the absence of reliable statistics and resources for ensuring effective inspection. The Committee must demand a time-framed plan from the Nigerian Government on how it plans to reverse these weaknesses and on how to eliminate wilful default of the application of the legislated national minimum wage.

The main rationale for developing, adopting and applying minimum wages is to have a wage anchor or benchmark below which wages should not fall. The other reasons are to protect unorganized workers, especially the millions in the informal sector of the economy, the majority being women and young people, and to fight poverty and inequality. Organized workers in Nigeria believe that all workers deserve to have a protected living wage. This is why we applaud the Committee of Experts' call on the country to do more to ensure that the national minimum wage covers all categories of workers, including those making a living in the informal sectors of the economy.

During the peak of COVID-19, Nigeria's organized labour and employers' associations came together to carve out an agreement to protect jobs and wages. We are happy to say that this tripartite arrangement preserved the wages of thousands of private sector workers. In a crisis, it is humane, moral and profitable to put people before profit. And there is no better way to do so than to keep people at work and pay decent wages. In essence, we are saying that to protect wages is to create decent jobs. The unemployment rate in Nigeria is staggering. The social security net is weak and inadequate. The minimum wage is one safety net that the Nigerian states should judiciously protect.

Government member, Morocco – Morocco is honoured to take the floor on this item on the agenda regarding the application by the Government of Nigeria of the two international labour Conventions Nos 26 and 95.

According to the information provided by the Government of Nigeria, of note is the Government of Nigeria's commitment to the protection of workers' freedom to dispose of their salary; the existence of an integrated labour inspection system allowing for oversight and application of penalties in the case of breaches; the Government's commitment to strengthening measures aimed at ensuring regular payment of wages; and the establishment of the Tripartite Committee on the National Minimum Wage as a mandatory national mechanism for determining minimum wages.

These measures, among others, demonstrate that the Government of Nigeria fully intends to improve its law and practice to ensure a more effective application of Conventions

Nos 26 and 95. To this end, Morocco supports and encourages the Government of Nigeria in its efforts to comply with the provisions of the two Conventions in question.

Worker member, South Africa – Let me start by stating that minimum wages have been introduced in many developed and developing economies so as to protect vulnerable workers from economic failures and greedy corporatism, thereby reducing poverty in our society.

I note that the main objective for Nigeria's Minimum Wage Act is to provide for a national minimum wage, advance economic development and social justice by improving the wages of the lowest paid workers, protecting workers from unreasonably low wages, promoting collective bargaining and supporting economic policy.

In its report, the Committee of Experts noted that Nigeria is not complying with some Articles of the Conventions. It has been noted that the Government has failed to extend the scope of the national minimum wage to all workers in Nigeria.

In South Africa, we also have a National Minimum Wage Act and also established the National Minimum Wage Commission chaired by an independent chairperson whose members are drawn from the social partners and independent experts appointed by the Minister of Employment and Labour. The National Minimum Wage Commission reviews the rates on an annual basis and make recommendations to the Minister on any changes to the national minimum wage.

South Africa has, through its basic conditions of employment, introduced earnings thresholds in its Act to protect vulnerable workers and allowed for flexibility regarding employees above the threshold. On inception, domestic workers' and farm workers' wages were set at at least 75 per cent and 90 per cent of the national minimum wage. As of 2022, the minimum wage for domestic workers is in line with the national minimum wage.

We want to impress on the Nigerian Government to do justice to the workers of Nigeria by implementing the national minimum wage in totality and, further, that it should establish a structure that will oversee the implementation of the national minimum wage and that such a structure should have powers to enforce full compliance with the national minimum wage.

Government member, Ghana – Ghana takes the floor to speak on the concerns raised by the Committee of Experts on Nigeria's commitment to ILO Conventions Nos 26 and 95. It is refreshing to note that Nigeria has set its legislative framework with the enactment of regulations to domesticate the essential provisions of these two ILO Conventions in the administration of the minimum wage and the necessary protection due to labour.

Furthermore, it is a step in the right direction that Nigeria has in place an administrative framework for the enforcement of this protection. We believe this provides an effective grievance resolution mechanism to ensure decent work.

It is commendable that the Government of Nigeria has identified the gaps in the legislative framework and is further committed to reviewing its law to help resolve all these lapses.

Just as Ghana enacted its Labour Domestic Workers Regulation, 2020, L.I 2408, to formalize domestic work and address such infractions, we believe Nigeria is on the right path to address these concerns, learning from our experiences in the subregion.

Worker member, Zimbabwe – I would like to commend the Government of Nigeria for coming up with a national minimum wage as a means for wealth distribution. While Africa's economies have grown from US$368 billion to 1.3 trillion in the last 15 years, challenges and evidence on the ground shows that this massive growth is not being shared with the majority

of people. The Nigerian Government has taken the right steps to address these challenges by establishing national minimum wages as provided for in the National Minimum Wage Act 2019. However, what worries me is the weak enforcement mechanism for such measures and the exclusion of domestic workers, homeworkers and others from the scope of the minimum wage law. This is discriminatory and must be addressed. I am also concerned at the refusal by some federal states in Nigeria to comply with the minimum wage regulations. What is also surprising is the Government's response to the matter. Allowing federal states to refuse to implement the minimum wage is an abrogation of the central Government's responsibilities. The Nigerian Government must provide measurable arrangements which it intends to engineer and deploy in ensuring full compliance by erring states. While the Nigerian Government should not make it look like it is delegating its responsibilities to the ILO, we do agree that tailor-made technical assistance to the Government should be accorded. The Government must act now and strengthen its labour inspection system to ensure that wealth is equitably distributed.

Government member, Algeria – Algeria thanks the representative of the Government of Nigeria for her statement and welcomes the follow-up carried out in the latest reports, and the comments on the implementation of the Committee's conclusions to give effect, in law and practice, to the provisions of the international labour Conventions Nos 26 and 95.

My country commends the high importance that the Government of Nigeria attaches to the implementation of international labour standards and notes the results of the work of the Tripartite Committee on the National Minimum Wage that takes into account national practice and conditions. It welcomes the Government's efforts to revise national legislation on the minimum wage with a view to covering workers engaged in enterprises employing fewer than 25 persons, while strengthening monitoring activities to improve the protection of workers' fundamental rights, especially in the informal sector.

Algeria encourages the Government to pursue reforms to protect and increase minimum wages and reduce wage inequalities to respond to the needs of domestic workers, in consultation with employers' and workers' representatives.

My country considers that the practice of implementing wages in proportion to the country's economic and social situation determined by the Government is fully in line with the provisions of international Conventions Nos 26 and 95 and contributes to strengthening workers' purchasing power and social cohesion, in consultation with the social partners. For all these reasons, Algeria invites the Committee to take into consideration the detailed replies provided by the Federal Government of Nigeria, as well as the progress noted in the country.

Worker member, Canada – The Committee of Experts has noted the exclusions in minimum wage coverage in Nigerian law and calls on the Government to extend the scope of the National Minimum Wage Act to offer coverage to the categories of workers currently excluded and in need of such protection. The Committee of Experts' request represents a very basic step towards achieving decent work goals and ensuring employment that respects the fundamental rights of all workers.

Decent work must be universal. Protections must extend to all workers, including workers in the informal sector, which in Nigeria represents 80 per cent of the workforce, and includes casual day labourers, domestic workers, industrial outworkers, undeclared workers and part-time or temporary workers, without secure contracts, worker benefits or social protection. According to World Bank figures, 82 per cent of working women in Nigeria are in the informal sector. Minimum wages and strong collective bargaining are important for the transformation from informal to formal work. They are effective shields to protect workers against exploitative

practices and unduly low pay and provide a level of income stability for workers and their families.

Exclusions and exemptions erode stable industrial relations. Minimum wages are an important mechanism to counter potentially negative race-to-the-bottom business practices that force workers to bear the costs of competition.

We urge the Government of Nigeria to heed the Committee of Experts' request and ensure adequate minimum wage coverage and wage protection for all workers.

Government member, Zimbabwe – Zimbabwe has followed the discussion on Convention No. 26 and Convention No. 95 in respect of the case of the Federal Republic of Nigeria. The information presented before this Committee by the Government of Nigeria shows that the tripartite partners have been consulting each other to find ways of dealing with the challenges that confront them collectively.

Zimbabwe commends the work undertaken by the National Labour Advisory Council and the Tripartite Committee on the National Minimum Wage in terms of strengthening their legislation and ensuring protection of the workers. In addition, the Government of Nigeria has highlighted their inclusion of the informal economy players in their tripartite-plus arrangement, which is a demonstration of the Government's commitment to leaving no one behind.

Zimbabwe therefore encourages the Office to provide technical assistance to strengthen social dialogue and to allow the tripartite constituents in Nigeria to address the challenges they face collectively.

Employer member, Democratic Republic of the Congo – In the view of the Employer members, whom we represent, it is entirely clear and specific that the National Minimum Wage Act 2019 of Nigeria, through the wording of section 4, reduces the minimum size of the establishments to which it applies from 50 to 25 persons, and accordingly undeniably runs counter to Convention No. 26, which requires the State concerned to take the necessary measures, by way of a system of supervision and sanctions, to ensure, on the one hand, that the employees and workers concerned are informed of the minimum wages and, on the other, that these minimum wages are applied in practice at all levels.

Moreover, there is a clear violation of Convention No. 95 due to the lack of coverage of homeworkers and domestic workers by the minimum wage.

In addition, it is necessary to restore the freedom of workers to dispose of their wages and to ensure the regular payment of wages, as set out in Articles 6 and 12 of Convention No. 95, rights that are violated by section 35 of the Labour Act.

As a suggestion for a solution, we urge the Government of Nigeria to avail itself of ILO technical assistance with a view to bringing the national labour legislation into conformity with the two Conventions and finally to encourage social dialogue between the Government and the social partners in accordance with international labour standards.

Worker member, Botswana – We recognize that minimum wage fixing constitutes one element of the policy that ensures the satisfaction of the needs of all workers and their families.

This means that the setting of minimum wages by a country is not effective as a stand-alone. It should be complemented by other initiatives to better realize, ensure and safeguard the welfare and well-being of all workers. One of the best ways to do this is by guaranteeing the protection of remuneration and earnings.

Every worker is deserving of his or her wages, which must be paid on time and when due. We recognize that Nigeria has revived the National Labour Advisory Council; this is appreciated. The expectation is that the Council should also be used in the promotion of the effective application of the national minimum wage and also for wage protection in Nigeria.

It is important that we recognize the adverse effects of insufficient implementation of the agreed minimum wage and non-payment of workers on their families and their jobs.

There is an established link between wages and mental health, as unpaid workers experience elevated levels of anxiety, depression and a sense of hopelessness. Families experience hardship and sometimes dislocation as a result of insufficient wage protection measures.

The Director-General of the ILO warns of an imminent triple crisis of food, fuel and finance, which are already adversely triggering and exacerbating inflation with dire consequences for wage earners. It is in a period such as this that one expects responsible and responsive governments to consider economic and social protection measures. A suitable minimum wage and wage protection should be adopted among other measures. Already, we are seeing an increase in cases of suicide by workers in Nigeria on account of non-payment of wages. The situation may get worse.

To close, we call for the Government of Nigeria to effectively deploy the Tripartite Committee, which is a critical structure that can help the Government to design implementation arrangements but also the creation of opportunities for remuneration and wage earning.

We also call on the Government to expand social protection safety nets to complement household earnings.

Government member, Senegal – Senegal wishes to thank the Nigerian delegation for the replies that it has provided to the concerns raised in the report of the Committee of Experts. My delegation welcomes the efforts made by Nigeria for the implementation of Conventions Nos 26 and 95, including the establishment of the Tripartite Committee on the National Minimum Wage and the consultation underlying the preparation of the new legislation, as illustrated by the tripartite and broader consultations held.

While reaffirming its commitment to the ILO's universal ideals and objectives, and the need for all Member States to ensure compliance with the rights and obligations deriving from ratified Conventions, Senegal invites the Government of Nigeria to pursue the progress achieved. We also encourage Nigeria to continue adopting the appropriate means to improve its law and practice through consensual reforms that guarantee economic and social stability.

Senegal therefore invites the Government of Nigeria to reinforce its cooperation with the ILO with a view to giving full effect to the provisions of Conventions Nos 26 and 95.

Worker member, Republic of Korea – I am speaking on behalf of the workers of Korea, Indonesia and the Philippines as a representative of the International Trade Union Confederation (ITUC)–Japanese Trade Union Confederation (JTUC-RENGO).

Under section 3(1) of the National Minimum Wage Act, 2019, every employer shall pay a national minimum wage of not less than 30,000 naira per month to every worker. This rate is applied for five years from its adoption until it is reviewed. The Committee of Experts raised two issues in relation to the implementation of Convention No. 26.

First, currently the statutory minimum wage does not apply to all workers in all workplaces, but it excludes workers in an establishment employing less than 25 persons under

section 4 of the Act. Second, even though section 2 of the Act stipulates that the minimum wage applies throughout the Federal Republic of Nigeria, several states have yet to implement the law.

All workers should enjoy adequate protection, including an adequate minimum wage for a human-centred future of work, as suggested in the ILO Centenary Declaration. Workers in small workplaces especially are more in need of such protection as these workplaces are usually in the informal economy. Amid the global crisis, inflation in Nigeria soared to 16.8 per cent in April of this year, driven by fuel and food price increases. At the time of an economic crisis, universal implementation of the Act is important more than ever to guarantee decent living conditions for all workers. It is unacceptable, therefore, that non-implementation of the statutory minimum wage by several state governments is not redressed.

I would like to call on the Government, as the Committee of Experts requires, to take the necessary measures to extend the minimum wage coverage to the categories of currently excluded workers who are in need of such protection. I also urge the Government to take the necessary measures by way of a system of supervision and sanctions to ensure that the national minimum wage is applied in all states throughout the country as stipulated in the law.

Government member, Cameroon – The Government of Cameroon thanks the Nigerian delegation for the useful information that it has brought to the Committee's attention on the implementation of the Conventions. The Government of Nigeria had stated that, as part of the implementation of those Conventions, it drew up in a tripartite and inclusive manner the National Minimum Wage Act 2019 and is gradually adopting measures to ensure equal implementation of the Act's provisions in all states and throughout the territory of the Federal Republic of Nigeria.

Other noteworthy actions include the development of a text that protects workers' freedom to dispose of their wages and ensures the non-exploitation of those wages. The text also empowers labour inspectors to undertake visits to enterprises and to bring those which are in violation before the labour tribunals.

Through these different measures, Nigeria reaffirms its commitment to implementing the fundamental principles and rights at work. The Government of Cameroon would therefore be grateful if this august Committee would allow this brother country to continue its reforms and to provide information on them to the ILO supervisory bodies in its future reports.

The Government of Cameroon commends Nigeria and encourages it to continue its efforts, and it hopes that the conclusions relating to this case will contribute to the improved application of the ratified Conventions in Nigeria.

Worker member, United Kingdom of Great Britain and Northern Ireland – Minimum wages and wage protection are parts of a suite of measures, including collective bargaining, that reduce inequality, increase stability and – when properly enforced – act as a bulwark against other forms of exploitation and create conditions for decent work.

The Committee of Experts' comments on the scope of Convention No. 26 in Nigeria have some resonance with our experience in the United Kingdom. Like Nigeria, the United Kingdom exempted many domestic workers from our own national minimum wage. The Low Pay Commission (LPC), which advises the Government on minimum wage levels, has recommended that they end the exemption for domestic workers due to significant exploitation. The LPC interviewed domestic workers and found harrowing stories that mirror the experiences of domestic workers in Nigeria, including physical abuse and humiliating

treatment. But a common feature of the British experience was that they were being paid well below the level of the minimum wage.

Next to some of those abuses, wage theft is comparatively easy to prove, but since the minimum wage has legal ambiguity with regard to domestic workers, employers can avoid prosecution. The exemption has therefore, as the LPC's own blog notes, acted as a barrier for these workers when they seek to protect their rights.

Similarly, where the fair and regular payment of wages is insufficiently enforced, other forms of exploitation follow. Noting the Committee of Experts' comments on the need for the Nigerian Government to prevent the non-regular payment of wages, we recall problems with minimum wage enforcement in the English city of Leicester where we also see several other forms of labour exploitation, up to and including modern slavery. Serious delays in payment are widespread. The link between the financial hardship created by such delays and exploitation is clear, and, in guidance issued by the UK Government, delayed payment of wages is listed as a risk factor of modern slavery. Again, this parallels the situation faced by Nigerian workers, where months-long delays in payment create a culture of debt and dependency that, in turn, fuels vulnerability.

We see that where either legal or practical protections for the levels and regularity of pay are absent, so is decent work. A minimum wage with the widest possible scope, and effective enforcement to protect the payment and value of wages, is an essential part of achieving decent work and social justice.

Government member, Kenya – The Kenyan delegation thanks the distinguished Federal Republic of Nigeria for their comprehensive and forward-looking response made on the observations of the Committee of Experts with respect to Convention No. 26 and Convention No. 95.

We note that the key concerns raised by the Committee of Experts, and in particular the exclusion of certain categories of workers from the application of the minimum wage, are matters which were dealt with by the national Tripartite Committee as established by the relevant laws.

We are also encouraged to note the Government's willingness to have the issue revisited during the next review of the National Minimum Wage Act and are hopeful the concerns will be duly considered.

We note that most of the other issues cited by the Committee of Experts relate to the practical application of existing legislative provisions. This is a responsibility that rests not only with the competent authorities but also with the tripartite partners and constituents who may be affected by the application, or lack thereof, of the laws. In this regard, we agree with the Government representative that, under the law, aggrieved parties, including workers, may either directly or through their unions petition the competent authorities, including the courts, for redress for their real or perceived labour violations.

In conclusion, and in view of the above, we find that most of the issues cited by the Committee of Experts could be comprehensively addressed within the framework of existing national tripartite mechanisms and relevant laws and that all parties may need to be encouraged to take full advantage of their existence for their own benefit.

Government member, Niger – We have duly noted the information provided by the Government of Nigeria to the Committee. This information is useful in assessing the country's efforts to implement the two Conventions under discussion.

Niger welcomes Nigeria's efforts to implement, in law and practice, the Conventions to which it has subscribed voluntarily, including Conventions Nos 26 and 95. Furthermore, Niger commends the Government and encourages it to engage in frank and sincere dialogue with all stakeholders in the matter. We hope that the Committee will take into consideration all the information provided by these brother countries. We take this opportunity to request that the Office continue to support and assist Nigeria in its efforts to conform to the values conveyed by the international labour standards adopted at the ILO.

Government member, Namibia – Namibia took note of the information provided by the Government of the Federal Republic of Nigeria in response to the Committee of Experts' queries on the implementation of Convention No. 26 and Convention No. 95.

Namibia applauds the steps taken by the Government of Nigeria to move along with the social partners to solve the challenges at hand in the spirit of tripartism, as it is on record that Nigeria has ratified, among other Conventions, the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which speaks of tripartite consultation.

In conclusion, Namibia looks forward to the impartial conclusion of this matter by the Committee based on the information provided by the Government of Nigeria.

Government representative – The Government of Nigeria wants to thank all who have contributed and made interventions. We note all the comments that have been made and we thank you all for making all those comments.

Before I proceed, I want to correct some information that has been provided here which we feel is not correct. Concerning the issue of suicide rates in the country, I do not know where the speaker got the data from, but there is nothing like that in my country, that the suicide rate has gone up because workers are not paid their remuneration, that there are workers being forced to spend their wages by employers. We have employers from Nigeria here, and we have a law, the Labour Act of Nigeria, section 2 of which states: "No employer shall impose in any contract for the employment of any worker any terms as to the place at which, or the manner in which, or the person with whom any wages paid to the worker are to be expended; and every contract between an employer and a worker containing any such terms shall be illegal, null and void." We want to state that if things like this are happening, we expect the workers to bring it to the attention of the Government so that action shall be taken immediately.

There is also information that there is a state government owing up to 18 months' salary which – I think – has to be confirmed because we are not sure if this information is true.

We want to state that on the issue of minimum wage fixing, the Government of Nigeria did not wake up and just fix the minimum wage. It is done through tripartism, and every element in that National Minimum Wage Act was accepted by all and assented to by all before it was enacted. The Government does not work on its own. Such a dialogue system in Nigeria is very robust. The Government and the workers and employers, we work freely together and when there are issues we expect it to be brought forward to all so that we can sit together as tripartite and thrash it out. We are surprised to see this case here because it was never brought forward before the Government. In any case, the National Minimum Wage Act has provided for monitoring, and this monitoring is made up between Government, employers and workers who are to come together to monitor implementation, and out of 36 states in the country, including the Federal Capital Territory, 32 states have implemented the national minimum wage, including the Federal Capital Territory, which leaves 4 states. Out of the 4 states, 2 have started implementation but not fully, and we hope to work to make sure that they implement the National Minimum Wage Act.

Furthermore, the National Labour Advisory Council has been resuscitated. It is a forum where all stakeholders come together, including the states' governments that are being accused here today. They are members of the National Labour Advisory Council. The Council met in March. Before the meeting, an agenda was circulated. We expected that if there was an issue like this on the ground, it should have been brought forward as an agenda item, since all those concerned would be present, so that it can be discussed at that forum, but nothing like that was brought up, only for us to get this information that the workers are complaining about that.

On the issue of social protection, the Government was working seriously in the midst of COVID-19 and is doing so in the aftermath of COVID-19. The Government came up with a lot of policies to help families, such as extending grants to households that lost businesses due to COVID-19, companies that took loans were given the possibility of extending the period of payment, and several other policies to ensure that families recover from the effect of COVID-19 in the country were adopted. So it is not just the minimum wage that is the safety net to help workers, there were other programmes that were put in place by the Government to support families to make sure that they recover from the aftermath of COVID-19.

Regarding the issue of the unemployment rate in the country, we know that in the world the issue of unemployment is a problem, and my Government is working assiduously by equipping those that have no skills to make sure that they have skills so that they can be self-employed, so that they can earn a living and support their families.

As to the issue of the informal sector, the Government has also set up a department to make sure that we formalize the informal sector and bring them into the fold so that we can monitor them and assist them so that they can enjoy all the social protection that is necessary. I submit at this point.

Employer members – The Employers welcome the views expressed by many of the delegates on this case and take note of the information submitted by the Government of Nigeria to the Committee on 16 May 2022, and further elaborated on in this meeting today.

After considering the discussions, we invite the Government: (1) to provide information to the Committee of Experts on the next review of the National Minimum Wage Act; (2) to ensure that all states in Nigeria comply with their obligations in respect of the national minimum wage; (3) to continue working with the most representative employers' and workers' organizations to finalize the review of the Labour Bill and to provide information on its progress, in this regard, to the Committee of Experts; (4) to provide information to the Committee of Experts, before 1 September 2022, on measures it has taken to comply with Articles 6, 7(2) and 12(1) of Convention No. 95, including a copy of the reviewed section 35 of Nigeria's Labour Act; (5) to the extent that the Labour Act does not require provision of wage conditions before workers enter employment, to consider amending the law to comply with Article 14 of Convention No. 95, in consultation with the most representative employers' and workers' organizations, and to submit information on its progress in this regard to the Committee of Experts; and (6) lastly, to continue working with its social partners when harmonizing national laws with the two Conventions, taking into account the national realities in Nigeria, including the needs of sustainable enterprises, and to seek ILO technical assistance if required.

Worker members – We note the comments of the Government of Nigeria and we also want to thank all those who have taken the floor to contribute to this discussion.

We emphasize that the Government of Nigeria has an obligation to establish a mechanism for minimum wage fixing to protect wages and to establish a supervisory and sanction system in line with Conventions Nos 26 and 95.

We call on the Government to: (i) extend the minimum wage coverage to the categories of workers currently excluded, such as in establishments employing less than 25 persons, workers paid on commission or on a piece-rate basis, as well as workers in seasonal employment such as agriculture, and to take measures to ensure equal remuneration for men and women for work of equal value, including with regard to minimum wage coverage; (ii) put in place an appropriate system of supervision and sanctions to ensure that the national minimum wage is applied at all levels with technical assistance from the Office; (iii) extend the scope of wage protection provisions to domestic workers and home-based workers; (iv) revise the provisions of section 35 of the Labour Act that allow the Minister of Labour to authorize deferred payment of up to 50 per cent of workers' wages until the completion of their contract, in order to ensure that workers can enjoy freedom to dispose of their wages and regular payment of wages in accordance with Articles 6 and 12(1) of ILO Convention No. 95; (v) ensure that section 6(1) is revised to be fully compliant with Article 7(2) of Convention No. 95; and (vi) revise section 7(1) of the Labour Act to ensure that workers are informed before they enter employment and when any changes take place of the conditions in respect of wages under which they are employed, in accordance with Article 14(a) of Convention No. 95. We want to urge the Nigerian Government to seek ILO technical assistance in this regard.

Conclusions of the Committee

The Committee took note of the written and oral information provided by the Government representative and the discussion that followed.

Taking into account the discussion, the Committee urges the Government, in consultation with the social partners, to:

- **consult with the social partners on the issue of extending the minimum wage coverage to the categories of workers currently excluded by the National Minimum Wage Act;**
- **ensure men and women receive equal remuneration for work of equal value, including with regard to minimum wage coverage;**
- **establish an effective system of supervision and sanctions to ensure that the national minimum wage is applied at all levels;**
- **consult with social partners on the issue of the application of the scope of wage protection to domestic workers;**
- **consult with the social partners on the provisions of section 35 of the Labour Act that allow the Minister of Labour to authorize deferred payment of up to 50 per cent of workers' wages until the completion of their contract in order to ensure that workers can enjoy freedom to dispose of their wages and regular payment of wages, in accordance with Articles 6 and 12(1) of Convention No. 95; and**
- **consult with social partners regarding amending sections 6(1) and 7(1) of the Labour Act to come into line with Convention No. 95.**

The Committee requests that the Government avail itself, without delay, of technical assistance from the Office to ensure compliance with the Conventions in law and practice.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 with information on the application of the Conventions in law and practice, in consultation with the social partners.

Solomon Islands (ratification: 2012)

Worst Forms of Child Labour Convention, 1999 (No. 182)

Discussion by the Committee

The Chairperson – The first case this morning concerns the implementation of the Worst Forms of Child Labour Convention, 1999 (No. 182), by the Solomon Islands. I must inform the Committee that the Government of the Solomon Islands is accredited to the Conference but has not registered with our Committee. Therefore, the case is going to be discussed in the absence of the Government, but the representative of the Solomon Islands has sent a written communication to this Committee. I am going to ask the representative of the Secretary-General to share with the members of the Committee the contents of that communication.

Representative of the Secretary-General – We received a message from the Chief Labour Officer of the Ministry of Commerce, Industry, Labour and Immigration of the Solomon Islands an hour ago and I am going to read it out to you because it is addressed to the entire Committee.

"Dear Colleagues,

I regret to inform the Committee that the Government of Solomon Islands is unable to take the floor before the Committee today, as we were interrupted by long holidays in the past couple of days and that affected our preparation for this important session.

However, we have noted the comments made by the Committee of Experts and we are happy to provide the information needed by the Committee in our next reporting schedule.

We hope that the Committee takes note of our interest to appear and understands our situation.

Thank you very much for your understanding in this matter."

Employer members – This case involves the application of a fundamental Convention in the Solomon Islands. I emphasize that this is the first time that the Committee is discussing the application of this Convention, which was ratified by the Solomon Islands in 2012. The Committee of Experts has made an observation and a direct request on the application of this Convention.

We regret that the Government is not participating in this discussion; it is undoubtedly very important for the work of this Committee to hear the observations of the governments regarding the application of the Conventions, and we regret that this is due to public holidays. However, we appreciate the fact that information has been provided clarifying some issues related to the application of the Convention.

The observations of the Committee of Experts outline very serious issues regarding the inadequate implementation of the Convention in the Solomon Islands. Let me summarize them in two points. First, in relation to Article 3(a), which prohibits "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict". The Committee of Experts noted that the Immigration Act (Act No. 3 of 2012)

criminalizes trafficking of children under 18 years of age and provides for sanctions of fines or imprisonment.

In this regard, the Government stated in its report that the Solomon Islands Immigration Division reported three cases of child trafficking during the period covering January to March 2020 and these cases resulted in acquittals. Similarly, the Government reported that there is evidence of the sale and trafficking of children, especially girls, by their parents to foreign workers. These facts have also been reported and noted with great concern by the United Nations Committee on the Rights of the Child.

In a study on the Solomon Islands published in 2019, the International Organization for Migration also emphasized the high number of reported cases of sexual exploitation and trafficking of children in communities near logging camps. It is for this reason that the Employers support the requests already made by the Committee of Experts for the Government to adopt all the necessary and urgent measures to identify, prosecute and punish those guilty of committing crimes, such as the sale or trafficking of children. In the same vein, we request that the Government provide detailed information on the number of investigations being carried out and the procedural stages of these investigations.

Second, the Committee's observations relate to the use, recruitment or offer of children for prostitution. We welcome the information presented by the Government on the amendment made to the Penal Code to protect all children under 18 years of age from prostitution in accordance with the comments already made by the Committee of Experts.

Section 141(2) of the Penal Code (Amendment) (Sexual Offences) Act of 2016 provides that a person who recruits or attempts to recruit another person to provide commercial sexual services, whether in the Solomon Islands or elsewhere, is liable to a prison sentence of up to 20 years if the victim is under the age of 15 years, and a sentence of up to 15 years in other cases. This amendment to the criminal law is in accordance with the provisions of the Convention, which we welcome.

Therefore, the Employer members encourage the Government to continue working with the most representative workers' and employers' organizations and international development cooperation organizations to prevent the use and recruitment of children for prostitution.

The Employer members also encourage the Government to continue to implement as a matter of priority awareness-raising and community-sensitization measures related to child labour, as well as capacity-building for labour inspectors, the criminal justice system, social workers and the private sector.

On the other hand, taking into account the role of education in the prevention of the worst forms of child labour, the Employer members suggest that the Government intensify its efforts to facilitate access to free basic education for all children, in order to increase school enrolment rates and reduce school drop-out rates.

I conclude by saying that it would have been of the utmost importance to hear from the Government, and we look forward to hearing the comments of the Worker members.

Worker members – The Worker members deeply deplore the absence of the Government for the discussion of its case. We recall the importance of the Committee's mandate, which is to provide a tripartite forum for dialogue on outstanding issues relating to the application of ratified international labour Conventions. A refusal by a government to participate in the work of the Committee is a significant obstacle to the attainment of the core objectives of the ILO.

On the substance of the case, we note that this is the first time that the Committee has had the opportunity to examine the application of the Convention in the Solomon Islands. We note that the Solomon Islands ratified the Convention in 2012 and that after sending its first report on the application of the Convention in 2015, the Government failed to send regular reports until 2021. In this respect, the Worker members wish to recall the fundamental nature of the dialogue that must be established between the Member States and the ILO, particularly through scrupulous respect for the reporting obligations linked to the standards.

With regard to the steps taken by the Government to combat the worst forms of child labour, including the sale and trafficking of children for the purpose of sexual exploitation, the Worker members take note of the adoption in 2016 of the Penal Code (Amendment) (Sexual Offences) Act which, in conjunction with Immigration Act No. 3 of 2012, aligns the national legislation with the Convention, as per the recommendations of the Committee of Experts.

The trafficking of persons under 18 years of age, whether internal or transnational, is now criminalized and sanctioned with a prison term. The use, procurement or offering of boys and girls under the age of 18 for the purpose of prostitution or for the production of pornography or pornographic performances is also criminally sanctioned under the Penal Code (Amendment) (Sexual Offences) Act.

While we take note of these positive developments in the legal sphere, we note with concern that, in practice there is consistent evidence of the sale and trafficking of children, particularly girls, by their parents to foreign workers. Investigations have revealed that children are being used as nightclub, motel and casino workers in Honiara, the capital city, as well as on foreign and local commercial fishing vessels and are being offered to clients for sexual services as part of their employment. Moreover, most logging camps in the country are sites to which children are domestically trafficked for sexual exploitation. Studies carried out by non-governmental organizations estimate that each camp has around 6 to 12 girls aged between 11 and 16 years old for these purposes. The sexual exploitation of these girls is often condoned as foreign logging workers provide financial aid to the girls' families.

In this regard, we note that operations of child labour monitoring are entrusted to the Royal Solomon Islands Police Force, the labour inspectors and the Transnational Crime Unit, while a National Central Bureau of the International Criminal Police Organization (INTERPOL) was established in the capital in 2017 to support the domestic law enforcement agencies.

However, we regret the lack of information on the activities of prevention, inspection, investigation and prosecution carried out. As regards investigations carried out and penalties imposed, we note from the Committee of Experts' observation that the three cases of trafficking in children reported in the period from January to March 2020 ended in acquittals.

The Worker members recall that Article 1 of the Convention requires that measures be adopted to ensure not only the prohibition of the worst forms of child labour in law, but also their elimination in practice. Monitoring mechanisms are essential for the effective translation of the relevant legislation into practice and, to echo the Committee of Experts' call in the 2012 General Survey on the fundamental Conventions, measures should be adopted to bring cases of the worst forms of child labour to the attention of the judicial and administrative authorities, and to encourage these authorities to apply the penalties provided in law.

Therefore, we call on the Government to strengthen the capacity of the law enforcement officials and labour inspection systems responsible for combating the worst forms of child labour. This includes ensuring that sufficient human and material resources are allocated to

these institutions for the performance of this mandate and that cooperation between them is promoted and facilitated.

The Worker members welcome the efforts deployed by the Government to increase the school enrolment, attendance and completion rates in primary and junior secondary education, in particular through its Education Strategic Framework 2016–30. Nevertheless, we note that UN supervisory bodies have expressed concern at the disparities in access to and the quality of education between urban and remote areas. The Worker members emphasize the importance of ensuring access to free basic education to prevent the engagement of children in the worst forms of child labour and to contribute to the rehabilitation and social integration of children removed from these worst forms.

The Worker members take note of the persisting gaps in the legislation, including the absence of a provision in the national penal legislation prohibiting the use, procuring or offering of a child under 18 years for the production and trafficking of drugs; and the absence of a list of types of hazardous work prohibited for children under the age of 18 years.

On this second aspect, we note that the UN Committee on the Rights of the Child in its 2018 observations requested the Government to take the measures necessary to ensure that no child under 18 years of age engaged in hazardous labour, including in the agriculture, logging, tourism and fishing industries. We also note that the Government is in the process of developing such a list, with the technical support of the ILO. We call on the Government to adopt, without delay, penal legislation prohibiting the use, procuring or offering of a child under 18 years for the production and trafficking of drugs and to finalize, in consultation with the social partners, the list of types of hazardous work prohibited for children under 18 years of age.

Finally, we strongly encourage the Government to step up its efforts to collect and analyse statistical data on the worst forms of child labour, including their nature, extent and trends, the number of children protected, the nature of the offences reported, investigations, prosecutions, convictions and penalties imposed.

Worker member, Solomon Islands – The Committee of Experts has rightly raised the issue of the worst forms of child labour happening in the Solomon Islands. The issues of human trafficking and the commercial sexual exploitation of children in the Solomon Islands are a confirmed fact with reported cases.

Unfortunately, we only have four reported cases so far. All these cases happened in the logging sector. It can also be assumed that this might be happening in all other sectors in the Solomon Islands but it remains unreported.

In relation to the cases reported, one case went before the magistrate, but has not been pursued further. We have cases in which logging companies paid compensation to parents of abused children and we have reported cases which ended up with the lawyers, but so far no prosecution has been conducted and we also have reported cases that have been taken up by the police to deal with under the Penal Code, but no positive outcome has been achieved so far.

Now, these are cases that are known by the workers' union, the union of which I am the President, because we represent private sector workers in the Solomon Islands, and our members throughout the country have been reporting this to us and we have raised them with not only the police, but relevant authorities. Unfortunately, none of these cases have been prosecuted, and perpetrators have not been convicted or punished. None of these cases ended

up in the High Court. Currently, the Immigration Act as well as the Penal Code are relevant to the issue, and I hope that work can be done immediately to review them.

The next relevant legislation is the Family Protection Act. The Family Protection Act, which is quite general, deals with domestic violence and sexual offences. The Immigration Act, which specifically deals with human trafficking, is very vague and makes it difficult to prove the elements of the crime. As a result, the prosecutor, as happened in one reported case, had to revert to the Penal Code for the relevant provision but only for sexual charges such as under-age sex, defilement and rape of under-age persons.

In conclusion, based on our findings and observations, we see that the Government is not serious enough or committed to focusing on improving in these areas. There is no specific legislation in place relating to child protection when there should be. There is a lack of monitoring and policing mechanisms in place. Only incidents in the logging sector have been reported but this could also be happening across other sectors.

There is also a lack of awareness; 80 to 90 per cent of the population lack understanding of the laws of the Solomon Islands and their rights under those laws. As a result, there may be a lot of cases left unreported.

As regards our recommendations, there is an urgent need to review the current relevant legislation. There is also a need to formulate specific legislation to protect children. And there is also a need to establish a monitoring council to report directly to the Labour Advisory Board on issues in this particular area.

Carrying out awareness programmes by stakeholders is also a necessity. We have discussed those matters with members of the judiciary and they see and share the same view as us.

Government member, France – I have the honour of speaking on behalf of the **European Union (EU) and its Member States**. The candidate country **Albania** and the European Free Trade Association country **Norway**, Member of the European Economic Area, align themselves with this statement.

The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights and the fight against child labour, in particular in its worst forms.

We actively promote the universal ratification and implementation of fundamental international labour standards, including the implementation of the Convention. We support the ILO in its indispensable role to develop, promote and supervise the application of ratified international labour standards and of fundamental Conventions in particular.

As stated in the recently adopted Durban Call to Action, the universally ratified Convention requires action from ILO Member States to eliminate as a matter of urgency the worst forms of child labour. We recall the importance of scaling up efforts in this regard and underline our strong commitment thereto.

As signatories to the Cotonou Agreement, the EU and the Solomon Islands have engaged in a comprehensive, balanced and deep political dialogue, covering human rights, labour rights and the fight against child labour, as a precondition for sustainable development, economic growth and poverty reduction. The EU and the Solomon Islands also cooperate through the Economic Partnership Agreement applied since May 2020, which commits the parties to supporting social rights. The Solomon Islands are also a beneficiary of the EU's "Everything but Arms" scheme for least developed countries.

We recall our great concern over the reports of the sale and trafficking of children, particularly of girls, by their parents to foreign workers, mainly in communities near logging camps, for the purpose of sex.

While these serious violations of the Convention persist and should be addressed, we welcome the 2016 amendments to the Penal Code regarding sexual offences, which was amended to protect all children (boys and girls) under the age of 18 years from prostitution, in line with the Committee's previous comments, and establish harsher prison sentences for persons engaging in internal trafficking of persons when the victim is a child.

With these legal amendments now in place, we reiterate the Committee's call to take the necessary measures to ensure that thorough investigations and prosecutions are carried out, and that sufficiently dissuasive penalties are imposed in practice in order to eliminate these worst forms of child labour.

We note with great concern that, despite various reports on the widespread persistence of the trafficking and sale of children for the purpose of prostitution and sexual abuse, the Government indicates in its report that the Solomon Islands Immigration Division has reported only three cases of trafficking of children for the period from January to March 2020, all of which ended in acquittals.

We urge the Government to continue to provide information on the application in practice of the relevant sections of the Penal Code and the Immigration Act (Act No. 3 of 2012), in particular on the number of investigations, prosecutions, nature of the offences, convictions and sanctions imposed on the offenders, including information on the number of acquittals.

The EU and its Member States are fully committed to working alongside the Solomon Islands. We will continue our engagement for the children in the country. We look forward to continuing joint efforts with the Government and the ILO to bring this practice of child abuse to an end, particularly by effectively implementing the available legislation.

Employer member, Argentina – The employers of Argentina thank the previous speakers for their perspectives on the case and regret the Government's absence from the session.

We have received the information regarding the implementation of section 77 of the Immigration Act (Act No. 3 of 2012). However, we regret that while the Government stated in its report on the Minimum Age Convention, 1973 (No. 138), that there is evidence of the sale and trafficking of children by their parents to foreigners, the Government did not provide on that occasion information on convictions or sentences imposed under the above-mentioned regulation or under section 145 of the Penal Code on sexual offences.

Accordingly, we reiterate the request that the Government take the necessary measures to ensure that thorough investigations and prosecutions are carried out, and that sufficiently dissuasive sanctions are applied to persons engaged in the sale or trafficking of children, and that the results of these prosecutions are reported.

Secondly, in relation to the recruitment or offering of children for prostitution, we also welcome the reform of the Penal Code to protect all children under the age of 18 years from prostitution, provided that the recruitment or attempted recruitment occurs in the Solomon Islands regardless of the place of exploitation.

In conclusion, while encouraging the Government to continue to provide detailed information on the application in practice of the amended legislation, we would like to highlight the importance of coordinating complementary actions aimed at addressing the

socio-cultural conditions, risk factors and structural issues that contribute to the occurrence and consequences of child labour in general and the worst forms of child labour in particular.

In order to design policies that efficiently coordinate the available resources and promote the economic development of the region and the creation of productive and quality employment for the country's adults, we reiterate the request of the Employer members and encourage the Government to work to empower the social partners and actively involve them in the design of public policies, taking advantage of the ILO's technical assistance to design effective strategies to eradicate the worst forms of child labour in the country.

Worker member, Australia – Traffickers subject children of the Solomon Islands to sex trafficking and forced labour, particularly near foreign logging camps, on commercial fishing vessels and at hotels and entertainment establishments.

The Immigration Act 2012, together with the Penal Code, criminalizes child sex trafficking and labour trafficking. Section 77 of the Immigration Act addresses offences related to the trafficking of children and provides for penalties of a fine or imprisonment for a term not exceeding ten years, or both.

The Committee of Experts' report notes that the Solomon Islands Immigration Division only reported three cases of trafficking in children in the period from January to March 2020, which ended in acquittals. This stands in contrast to the concluding observations of the UN Committee on the Rights of the Child in 2018, which express serious concern about the sale of children to foreign workers in the natural resources sector, and an International Organization for Migration case study from 2019, which highlights the high number of reported cases of sexual exploitation and trafficking involving children in communities near logging camps.

This gap between the number of cases and the lack of convictions indicates a number of issues that the Government must address in order to uphold their obligations under the Convention.

First, section 77 of the Immigration Act is too vague, and the penalties do not match the severity of the crime. A fine in lieu of imprisonment is not commensurate with the penalties prescribed for other serious offences. The Government should ensure that penalties are sufficiently dissuasive and reflect the seriousness of the crime.

Second, there is a lack of monitoring and enforcement. We note the direct request from the Committee of Experts to provide information on the activities of the police force, the Transnational Crime Unit and other bodies responsible for monitoring the crimes related to child trafficking, including measures to strengthen their capacities.

There is no monitoring mechanism in place, and the Government has not initiated or conducted any anti-trafficking training for law enforcement. The Government should implement measures including additional resources, commitment, coordination, training and awareness, to enable government agencies to investigate and prosecute child trafficking and should establish a monitoring council that reports to the Labour Advisory Board.

Recalling Article 7 of the Convention, we call on the Government to implement effective and time-bound measures to eliminate the worst forms of child labour, including child sex trafficking. This should include thorough investigations and prosecutions against persons who engage in the sale and trafficking of children; ensuring access to basic free education; and ensuring that sufficiently dissuasive penalties that reflect the severity of the crime are imposed in practice.

Government member, Switzerland – We regret that the Government is not present. The eradication of the worst forms of child labour, to which the Convention contributes, is a universally applicable principle for all children under the age of 18 years and is one of the most important objectives of the ILO. Switzerland attaches great importance to this fundamental Convention.

We therefore welcome the fact that, through the amendment of the Penal Code in 2016, the Government has closed significant legal loopholes to protect all children, girls and boys, under the age of 18 years from prostitution. Through the amendment of the Penal Code, the Government has made efforts to implement international labour standards and respect the supervisory system and the recommendations of the Committee of Experts.

Switzerland encourages the Government to continue to make every effort, both in legislation and above all in practice, to combat child labour, trafficking and the sexual exploitation of children. The fight against child prostitution must be as intense as possible, for all countries. This fight requires, in addition to the appropriate legal framework, investigations, prosecutions and dissuasive sanctions. Finally, we encourage the Government to continue to intensify its efforts and to also address the root causes that lead parents to sell their children to foreign workers.

Worker member, Canada – The Workers of the Philippines support this statement. With the passing of the Penal Code (Amendment) (Sexual Offences) Act 2016, the Government has aligned its national legislation with international standards in terms of protecting children from exploitation and prostitution and from being trafficked for sexual purposes. However, important omissions persist within the legislation that may leave children vulnerable to being sexually exploited. For instance, although current legislation contains comprehensive coverage of child trafficking offences, both within and outside of the country, there is no stand-alone provision that explicitly prohibits the sale of children.

The Committee of Experts has noted the absence of a provision in the national penal legislation prohibiting the use, procuring or offering of a child under 18 years for the production and trafficking of drugs. Human trafficking in the Solomon Islands is most common in the logging camps, where children are domestically trafficked for labour and sexual purposes. A Save the Children report estimated that each camp had as many as 12 children aged from 11 to 16 years old. These children often became “house girls”, which is synonymous with wives. The sexual exploitation of these girls is often condoned as foreign logging workers provide financial payment to families suffering the hardships of poverty.

The United States Department of State’s 2021 *Trafficking in Persons Report* noted specifically that the Solomon Islands Labour Division did not conduct systematic monitoring and inspection activities at logging operation sites during the term covered by the report. Inspections are critical to the identification, investigation and prosecution of cases of forced labour and sexual exploitation of children within the logging industry.

The Government should also conduct a nationwide assessment on all manifestations of the sexual exploitation of children to develop evidence-based policies and strategies. It must also advance on developing a list of types of hazardous work prohibited for children under the age of 18 years. Hazardous or exploitative labour as defined in the Child and Family Welfare Act 2016 includes any work that is inappropriate for the child’s age or is hazardous to the child’s physical or mental health or impairs the child’s education and moral development.

These steps will help provide needed protections to combat forced child labour and the sexual exploitation associated with this industry.

Employer members – We have listened attentively and taken note of the remarks of all those who have taken the floor. I would especially like to thank the Workers and Employers for their contributions.

We would like to emphasize that in order to achieve target 8.7 of the Sustainable Development Goals – to eliminate child labour in all its forms by 2025 – it is necessary for all governments, employers' and workers' organizations, and the ILO itself to work in a coordinated manner through strengthened social dialogue.

Recently, at the 5th Global Conference on the Elimination of Child Labour held in Durban, South Africa, it was noted that the COVID-19 pandemic, armed conflicts, and humanitarian and environmental crises threaten to reverse the progress made in combating child labour.

The Durban Call to Action includes commitments in six different areas. First, to make productive employment and decent work a reality for adults and young people above the minimum working age, accelerating multi-stakeholder efforts to eliminate child labour and prioritizing the worst forms of child labour; second, to end child labour in all sectors; third, to strengthen the prevention and elimination of child labour including its worst forms, forced labour, modern slavery and human trafficking, and protect survivors through policy and programmatic responses; fourth, to realize children's right to education and ensure universal access to free, compulsory, quality, equitable and inclusive education and training; fifth, to achieve universal access to financially sustainable social protection; and sixth, to increase funding and international cooperation for the elimination of child labour and forced labour.

This is why the Employer members are making an "urgent call" to focus all efforts on the prevention and elimination of child labour with special emphasis on the eradication of the worst forms of child labour.

Given that the ILO has significant capacity for programme development in countries where child labour exists, we encourage the Government to urgently request technical assistance from the ILO to build the capacity of the tripartite constituents. In addition, there is a need to focus on the implementation of effective strategies to eradicate the worst forms of child labour, following timely and effective consultation with the social partners. We further call on the international community to mobilize to achieve the eradication of child labour in the Solomon Islands.

Finally, we strongly encourage the Government to make an immediate and urgent commitment to provide solutions in law and practice that will address this scourge.

It is necessary to establish investigative and judicial bodies to identify and convict the culprits. Strategies must be put in place to provide training to communities and families, to protect children, and to raise awareness of this major problem among all of the country's inhabitants.

It is necessary to ensure greater dissemination of the mechanisms available to address this scourge. It is also necessary to strengthen the educational system so that the children of the Solomon Islands have the opportunity to study; and development must also be guaranteed in an environment conducive to the generation of sustainable enterprises that generate quality jobs for the parents and relatives of children.

Worker members – We express once again our deep regret that the Government declined to participate in the work of the Committee and recall that a refusal by a government to participate in the work of the Committee is a significant obstacle to the attainment of the core objectives of the ILO.

We take note of the steps taken by the Government to bring its national legislation into conformity with the Convention, in line with the recommendations of the Committee of Experts. We encourage the Government to continue its efforts and adopt penal legislation prohibiting the use, procuring or offering of a child under 18 years for the production and trafficking of drugs. We also encourage the Government to adopt, without delay and in consultation with the social partners, a list of types of hazardous work prohibited for children under the age of 18 years.

Despite these positive legislative developments, we remain concerned by the persistence of the worst forms of child labour, including the sale and trafficking of children, particularly of girls, for sexual exploitation purposes. We urge the Government to take concrete measures to prevent, prohibit and eliminate these worst forms of child labour, including:

- by strengthening the capacity of law enforcement agencies and the labour inspectorate;
- by promoting their effective cooperation;
- by ensuring that cases of the worst forms of child labour are duly investigated, prosecuted and sanctioned; and
- by ensuring access to free basic education to all children in primary and secondary education, particularly among children from poor and disadvantaged families as well as children living in remote areas.

We also encourage the Government to adopt specific legislation on child protection and to conduct awareness-raising activities to disseminate information to the public on the identification of the worst forms of child labour and on ways to report cases to the authorities.

Finally, we encourage the Government to step up its efforts to collect and analyse statistical data on the worst forms of child labour, including their nature, extent and trends, the number of children protected, the nature of offences reported, investigations, prosecutions, convictions and penalties imposed.

We invite the Government to avail itself of the technical assistance of the ILO.

Conclusions of the Committee

The Committee expressed its deep regret that the Government declined to participate in its work and recalled that a refusal by a government to participate in the work of the Committee, despite being accredited to the International Labour Conference, is a significant obstacle to the attainment of the core objectives of the ILO.

In those circumstances and as provided for in paragraph 34 of document D.1 concerning the working methods adopted by the Committee, the Committee discussed the substance of the case in the absence of the Government.

The Committee took positive note of the steps taken by the Government to bring its national legislation into conformity with the Convention. Despite these positive legislative developments, the Committee expressed its deep concern about the persistence of the worst forms of child labour, including the sale and trafficking of children, particularly of girls, for sexual exploitation purposes.

Taking into account the discussion, the Committee urges the Government, in consultation with the social partners, to:

- **adopt legislation prohibiting the use, procuring or offering of a child under 18 years of age for the production and/or trafficking of drugs, without delay;**
- **adopt, in consultation with the social partners, a list of types of hazardous work prohibited for children under the age of 18, without delay;**
- **strengthen the capacity of law enforcement agencies and the labour inspectorate to address the worst forms of child labour and to promote their effective cooperation;**
- **ensure that cases of the worst forms of child labour are duly investigated, prosecuted and sanctioned;**
- **ensure access to free basic education to all children, particularly children from poor and disadvantaged families as well as children living in remote areas;**
- **collect and analyse statistical data on the situations of the worst forms of child labour, including the nature and extent of such situations, the number of children involved, reintegration procedures, the nature of offences reported, the number of offences investigated, prosecuted and the penalties imposed.**

The Committee urges the Government to avail itself of the technical assistance of the ILO.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 with information on the application of the Convention in law and practice, in consultation with the social partners.

Appendix I. Table of Reports on ratified Conventions due for 2021 and received since the last session of the CEACR (as of 10 June 2022)

(articles 22 and 35 of the Constitution)

The table published in the Report of the Committee of Experts, page 833, should be brought up to date in the following manner:

Note: First reports are indicated in parentheses.
Paragraph numbers indicate a modification in the lists of countries mentioned in Part One (General Report) of the Report of the Committee of Experts.

Belize — 22 reports requested

(Paragraph 80)

· 13 reports received: Conventions Nos. 11, 19, 29, 87, 88, 98, 105, 135, 138, 141, 150, 151, 154
· 9 reports not received: Conventions Nos. 97, 100, 111, 115, 140, 144, 155, 156, 182

Botswana — 4 reports requested

(Paragraphs 72 and 80)

· All reports received: Conventions Nos. 29, 105, 138, 182

Congo — 16 reports requested

(Paragraph 72)

· 1 report received: Convention No. 87
· 15 reports not received: Conventions Nos. 29, 81, 98, 100, 105, 111, 138, 144, 149, 150, 152, 182, (185), (MLC), (188)

Democratic Republic of the Congo — 9 reports requested

(Paragraphs 72 and 80)

· 7 reports received: Conventions Nos. 29, 94, 105, 117, 138, 144, 182
· 2 reports not received: Conventions Nos. 88, 158

Djibouti — 26 reports requested

(Paragraph 80)

· 16 reports received: Conventions Nos. 12, 71, 81, 87, 88, 94, 96, 98, 100, 108, 111, 122, 125, 126, 144, MLC
· 10 reports not received: Conventions Nos. 17, 18, 19, 24, 29, 37, 38, 105, 138, 182

Ethiopia — 10 reports requested

(Paragraph 80)

· 9 reports received: Conventions Nos. 29, 88, 105, 138, 158, 159, 181, 182, MLC
· 1 report not received: Convention No. 2

Ghana — 12 reports requested

· 9 reports received: Conventions Nos. 29, 81, 87, 98, 111, 144, 149, 182, MLC
· 3 reports not received: Conventions Nos. 11, 100, 151

Guyana — 21 reports requested

· All reports received: Conventions Nos. 11, 81, 87, 94, 97, 98, 100, 105, 111, 129, 135, 138, 139, 140, 141, 144, 149, 151, 172, 182, 189

Hungary — 9 reports requested

(Paragraph 80)

· All reports received: Conventions Nos. 81, 87, 98, 129, 135, 141, 144, 151, 154

Iceland — 8 reports requested

· 7 reports received: Conventions Nos. 11, 81, 87, 98, 129, 144, 187

· 1 report not received: Convention No. MLC

India — 5 reports requested

(Paragraph 80)

· All reports received: Conventions Nos. 11, 81, 141, 144, MLC

Jamaica — 6 reports requested

(Paragraph 80)

· All reports received: Conventions Nos. 11, 81, 87, 98, 144, (189)

Jordan — 5 reports requested

(Paragraph 80)

· 4 reports received: Conventions Nos. 81, 98, 135, 144

· 1 report not received: Convention No. 142

Kenya — 9 reports requested

(Paragraph 80)

· 8 reports received: Conventions Nos. 11, 81, 98, 129, 135, 141, 144, MLC

· 1 report not received: Convention No. 142

Luxembourg — 36 reports requested

· 35 reports received: Conventions Nos. 1, 3, 12, 13, 14, 19, 26, 30, 81, 87, 98, 102, 115, 119, 120, 121, 127, 129, 130, 132, 136, 139, 148, 155, 161, 162, 167, 169, 170, 171, 174, 175, 176, 183, 184

· 1 report not received: Convention No. 150

Madagascar — 34 reports requested

(Paragraphs 72 and 73)

· 13 reports received: Conventions Nos. 29, 87, 98, 100, 105, 111, 138, 143, 151, 154, 181, 182, 189

· 21 reports not received: Conventions Nos. 12, 13, 14, 19, 26, 81, 88, 95, 117, 118, 119, 120, 122, 127, 129, 132, 144, 159, 171, 173, 185

Mongolia — 8 reports requested

· All reports received: Conventions Nos. 87, 98, 103, 144, 155, 176, 181, MLC

Morocco — 26 reports requested

(Paragraph 80)

· All reports received: Conventions Nos. 12, 13, 14, 17, 19, 30, 42, 45, 52, 81, 97, 98, 99, 101, 102, 106, 119, 129, 131, 136, 144, 150, 162, 176, 183, 187

Netherlands - Sint Maarten — 15 reports requested

(Paragraph 80)

· All reports received: Conventions Nos. 12, 14, 17, 25, 42, 81, 87, 88, 94, 95, 101, 106, 118, 122, 144

Nigeria — 16 reports requested

· 15 reports received: Conventions Nos. 19, 26, 45, 81, 87, 88, 94, 95, 98, 100, 111, 144, 155, 159, MLC

· 1 report not received: Convention No. 185

Samoa — 4 reports requested

(Paragraph 80)

· 2 reports received: Conventions Nos. 144, MLC

· 2 reports not received: Conventions Nos. 100, 111

Sao Tome and Principe — 10 reports requested

(Paragraphs 75, 77 and 80)

· 9 reports received: Conventions Nos. 29, 81, 87, 98, 100, 105, 138, 182, (183)

· 1 report not received: Convention No. 111

Serbia — 6 reports requested

(Paragraph 80)

· All reports received: Conventions Nos. 97, 100, 111, 143, 156, 184

South Sudan — 7 reports requested

(Paragraph 72)

· 1 report received: Convention No. 29

· 6 reports not received: Conventions Nos. 98, 100, 105, 111, 138, 182

Sri Lanka — 5 reports requested

(Paragraph 80)

· 4 reports received: Conventions Nos. 98, 110, 111, (MLC)

· 1 report not received: Convention No. 100

Suriname — 3 reports requested

(Paragraph 80)

· All reports received: Conventions Nos. 100, 111, 138

Tunisia — 6 reports requested

(Paragraphs 75, 77 and 80)

· 5 reports received: Conventions Nos. 100, 111, 113, 114, (MLC)

· 1 report not received: Convention No. 185

United Republic of Tanzania — 7 reports requested

· 4 reports received: Conventions Nos. 12, 111, (185), MLC

· 3 reports not received: Conventions Nos. 100, 137, 152

Viet Nam — 7 reports requested

· All reports received: Conventions Nos. 27, 88, 98, 100, 111, 159, MLC

Grand Total

A total of 1,865 reports (article 22) were requested,
of which 1,383 reports (74.16 per cent) were received.

A total of 141 reports (article 35) were requested,
of which 139 reports (98.58 per cent) were received.

Appendix II. Statistical table of reports received on ratified Conventions
(article 22 of the Constitution)

Reports received as of 10 June 2022

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports registered for the session of the Committee of Experts		Reports registered for the session of the Conference	
1932	447	-		406	90.8%	423	94.6%
1933	522	-		435	83.3%	453	86.7%
1934	601	-		508	84.5%	544	90.5%
1935	630	-		584	92.7%	620	98.4%
1936	662	-		577	87.2%	604	91.2%
1937	702	-		580	82.6%	634	90.3%
1938	748	-		616	82.4%	635	84.9%
1939	766	-		588	76.8%	-	
1944	583	-		251	43.1%	314	53.9%
1945	725	-		351	48.4%	523	72.2%
1946	731	-		370	50.6%	578	79.1%
1947	763	-		581	76.1%	666	87.3%
1948	799	-		521	65.2%	648	81.1%
1949	806	134	16.6%	666	82.6%	695	86.2%
1950	831	253	30.4%	597	71.8%	666	80.1%
1951	907	288	31.7%	507	77.7%	761	83.9%
1952	981	268	27.3%	743	75.7%	826	84.2%
1953	1026	212	20.6%	840	75.7%	917	89.3%
1954	1175	268	22.8%	1077	91.7%	1119	95.2%
1955	1234	283	22.9%	1063	86.1%	1170	94.8%
1956	1333	332	24.9%	1234	92.5%	1283	96.2%
1957	1418	210	14.7%	1295	91.3%	1349	95.1%
1958	1558	340	21.8%	1484	95.2%	1509	96.8%
As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions							
1959	995	200	20.4%	864	86.8%	902	90.6%
1960	1100	256	23.2%	838	76.1%	963	87.4%
1961	1362	243	18.1%	1090	80.0%	1142	83.8%
1962	1309	200	15.5%	1059	80.9%	1121	85.6%
1963	1624	280	17.2%	1314	80.9%	1430	88.0%
1964	1495	213	14.2%	1268	84.8%	1356	90.7%
1965	1700	282	16.6%	1444	84.9%	1527	89.8%
1966	1562	245	16.3%	1330	85.1%	1395	89.3%
1967	1883	323	17.4%	1551	84.5%	1643	89.6%
1968	1647	281	17.1%	1409	85.5%	1470	89.1%
1969	1821	249	13.4%	1501	82.4%	1601	87.9%
1970	1894	360	18.9%	1463	77.0%	1549	81.6%
1971	1992	237	11.8%	1504	75.5%	1707	85.6%
1972	2025	297	14.6%	1572	77.6%	1753	86.5%
1973	2048	300	14.6%	1521	74.3%	1691	82.5%
1974	2189	370	16.5%	1854	84.6%	1958	89.4%
1975	2034	301	14.8%	1663	81.7%	1764	86.7%
1976	2200	292	13.2%	1831	83.0%	1914	87.0%

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports registered for the session of the Committee of Experts		Reports registered for the session of the Conference	
As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals							
1977	1529	215	14.0%	1120	73.2%	1328	87.0%
1978	1701	251	14.7%	1289	75.7%	1391	81.7%
1979	1593	234	14.7%	1270	79.8%	1376	86.4%
1980	1581	168	10.6%	1302	82.2%	1437	90.8%
1981	1543	127	8.1%	1210	78.4%	1340	86.7%
1982	1695	332	19.4%	1382	81.4%	1493	88.0%
1983	1737	236	13.5%	1388	79.9%	1558	89.6%
1984	1669	189	11.3%	1286	77.0%	1412	84.6%
1985	1666	189	11.3%	1312	78.7%	1471	88.2%
1986	1752	207	11.8%	1388	79.2%	1529	87.3%
1987	1793	171	9.5%	1408	78.4%	1542	86.0%
1988	1636	149	9.0%	1230	75.9%	1384	84.4%
1989	1719	196	11.4%	1256	73.0%	1409	81.9%
1990	1958	192	9.8%	1409	71.9%	1639	83.7%
1991	2010	271	13.4%	1411	69.9%	1544	76.8%
1992	1824	313	17.1%	1194	65.4%	1384	75.8%
1993	1906	471	24.7%	1233	64.6%	1473	77.2%
1994	2290	370	16.1%	1573	68.7%	1879	82.0%
As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995							
1995	1252	479	38.2%	824	65.8%	988	78.9%
As a result of a decision by the Governing Body (November 1993), reports were requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals							
1996	1806	362	20.5%	1145	63.3%	1413	78.2%
1997	1927	553	28.7%	1211	62.8%	1438	74.6%
1998	2036	463	22.7%	1264	62.1%	1455	71.4%
1999	2288	520	22.7%	1406	61.4%	1641	71.7%
2000	2550	740	29.0%	1798	70.5%	1952	76.6%
2001	2313	598	25.9%	1513	65.4%	1672	72.2%
2002	2368	600	25.3%	1529	64.5%	1701	71.8%
2003	2344	568	24.2%	1544	65.9%	1701	72.6%
2004	2569	659	25.6%	1645	64.0%	1852	72.1%
2005	2638	696	26.4%	1820	69.0%	2065	78.3%
2006	2586	745	28.8%	1719	66.5%	1949	75.4%
2007	2478	845	34.1%	1611	65.0%	1812	73.2%
2008	2515	811	32.2%	1768	70.2%	1962	78.0%
2009	2733	682	24.9%	1853	67.8%	2120	77.6%
2010	2745	861	31.4%	1866	67.9%	2122	77.3%
2011	2735	960	35.1%	1855	67.8%	2117	77.4%

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports registered for the session of the Committee of Experts		Reports registered for the session of the Conference	
As a result of a decision by the Governing Body (November 2009 and March 2011), reports are requested, according to certain criteria, at yearly, three-yearly or five-yearly intervals							
2012	2207	809	36.7%	1497	67.8%	1742	78.9%
2013	2176	740	34.1%	1578	72.5%	1755	80.6%
2014	2251	875	38.9%	1597	70.9%	1739	77.2%
2015	2139	829	38.8%	1482	69.3%	1617	75.6%
2016	2303	902	39.2%	1600	69.5%	1781	77.3%
2017	2083	785	37.7%	1386	66.5%	1543	74.1%
2018	1683	571	33.9%	1038	61.7%	1194	70.9%
As a result of a decision by the Governing Body (November 2018), reports are requested, according to certain criteria, at yearly, three-yearly or six-yearly intervals							
2019	1788	645	36.1%	1217	68.1%	ILC 2020 deferred due to the COVID-19 pandemic	
In light of the deferral of 109th Session of the Conference to June 2021 due to the COVID-19 pandemic, the Governing Body decided in March 2020 to invite Member States to provide supplementary information on reports submitted in 2019, highlighting relevant developments, if any, on the application of the provisions of Conventions under review that might have occurred in the meantime. In addition, reports were requested on the basis of a footnote adopted by the Committee requesting a report for 2020 and on the follow-up of failures to submit reports							
2020	1796	394	21.9%	712	39.6%	768	42.8%
As a result of a decision by the Governing Body (November 2018), reports are requested, according to certain criteria, at yearly, three-yearly or six-yearly intervals							
2021	1865	747	40.0%	1230	65.9%	1383	74.2%