



**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 ONE**

**GENERAL REPORT**

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## A. Introduction

1. In accordance with article 7 of the Standing Orders, the Conference set up a Committee to consider and report on item III on the agenda: “Information and reports on the application of Conventions and Recommendations”. The Committee was composed of 220 members (126 Government members, five Employer members and 89 Worker members). It also included three Government deputy members, 76 Employer deputy members, and 161 Worker deputy members. In addition, 19 international non-governmental organizations were represented by observers.<sup>1</sup>

2. The Committee elected its Officers as follows:

*Chairperson:* Ms Noemí Rial (Government member, Argentina)

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

*Reporter:* Mr David Katjaimo (Government member, Namibia)

3. The Committee held 16 sittings.

4. In accordance with its terms of reference, the Committee considered the following: (i) information supplied under article 19 of the Constitution on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference; (ii) reports supplied under articles 22 and 35 of the Constitution on the application of ratified Conventions; and (iii) reports requested by the Governing Body under article 19 of the Constitution on the Labour Relations (Public Service) Convention, 1978 (No. 151), the Labour Relations (Public Service) Recommendation, 1978 (No. 159), the Collective Bargaining Convention, 1981 (No. 154), and the Collective Bargaining Recommendation, 1981 (No. 163).<sup>2</sup>

## Opening statements of Vice-Chairpersons

5. The Employer members stressed the important role of international labour Conventions, and highlighted that the supervisory system was the heart and soul of the ILO to which the Employer members continued to give their full support. While noting the key role of the Committee of Experts and the Conference Committee – the two pillars of the supervisory system – the Employer members reaffirmed that tripartite governance was necessary to ensure the system’s relevance and sustainability. Referring to last year’s Conference, the Employer members raised concerns which still needed to be addressed to maintain the system’s relevance and credibility. In this regard, they were pleased to note the statement

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

<sup>2</sup> Report III to the International Labour Conference – Part 1AI: Report of the Committee of Experts on the Application of Conventions and Recommendations; Part 1AII: Information document on ratifications and standards-related activities; Part 1B: General Survey concerning labour relations and collective bargaining in the public service.

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by the representative of the Secretary-General of the vital role of this Committee as the main ILO tripartite supervisory body in maintaining and strengthening the ILO standards system. Moreover, they welcomed her statement concerning the importance of a credible supervisory system, that had the support of the tripartite constituents.

- 6.** They explained that after last year's Conference, they noted the following several outstanding issues: the mandate of the Committee of Experts, particularly its scope and the manner in which it was communicated and expressed; and the interpretation given to the right to strike as a component of Convention No. 87. The Employer members were hopeful that these issues would be resolved and in this respect, stated that they would propose a number of measures which would help to make the standards supervision more effective, relevant and sustainable.
- 7.** The Worker members indicated that it was difficult not to go back over the events that had affected the Conference Committee's work in 2012 since, for the workers present, they had given rise to feelings of frustration on several counts. Firstly, many workers had been unable to expose the violations of the rights guaranteed to them by the ILO Conventions and had gone home fearing reprisals. Secondly, some governments had construed the impasse as fostering impunity regarding their use of the economic crisis as a pretext for their refusal to apply international rules. Academic circles and certain international bodies, such as the European Committee on Social Dialogue, had wondered about the consequences of the failure of the Conference Committee's work. Nevertheless, the Worker members welcomed the fact that many governments concerned by the preliminary list of cases had submitted their reports to the Committee of Experts, as requested at the end of the previous year's session of the Conference, on developments in the situation in their respective countries.
- 8.** The Worker members hoped that a solution would be found to the impasse in the supervisory system and recalled that employers needed workers and their representatives to guarantee social peace, which was the only way to ensure an economy geared to growth, maintaining quality of employment and a balance of everyone's needs. The parties concerned had held several informal tripartite consultations in September 2012 and February 2013, and the ILO Governing Body had noted their commitment towards pursuing such discussions. The meeting between the Employer and Worker Vice-Chairpersons and the Committee of Experts had also enabled a calm discussion of each party's concerns and objectives for an effective and efficient supervisory mechanism.
- 9.** The Worker members expressed the wish for an acceptable and balanced tripartite solution to be found in order to preserve the role of the ILO as a standard-setting organization having sufficient powers to ensure the application in law and in practice of the standards that it had created. They recalled the ILO Director-General's statement that a supervisory system that lacked the necessary credibility and authority and the support of all parties would not allow the ILO to discharge its core duties. The Worker members indicated that constructive meetings had been held between the Employers and Workers to determine the list of individual cases, which should ensure that the Conference Committee functioned normally this year.
- 10.** However, for the Worker members, it was imperative that all Conventions could be discussed, taking into account, as usual, both a geographic and a thematic balance. The cases would therefore cover the application of the fundamental and priority Conventions as well as those more technical Conventions which related to the current social and legislative climate of the countries referred to in the Committee of Experts' report. The Worker members thus recalled that the right to strike is the workers' ultimate means of exerting pressure to achieve respect of their rights. This right could give rise to understandable reactions. The fact remained, however, that any list excluding discussions on the

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application of Convention No. 87 was totally impossible, as that Convention related to fundamental rights which must be guaranteed for both workers and employers. The Worker members thus considered it important that the individual cases on which an agreement would be reached be discussed calmly, as requested several times by the governments themselves.

11. The Worker members also emphasized the importance for the Committee of adopting conclusions, shared by both Workers and Employers, which were clear, relevant and able to be implemented by the governments concerned. To that end, efforts had to be made by both groups to ensure that the conclusions were adopted by consensus, even if the related discussions were long and difficult. Disagreement over the conclusions would send a negative message to States that were unwilling to ratify or apply the ILO Conventions.
12. The Worker members, recalling that the supervisory system was based on the principle of mutual supervision among ILO member States in order to prevent unfair competition, considered that the diverging opinions regarding the exact mandate of the Committee of Experts must not lead to the destruction of a system which functioned better than any international system based on financial, economic or penal sanctions.
13. The Worker members recalled that the work of the Committee of Experts was a decisive part of the tripartite oversight of the application of standards that began with the Governing Body, itself a tripartite body, which had the duty to approve report forms under the ILO Constitution. The work of the Committee of Experts should be as much the result of the involvement of governments as of employers and workers in the process of submitting reports and comments from the social partners on the application of Conventions. As for the role of workers' organizations in the supervisory process, the Worker members observed that effort was needed on their part to provide up-to-date, properly substantiated and documented information on States' application of ratified Conventions. The attention of workers' organizations would be drawn to that in order to strengthen the work of the Committee of Experts.

## Work of the Committee

14. In accordance with its usual practice, the Committee began its work with a discussion on general aspects of the application of Conventions and Recommendations and the discharge by member States of standards-related obligations under the ILO Constitution. In this part of the general discussion, reference was made to Part One of the report of the Committee of Experts on the Application of Conventions and Recommendations and to the information document on ratifications and standards-related activities. During the first part of the general discussion, the Committee also considered its working methods with reference being made to a document submitted to the Committee for this purpose.<sup>3</sup> A summary of this part of the general discussion is found under relevant headings in sections A and B of Part One of this report.
15. The second part of the general discussion dealt with the General Survey concerning labour relations and collective bargaining in the public service carried out by the Committee of Experts. It is summarized in section C of Part One of this report. The final part of the general discussion considered the report on Teaching Personnel of the Joint ILO-UNESCO Committee of Experts. This discussion is set out in section D of this report.

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<sup>3</sup> Work of the Committee on the Application of Standards, ILC, 102nd Session, C.App/D.1 (see Annex 1).

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- 16.** Following the general discussion, the Committee considered various cases concerning compliance with obligations to submit Conventions and Recommendations to the competent national authorities and to supply reports on the application of ratified Conventions. Details on these cases are contained in section E of Part One of this report.
  - 17.** The Committee did not hold a special sitting to consider the application of the Forced Labour Convention, 1930 (No. 29), by Myanmar, as in previous years, because following the recommendation made by the Governing Body in March 2013, the Conference had suspended paragraph 1(a) of its 2000 resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution.<sup>4</sup>
  - 18.** The Committee considered 25 individual cases relating to the application of various Conventions, as well as one case of progress. The Committee noted with regret that it was unable to discuss the case of progress relating to the application by Rwanda of the Minimum Age Convention, 1973 (No. 138), since the Government did not accredit its delegation to the Conference. The examination of the individual cases was based principally on the observations contained in the Committee of Experts' report and the oral and written explanations provided by the governments concerned. As usual, the Committee also referred to its discussions in previous years, comments received from employers' and workers' organizations and, where appropriate, reports of other supervisory bodies of the ILO and other international organizations. Time restrictions once again required the Committee to select a limited number of individual cases among the Committee of Experts' observations. With reference to its examination of these cases, the Committee reiterated the importance it placed on the role of tripartite dialogue in its work and trusted that the governments of all those countries selected would make every effort to take the measures necessary to fulfil the obligations they had undertaken by ratifying Conventions. A summary of the information submitted by Governments, the discussions, and conclusions of the examination of individual cases are contained in Part Two of this report.
  - 19.** With regard to the adoption of the list of individual cases to be discussed by the Committee, the Chairperson of the Committee announced that the final list of individual cases was now available.<sup>5</sup>
  - 20.** Following the adoption of the final list of individual cases by the Committee, the Worker members recalled that the Worker members and Employer members, who had been negotiating for several weeks in order to draw up a list of individual cases, had committed, from the outset of the negotiations, to the adoption of a list so as to enable this Committee to effectively fulfil its work. As recalled by the Employer members, the ILO supervisory system was indeed at the heart of the Organization's work. This system was essential for the preservation and advancement of workers' rights and worked better than any economic or financial sanctions. The question of the mandate of the Committee of Experts was to be dealt with in other forums, since the priority task of this Committee was to examine 25 individual cases. As reiterated by the representative of the Secretary-General, the Committee's duty was to evaluate the measures taken by member States to implement ratified Conventions and to take note of progress achieved. Stressing the prominent role of this Committee, the Worker members expressed their willingness to work for the maintenance of the ILO standards system.

<sup>4</sup> Provisional Record No. 2-2, para. 51(a).

<sup>5</sup> ILC, 102nd Session, Committee on the Application of Standards, C. App. /D. 6 (see Annex 2).

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- 21.** Regarding the selection of the 25 individual cases, the Worker members indicated that the most serious cases (also known as “double footnoted cases”), identified by the Committee of Experts according to the criteria referred to in paragraph 69 of its report, must be taken into account. In this regard, an agreement was reached with the Employer members on the selection of the four “double footnoted cases” for 2013, as well as of the five “double footnoted cases” for 2012, as they had not been examined last year. Making a selection from the preliminary list of 40 cases established in May 2013 had not been an easy task, as the preliminary list was already the result of a delicate compromise. A first selection through a transparent procedure involving workers from five continents in order to best reflect the challenges they faced on the ground, had resulted in the identification of 50 cases. These cases had then been compared to those that had been selected by the Employer members to arrive at a final list of 25 cases.
  - 22.** However, the Worker members stressed that, in order to accomplish the list of 25 cases, they had to renounce the inclusion of the case of Colombia on the application of Convention No. 87, of the case of Brazil on the application of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and of the case concerning the trade union situation in Algeria, among others. Regarding Colombia, the Worker members informed the Committee of the assassination on 5 June 2013 of two CGT leaders by the FARC and the serious injuries inflicted on a third CGT leader. They also recalled the serious acts of violence and threats directed against the leaders of the CTC, the CUT and the CGT, all present in this Committee. In 2012, 20 trade unionists had been murdered and, despite some real progress, much remained to be done to implement the conclusions of the mechanisms of the ILO. Even if a commitment existed regarding the establishment of a tripartite process during this Conference under the aegis of the ILO, the inclusion on the list of individual cases of Colombia would have permitted to evaluate the results achieved and to determine the next steps to eventually ensure the full implementation of Convention No. 87. The Worker members further underlined that, in its report, the Committee of Experts had examined the application of Convention No. 169 in ten countries, mostly located in Latin America. In the light of the issue of the exploitation of resources of land occupied by indigenous peoples who were facing particular discrimination, the Worker members expressed their desire to see the application of Convention No. 169 soon being considered by this Committee. They also stated that the difficult situation faced by independent trade unions in Algeria would have deserved to be addressed.
  - 23.** The Employer members stated that, following the events that had taken place in the Committee last year, they had committed, as a show of good faith, to reaching an agreement on the final list of cases to be discussed. The Employer members had delivered on that commitment with the negotiation of the list that was before the Committee. While also regretting that certain cases could not be included in the final list, they would not outline detailed arguments about the cases that they would have liked to be supervised. Instead, with a view to approaching the issue in a constructive manner, the Employer members were looking forward to engaging in a constructive and positive discussion within the Committee and to hearing the important submissions from tripartite partners with respect to the cases being examined. The Employer members stated that they had the honour and the privilege to accept the list of 25 cases that the Committee would consider.
  - 24.** Following the adoption of the list of individual cases to be discussed by the Committee, the Employer and Worker spokespersons conducted an informal briefing for Government representatives.

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## **Working methods of the Committee**

25. The Chairperson announced, in accordance with Part V(E) of document D.1, the time limits for speeches made before the Committee. These time limits were established in consultation with the Vice-Chairpersons and it was the Chairperson's intention to strictly enforce them in the interest of the work of the Committee. The Chairperson also called on the members of the Committee to make every effort so that sessions started on time and the working schedule was respected. Finally, the Chairperson recalled that all delegates were under the obligation to abide by parliamentary language. Interventions should be relevant to the subject under discussion and be within the boundaries of respect and decorum.
26. The Government member of Colombia, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), highlighted the importance of document D.1, which described how the work of the Committee should be conducted.
27. With regard to paragraph I(v), on "Automatic registration of individual cases: Modalities for selecting the starting letter for the registration of cases", GRULAC recalled that, as stated in the document, there had not been consensus on that paragraph. She recalled and endorsed the opinion of GRULAC at the informal tripartite consultations of the Working Group on the Working Methods of the Conference Committee on the Application of Standards, held in November 2011, at which GRULAC had indicated that it supported the implementation of a system in which the starting letter for the registration of individual cases was determined by drawing lots. That system was, in its opinion, more objective, fair and transparent. GRULAC had pointed out that the lots could be drawn at ILO headquarters, well in advance of the start of the Conference, in the presence of the secretariats of the Employers' and Workers' groups and the Regional Coordinators. At that time, the members of GRULAC had agreed, solely in order to maintain the consensus that had been reached, that the Office proposal should be implemented on an experimental basis for the 2011 Conference, always leaving open the possibility of amending the experimental system as of 2012. She stated that, as everyone was aware, that system was currently still in operation on an experimental basis, but that did not mean that GRULAC had withdrawn its proposal. The GRULAC proposal respected the principles of increased transparency and objectivity, and there was a constant need to strive to improve the working methods of the Committee.
28. As for paragraph I(vi), GRULAC confirmed its position, which was well known and which it had explained in the different settings that had provided it with an opportunity to make its case. Pointing out that the wording was that which had been agreed on by GRULAC in its statement delivered at the 317th Session of the Governing Body (March 2013), she reiterated that:

The results of the discussions of the Working Group on the Working Methods of the Conference Committee on the Application of Standards should unquestionably be brought to the attention of the Working Party of the Governing Body, which has been examining all issues related to the Conference with great competence.

29. She recalled that specific reference was made to that fact in the report of the Working Party to the 312th Session of the Governing Body in November 2011. This report indicated that "it was noted that the work of the Working Group on the Working Methods of the Conference Committee on the Application of Standards overlapped with the mandate of the Working Party, and that therefore the conclusions of the Working Group should be brought to the Working Party's attention" (GB.312/INS/13, paragraph 3).
30. She emphasized that this position, held mainly by GRULAC, was supported by the favourable legal opinion of the Office, according to document GB.313/WP/GBC/1 (March 2012). The Office stated that the issues dealt with by the tripartite Working Group

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of the Committee on the Application of Standards of the Conference “exceeded (i.e., went over and above) the matters covered by the provisions of Section H of the Standing Orders of the Conference”. The Office also stated that “the outcome of the work of the Working Group which has already been adopted by the Conference Committee and thus by the ILC can be submitted to this Working Group for review for any Standing Orders’ implications that it may have”.

31. She stressed that it should be kept in mind that it was not only GRULAC’s opinion that she was reiterating, since it was known that when the creation of the Working Party of the Governing Body was agreed to – with a formal structure and with broad responsibilities and terms of reference – no reservation had been expressed regarding any subject or any Conference Committee. For that reason she reaffirmed that GRULAC regretted having to repeat the same points when it was aware that within the tripartite structure it was committed to making comprehensive improvements to the Conference, without dismissing weaknesses or problems which should be addressed responsibly, with the aim of protecting the reputation, responsibility, credibility, transparency, tripartite balance and good use of the time assigned to this Committee, and consequently of the Conference.
32. As always, GRULAC would, if necessary, carefully follow up on all aspects related to the important subjects referred to above regarding the smooth functioning of the Committee. In view of these points, GRULAC supported the adoption of document D.1 on the working methods of the Committee.

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

### **General aspects of the supervisory procedure**

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

33. First of all, the representative of the Secretary-General recalled that this Committee had had a long-standing practice of focusing its discussions on a list of individual cases proposed by the representatives of the Employers and representatives of the Workers. Last year, the Committee had not been able to complete its mandate as a list had not been agreed upon. However, three important issues had arisen out of the Committee’s 2012 discussion: the process for selection of the list of cases; the status of comments by the Committee of Experts on the right to strike in assessing the implementation of Convention No. 87; and the mandate of the Committee of Experts with respect to the interpretation of Conventions when evaluating their application, and, in that regard, the relationship between the Committee of Experts and this Committee.
34. The decision taken by the Conference, upon the Committee’s recommendation, had resulted in a series of tripartite consultations and discussions in the Governing Body in November 2012 and March 2013, led by the Officers of the Governing Body, with the active support of the Director-General. The Committee of Experts had at its session in November–December 2012, devoted a significant part of its discussions to this issue, including an exchange of views with the Vice-Chairpersons of this Committee. Moreover, at the invitation of the Officers of the Governing Body, members of the Committee of Experts had exchanged views with constituents during the informal tripartite consultations held in February 2013. Furthermore, regarding the process for establishing the list of individual cases to be considered by the Committee at this session, progress had been

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achieved under other arrangements agreed upon between the Employer and Worker members.

35. In addition, the speaker indicated that the working methods of the Committee had been raised within the context of the broader discussion on the reform of the Conference process, held by the Working Party established by the Governing Body. The tripartite Working Group, set up by this Committee to discuss its working methods, had suggested at its last meeting in November 2011, that it might be reconvened, to follow up as necessary upon questions raised by the Working Party of the Governing Body. This matter could be considered by the Committee.
36. The speaker highlighted that the issues arising out of the Committee's 2012 report were primarily of an institutional and procedural nature. These issues were of critical importance to the ILO in terms of its role as a forum for effective international social dialogue with a view to developing and implementing international labour standards for decent work with sustainable economic development. As evidenced in the numerous papers and reports relating to the Committee's discussion in 2012, this had resulted in extensive tripartite reflection and discussion both informally and in the Governing Body. This could also serve as a possible precedent for more frequent exchanges in the future between the representatives of this Committee and the Committee of Experts.
37. The speaker underlined that there were certainly many matters left to discuss and resolve, including the question of the relationship between the interpretation and the application of Conventions and other matters related to the functioning of the supervisory system. However, this challenging year had led, and could continue to lead, to some useful outcomes and changes in practice. One of the important and most sustainable characteristics of the ILO as an organization was that it had been built, and maintained relevant, because of such conflicts, which reflected contemporary debates and concerns.
38. Turning to the way forward, the speaker highlighted that the constituents had agreed that having an authoritative and credible system, which enjoyed the support of all actors in the ILO, was absolutely essential to the future of the Organization. In addition, there was a clear commitment to ensure not only the preservation of the ILO standards system, but also its strengthening, through a tripartite process. This Committee, as the main ILO tripartite supervisory body, had the key role.
39. Regarding the General Survey of the Committee of Experts concerning labour relations and collective bargaining in the public service, the speaker recalled that its discussion would complement the 2012 discussion concerning fundamental principles and rights at work and the eight fundamental Conventions. The General Survey highlighted the difficulties encountered by workers in the public service as regards the right to freedom of association and collective bargaining. Meaningful social dialogue was underpinned by freedom of association and collective bargaining. Public service employees were an important workforce in ILO member States. Over the last decade, their conditions of work had undergone substantial changes, which in many countries had reduced the distinction between public service employees and those in the private sector. The significance of these changes had led the Employer members to propose the public sector as an item to be placed on the agenda of future sessions of the Conference.
40. Under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization (2008 Social Justice Declaration), the topic of the General Surveys had been aligned with the strategic objective to be discussed by the Conference in the context of its recurrent discussions, which this year was on social dialogue. This Committee would interact with the Committee for the Recurrent Discussion on Social Dialogue (CDS) and the outcome of

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the Committee's discussion on the General Survey would feed into the discussion of the CDS.

41. The speaker underlined that greater coordination of ILO activities had become a key component of ILO governance. At its March 2013 session, the Governing Body had decided to place two standard-setting items on the agenda of the Conference in 2014: one related to supplementing Convention No. 29; and the second concerning facilitating transitions from the informal to the formal economy. The Employer members had taken the initiative of proposing this latter item, which had been actively supported by the Worker members. This issue had also been addressed in 2012 in the recurrent item discussion, and the Conference's conclusions had referred to the organization of a meeting of experts on advancing fundamental principles and rights at work in the informal economy. These had been the seeds for the upcoming Tripartite Meeting of Experts on Facilitating Transitions from the Informal Economy to the Formal Economy, to be held in September 2013 as part of the preparatory process for the Conference discussion in 2014.
42. Turning to the question of the observance by Myanmar of Convention No. 29, the speaker recalled that there would be no special sitting of the Committee on this question, which was a significant development. The observance by Myanmar of Convention No. 29 had involved the most comprehensive combination of procedures available in the ILO's supervisory system, encompassing consideration by the Committee of Experts and this Committee, an article 24 representation with a referral to a tripartite committee, an article 26 complaint with a referral to a Commission of Inquiry, a resolution by the Conference in relation to the previously unused article 33 of the Constitution, and the establishment of a special sitting of this Committee to discuss the country's observance of the Convention. This case illustrated the importance, as well as the capacity, of tripartism and social dialogue in ensuring the impact of the supervisory system. It had been information and pressure from the trade union movement that had triggered consideration of the issue and ensured the continued progression of the matter through the various supervisory mechanisms. It was also a unique case, as the Governing Body took a leading role in following up on the implementation of the recommendations of the Commission of Inquiry. This case demonstrated that a great deal could be achieved for the advancement of labour rights when there was a comprehensive institutional response from the ILO backed by tripartite consensus.
43. Looking to the future, the speaker pointed to two instruments among the ILO body of standards for their relevance to the future orientation of the ILO standards policy, one of the pillars of a strengthened ILO standards system. Firstly, the Maritime Labour Convention, 2006 (MLC, 2006) which would enter into force on 20 August 2013, established minimum international standards for working and living conditions for seafarers. The countries that had thus far ratified it represented nearly 70 per cent of the world's gross tonnage of ships. This ambitious instrument took over the essence of 37 of the maritime labour Conventions adopted since 1920 and the related 31 Recommendations. The Convention contained requirements for ratifying Members to have a strong enforcement system to help ensure protection of seafarers' rights and compliance with the standards in this Convention, in particular its enforcement by all ratifying countries even with respect to foreign ships from non-ratifying countries.
44. To enable such a comprehensive Convention to secure the widest possible acceptability among governments, shipowners and seafarers, the MLC, 2006, relied on several novel features, including: devices that gave national legislators considerable discretion as to matters of detail, while still ensuring that the rights and principles laid down in all the areas covered by the Convention were properly implemented; giving a role in the enforcement process to the seafarers (through various complaint-handling systems) and to shipowners, who were given discretion in deciding how they would ensure that the details of the

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Convention were effectively implemented on their ships; strengthening national labour inspections through national ship certification systems that would help to concentrate national resources on the inspection of substandard ships; a simplified amendment procedure to ensure that the details of the Convention were kept up to date; and the elaboration of the Convention followed by its adoption with no votes against, through a continual process of tripartite dialogue based on consensus and freely made concessions. These novel features in the MLC, 2006, may be considered for the purpose of designing ILO standards that meet the requirements of the 2008 Social Justice Declaration.

45. The second recent instrument from which lessons could be drawn was the Social Protection Floors Recommendation, 2012 (No. 202). The preparation and adoption of this Recommendation had often been cited by constituents as an example of good institutional practice. With more than 5 billion people lacking adequate social security, the Recommendation called for the provision of essential health care and benefits, as well as basic income security constituting national social protection floors and recommended the implementation of social protection floors as early as possible in national economic development. There were many positive examples in Latin America, Asia and Africa that showed that some social protection for all was affordable nearly everywhere. The Recommendation explicitly stated that people employed in the informal, as well as the formal economy should benefit from social security. This would be an important element in the first discussion in 2014 of the standard-setting item on facilitating transitions from the informal to the formal economy. Aside from the ILO context, this Recommendation had sent a strong message regarding the need to extend social protection despite the ongoing economic crisis. Social protection floors were increasingly recognized as important tools for policy coherence both at the international and national levels.
46. The speaker highlighted that many other important complementary activities were ongoing to achieve on-the-ground change, particularly with regard to technical cooperation through the Decent Work Country Programmes and capacity-building programmes, including through the International Training Centre of the ILO in Turin. She noted the important work carried out by the Committee on Freedom of Association (CFA). This body had occasionally been called upon to examine complaints which could have been resolved through a rapid and effective intervention at the national level. To address this, mechanisms had been set up to offer mediation on the basis of the acceptance and attendance of the parties involved. This had been the case in Colombia, with the Special Committee for the Handling of Conflicts referred to the ILO (CETCOIT), which had not only allowed solutions to be found to problems already raised in formal complaints to the CFA, but had also enabled complaints of violations of freedom of association and collective bargaining to be examined instead at the national level. The conciliation proposals and the conclusions adopted within the framework of this type of mechanism were based, among others, on the relevant ILO Conventions and the principles of the CFA. Following the Colombian example and with the technical assistance of the Office, Panama had established a similar mechanism which had already achieved some results.
47. The speaker concluded by recalling that ILO Conventions should be seen and used as tools that could help in the development and realization of the social dimension of the future development agenda and framework. A great deal would depend on the manner in which these Conventions, and the related guidance from the supervisory bodies would be integrated into the overall ILO strategy, as well as the way in which the ILO and its constituents would communicate the relevance of the standards system. More broadly, the strengthening of the standards system needed to be coordinated with the reform process led by the Director-General, with the support of the Governing Body. International labour standards were an essential point of reference in this reform process. In addition to these opportunities at the global level, the ILO must meet the needs of its constituents, most evidently in times of crisis.

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

- 48.** The Committee welcomed Mr Yozo Yokota, Chairperson of the Committee of Experts. He welcomed the opportunity to speak as evidence of the close and useful working relationship between the two Committees which carried out the supervision of international labour standards. These two Committees, one with a tripartite composition and the other composed of independent experts, had been working together to promote, protect and enhance the rights and quality of life of all the workers in the world.
- 49.** Turning to the meeting of the last session of the Committee of Experts, the speaker indicated that the Committee of Experts had welcomed two new members from Germany and Spain, respectively. In addition, the Committee of Experts had the opportunity to exchange opinions in a special sitting with the Vice-Chairpersons of this Committee. While such meetings had been taking place almost every year, the special sitting during the 83rd Session of the Committee of Experts had been of particular importance in view of the events that had taken place during the last session of the Conference Committee and the subsequent informal tripartite consultations in September 2012 as well as the discussions that had taken place during the November 2012 session of the Governing Body.
- 50.** On that occasion, the Employer Vice-Chairperson had underlined that the internal dialogue within the ILO's standards supervisory system had been of utmost importance for the proper functioning of the system. Regarding the issue of the right to strike, he had reiterated the long-held view of the Employers' group that the right to strike was not regulated by Convention No. 87 and that the ILO's constituents had not agreed on the inclusion of the right to strike when the Convention was adopted in 1948. The Employer Vice-Chairperson had further stated that the Committee of Experts had been mandated by the International Labour Conference in 1926 to function as a technical body and not as a judicial one. He had considered that the Governing Body had never decided to amend the stated terms of reference so as to expressly include the interpretation of international labour standards. He further stated that, under the ILO Constitution, the authority to interpret ILO Conventions was vested with the International Court of Justice (ICJ).
- 51.** The Worker Vice-Chairperson had recalled that as early as 1928, the Conference Committee had considered, after noting that the Committee of Experts had been confining itself to examining the compliance of national laws and regulations with international Conventions, that it should examine more deeply the issue of effective application of the Conventions. He had further stated that the ILO supervisory bodies had recognized the right to strike and considered it to be a fundamental instrument available to workers' organizations for the defence of their economic and social interests: the Committee of Experts had considered the right to strike to be an essential corollary of the right to organize; this was also the view of the tripartite CFA, which had recognized this right in 1952.
- 52.** The Committee of Experts had welcomed the frank and constructive views expressed by both Vice-Chairpersons and noted that since 1947 it had regularly expressed its views on its mandate and methods of work. In particular, it had repeatedly stressed its status as an impartial, objective and independent body and had regularly clarified that, in order to carry out its mandate of evaluating and assessing the application and implementation of ratified Conventions, it needed to consider and express its views on the legal scope and meaning of the provisions of these Conventions.
- 53.** Referring to collaboration with other international organizations, the speaker indicated that the Committee of Experts had held an annual meeting with members of the United Nations Committee on Economic, Social and Cultural Rights in November 2012 on the theme of

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the supervision of labour rights in the informal economy. Moreover, in accordance with the arrangements made between the ILO and the Council of Europe, the Committee of Experts had examined 21 reports on the application of the European Code of Social Security, and as appropriate, its Protocol.

54. Turning to the methods of work of the Committee of Experts, the speaker indicated that while since 2001, this subject had been discussed in the Subcommittee on Working Methods, the Subcommittee had not met at its last session. Instead, a new Subcommittee on the Streamlining of Treatment of Certain Reports had been established. This Subcommittee had examined all the comments related to repetitions as well as the general observations and direct requests. It had then presented, for adoption in the plenary, its report to the Committee of Experts, by drawing attention to the most important issues raised during its examination. This new method had enabled the Committee of Experts to save time. It had therefore been suggested to reconvene it every year.
55. The speaker then addressed the issue of reporting obligations. At the last session, a total of 2,393 reports under articles 22 and 35 of the ILO Constitution had been requested and by the end of the session, 1,664 reports (67.83 per cent) had been received by the Office. Ten countries had failed to submit reports due for the past two or three years. The Committee was aware of the difficulties which arose out of a lack of adequate human and financial resources that could be properly addressed through the technical assistance of the Office. The late submission of reports had continued to be a problem. Moreover, the Committee had continued to face the problem of a large number of reports which had not contained replies to its comments. It had therefore once again requested all member States to make every effort to ensure that next reports were submitted within the time limits and contained all requested information.
56. Turning to the General Survey, the speaker indicated that this was the first one to be conducted on Convention No. 151, Convention No. 154, Recommendation No. 159, and Recommendation No. 163. While its main focus was on collective bargaining rights in the public administration, it also covered the following subjects: consultations, civil and political rights of public employees, the facilities to be granted to trade union representatives, protection against acts of discrimination and interference, and dispute settlement mechanisms.
57. In conclusion, the speaker thanked the Committee for giving him the opportunity to present the General Report of the Committee of Experts. He underscored the unanimous view of the members of the Committee of Experts that the two Committees were the two pillars of the ILO's supervisory system on which the rights, life, health, safety, personal aspiration and dignity of all workers of the world heavily depended. He informed the Committee of the Committee of Experts' decision to nominate Mr Abdul G. Koroma of Sierra Leone as its new Chairperson.
58. The Employer members and the Worker members, as well as all Government members who spoke, welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of the Conference Committee.

#### ***Statement of the President of the Conference***

59. The President of the Conference highlighted that the agenda of the Conference included very topical and relevant subjects, which were vital to these times and critical to the main objective of the ILO of social justice. These included questions of employment and social protection in the new demographic context, sustainable development, decent work and green jobs and social dialogue. Such subjects highlighted the pertinence of the ILO and underlined the direction its work would take as it approached its centenary. However, the

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ILO would be hampered in its attempts to promote social justice if the strong backbone provided by its supervisory system was in any way weakened. It was the Conference that adopted Conventions and Recommendations and it was the Conference, through this Committee, that provided the tripartite oversight into how countries were meeting their obligations. This was international governance at its best. The speaker expressed his appreciation, on behalf of the Officers of the Conference, for the positive contribution of the Committee each year.

60. The speaker emphasized that the Officers of the Conference would do all they could to facilitate and support the important work of the Committee. As was stated by the Chairperson of the Governing Body and the ILO Director-General during the presentation of their reports to the Conference, it was crucial to obtain full tripartite consensus and support for the supervisory system. The ILO was built on tripartite commitment, and it was necessary that this commitment be present in this sphere as well. The role of this Committee was to build on, and enhance, this tripartite commitment.
61. The Employer and Worker members welcomed the attendance of the President and Vice-Presidents of the Conference in the Committee.

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

62. The Employer members recalled that the supervisory system had made invaluable contributions for the promotion of fundamental workplace rights and constructive labour relations. A credible, balanced and well-functioning supervisory system was integral in guiding member States in their efforts to comply, both in law and practice, with international labour standards. The Employer members were fully committed to a proper and sustainably functioning supervisory system. This commitment included their dedication in engaging in clear and constructive discussions on the General Report of the Committee of Experts, as well as on the individual cases. Significantly, however, they had repeatedly raised a number of concerns about deficiencies within the system, which needed to be addressed in order to ensure its continued credibility and continued relevance.
63. The Employer members welcomed the Committee of Experts' statement in the 2013 General Report that a spirit of mutual respect, cooperation and responsibility had consistently prevailed over the years in the Committee of Experts' relations with the Conference Committee. They remained fully committed to preserving and strengthening the cooperation and coordination between these two Committees. The fact-finding and technical work of the Committee of Experts was very helpful and very important to the work of the Conference Committee. Without the work of the Committee of Experts, the Conference Committee could not do its work, and closer cooperation and coordination in this regard were welcomed. Frank and constructive dialogue between the Conference Committee and the Committee of Experts was vital to ensure the continued relevance of the supervisory system. The Employer members had appreciated the opportunity to engage in dialogue with several members of the Committee of Experts in February 2013, and hoped that this spirit of dialogue and cooperation would continue.
64. The Employer members welcomed the inclusion, in paragraphs 13–18 of the General Report, of the Employer members' concerns in relation to the scope of the mandate of the Committee of Experts, as well as the inclusion of the Employer members' deep concerns regarding the Committee of Experts' extension of that mandate, in order to draw conclusions about the right to strike, in relation to Convention No. 87. It was unfortunate that, despite the concerns raised by the Employer members and the research and information shared in support of these concerns, the Committee of Experts had chosen to respond as reflected in paragraph 27 of the General Report. The concerns raised about the scope of the mandate of the Committee of Experts provided an opportunity to engage in

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constructive dialogue on this topic. However, instead of responding to the merits and substance of the Employer members' concerns, the Committee of Experts had argued that the Employer members had accepted the interpretive role of the Committee of Experts as part of its mandate, citing statements made by spokespersons of the Employer members during the cold war or shortly thereafter, dating back to 1987 and 1993. This did not accurately describe the position of the Employer members historically, and more rigorous research could have been conducted in order to present a fair picture of the Employer members' position in the prior years. Failure to present the Employer members' position fairly was set against the efforts of the Employer members to be constructive in their dialogue. They had made every effort in good faith to present information regarding the Committee of Experts' mandate in a clear and accurate fashion, based on a legislative history and the applicable interpretive principles, and the relevant ILO documents, in order to engage in a constructive dialogue to find a way forward.

- 65.** As a result of the debate in the Conference Committee in 2012, the Employer members considered that there were several outstanding issues that required resolution, particularly concerning the mandate of the Committee of Experts, and regarding that Committee's interpretation of the right to strike as a component of Convention No. 87. The Employer members recalled that the Committee of Experts' mandate had been first established at the International Labour Conference in 1926, and at that time it had been expressly stated that its functions were entirely technical, with no judicial capacity. Further exploration of the role of the Committee of Experts had taken place at the Conference in 1947, where it had been stated that the Committee of Experts was appointed by the Governing Body for the purpose of carrying out a preliminary examination of the annual reports of governments. This mandate had not been changed since that time. Despite clear limits to this mandate, the Committee of Experts had interpreted a right to strike as a component of Convention No. 87, which was not supported by either the terms of this Convention or the preparatory work. The lack of consensus regarding the Committee of Experts' comments raised larger questions related to that Committee's supervisory role, its working methods and its observations, and therefore the Governing Body should be engaged to review the Committee of Experts' mandate.
- 66.** The Employer members reiterated their concern relating to how the mandate of the Committee of Experts was expressed to the tripartite constituents and the outside world, including their disappointment with the language of paragraphs 6 and 8 of the General Survey. In order to provide appropriate visibility to the mandate of the Committee of Experts, the Employer members had made repeated requests for inclusion, in the introductory portion of that Committee's report, of a short "statement of truth" which would explain this mandate. Despite the negative response to this suggestion, contained in paragraph 36 of the Committee of Experts' General Report of 2013, the Employer members hoped that the Committee of Experts would reconsider its position on this reasonable request.
- 67.** Turning to the issue of the mandate of the Committee of Experts to draw conclusions on the right to strike under Convention No. 87, the Employer members recalled that they had already provided their position on this subject in a comprehensive manner over many years. The Committee of Experts' response, in the introduction of the 2013 General Report, did not address the substance of this position. The response of the Committee of Experts appeared to have been that, since that Committee had decided a number of years ago that Convention No. 87 included the right to strike, it then had had to articulate restrictions on this right. This was an unsatisfactory response, as the Committee of Experts did not have, at any time, the competency or mandate to interpret or extend the scope of Convention No. 87. This was a deep concern for the Employer members, as their aim was to preserve the integrity of the supervisory system.

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- 68.** Out of the 63 observations concerning the application of Convention No. 87 in the 2013 report of the Committee of Experts, 55 discussed the right to strike. This issue of the right to strike, although not established in Convention No. 87, appeared to have become one of the major cornerstones of the observations of the Committee of Experts related to freedom of association. The practical result of this approach posed a challenge to the Conference Committee in terms of effectively managing cases concerning the application of Convention No. 87. Therefore, the Employer members emphasized that nothing in the Conference Committee's conclusions could be construed as an agreement to the existence of the right to strike in Convention No. 87.
- 69.** The Employer members reiterated that the role of the Committee of Experts was to conduct a technical and fact-finding function, as one of the two key pillars of the supervisory system, and this was fundamental to the work of the Conference Committee. However, it was in the Conference Committee that governments appeared and made oral statements, that tripartite constituents could consider member States' compliance with international labour standards, and that conclusions were drawn that provided direction to member States on how this compliance could be achieved. Reiterating their full commitment to the credibility and sustainability of the supervisory system, the Employer members indicated that they looked forward to constructive discussions on individual cases.
- 70.** Turning to section II of the 2013 General Report on compliance with obligations, the Employer members observed that while this section contained useful information on the general functioning of the standards supervisory system, it was much the same as in previous years. While a number of changes had been introduced over time to stabilize or improve the supervisory system, progress in that area did not seem to be up to expectations. The supervisory system appeared to be working, but each year serious shortcomings were identified in governments' cooperation, either due to failure to provide the relevant information or failure to adopt legislation to give effect to the international standards. The tripartite constituents in the Conference Committee and the Governing Body were responsible for making the necessary changes. As the Employer members had pointed out several times, the tripartite constituents had neglected their governance and advisory role in past decades, and it was now time for them to take concrete steps to put the system back on a solid and sustainable basis so that it could respond to genuine needs.

**71.** The Employer members submitted six proposals in this regard.

(i) Closer cooperation between the Conference Committee, the Committee of Experts and the Office

**72.** The Employers welcomed the initial steps that had been taken to improve cooperation between the three key players in the supervision of standards, the Conference Committee, the Committee of Experts and the Office, in particular the informal consultations in February 2013 between members of the Conference Committees and members of the Committee of Experts alongside representatives of the Office. The purpose of those consultations had been to promote a better mutual understanding of the real situation and needs of both the providers and the users of the supervisory system. The Employer members trusted that this cooperation would be strengthened in the future. One important measure to reinforce links between the Committee of Experts and the constituents would be to involve the Bureau for Employers' Activities (ACT/EMP) and the Bureau for Workers' Activities (ACTRAV) in the briefing programme that was organized for new members of the Committee of Experts upon their arrival in Geneva. Another would be to allow ACT/EMP, ACTRAV, the IOE and ITUC to take part in the meeting of the Committee of Experts and the Vice-Chairpersons of the Conference Committee in December each year.

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- (ii) A more participatory approach for the report of the Committee of Experts
    - 73.** The Employer members recalled that Report III (Part 1A) and (Part 1B) (the General Survey) were the most visible parts of the ILO's supervisory work. They had proposed changes to reflect inputs from the tripartite constituents, notably that there should be a possibility in the report of the Committee of Experts for employers, workers and governments to state their views on supervision-related issues, including the relevance of Conventions and special problems relating to their application. Readers of the reports should be made aware of the constituents' position on the implementation and interpretation of the Conventions, for instance in the context of "general observations". This would enhance the transparency and credibility of the supervisory system, and the Employer members called upon the Committee of Experts and the Office to consider making the necessary changes in the next report. Another possibility would be for the report of the Committee of Experts to be examined in draft form by the Governing Body or the Conference Committee and for a final annual report, containing both the reports of the Committee of Experts and the Conference Committee reports, to be published only after the Conference.
  - (iii) Addressing reporting failures in a more sustainable way
    - 74.** The Employer members observed that, as the ILO supervisory system was based on reports being sent in by governments at agreed intervals, the situation described in the report could not be considered satisfactory since barely more than two-thirds of the requested reports had been received. The Employers agreed with the Committee of Experts that the failure of governments to comply with their reporting obligations was partly due to their heavy workload in sending reports. The Employer members considered that the following specific steps needed to be initiated as soon as possible:
      - (a) As regards evaluating the capacity of governments to implement and report on implementation before ratification, the Office should provide governments with training and comprehensive advice. They invited the Office to provide the Governing Body with specific ideas and information on the context of this proposal and the best way to address the issue.
      - (b) The possible consolidation, integration and simplification of ILO Conventions should be dealt with under the ILO standards review mechanism (SRM) which, although agreed upon by the Governing Body, had not yet started functioning. They trusted that the mechanism would soon be operational.
  - (iv) Improving the focus of supervision by reducing the number of observations
    - 75.** Referring to the difference between the observations, which appeared in the report of the Committee of Experts, and the direct requests, which did not, the Employer members indicated that the difference between the two was one of degree rather than principle. Direct requests usually concerned a lack of information on secondary matters. However, many observations in the current report of the Committee of Experts were essentially requests for information and did not raise issues of compliance. The fact that this report contained more than 800 observations made it difficult for the Conference Committee to carry out a full review and to play a meaningful role in supervision. The Employer members suggested that a significant reduction could be envisaged in the number of observations in the future. This could be achieved by narrowing the eligibility criteria for observations, which would result in many existing observations being classified as direct requests. To strengthen the ILO's supervisory system it would also be desirable for the

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number of observations focused on crucial compliance issues to be more reasonable. Moreover, the Office should facilitate general access to direct requests on the ILO's website so as to give them a higher profile.

(v) Measuring progress in compliance with ratified Conventions in a more meaningful way

- 76.** This year the Committee of Experts had identified 39 cases of progress in compliance with the fundamental Conventions in 30 countries. Most of the cases had to do with the application of Conventions Nos 138 and 182 on child labour and of Conventions Nos 87 and 98 on freedom of association and collective bargaining. There had also been a few cases of progress regarding Conventions Nos 29 and 105 on forced labour, as well as one instance of progress regarding Convention No. 100 and none regarding Convention No. 111 on discrimination. The Employer members requested the reason for that outcome.
- 77.** The Employer members did not see the purpose of the differentiation that the Committee of Experts had made between cases of progress and cases of interest. More important was the issue of compliance, not whether the measures taken were sufficiently advanced to justify the expectation of further progress. The Committee of Experts could keep an internal record of cases of interest but, as it was not of much use to constituents, and to simplify the report, such cases should not be included in future reports. This also applied to cases of "good practice". Good practice and compliance were clearly two different matters. Identifying "good practices" was outside the mandate of the Committee of Experts, and should therefore not figure in its report, though it may well be of interest to the Office in its cooperation with constituents when promoting ILO Conventions.
- 78.** The Employer members wished to make the selection of cases of progress a more useful procedure under the supervisory system. Measuring progress in applying ratified Conventions required the development of a simple methodology that involved: (i) recording cases of progress by individual Convention and by individual country; (ii) relating the number of cases of progress to the number of unsolved or new cases of non-compliance; and (iii) developing qualitative criteria for progress (for example, seriousness of the problem solved, number of workers or employers benefiting from the improvement). Consultations should be held between the Committee of Experts, the Conference Committee and the Office on the best approach to this issue.

(vi) Revitalizing general observations as a tool in standards supervision

- 79.** The Employer members noted that, as in previous years, Part II of the report of the Committee of Experts did not contain any general observations on particular Conventions. General observations, if used properly, could draw attention to relevant issues and practices that went beyond the application of a Convention in a particular country, or could serve as a basis for a discussion of new trends in the application of a Convention. The general observations could then actually help member States to improve compliance with ratified Conventions. The Employer members therefore invited the Committee of Experts to make general observations that offered: (i) an analysis of the main problems encountered in applying Conventions and suggestions as to how they could be overcome; (ii) an assessment of progress in complying with Conventions according to criteria to be determined, such as the number of countries complying fully with a Convention, the number of problems solved, new problems that had arisen in interpreting or applying Conventions, etc.; (iii) an explanation of the scope and meaning of provisions that tended to be misconstrued or were difficult to understand; and (iv) the views of employers' and workers' organizations on the status of compliance, the understanding of the provisions and scope of a Convention.

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- 80.** Turning to observations on selected countries, the Employer members expressed concern regarding the application of Conventions in several countries, including the application of Convention No. 131 by the Plurinational State of Bolivia, the application of Convention No. 87 by Serbia, the application of Conventions Nos 87 and 98 by Uruguay and the application of Conventions Nos 87 and 144 by the Bolivarian Republic of Venezuela.
  - 81.** In conclusion, the Employer members recognized the important role that the Committee of Experts played in the supervision of standards and requested that the ILO's supervisory system be reformed to make it more effective and sustainable.

### ***Statement by the Worker members***

- 82.** The Worker members considered it necessary to clarify a number of important elements after hearing the fresh attacks on the work of the Committee of Experts. They had kept their initial statement brief so that they could focus on what should be the Conference Committee's priority, namely the list of individual cases, and give the official and unofficial processes in progress a chance to provide a way out of the crisis that had gripped the supervisory mechanisms in 2012. They recalled that the Governing Body had sole competence for settling the questions raised in that context.
- 83.** In 2012, the Employers had denied that the basis of the right to strike or to collective action could be found in Convention No. 87 and had asserted that it was not in the mandate of the Committee of Experts to give any interpretation concerning the right to strike or its basis. The Worker members expressed their complete disagreement with that position and reaffirmed the confidence of workers throughout the world in all the ILO supervisory mechanisms. Over the course of time, on the basis of the ILO Constitution and joint tripartite analysis, these bodies had developed work which was undeniably useful for workers, employers and governments and for the strengthening of international labour law. The documents generated by those bodies were points of reference for the understanding and application of standards, ensuring social stability and peace both within and among member States, in order to avoid unfair competition based on social dumping. The Worker members stated that it was undeniable that the throwing into question by the Employers of the right to strike was part of a broad process of undermining of inter-professional and sectoral social dialogue.
- 84.** With regard to the mandate of the Committee of Experts, the Worker members recalled that as long ago as 1928 the Conference Committee had considered, with respect to the observation that the Committee of Experts was merely analysing the concordance of national law with international Conventions, that consideration of the issue should not merely examine whether Conventions and national laws complied in their provisions but should examine in greater depth the question of the effective application of Conventions. Accordingly, the Worker members affirmed that it was for all the tripartite constituents to sustain the supervisory mechanisms to ensure the effective application of Conventions. In the absence of criminal or financial penalties at the international level, the application of international labour standards was only effective through supervisory mechanisms, whether regular or special. They underlined the key role of the Committee of Experts, whose independence, impartiality and objectivity were essential for preparing the work of the Conference Committee and ensuring the proper application of standards in law and in practice. They also underlined the role of the Committee of Experts in the establishment of a dialogue with governments through direct requests and also emphasized the pedagogical importance of its work.
- 85.** The Worker members stressed that the Conference Committee provided another fundamental aspect of the supervisory mechanisms through the tripartite examination of individual cases, which constituted a means of pressure vis-à-vis defaulting or

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uncooperative States. They underlined that the various aspects of the supervisory mechanisms which had just been mentioned should be preserved in future. Those mechanisms, not only as provided for by the relevant articles of the ILO Constitution but also as they had evolved in the course of ILO Conference sessions or Governing Body meetings, provided workers with a guarantee for the respect of their rights and the hope of progress in the way those rights were applied.

- 86.** The Worker members expressed willingness to continue the discussions on the mandate of the Committee of Experts in 2013, but in the forums created for that purpose and in order to achieve sustainable responses that enabled the Committee on the Application of Standards to improve the way it conducted its work. The issue of the right to strike could possibly be dealt with by means of recourse to the ICJ or by activating the mechanism enshrined in article 37(2) of the Constitution. In that regard, the Worker members were of the view that it was not viable simply to criticize certain aspects of the functioning of the supervisory bodies. If those who made such criticisms were sure of their case, they should make use of the existing remedies.
- 87.** The Worker members then emphasized the extent to which tripartism underpinned the work of the Committee of Experts, which constituted one element of the tripartite supervision of the application of standards that was particularly founded on articles 19 and 22 of the Constitution. In that regard, the Governing Body, with its tripartite composition, played a crucial role, starting with approving the questionnaires on articles 19 and 22. Moreover, at the national level, the tripartite constituents had a unique opportunity to influence the work of the Committee of Experts through their reports and comments. The Committee of Experts therefore exercised its mandate within a very specific framework. In that connection, the Worker members stated that: the mandate of the Committee of Experts was the product of an ongoing process that was conducted and agreed upon by the Governing Body within the context of the objectives established by the Constitution and it was supported by the involvement of the tripartite partners on the ground, including the employers. Moreover, the experts' work could not be made dependent on an opportunistic interpretation based on the prevailing economic conditions and allowing for a flexible application of the standards at some times and a stricter interpretation at other times. In addition, the Committee of Experts could not amend its jurisprudence depending on constituents' differences of opinion, as that would threaten the stability and objectivity guaranteed by the composition and appointment process of the Committee of Experts.
- 88.** With regard to the right to strike, the Worker members emphasized that the Employer members had made it clear that they were not contesting the existence or legitimacy of the right to strike, but rather maintaining that that right could have no basis in supranational standards and must be regulated at the national level. The Worker members considered that such reasoning revealed the undeniable desire to weaken the trade union movement, social dialogue and, finally, collective bargaining. For those who had negotiated Conventions Nos 87 and 98, which contained the right to strike and to bargain collectively, all those rights were closely linked and formed the basis of the industrial relations systems used in the great majority of member States. The Worker members then stated that limiting the regulation of the right to strike at the national level alone would place the government concerned in an excessively strong position that could, for example, be used to destroy the trade union movement, which had not been the aim of the negotiators of those two Conventions.
- 89.** Concerning the six proposals made by the Employers' group with regard to the supervisory mechanisms, the Worker members made the preliminary observation that these proposals were connected with the discussions under way in the Governing Body and that it would therefore be beneficial to discuss them in the appropriate forum, namely the Governing

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Body. The Worker members did not wish for the Conference Committee to interfere in those discussions and hoped that it could finally concentrate on its work.

### ***Statements by Government members***

- 90.** The Government member of Australia, speaking on behalf of the group of governments of the industrialized market economy countries (IMEC) reaffirmed the high level of importance placed by the IMEC group on the supervisory system of the ILO and its key role in facilitating the implementation of and adherence to international labour standards when seeking to improve working conditions across the globe. The ILO supervisory system was unique in the international framework of human rights procedures and the Conference Committee had the responsibility to help ensure that the capacity, visibility and impact of the ILO supervisory system continued to evolve positively despite the inherent challenges. He thanked the outgoing Chairperson of the Committee of Experts, Mr Yokota, for his work and welcomed the new Chairperson, Mr Koroma, who, he hoped, would be able to attend the sessions of the Conference Committee in the future. The outstanding work and high level of expertise of the Committee of Experts was highly relied upon and the efforts to enhance dialogue between the Committee of Experts and the Conference Committee much appreciated.
- 91.** He thanked the Committee of Experts for having clarified elements of their mandate. With respect to this mandate, he outlined the foreword to the General Survey noting that “The Committee’s opinions and recommendations are not binding within the ILO supervisory process and are not binding outside the ILO unless an international instrument expressly establishes them as such or the supreme court of a country so decides of its own volition.” He expressed the view that this clarifying statement, along with other points of explanation made in the General Survey and the General Report, were constructive for taking this issue forward. While it was a matter for the Committee of Experts alone to determine the scope of its comments, this year’s General Survey provided, however, a sound reference point for its future reports. IMEC governments remained committed to helping facilitate a resolution to these issues and looked forward to further tripartite consultations after the Conference.
- 92.** For improving collaboration between the two Committees, he reiterated the suggestion to include the Conference Committee’s Chairperson from the previous session in the traditional yearly meeting of the Committee of Experts and the Employer and Worker spokespersons of the Conference Committee. Turning to the working methods of the Committee of Experts, he particularly noted establishment of a new Subcommittee on the Streamlining of Treatment of Certain Reports and considered that efficiency in its work would contribute to a better report and have positive effects for the Office and reporting governments. The continued follow-up of the cases of failure to fulfil reporting and other standards-related obligations was particularly important and technical cooperation was key to resolving problems as well as to enhancing the application of ratified Conventions in this regard. He supported a strengthened combination of the work by the ILO supervisory bodies and the Office’s technical assistance including the time-bound programmes for a better application of international labour standards which were mentioned in paragraphs 90–92 of the report, and was looking forward to next year’s assessment by the Committee of Experts of these programmes. Having noted that the Committee of Experts was still not operating at its full capacity, IMEC encouraged the Director-General to fill the three vacancies of the Committee of Experts quickly and give consideration to reducing the requirement of five candidates for each position. Reiterating IMEC’s appreciation of the work of the Office in supporting the ILO supervisory bodies, he called on the Director-General to ensure that the essential work of the International Labour Standards Department was among his top priorities so that it had adequate resources to meet its continually increasing workload, especially with respect to the fundamental Conventions.

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- 93.** The Government member of China expressed the hope that the Conference Committee and the Committee of Experts would further improve their mutual understanding, so that they could also improve actions in relation to the supervision of standards. His Government had always attached a great deal of importance to the protection of the legitimate rights and interests of workers. The new Government had set out the goal to achieve a better society by the year 2020, the main objective of which was the improvement of the living conditions of the population, which naturally involved the improvement of working conditions and the rights of workers. On 1 May this year, the President met with trade unions with a view to ensuring that workers' rights be better protected. His country had adopted a range of measures including: (i) the promulgation of a special regulation on the protection of women workers in April 2013; (ii) the adoption of modifications to the Law on labour contracts, which would enter into force on 1 July 2013 and which contained better conditions concerning the assignment of workers and improvements in conditions relating to occupational safety and health; (iii) measures aimed at strengthening collective consultation mechanisms in order to set standards in consultation with the social partners and do away with conflicts before they would arise in the spirit of the Conventions concerning collective bargaining rights; (iv) the further development of international cooperation with the ILO, including a high-level seminar on the elimination of child labour with representatives of half of all the Chinese provinces and cities. The Chinese Government believed that the ratification of Conventions itself was not enough; their provisions had also to be effectively applied. China remained a developing country with many challenges in the world of work and would cooperate fully with the international community to overcome these difficulties. His Government was working towards overcoming some of the obstacles to the ratification of the MLC, 2006, and in the process of implementing many other Conventions which the country had ratified and expressed the hope that the ILO would be able to provide technical assistance to further strengthen the country's capacities in this regard.

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

### **General Survey concerning labour relations and collective bargaining in the public service**

- 94.** The Committee held a discussion on the General Survey concerning labour relations and collective bargaining in the public service,<sup>6</sup> prepared by the Committee of Experts on the Application of Conventions and Recommendations.

### ***Opening statements***

- 95.** The Worker members recalled that an important element of the General Survey was its connection with both the 2012 recurrent discussion on fundamental principles and rights at work and with the recurrent discussion this year on social dialogue. It was important for the Committee to agree on a powerful joint message to promote the ratification and effective application of the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154). The Conventions were

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<sup>6</sup> ILC, General Survey concerning labour relations and collective bargaining in the public service, *Collective bargaining in the public service: A way forward*, Report III (Part 1B), 102nd Session, Geneva, 2013.

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relatively well applied overall, which was encouraging for future ratifications. The good level of application was also due to trade union action in various countries. It was to be welcomed that the Committee of Experts had drawn up a list of good practices that could easily be replicated and could foster a better application of the standards, with a view to the optimum functioning of public services through the observance and application in law and practice of the ILO instruments on collective bargaining.

- 96.** They added that the General Survey was of great value in both institutional and legal terms. Nevertheless, the Committee of Experts had omitted to address certain issues, such as gender pay equality, the access of migrant workers to the public service and the practices observed in certain federal States that were not in compliance with the principles set out in the Conventions, even to the point of prohibiting collective bargaining by public sector workers. However, the General Survey did address such highly topical subjects as the liberalization of public services in reaction to economic problems, or on purely ideological grounds. It emphasized the impact of the economic crisis on collective bargaining, and the wage restrictions supposedly justified by the need to reduce public expenditure, or imposed by international or regional institutions, contrary to ILO standards. It highlighted the increased use of subcontracting, as a result of which workers assigned to public service duties did not enjoy the protection of Convention No. 151. The rise in precarious employment in the public sector was a matter of ever-increasing concern.
- 97.** The Worker members fully endorsed the conclusions reached by the Committee of Experts that: the implementation of the Conventions had been compromised in a number of countries in the context of the recent financial and economic crisis, and particular vigilance was needed in times of economic downturns to ensure their full application; the public service needed to be effective and efficient to ensure the rule of law, the effective exercise of citizens' rights and the improvement of their quality of life, and was therefore an essential factor in sustainable economic and social development; high-quality services were needed in all public institutions, as were properly qualified and motivated staff and a dynamic and depoliticized public governance and administrative culture free from corruption; and social dialogue in its different forms, and especially collective bargaining between trade union organizations and the public administration, was key to meeting the challenge of providing high-quality services and ensuring good democratic governance. Collective bargaining yielded benefits not only for public servants, but also for administrations, which were supported by unions in their efforts to implement the key principles of public governance in democratic States. It also served as an effective tool for sound human resource management, which in turn enhanced the quality of services provided to the public. The Worker members emphasized the undeniable links between Conventions Nos 151 and 154 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which were crucial instruments for democracy regardless of a country's level of development.
- 98.** The Worker members, referring to the scope of application of Convention No. 151, said that although the instrument was sufficiently clear and flexible to be adapted to the specific features of the public service, in many countries major categories of public employees were denied the rights and benefits set out in the instruments under discussion. These included, in particular, high-level employees whose functions were normally considered as policy-making or managerial, and employees whose duties were of a highly confidential nature. That category was generally interpreted too broadly, resulting in their being deprived of protection. Moreover, even though Convention No. 151 applied to civilian staff in the armed forces and staff attached to the police, questions arose regarding prison staff who, the Committee of Experts had recalled, did not constitute an acceptable exception from the provisions of the Convention. The Worker members also denounced the widespread attempts made to avoid the specific protection provided under Convention

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No. 151 through recourse to restructuring in the public administration and the ever broader use of precarious forms of employment and subcontracting for work that was nevertheless of a permanent nature and covered by the conditions of service of the public service. In some countries, precarious workers accounted for up to 50 per cent of public service personnel, which had a direct negative impact on the neutrality and independence of public services, as well as encouraging corruption and clientelism.

- 99.** With regard to the civil and political rights recognized for public employees, the Worker members emphasized the importance of the resolution concerning trade union rights and their relation to civil liberties adopted by the Conference in 1970, which enumerated the fundamental rights necessary for the exercise of freedom of association, including: the right to freedom and personal safety, freedom of opinion and expression, the right to fair trial by an independent and impartial court, and the right to protection of trade union property. They recalled that, with the sole exception of obligations relating to the status of public employees and the nature of their duties, human rights were applicable to public employees in the same way as to any other citizens. However, the Committee of Experts had noted with concern: the persistence, in a significant number of countries, of murders of trade union leaders and members and the violent suppression of demonstrations, also affecting public employees; the persistence of legal provisions in certain countries prohibiting political activities by public employees' organizations for the promotion of their specific objectives, even though such a prohibition was contrary to the principles of freedom of association; and the obstacles preventing public employees' organizations from publicly voicing their opinions on general economic and social policy matters which had a direct impact on their members' interests. The Worker members considered that the establishment of democracy required respect for the fundamental rights and civil and political liberties enshrined in the Universal Declaration of Human Rights and other fundamental international instruments, as well as the lifting of any restrictions that were incompatible with the implementation of Convention No. 151. The challenge was the effective implementation of those rights and principles in practice, and not only in law.
- 100.** With regard to protection against acts of interference and anti-union discrimination, the Worker members emphasized that the applicable penalties often had little deterrent effect, and that threats, transfers and dismissals of trade union leaders remained widespread. In certain countries, bonuses were offered to non-unionized workers, or access to certain posts was reserved for members of a specific union. They recalled that public service employees, and particularly their trade union representatives and leaders, needed to be afforded effective protection against any act of interference by the public authorities in the establishment, operation and administration of their representative organizations. A weak point of Convention No. 151 was the scope of the concept of "adequate protection" against acts of discrimination provided for in Article 4, which lay at the heart of all disputes relating to situations involving anti-union dismissals, including their prevention and compensation. Many procedures offered no recourse to workers against decisions by the administration that were often unilateral and discriminatory. Another major problem was the slowness of appeal procedures and of the reinstatement of dismissed trade union members. Methods of compensation should be designed to provide full reparation for the financial and professional damage suffered by public employees. These weak points imperilled the effective application of the rights set out in the Conventions.
- 101.** The Worker members added that the right of public employees' organizations to participate in the determination of their conditions of employment through consultation or collective bargaining, or both, was now recognized in the great majority of member States. Many countries were already in compliance with Article 7 of Convention No. 151, even though they had adopted differing methods and systems of consultation in accordance with their national circumstances and cultural and legal traditions. In general, the consultations held were in-depth, frank, full, detailed and without impediment. However, emphasis

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should be placed on the term “consultation”, which was broader in scope than “information”, encompassing as it did the notion of good faith, trust and mutual respect. The parties needed to be afforded sufficient time to express their views and to enter into broad discussions, before reaching an appropriate compromise. Consultations also needed to be held on all matters relating to terms and conditions of employment and all subjects of mutual interest in relation to personnel management. They should be held at all relevant levels and offer the guarantee that the specific concerns of workers in the public service were duly taken into account. They therefore called for the establishment, for the purposes of consultation procedures, of effective, well-targeted and organized dialogue.

- 102.** The Worker members observed that collective bargaining gave rise to many problems in practice including, as indicated in the General Survey, the issues of good faith, which presupposed that all bargaining was undertaken with a view to reaching an agreement, the representativeness of trade union negotiators and the binding nature of the agreements concluded. They emphasized that the adoption and ratification of Conventions Nos 151 and 154 implied a common acceptance that terms and conditions of employment in the public service could not be decided upon unilaterally and that adequate procedures for that purpose needed to include the full participation of trade unions of public employees. Convention No. 154 allowed for special modalities of application for collective bargaining in the public service, which could be fixed by national laws or regulations or national practice, including by means of collective agreements, arbitration awards or other methods. Under Convention No. 154, the right to collective bargaining should cover, in addition to employees in the public administration, organizations representing permanent and temporary public sector employees and those engaged under civil or administrative contracts for the provision of services, contract workers and part-time employees. In certain countries, collective bargaining was not widely used for determining the terms and conditions of employment of public officials, who often had to accept the minimum conditions laid down by law. In some countries, there was no formal collective bargaining machinery in the public service, while in others the content of bargaining was very limited, with the government invoking its prerogative to regulate unilaterally a range of matters, which often included remuneration. Where there was bargaining and agreements were concluded, trade unions often experienced difficulty in having their binding nature recognized and their provisions respected. In other countries, bargaining with representative organizations was rebuffed by the authorities, which blamed delays in renewing union executive committees, even though the delays were often caused in practice by state bodies interfering in the election process. There was therefore a gap between law and practice, and the impact of the financial and economic crisis and the trend towards purely ideological liberalization should not be underestimated in that respect.
- 103.** The Worker members emphasized that the very principle of free and voluntary bargaining meant that agreements had to be respected and that the authorities could not revoke or modify agreements that had been freely concluded. That also applied to the private sector. If agreements needed to be approved by the legislature, that process should not undermine their content, irrespective of the political majority in power. Bargaining within the meaning of Convention No. 154, as well as consultations under Article 7 of Convention No. 151, needed to cover terms and conditions of employment in the broadest sense and the relations between the parties, including vocational training and career development, dispute prevention and settlement machinery, non-discrimination and any measures agreed upon by the parties to improve the functioning of public institutions and the application of the principles of public management in democratic societies. However, a large number of trade unions reported the unilateral revision of collective agreements in the public sector and the adoption of laws without any prior consultation which unilaterally modified the terms and conditions of employment of public employees set out in collective agreements. Certain measures adopted under the pretext of responding to the economic crisis not only prevented further wage negotiations, but had even imposed wage cuts for the years to

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come, in defiance of the collective agreements in force. Many unions also complained of the presence and role of budgetary authorities in the collective bargaining process in relation to wages and clauses with financial implications. In certain countries, if public employers were not in compliance with the directives of the budgetary authorities, they were liable to penal sanctions.

- 104.** The Worker members endorsed the views of the Committee of Experts and the CFA concerning the impact of economic crises on collective bargaining and on the most appropriate means of responding to exceptional economic situations in the framework of the collective bargaining system in the public sector. However, certain principles needed to be generally recognized in that respect, including that collective agreements currently in force should be respected. Limitations on the content of collective bargaining imposed by the authorities in the light of economic stabilization or structural adjustment policies, particularly concerning wages, were only admissible on an exceptional basis, should be restricted to what was absolutely necessary, should not exceed a reasonable period of time, and should be accompanied by guarantees to protect workers' standard of living, especially those most severely affected. The Committee of Experts should place greater emphasis on the need for such limitations to be preceded by consultations with the employers' and workers' organizations. Collective agreements should be respected and economic stabilization measures should only be applied when existing collective agreements had expired with a view to preserving jobs and the continuity of enterprises and institutions, except in the case of serious and insurmountable difficulties, when exceptions could be accepted within the framework of social dialogue. Finally, in the event of crises, in relation to matters concerning the world of work and collective bargaining, mechanisms bringing together representatives of the highest state bodies and the most representative organizations of workers and employers should be established rapidly to address the economic and social consequences, paying particular attention to the most vulnerable categories. The principles set out in the Oslo Declaration adopted in April 2013 should be promoted globally, in the context of relations with international and regional organizations, and particularly the IMF, the OECD, the World Bank and the European Union.
- 105.** In conclusion, the Worker members hoped that the Committee would reach a consensus on strong and useful conclusions to be transmitted to the CDS. The conclusions could include an appeal for the widespread and rapid ratification and effective implementation of the standards on collective bargaining in the public service, including in countries that had already ratified the Conventions, where tripartite consultations should be held on updating and reinforcing the respective legislative provisions. ILO technical assistance should be made available for governments encountering difficulties in applying the standards, including on the legal issues raised in the General Survey, such as essential services and dispute resolution procedures. The Worker members also proposed the introduction of a four-year programme of action to promote collective bargaining in the public service, which could be based on the existing sectoral programme, the scope of which could be extended and sufficient resources allocated. They also called on the ILO to devote more attention as to the impact of precarious employment in the public service, and supported the proposal by the Committee of Experts that the impact of precarious forms of employment on trade union rights should be examined in a tripartite context. They called on the ILO to intensify its efforts in respect of labour administration and labour inspection, and all means of ensuring that social dialogue was strengthened and more widely respected. Finally, the Turin Centre could provide support and design training programmes focusing on the needs identified in the General Survey, as a means of contributing to the further development of democratic societies supported by high-quality public services.
- 106.** The Employer members expressed appreciation of the work of the Committee of Experts in preparing an overview of law and practice with respect to labour relations and collective bargaining in the public service, although the fact that fewer than half of the member

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States had provided the requested reports meant that it was not as representative as it might have been. They observed that, while the General Survey mainly dealt with labour relations and collective bargaining in the public sector, those matters were also highly relevant to the private sector. Private employers had an interest in a competent and cost-efficient public service, for which constructive labour relations and a clear regulatory framework were important preconditions.

- 107.** The Employer members emphasized that in their view Conventions Nos 151 and 154 were of equal value. They did not agree with the impression given by the Committee of Experts that the determination of working conditions through consultations, as provided for in Convention No. 151, was only a second-best solution in relation to collective bargaining, as envisaged in Convention No. 154. They also expressed strong doubts that, as claimed in the General Survey, with the adoption of Convention No. 154 the international community had recognized that collective bargaining constituted the preferred method of regulating working conditions for both the public and the private sectors.
- 108.** With reference to the foreword of the General Survey, the Employer members noted with interest the clarification that the views and recommendations of the Committee of Experts were not legally binding, which confirmed their position on that point. However, further statements in the foreword, in particular paragraphs 6 and 8, were ambiguous, misleading and weakened that initial clarification. That was particularly the case with the idea that the opinions and recommendations of the Committee of Experts were not binding within the ILO supervisory process or outside the ILO unless an international instrument expressly established them as such or the supreme court of a country so decided of its own volition. It was clear that, if an international instrument reflected the views or recommendations of the Committee of Experts, it was the international instrument that was binding, not the views of the Committee of Experts. Similarly, if a supreme court took up the views or recommendations of the Committee of Experts, or contradicted them, it was the judgment that became legally binding. The views of the Committee of Experts remained not legally binding.
- 109.** The Employer members also referred to the statement in paragraph 8 of the General Survey that, in so far as the views of the Committee of Experts were not contradicted by the ICJ, those views should be considered valid and generally recognized, which they considered to be an attempt by the Committee of Experts to give greater legal weight to its views. They believed that the Committee of Experts should seek to convince ILO constituents by delivering reasonable and balanced analyses and assessments, reflecting genuine expertise and responding to realities. There was a further misleading claim at the end of the same paragraph, which had also been made by the Committee of Experts in 1990, that the acceptance of such considerations was indispensable to maintaining the principle of legality, and consequently to the certainty of law required for the proper functioning of the ILO. That claim lacked any legal or factual basis. As the views of the Committee of Experts were not legally binding, the principle of legality and the certainty of law could not be affected by disagreement with their views. The Employer members called on the Committee of Experts to refrain in future from making such ambiguous statements.
- 110.** The Employer members, in light of the above, recalled their proposal that a very short “statement of truth” be reproduced at the very beginning of the reports of the Committee of Experts. They considered that the response by the Committee of Experts to that proposal was not convincing and that the inclusion of “clarifications” in the introduction of its reports was insufficient and could easily be overlooked. The Committee of Experts had nevertheless indicated that it might be prepared to consider such a proposal based on consensus. Informal discussions were therefore being held concerning the inclusion of a short “statement of truth” in the first pages of all of its reports.

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- 111.** With regard to the substance of the General Survey, the Employer members referred to a series of specific paragraphs in which, in their view, the Committee of Experts had gone beyond its mandate in a number of ways. They emphasized that it was the task of the Committee of Experts to undertake a technical examination of the state of compliance, and not provide opinions. For example, the description in paragraph 57 of the General Survey of the restriction on collective bargaining for public servants engaged in the administration of the State contained in Convention No. 98 as a “shortcoming” was beyond the mandate of the Committee of Experts, the role of which was to assess compliance with ratified Conventions, not the usefulness or suitability of their contents. In the view of the Employer members, Convention No. 151 could not necessarily be seen as extending the right to collective bargaining to all public servants beyond the restrictions in Convention No. 98, as it also envisaged the use of methods other than collective bargaining for the participation of representatives of public employees in the determination of their working conditions.
- 112.** While welcoming the indication in paragraph 88 that the preparatory work for Convention No. 151 established that it “does not cover the right to strike”, the Employer members regretted the failure of the Committee of Experts to consider the preparatory work on the same issue for Convention No. 87, which also established that it would not deal with the right to strike. The impression was given of a failure to make consistent use of the preparatory work for ILO instruments, which was only considered when it supported the views of the Committee of Experts.
- 113.** With reference to protection against acts of anti-union discrimination, the Employer members recalled that Article 4(1) of Convention No. 151 established a requirement to provide for “adequate protection against acts of anti-union discrimination”, while Article 4(2) listed particular acts to which such protection should apply. It was the view of the Employer members that, within that framework, it was for governments to decide on the potential risks of anti-union discrimination and the concrete measures to be taken, taking into consideration the specific national circumstances and the practicality and cost-efficiency of such protection. However, “adequate protection” did not necessarily mean “absolute protection”. Nor was there a requirement under the Convention to provide a higher level of protection against anti-union discrimination than against other types of discrimination, or a higher level of protection against anti-union discrimination for public service workers than for private sector workers. Some of the proposals for implementation made by the Committee of Experts in that connection went far beyond the requirements of Article 4. The Committee of Experts should fully recognize the flexibility encompassed in the term “adequate protection” and refrain from promoting an unduly restrictive understanding of that term.
- 114.** The Employer members added that the measures mentioned by the Committee of Experts concerning protection against anti-union discrimination during recruitment, in the course of employment and in relation to dismissal, although they might be seen as examples of what governments could do in particular situations to implement the Convention, were not required by the Convention. The meaning of “adequate protection” in the context of recruitment was specifically explained in Article 4(2)(a) and, in the view of the Employer members, concerned acts of discrimination against workers because of possible trade union membership in the future, not because of trade union membership in the past. They reaffirmed that it was the responsibility of governments to make, in good faith and in the specific national context, their own assessment of what additional “adequate” protection might be required at the stage of recruitment. Normally, hiring procedures which ensured the selection of the best-suited candidate should be sufficient to avoid anti-union and other forms of discrimination. Additional measures would only be required where concrete risks existed; for instance, measures against “blacklisting” would only be necessary if that practice actually existed in a country. Moreover, the suggested measure of a “reversal of the burden of proof” was not only not required by the Convention, but would also appear

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to be an overly bureaucratic burden to an efficient recruitment process that was clearly inadvisable.

- 115.** The Employer members further observed that there was no basis in the Convention for the view expressed by the Committee of Experts that “provisions” needed to be adopted “against all acts of anti-union discrimination”. They disagreed with the statement in the General Survey that the unilateral termination of the employment of a public employee without giving a reason, provided that compensation prescribed by the law was paid, was not compatible with the Convention. There was no requirement under Article 4(2)(b) of the Convention for national legislation to prohibit dismissal without giving a reason, provided that public employees could effectively challenge dismissal on the grounds of anti-union discrimination before an independent institution, such as a labour court. Requiring public employers to give a reason in case of dismissal would be tantamount to importing the provisions of the Termination of Employment Convention, 1982 (No. 158), into Convention No. 151 without any justification. The Employer members also expressed strong disagreement with the proposal by the Committee of Experts that collective agreements might require the trade union confederation to give its consent to the dismissal of a public employee, as a right of veto for trade union confederations for dismissals would be potentially very damaging for any public service by giving trade unions undue control over personnel policy, and could lead to arbitrariness and cronyism. They added that reinstatement was not in general an appropriate or practical measure, and was not even required by Convention No. 158. Moreover, they recalled that the Convention did not differentiate between non-trade union members, trade union members or trade union officials and representatives, and did not establish any requirement for privileged protection for trade union members or officials and representatives.
- 116.** With regard to union security clauses which, as recalled by the Committee of Experts, were increasingly being contested by national supreme courts, the Employer members recalled their view that the State should not allow third parties to limit the fundamental freedoms of individuals, which would be the case if union security clauses were considered admissible in collective agreements. Furthermore, in relation to the financing of employees’ organizations by the State, to which the Committee of Experts raised “no objection in principle”, provided that it did not have the effect of allowing the State “to exercise control over” or favour “one union over another”, the Employer members questioned how an organization financed by the State could be independent of the State. In their view, employers’ and workers’ organizations, in both the private and public sectors, should not be financed by the State in order to ensure the necessary distance to represent their members’ interests effectively.
- 117.** The Employer members, referring to the facilities to be afforded to the representatives of recognized public employees’ organizations, emphasized that the requirement in Convention No. 151 concerned the granting of facilities to representatives, and not to organizations, as indicated by the Committee of Experts in paragraph 135. The latter claim constituted an interpretation which had no basis in the text of the Convention. In the view of the Employer members, governments were justified in limiting the provision of facilities to what was required to enable employees’ representatives to carry out their functions. With regard to the types of facilities that could be provided, the General Survey cited the Workers’ Representatives Recommendation, 1971 (No. 143), which was a non-binding instrument. It should be recalled that Convention No. 151 did not contain any indication of the relative importance of particular facilities. The views expressed by the Committee of Experts in that respect were not therefore helpful and lay outside its mandate. Moreover, the Employer members emphasized that the collection of trade union dues was a matter for trade unions themselves, without the involvement of employers. The Convention did not refer to any active involvement of employers in that respect, as in a check-off system.

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There were no grounds for privileging trade unions by establishing a right to an employer facility in that connection.

- 118.** The Employer members, concerning procedures for determining terms and conditions of employment other than collective bargaining, noted the reference by the Committee of Experts to principles established by the CFA. However, it was unclear in what context the CFA had made those statements, which appeared to relate more to negotiations than consultations and were therefore largely irrelevant in the context of Article 7 of Convention No. 151. They therefore called on the Committee of Experts in future General Surveys not to uncritically adopt non-technical views expressed by the CFA, which was not a body mandated to supervise the application of Conventions. With regard to the specific comments made in paragraph 192 concerning the system in Honduras under which public employees could submit “respectful statements”, although the Employer members agreed that such a system was not in accordance with Convention No. 98, they failed to understand the view expressed by the Committee of Experts that the system did not meet the requirements of Convention No. 151, which envisaged methods other than negotiation for the determination of terms and conditions of employment. The submission of “respectful statements” might be such a method and it was to be regretted that the Committee of Experts had not provided explanations in support of its views.
- 119.** With regard to collective bargaining in the public service, the Employer members considered that it would have been helpful if the Committee of Experts had considered the full range of participative methods available under Convention No. 151 and discussed their respective strengths and weaknesses. Instead, by placing such emphasis on collective bargaining, and even placing it on the same level of importance as democracy and free elections, the Committee of Experts was clearly exceeding its mandate and going beyond the requirements set out in Conventions Nos 151 and 154. Furthermore, in the section on developments in public administration, the multiple issues addressed by the Committee of Experts, including economics, administrative careers, free trade, loans and other financial issues exceeded both the scope of the General Survey and the Committee’s mandate.
- 120.** In relation to the scope and methods of application of the Conventions, the Employer members failed to understand the differentiation made by the Committee of Experts, which was not established in the Conventions, between members of the armed forces and civilian staff in the armed forces. In the view of the Employer members, the reason for the exclusion of members of the armed forces from the provisions of the Conventions was their importance in ensuring external security, but it could be argued that civilian staff in the armed forces were equally important in that regard. They also expressed doubts concerning the comment in paragraph 256 that the Conventions applied to workers in public enterprises, which in their view could not normally be regarded as a public authority.
- 121.** With regard to collective bargaining, the Employer members noted the indication in paragraph 271 that, during the preparatory work for Convention No. 154, it had been specified that “promotion” should be interpreted as not creating an “obligation” for a State to impose collective bargaining. The statement by the Committee of Experts in the next paragraph that the “voluntary nature” of collective bargaining might mean that States could provide that collective bargaining with representative organizations of public employees was obligatory was therefore a contradiction in terms, and an interpretation of Convention No. 154 that was totally at odds with its legislative history. In addition, in relation to the issue of negotiation with elected workers’ representatives and non-unionized workers, the Employer members believed that, providing that collective bargaining was promoted, it was for the workers to decide whom they wished to represent them. The existence of a higher number of agreements with non-unionized workers should not necessarily be seen

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as an indicator that governments were not taking appropriate measures to ensure that the position of trade unions in collective bargaining was not undermined.

- 122.** With reference to good faith, representativeness and the recognition of organizations, the Employer members, while agreeing that good faith by the parties to collective negotiation was important in achieving a meaningful outcome, did not accept that there was an obligation to bargain in good faith which implicitly presupposed an obligation to bargain. During the preparatory work for Convention No. 154, it had been said that good faith could not be imposed by law, but could only be achieved through the voluntary and persistent efforts of both parties. With regard to the recognition of organizations for collective bargaining purposes, it was disconcerting that the General Survey provided detailed explanations on recognition procedures and the criteria and thresholds for representativeness that would be acceptable. While it might be necessary to define rules on eligibility for collective bargaining at the national level, neither of the Conventions set out any such rules or obligations. Given the diversity of contexts for industrial relations, the specification of more concrete rules was not appropriate. The Committee of Experts was therefore making its own rules, rather than explaining those contained in the Conventions, and was therefore going beyond its mandate. In relation to the autonomy of the parties to collective bargaining and the principle of non-interference, the Employer members noted the criticism by the Committee of Experts of the excessive use of appeals respecting the constitutionality of collective agreements. While agreeing that the autonomy of the parties needed to be respected, the Employer members considered that this principle should also apply to the initial decision on whether or not to enter into negotiations.
- 123.** On the subject of collective bargaining procedures, the Employer members noted with interest the reference in footnote 197 to the preparatory work of Conventions Nos 151 and 154, during which it was agreed that the right to strike would not be dealt with. Accordingly, the Committee of Experts did not derive the right to strike from Conventions Nos 151 and 154. The Employer members called on the Committee of Experts to show the same respect for the preparatory work for Convention No. 87, which also showed that it did not deal with the right to strike.
- 124.** With regard to the content of collective bargaining, the Employer members emphasized that it should be for the workers and employers concerned to assess what was in their best interests to negotiate over. The list of subjects of bargaining suggested in the General Survey mainly reflected the priorities of workers. Greater efforts should have been made to include subjects of potential interest to employers, such as productivity increases, service improvements and cost-containing measures. Furthermore, the description in paragraph 337 of the lending conditions imposed on States by the international financial institutions was somehow distorted. It was not the lending conditions imposed that were affecting collective bargaining in public administrations, but the careless financial management by governments which had denied countries access to the normal credit markets and which was restricting the room for collective bargaining.
- 125.** With reference to the impact of the economic crisis on collective bargaining, the Committee of Experts had referred to an opinion by the CFA considering a three-year period of limited collective bargaining on remuneration a “substantial restriction”. While the Employer members agreed that, in line with the principle *pacta sunt servanda*, collective agreements should be fulfilled, they recalled that such agreements were concluded in a particular economic context. In unforeseen situations and extreme conditions, adaptations should be possible. Where the parties could not agree to adoptive measures, the State had the responsibility to take the necessary measures. The Committee of Experts failed to recognize that collective bargaining systems which proved unable to adapt to a crisis, or even aggravated the crisis, might require a more in-depth reform to make them more robust and sustainable in future. Neither of the Conventions considered

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set out any concrete rules on this subject. While there might be a need for advice, it could not therefore be derived from existing ILO Conventions. Once again, the Committee of Experts was giving opinions on economic policies and measures, which was outside its mandate and competence.

- 126.** On the subject of bargaining levels, the Employer members agreed with the indication in paragraph 351 that legislation imposing a level of bargaining raised problems of compliance with the Convention. However, it was unfortunate that most of the examples of collective bargaining systems referred to in the General Survey involved an obligation to bargain collectively, or other elements of compulsion, which gave the impression that compulsory collective bargaining in the public service was normal and even desirable. Coercion in relation to collective bargaining was incompatible with the principle of “voluntary negotiation” enshrined in ILO Conventions.
- 127.** Finally, the Employer members emphasized that, in “making a pressing appeal” to member States to ratify Conventions Nos 151 and 154 and giving its views on the importance of the two instruments, the Committee of Experts had exceeded its mandate and entered the sphere of politics, which was reserved for the ILO’s tripartite bodies. They once again called on the Committee of Experts to adhere to its technical mandate which, in the case of the General Survey, consisted of providing an overview of law and practice relating to the instruments under examination, including the status of compliance with those instruments by ratifying countries.
- 128.** Many Government and Worker members welcomed the General Survey, which they considered to be a very useful tool providing comprehensive information and guidance on issues that were of great importance in enhancing labour relations in the public service, and addressing issues that were of critical importance for public sector workers.
- 129.** The Government member of Ireland, speaking on behalf of the European Union and its Member States, as well as Bosnia and Herzegovina, Croatia, Iceland, The former Yugoslav Republic of Macedonia, Republic of Moldova, Montenegro, Serbia and Ukraine, welcomed the General Survey and considered that the information provided on national law and practice and the recommendations outlined would be very useful in finding a way forward. She recalled that employment relations in the public sector displayed a great variety across the European Union Member States. They were rooted in country-specific legal and institutional traditions, despite certain trends towards convergence, both between countries and between the public and private sector within each country. Within the diversity, the principle of freedom of association was a common denominator. The economic crisis had exercised some common pressures, but the process and severity of adjustments had differed between countries. She reaffirmed a strong commitment to the principles of freedom of association and collective bargaining, which were values fully shared by the European Union and its Member States, as well as the view that freedom of association and collective bargaining could only be fully developed in a democratic system in which civil liberties were respected. The aim of this discussion should be to provide strategic and action-oriented governance advice to the Office on the actions considered necessary and useful. The results of this discussion should feed into the recurrent discussion on social dialogue. The Office should concentrate on the identification of the challenges faced by member States. The capacity-building and assistance mechanisms at the disposal of the Office would significantly contribute to the full implementation of the social dialogue Conventions and the promotion of their ratification.
- 130.** The Government member of Australia, speaking on behalf of IMEC, reaffirmed the high level of importance placed by IMEC on the ILO supervisory system and its key role in facilitating the implementation of and adherence to international labour standards. The ILO supervisory system would be instrumental in ensuring a fair and balanced path towards

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economic recovery. The IMEC governments were committed to doing all they could, in cooperation with the social partners, to ensure the continued effectiveness of the Conference Committee, particularly in light of the events of the previous year. In that regard, with reference to the mandate of the Committee of Experts, he noted the statement in the foreword to the General Survey that the Committee's opinions and recommendations were "not binding within the ILO supervisory process and ... not binding outside the ILO unless an international instrument expressly establishes them as such or the supreme court of a country so decides of its own volition". He considered that this clarification, along with other explanations provided in the General Survey and the General Report, were constructive in taking this issue forward. While it was for the Committee of Experts alone to determine the scope of its comments, the General Survey this year provided a sound reference point for future reports. The IMEC governments were committed to facilitating a resolution of these issues and looked forward to further tripartite consultations after the Conference.

- 131.** The Government member of Colombia, speaking on behalf of the Governments of the Group of Latin American and Caribbean Countries (GRULAC), welcomed the General Survey on a subject of great interest. However, she noted that, in her view, the statement in paragraph 6 of the General Survey was highly debatable that the work of the Committee of Experts inevitably involved a degree of interpretation, as the Committee of Experts, in the same way as the other ILO supervisory bodies, lacked the legal competence to interpret ILO Conventions. That competence lay exclusively with the ICJ. She therefore renewed the call for the Committee of Experts not to exceed its mandate by interpreting Conventions, and added that in so doing it created legal uncertainty which might have the effect of discouraging States from ratifying Conventions. She also expressed concern at the statement in paragraph 6 that the opinions and recommendations of the Committee of Experts are not binding within the ILO supervisory process, and not binding outside the ILO unless an international instrument expressly established them as such, or the supreme court of a country so decided of its own volition. In hypothetical terms, such a statement was likely to increase legal uncertainty, and a document issued by the ILO should not create room for such hypotheses that were without basis or precedent. Moreover, there could be no basis for requiring a supreme court, in an autonomous and sovereign ruling in its capacity as the highest legal authority in a country, to share the non-binding opinions or recommendations of the Committee of Experts on any of the ILO Conventions. In such a case, what would be binding for the country concerned would not be the opinion or recommendation of the Committee of Experts, but the decision of the supreme court.
- 132.** With regard to paragraph 8 of the General Survey, she voiced deep concern at the reference to the statement by the Committee of Experts, previously made in 1990, that in so far as its views were not contradicted by the ICJ, they should be considered as valid and generally recognized. The Committee of Experts had reconsidered that statement in 1991, emphasizing that it did not consider that its opinions had the same authority as the decisions of a judicial body and that, in making its previous statement, its intention had been to highlight the fact that member States should not reject its opinions concerning the application of a provision of a ratified Convention while at the same time refraining from using the procedure established in article 37 of the ILO Constitution to obtain a definitive interpretation of the Convention in question. Making that reference in paragraph 8, without referring to the clarification of 1991, caused confusion and was unhelpful in trying to resolve the differences regarding the status of the views of the Committee of Experts. The Office should be very careful in publishing reports that did not contain all the necessary information for constituents to form their opinions in relation to international labour standards, as it placed at risk the principle of legality, and consequently of legal certainty for the proper functioning of the ILO.

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- 133.** The Government member of the Russian Federation considered that the General Survey was an excellent source of useful information. It described clearly those cases in which the right to bargain collectively in the public services, as recognized in ILO Conventions, was subject to restrictions, particularly in the current context of economic crisis. In that regard, failure to respect labour rights, including collective bargaining, should not be accepted on the pretext that it was necessary to overcome the effects of the crisis. He recalled the concern expressed by trade unions at the growing use of atypical forms of employment in the public sector, which could lead to a deterioration in workers' rights. Governments should be alert to the issue and strike a fair balance. He added that the Committee of Experts should follow the advice of the Employer members and not lay itself open to criticism that it was exceeding its technical mandate, particularly by avoiding addressing issues of an essentially political nature. He concluded that the General Survey was of interest to member States that had ratified the relevant Conventions and wished to improve their national legislation and policy in compliance with international labour standards.

***Application of the instruments in practice  
through different systems and under differing  
national conditions***

- 134.** Many speakers described the different systems for the application of the instruments on labour relations and collective bargaining in the public service, and highlighted the specific problems encountered at the national level. Several Government members noted improvements in consultation and bargaining in the public sector, even without ratification of the respective Conventions.
- 135.** The Government member of Morocco said that freedom of association for public officials had been legally recognized in his country since 1957. The new Constitution now embodied the right to collective bargaining and four tripartite national social agreements had been concluded between 1996 and 2011 to regulate a range of issues. Accordingly Morocco, which had already ratified Conventions Nos 98 and 154, had just deposited the instrument of ratification of Convention No. 151.
- 136.** The Government member of Tunisia indicated that the right to collective bargaining in the public sector had been widely respected since 1990 and was granted on an equal footing with the private sector. Tunisia had ratified Convention No. 154 and, in 2013, had become the first Arab State to ratify Convention No. 151. The Tunisian trade union movement had seen the creation of a multitude of organizations since 2012, which could raise questions as to their nature and representativeness. The Government hoped to receive ILO technical assistance to address those issues.
- 137.** The Government member of Algeria said that his country had introduced a new statute for the civil service in 2006, which had been the subject of extensive consultations between the Government and the most representative trade union in the sector. The statute guaranteed civil servants various rights, including freedom of opinion, freedom of association and the right to strike, along with protection against threats, abuse and defamation. Under the overall statute, 59 individual statutes had been adopted between 2008 and 2012. Civil servants participated in managing their own career progression through an institutional framework that included independent joint administrative committees, appeals bodies and technical committees. The institutional framework in the civil service included the Higher Council for the Civil Service, which was a dialogue body.
- 138.** The Government member of Libya described the efforts made in his country to update and develop its labour legislation. A draft Labour Code had been prepared, which took into account the Arab and international Conventions ratified by his country. The draft Labour Code would be submitted to the ILO for examination and any observations would be taken

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into account. A new bill on trade unions was also being prepared, which would provide for freedom of association. The Civil Service Law was also being updated and occupational safety and health legislation developed.

- 139.** The Government member of the Islamic Republic of Iran said that, although his country had not ratified the two Conventions, his Government had constantly strived to eliminate any form of discrimination against public sector employees, especially with regard to their terms and conditions of employment. Among other measures, an independent administrative court of justice had been established to examine all claims by public sector employees relating to their social and labour rights.
- 140.** The Government member of Kenya indicated that, while Kenya had not ratified Conventions Nos 151 and 154, a consultative process was being followed with the social partners concerning their ratification and the new Constitution established institutions and processes to ensure the observance of trade union rights and facilities in the public service.
- 141.** The Government member of Senegal observed that collective bargaining took place in her country in both the private and public sectors and had resulted in the conclusion of collective agreements at the establishment, enterprise, occupational and inter-occupational levels. Widespread unionization in the public sector contributed to the regular conclusion of agreements. A number of good practices, including the consultation of independent bodies, such as the National Committee for Social Dialogue, and the conclusion of the National Social Dialogue Charter, had been commended by the Committee of Experts. Some important measures had been adopted with respect to certain restrictions on the right to bargain collectively in the public sector. Although Senegal had not ratified Conventions Nos 151 and 154, the national legislation recognized the right to bargain collectively.
- 142.** The Government member of Cameroon said that, although her country had not yet ratified Conventions Nos 151 and 154, steps had been taken in practice to enable civil servants to exercise their rights. A number of decrees adopted in 2000 and 2001 set out the operational procedures of the Superior Council on the Public Service, where discussions were held on the revision of wages and social benefits, statutory rules regarding civil servants' careers, the functioning of the civil service disciplinary board and of joint administrative committees. The right to organize in the public service was governed by Act No. 68/LF/19 of 1968 on associations or trade unions not covered by the Labour Code, under which the establishment of a trade union of public servants was subject to approval by the Minister for Territorial Administration and Decentralization. That was not consistent with the provisions of Convention No. 87, which Cameroon had ratified, and the Government was accordingly in the process of revising the Labour Code and drafting a bill dealing specifically with trade unions that would allow them to be established on the basis of a simple declaration, as required by international standards. The Government was relying on technical support from the international community in several areas with a view to applying ILO standards more effectively.
- 143.** The Government member of the Democratic Republic of the Congo emphasized that, although it had not yet ratified the Conventions covered by the General Survey, his country applied the principles that they embodied. For example, the 2006 Constitution reaffirmed freedom of association as a citizens' right, and the regulations governing trade union activities in the public administration had been updated in 2013. Moreover, the new bill issuing the statute of the public service embodied the principle of collective bargaining in the public service.
- 144.** The Government member of South Sudan said that her country was taking measures towards the ratification of Conventions Nos 87 and 144. The transitional Constitution contained provisions on collective bargaining and freedom of association, and a Labour

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Advisory Working Group had been established to discuss issues relating to both the private and public sectors. She emphasized the importance of opening pathways for dialogue to achieve further progress and considered that strikes should be seen as a measure of last resort.

- 145.** The Government member of India stated that the right to unite for a common cause and freedom of association had been recognized and effectively protected in his country since the adoption of the Trade Unions Act, 1926. Collective bargaining had been an effective method used by trade unions in India for improving working conditions and collective agreements could be made enforceable if they were registered with the appropriate government. In his view, ratification was a governance issue, as member States could be at different stages of development and could be faced with diverse socio-economic realities. Non-ratification of some of the core or governance Conventions should not therefore be considered as absence of compliance with the principles enshrined in those instruments. His Government remained committed to the ILO Declaration on Fundamental Principles and Rights at Work and would continue to follow socially oriented policies upholding the principles of tripartism and social dialogue.
- 146.** The Government member of Sri Lanka indicated that, while collective bargaining and dispute settlement procedures existed in her country, as established in the Industrial Disputes Act, that was not the case in the public sector. The situation had been addressed by some remedial actions with ILO assistance, including the setting up of a tripartite committee to discuss issues relating to collective bargaining and dispute settlement in the public sector.
- 147.** The Government member of the Republic of Korea said that, in her country, the rights of association and collective bargaining for public officials and teachers were guaranteed by special laws, in accordance with ILO principles. Once established, in the Republic of Korea, a trade union was automatically granted the right to bargain collectively. Unions could request the Labour Relations Commission to settle labour disputes and resolve cases of unfair labour practices by employers. Moreover, employers had an obligation to engage in the bargaining process when so requested by a union. Due to this unique nature of the system, it was necessary to check whether union by-laws complied with the respective laws, and whether the union and the employer were the legitimate parties for collective bargaining in order to reduce unnecessary conflicts. In practice, there were over 100 unions of public officials and teachers operating in the country. Unlike other workers, the Constitution established the obligation of impartiality for public officials and teachers, while their employment security and working conditions were guaranteed by law. Public officials were career civil servants and the system aimed to ensure political impartiality by preventing them from being affected by political pressure. Public officials were therefore prohibited from engaging in political activities in favour of a specific political party or a politician.
- 148.** The Government member of Brazil said that the ratification of Convention No. 151 by his country represented a victory for the trade union movement in the public sector. Collective bargaining in the public sector had specific characteristics as a result of the dual function of the State as employer and public authority, with responsibility for allocating and managing the resources available. The Ministry of Labour and Employment, the Public Ministry of Labour and the ILO Office had organized a seminar in Brazil on democratizing the State, with the participation of the social partners, during which the Government had provided information on setting up forums for dialogue and bargaining in the public sector.
- 149.** The Government member of the Bolivarian Republic of Venezuela emphasized that his Government was socially oriented, progressive and supportive of trade unions and had always fully recognized collective bargaining in the public administration. With regard to

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the criticisms made of his country, he emphasized that care was needed to ensure that such comments were accurate, truthful, objective and based on collective interests for the benefit of public sector workers. Any difficulties that arose in relation to widespread trade union participation and collective bargaining were always dealt with by seeking collective solutions. Although his country had not ratified Conventions Nos 151 and 154, their provisions were taken into account. The national legislation contained provisions that were beneficial, advanced and progressive for the protection of workers and the recognition of the role of trade unions.

- 150.** The Government member of Cuba reaffirmed that there were no restrictions on the exercise of the right to bargain collectively in her country. Collective agreements were approved by workers' assemblies, and trade union representatives, workers and workplace administrations had complete autonomy and independence to submit, discuss and approve the subjects covered. Trade union representatives also participated in the process of drafting labour and social security legislation. The voluntary nature of the process of drafting, amending or revising collective agreements and the full autonomy of the parties in that process were confirmed by law. Arbitration would only apply when requested by the parties of their common accord, although that had not yet happened.
- 151.** The Government member of Colombia recalled that, following the adoption of Decree No. 1092 in 2012, over 30 workshops had been held, attracting many trade union participants and covering a large part of the public sector. A list of demands had been submitted and, after a long negotiation process, had led to the signing of a national agreement covering five thematic areas, including the amendment of Decree No. 1092, wages for the period 2013–14, strengthened careers in the public service, the participation of the social partners and the formalization of employment. The agreement had been the result of a constructive process and was welcomed by the Government.
- 152.** The Government member of the Czech Republic indicated that the relevant Conventions had been discussed by the Czech tripartite partners, although no consensus had been reached regarding their possible ratification. Among the major points of discussion were: the mechanism through which trade unions might be consulted in the case of draft legislation affecting working conditions or terms of employment, where the legislative initiative had been taken by actors other than the Government; the modalities of dispute settlement; and the relationship between collective bargaining on remuneration and the preparation and adoption of the state budget.
- 153.** The Government member of Germany explained that collective bargaining in the public sector in his country was a complex issue. He added that his Government agreed entirely with the main goals of Convention No. 151 and, with regard to freedom of association, all the necessary conditions were fulfilled for employees in the public sector, as the Constitution established the right to improve and promote working conditions and to join an association. However, those provisions only applied to the working conditions of workers and employers. The terms and conditions of employment of civil servants were regulated by the Government. The Constitution allowed no room for manoeuvre in that respect, for which reason his country was not in a position to ratify Convention No. 151. Germany also approved of the goals of Convention No. 154 and considered that the determination of working conditions should be left to the parties to collective agreements to the greatest possible extent. Nevertheless, as the terms and conditions of employment of civil servants were laid down by law, and not collective bargaining, under the terms of the Constitution, the ratification of Convention No. 154 could not be envisaged.
- 154.** Many of the Worker members who took the floor made an urgent call for governments to pursue the widespread ratification of Conventions Nos 151 and 154 and to take effective

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action for their implementation in practice. They expressed support for the call for an ILO sectoral programme of action on labour relations in the public service.

- 155.** A Worker member of Italy, speaking on behalf of Public Services International, considered that there was a concerted global attack on the public sector, with austerity measures and privatization being used to weaken trade unions and workers' rights. Anti-union tactics had now spread from the private to the public sector and included: the loss of autonomy of trade unions through government interference in their election processes; smear campaigns against trade unions and their leaders; the criminalization and prosecution of protest action; the creation, at all levels, of new trade unions for the political control of workers; the deregulation of public employment; and the de-institutionalization of social dialogue and tripartism, and their replacement by policies imposed by employers and selective dismissals. There were examples in many countries of the denial of registration of trade unions in the public sector, their suppression by governments, killings without the prosecution of those responsible, attacks resulting in decreased union membership, the deterioration of wages and pensions for public sector and health workers, strict anti-strike laws and threats for participating in demonstrations. Substantial categories of public employees were denied the right to bargain or were subjected to severe restrictions. The practices of outsourcing, short-term contracts and consultancy contracts, which were now increasingly present in the public sector, were breaking the mould of an independent public service that delivered high-quality public services for inclusive, transparent and democratic societies that were free of corruption. A Worker member of Nicaragua, speaking on behalf of Education International, highlighted the fundamental role of freedom of association and collective bargaining for the education sector, both public and private. The Committee of Experts recognized that teachers in the public sector should enjoy the right to collective bargaining, whether or not they were public servants. Those who fulfilled technical and administrative functions in the education sector should also enjoy the same right. The ILO–UNESCO Recommendation concerning the Status of Teachers contained a requirement that both the salaries and working conditions of teachers should be determined through negotiation.
- 156.** A Worker member of Argentina, speaking on behalf of the Latin American and Caribbean Official Workers' Confederation (CLATE), emphasized the need to guarantee the effective exercise of the right to collective bargaining in the public sector, as public employees in Latin America were frequently still dependent on the unilateral will of the Government. It was particularly important to guarantee stable employment with a view to protecting public employees from the tendency of governments to resort to mass dismissals with every change of administration and avoiding trade union persecution and discrimination. With regard to the resolution of disputes in the public service, he emphasized that the State should not be both judge and jury. If a strike in the public sector was declared illegal, that should not be done by the Government, but by an independent body which had the confidence of the parties involved. An observer, speaking on behalf of the Confederation of University Workers of the Americas, added that non-teaching staff at public universities in Latin America were one of the sectors with the highest rates of trade union membership. However, he warned that any move to transfer the costs of a crisis created in the private sector onto the public sector should be opposed, and emphasized that Latin American workers expected support from the region's governments.
- 157.** Several Worker members described specific cases in which the rights of public employees to participate in the determination of their terms and conditions of employment had come under attack and emphasized that while, before the crisis, the use of precarious forms of employment had been increasing, it was now well rooted and spreading widely across the public and private sectors. As a result, opportunities for workers to join unions and bargain collectively had dropped considerably. For example, in the United Kingdom, there was an increase in the use of fixed-term contracts, and an even greater increase in the use of

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agency staff, who had no real rights to collective bargaining or employment protection. The Government had removed collective bargaining on pay and working hours for teachers some decades ago. Teachers' unions could only make "representations" to an independent body, which itself merely made "recommendations" to the Government, which took the final decision. In Denmark, recent negotiations for the renewal of the collective agreements of teachers had been settled in advance between the Government and public employers in the local authorities. During the negotiations, the employers had locked out all teachers for four weeks, with the lockout being ended by a Government decree which corresponded to the demands of employers, but did not take into account the views of the workers. The Government and public sector employers had been able to use Government powers to alter the bargaining system in the public sector. In Ireland, in February 2013, some 800 bank workers had lost their jobs overnight as a result of a law terminating their employment. This law had closed down the bank which, for several years, had been the property of the State, and had unilaterally withdrawn the collective agreement, including the rights that it established concerning termination of employment. In the United States, systematic attacks had been made in some states on collective bargaining in the public sector, particularly in Wisconsin where, in 2011, the Governor and legislature had generated a budgetary crisis and then used that crisis to ban almost all collective bargaining in the public sector. However, the General Survey had failed to capture those developments, or even to mention Wisconsin. In Australia, which had escaped the worst of the global economic crisis and austerity measures, there had also been attacks on the fundamental rights of public employees. For example, in both Queensland and New South Wales, legislative measures had been adopted which moved their respective Governments further away from compliance with Convention No. 87 by restricting the already limited rights in the public service to take industrial action, without genuine prior consultation with the relevant unions. In France, where the public services were the guarantors of republican values, independence and secularism, social cohesion and the exercise of fundamental rights and the fight against inequality, they were under attack from all sides and the general reform of public policies had led to massive job losses. Collective bargaining in the public service was above all consultative, and in no way binding on the employer. The wage freeze for public servants decided upon in 2010 had been the result of a unilateral decision by the State as employer. In Germany, a general prohibition of the right to strike was in violation of article 9(3) of the German Constitution. It was therefore unacceptable that a ruling of the Constitutional Court prevented certain categories of workers from striking in the public sector and that the country had refused to ratify Conventions Nos 151 and 154. In Belarus, social dialogue existed at all levels, as the Labour Code provided for collective bargaining, and 96 per cent of the working population were covered by collective agreements. However, the country was facing problems common to many other countries, including budgetary cuts, the ageing of the population and the acquisition by foreign investors of enterprises previously owned by the State, which wiped out the collective agreements concluded previously.

- 158.** Several Worker members from Asian countries agreed that public sector collective bargaining rights and labour relations had come under attack as globalization had led governments to engage in downsizing and the casualization of public sector employees, for example through subcontracting. While it was important to emphasize the right to collective bargaining for public employees, collective bargaining alone had no power without the fundamental and basic right to strike. The employment of public servants on a temporary, recurrent, fixed-term or part-time basis gave rise to discrimination among civil servants, as employees who could not bargain collectively received lower wages, did not receive pensions and did not benefit from the social security measures and other rights enjoyed by civil servants employed on a permanent basis. These forms of employment had a negative impact on the exercise of trade union rights, as demonstrated in Indonesia by the arrest of three members of the Confederation of Indonesia Prosperity Trade Unions (KSBSI) in early 2013, following a strike called to protest against the dismissal of

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363 outsourced workers. In the Republic of Korea, despite the fact that labour law was based on the principle of the autonomy to establish trade unions, the authorities had cancelled the registration of the Korean Government Employees' Union (KGEU) three times since 2009 on the grounds that its membership included dismissed workers. In so doing, the Government had in practice denied collective bargaining for public officials for the last five years. It had also threatened to cancel the registration of the Korean Teachers and Education Workers' Union (KTU). The Government determined the wages and working conditions of public sector workers through budgetary directives, thereby denying the right to bargain on these issues, while the exercise of trade union rights was all but impossible for precarious public sector workers. The central administration and public sector employers had also engaged in systematic union busting through the unilateral cancellation of collective agreements, the development of pro-company unions and physical and psychological intimidation. Hundreds of public sector workers had been dismissed in retaliation for union activities.

- 159.** Several Worker members from Latin American countries observed that the attitude of the Employer members towards the General Survey showed just what trade unions were up against in their efforts to defend the interests of public sector employees. Ever since the 1980s, the dismantling of the State had been the prime concern of governments throughout the world, with the privatization, outsourcing and flexibilization of public services. Despite the emphasis placed by the General Survey on the need to respect civil liberties in order to promote freedom of association, the trade union movement was being penalized in Latin America and trade union leaders were persecuted and their human rights violated. There was a significant delay in discussing collective bargaining in the public administration in the Bolivarian Republic of Venezuela. If collective bargaining in the public administration was to have a future, there needed to be increased participation by the social partners in the planning, implementation, evaluation and follow-up of public policy. In Peru, a Civil Service Bill had been tabled on which there had been no prior consultation with the trade unions. The Bill proposed to remove both the right to bargain collectively and the right to strike, while encouraging the dismissal of employees. Because there had been no social dialogue on the subject, Peruvian workers had gone on strike, which was the only means left to workers to uphold their labour demands. In Colombia, 15 years after the ratification of Conventions Nos 151 and 154, the workers had succeeded in persuading the Government to regulate collective bargaining through a legislative decree, under which a national agreement had been concluded. However, restrictions and difficulties hampered the exercise of freedom of association in the country. When Decree No. 1092 of 2012 had eventually been adopted, it failed to meet the expectations of the workers, as it contained gaps and excessive prohibitions. Under the Decree, the administration could unilaterally determine the nature of any dispute and most issues were excluded from bargaining. It was hoped that the Decree would be amended appropriately and that agreement would be reached through social dialogue in determining the terms and conditions of employment of public employees in the light of ILO instruments. In the vast majority of public institutions in Colombia, the increasingly precarious nature of employment effectively prevented genuine collective bargaining. In Chile, Convention No. 151 had been ratified in 2000 following an extensive process of collective consultation at the national level. However, since then no progress had been made in amending the national legislation to give effect to the Convention. The constitutional prohibition on public officials joining trade unions, engaging in collective bargaining and going on strike remained in place, as did the related administrative penalties, including dismissal. Several draft laws would also strengthen exceptions, such as the State Domestic Security Act, under which the disruption of public services was a criminal offence. Furthermore, over 11,000 public officials had been arbitrarily dismissed for political reasons since 2010 and anti-union practices had become widespread. Temporary and precarious work had increased and currently affected 70 per cent of public employees. A series of Bills to restructure numerous public services had recently been tabled, which would involve changing the working and contractual

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conditions of thousands of workers, encouraging outsourcing and privatization processes and increasing the precariousness of public officials. The views of the trade unions had not been taken into account.

- 160.** The Employer member of Denmark, in response to the Worker member of Denmark, explained that, pursuant to the collective agreement signed by both parties in the teaching sector, the right to strike or lockout could be exercised as a legal means of resolving a conflict arising during collective bargaining, but only following a secured period of negotiations. For the employers, it was a matter of priority to change the collective agreement in respect of working time. The parties had failed to reach agreement and the lockout had been declared. After 28 days of conflict, involving about 50,000 teachers and nearly 500,000 pupils, the Government had ended the conflict by decree. No complaints had been submitted to the labour court by trade unions in this respect.
- 161.** The Employer member of Austria, with reference to paragraph 59 of the General Survey, said the CFA had no role in assessing compliance with ILO Conventions or in explaining their contents. He added that the views expressed by the Committee of Experts concerning “high-level employees”, including the need to interpret the notion of confidentiality and the terms “policy-making or managerial functions” restrictively, were outside its mandate. He called on the Committee of Experts to refrain from questioning the content of Conventions and replacing it with its own views.

### ***Concluding remarks***

- 162.** The Employer members recalled that the preparation of General Surveys was a very important function of the Committee of Experts, and reiterated their appreciation for this work. The outcome of the present discussion should reflect several elements. Firstly, the purpose of General Surveys was to provide an overview of law and practice in relation to the Conventions examined. Remarks addressing the usefulness of specific provisions of these Conventions, or calls for their ratification fell outside the scope of General Surveys and should therefore be avoided. Secondly, the Committee of Experts should avoid citing the views of the CFA in light of the latter’s mandate and role. While the CFA occupied an important place in the work of the ILO, its comments were directed at specific national situations which could not be generalized. Moreover, the Committee of Experts should avoid calling for actions unrelated to compliance with Conventions or which exceeded their scope. In recognition of the important work of the Committee of Experts as a key component of the ILO supervisory system, the Employer members encouraged it to adhere to its technical mandate by providing an overview of the law and practice of the instruments examined in General Surveys, including the status of compliance in ratifying countries.
- 163.** The Worker members recalled the events that had marked the work of the Conference Committee in 2012 and the difficult circumstances that had since prevailed. In this regard, dialogue was more necessary than ever and the discussions held within the Conference Committee formed part of the follow-up within the Governing Body. While it was unlikely that a solution would be found during the current session of the Conference, work was under way in this respect outside the Conference Committee. The Worker members had high hopes of finding an acceptable and balanced tripartite solution in order to preserve the role of the ILO as the organization that set standards and was vested with sufficient powers to guarantee their application in both law and in practice. It was not therefore appropriate to open or continue that debate within the Conference Committee, which was mandated to address issues of application. In conclusion, the Worker members reaffirmed their unconditional support for the ILO’s primary mandate, which was to promote social justice and implement the fundamental principles and rights at work.

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- 164.** In his reply to the discussion on the General Survey, the Chairperson of the Committee of Experts emphasized the active role played by trade unions in various countries in the promotion of the principle of freedom of association and collective bargaining. He observed that many Worker members had expressed concern at the negative impact of economic and financial crises on the rights and interests of workers in general, and more specifically the enjoyment of freedom of association and collective bargaining in the public sector. A significant number of Worker members had provided helpful information about serious cases of discrimination against and interference with trade union management and activities in the public sector. They had emphasized the requirement for legal provisions to ensure freedom of association and collective bargaining in the public sector to be accompanied by their effective implementation. The role of the ILO supervisory mechanisms was crucial in this respect.
- 165.** Turning to the points of criticism of the General Survey by the Employer members, he considered that they were very thought-provoking and legally interesting. They would be brought to the attention of the members of the Committee of Experts at its next session, and could be discussed during the special sitting of the members of the Committee of Experts and the two Vice-Chairpersons of the Conference Committee. Nonetheless, he wished to address briefly certain points raised by the Employer members. Concerning the mandate of the Committee of Experts, the position of the Committee of Experts was clearly explained in its General Report of 2013 and particularly paragraph 33(a), which read: “The terms of reference of the Committee of Experts call for it to examine a range of reports and information in order to monitor the application of Conventions and Recommendations. In fulfilling this responsibility, the Committee must bring to the attention of the Conference Committee on the Application of Standards any national laws or practices not in conformity with the Conventions, including the severity of certain situations. This logically and inevitably requires an assessment, which in turn involves a degree of interpretation of both the national legislation and the text of the Convention”. By this statement the Committee of Experts showed that it was well aware that the views of the Committee of Experts were not legally binding and that the power of authoritative, legally binding interpretation of the Conventions was vested with the ICJ under article 37 of the ILO Constitution. Turning to the right to strike, he pointed out that the views of the Committee of Experts had been extensively developed in the Chapter dealing with Convention No. 87 in the 2012 General Survey, and particularly in paragraphs 117–122. Concerning the legislative history, the position of the Committee of Experts had been briefly explained in paragraph 118. With regard to the point raised by the Employer members concerning the question of why the Committee of Experts had referred, in paragraph 308 and footnote 197 of the 2013 General Survey, to the preparatory work concerning Conventions Nos 151 and 154, but had not respected the preparatory work in the same way for Convention No. 87, he indicated that careful analysis and discussion were required during the next session of the Committee of Experts in order to provide a reply to this point.

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- 166.** A brief summary and the outcome of the discussion on the General Survey concerning labour relations and collective bargaining in the public service were presented by the Officers of the Committee on the Application of Standards to the CDS on 8 June 2013. The text of the outcome is set out below.

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## **Outcome of the discussion on the General Survey concerning Labour Relations and Collective Bargaining in the Public Service**

- 167.** Upon consideration of the General Survey concerning the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154), prepared by the Committee of Experts on the Application of Conventions and Recommendations in light of the 2008 Declaration on Social Justice for a Fair Globalization, the Committee on the Application of Standards took note of the rich discussion that took place and the diversity of views reflected on the different issues raised by the General Survey and agreed on the following outcome of its discussion, which it would like to bring to the attention of the CDS:

The Committee welcomed the comprehensive General Survey prepared this year by the Committee of Experts which touches upon many important issues relevant to the public service today. The Committee on the Application of Standards expressed its strong attachment to the principles of freedom of association and collective bargaining and emphasized that these rights can only be fully developed in a democratic system in which civil liberties are respected.

The Committee recalled that Convention No. 151 permits ratifying States to choose between collective bargaining mechanisms for the public service and other methods which would allow representatives of public employees to participate in the determination of their terms and conditions of employment, for example consultation.

Convention No. 154, on the other hand calls for the progressive promotion of collective bargaining in all branches of activity, and permits special modalities of application for the public service. The Convention can be applied through diverse national labour relations systems.

The Committee highlighted that collective bargaining in the public, as in the private sector should be conducted in accordance with the principles of free, voluntary and good faith negotiation.

Collective bargaining in the public service can maximize the impact of the responses to the needs of the real economy and be of particular importance during times of economic crisis.

Collective bargaining contributes to just and equitable working conditions, harmonious relations at the workplace and social peace. By facilitating adaptation to economic and technological changes and the needs of administrative management, it represents an effective instrument for ensuring an efficient public administration, which in turn is important to ensure conditions conducive for sustainable enterprises and citizen rights.

Collective bargaining may cover a broad range of subjects of interest both to workers and to employers, including: fundamental rights, wages and working conditions, maternity protection, gender equality, family responsibilities, productivity, workplace adaptations and much more.

The Committee observed that governments could benefit from advice on, and sharing experience with respect to different collective bargaining mechanisms which assist in the adaptation of systems for the promotion of collective bargaining appropriate to national conditions. Support for capacity-building and assistance mechanisms by the Office can significantly contribute to the full implementation of these standards and towards the promotion of their ratification.

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#### **D. Report of the Joint ILO–UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART)**

- 168.** The Worker members supported the recommendations of the CEART report, which had noted several trends pointing to a deprofessionalization of teachers. First, there was an influx of unqualified teachers in many countries, partially as a result of emergency short-term measures to close the teacher gap. Such short-term solutions had become established practice, leading to a lack of qualified teachers. In some central African countries, for example, only a small percentage of teachers possessed full qualifications. This trend was also accompanied by the rising perception that teaching did not require qualifications or training, but could be delivered by anyone following a script. A second trend picked up by the CEART report was the increasing use of short-term contracts, with reduced pay and benefits in relation to regular teachers. Such employment conditions were in line with the structural adjustment strategies promoted by international financial institutions seeking to reduce public spending, as well as misguided efforts to create better “accountability” of teachers through increased employment insecurity. A further trend was the increasing gap between teachers’ pay and remuneration in other sectors. The CEART report noted the continuing decline of teacher salaries, and in some countries teachers had difficulty accessing their pay, especially in rural locations. This not only deterred people from entering the profession, but dissuaded teachers from remaining in it. The economic crisis had exacerbated this situation, especially in Europe, where in a number of countries, teacher salaries and benefits had declined. Moreover, cuts in teacher salaries were carried out without negotiation.
- 169.** The further trend the CEART report had noted was the restriction of teachers’ professional autonomy. Curricula were narrowing, teacher preparation time was being reduced, and “teaching-the-test” curricula were prescribing not only what to teach, but how to teach. This was linked to the rapid spread of standardized testing, which was imposed as a means of quality assurance. Schools and teachers were being assessed by learning outcomes, and some of these assessments were high-stake evaluations linked to merit pay schemes and school ranking and funding. Regrettably, teacher assessment policies were often established without consulting teachers. Although social dialogue mechanisms often existed to deal with such matters, they were not always used. Finally, the CEART report had noted the increased use of private sector management approaches in education, which ranged from the use of private sector techniques and practices to the outright use of private entities to design, deliver, and manage education services. All of these trends had led to a reduced influence and status of teachers as professionals. The OECD had recently concluded that countries with high educational performance were more likely to work constructively with teachers as professional partners in shaping education policy. Social dialogue was therefore a powerful tool for education reform, especially in times of crisis.
- 170.** The Employer members noted that the CEART report allowed the Committee on the Application of Standards to examine work issues in the highly important education sector. His group agreed with the CEART’s conclusion that education opportunities should not be sacrificed to the demands generated by the economic crisis. The Employer members shared the objectives of developing a professional teaching force with good working conditions. Further trends which needed to be taken into account were the increasing use of information and communication technology in teaching and learning; increased demand for higher education; increasing teacher and student mobility; and the growing pressure to align higher education with the demands of the workplace. These trends required teachers to be passionate, up to date and motivated. Violence in schools was a worrying trend which undermined teacher performance, and should be rapidly dealt with at the national level.

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- 171.** According to the Employer members, the CEART report noted that social dialogue should be used positively to deal with measures necessary under the financial crisis affecting numerous countries. The strength of social dialogue was the numerous forms it could take; it could not be forced and did not necessarily mean collective bargaining agreements. As the Employer members had pointed out at the 316th Session of the Governing Body (November 2012) , they did not agree with the language used in the recommendation concerning an allegation made by the National Teachers' Federation of Portugal, which stated that austerity measures should not be used as an excuse to "violate" principles of the Recommendations concerning the status of teachers. Such a term was inappropriate for a non-binding instrument. It was furthermore not within the CEART's mandate to make recommendations about austerity measures without a full understanding of the context. The Employer members also did not agree that part-time teaching was the same as precarious employment, as paragraph 27 of the report suggested. The speaker concluded by stressing the continued relevance of the 1966 and 1997 Recommendations and the need for regular tripartite discussions on the vital subject which they covered.
- 172.** A representative from Education International indicated that in Honduras, the lack of social dialogue and the implementation of anti-union policies significantly affected the quality of education and teachers' unions. This was reflected by the disrespect of teachers' status, the freezing of salary increases, the non-payment of wages, the suspension of exams for the posts of teachers, and the recruitment of people with no proper training and qualifications. The approval of a law by the Honduran government on social security for teachers, replacing the former pension system that was more favourable to teachers, coincided with an ongoing campaign of vilification and persecution of teachers. In this respect, teachers' union leaders had been subject to threats and denial of union leave. In March 2011, a teacher union activist had been killed in a demonstration. It was furthermore feared that Antonio Casaña, President of the Professional Association of School Teachers of Honduras (COPRUMH), might be dismissed for attending the present Committee.
- 173.** The Government member of Sudan noted the importance of sound collective bargaining in the public service.

## **E. Compliance with specific obligations**

- 174.** The Chairperson explained the working methods of the Committee for the discussion of cases of serious failure by member States to respect their reporting and other standards-related obligations.
- 175.** The Worker members indicated that the failure of member States to respect their reporting obligations was regrettable and constituted a serious situation. The Governments concerned had to comply with their obligations as soon as possible and the Office had to provide assistance to them to this end.
- 176.** The Employer members insisted that non-compliance with the obligation to send reports hampered the operation of the supervisory system. The majority of reports – 69.53 per cent of those requested under article 22 of the ILO Constitution and 89.78 per cent of those requested under article 35 – had been received. However, ten countries had not submitted reports that had been due for two years. For the system to function properly, reports needed to be presented periodically with high-quality information, and countries needed to consider the implication of ratifying a Convention carefully, as they were also responsible for reporting on its application. To that end, technical assistance from the Office should be maintained in order to lighten governments' workloads in terms of reporting obligations.

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- 177.** In examining individual cases relating to compliance by States with their obligations under or relating to international labour standards, the Committee applied the same working methods and criteria as last year.
  - 178.** In applying those methods, the Committee decided to invite all governments concerned by the comments in paragraphs 51 (failure to supply reports for the past two years or more on the application of ratified Conventions), 57 (failure to supply first reports on the application of ratified Conventions), 60 (failure to supply information in reply to comments made by the Committee of Experts), 116 (failure to submit instruments to the competent authorities), and 125 (failure to supply reports for the past five years on unratified Conventions and Recommendations) of the Committee of Experts' report to supply information to the Committee in a half-day sitting devoted to those cases.

### **Submission of Conventions, Protocols and Recommendations to the competent authorities**

- 179.** In accordance with its terms of reference, the Committee considered the manner in which effect was given to article 19, paragraphs 5–7, of the ILO Constitution. These provisions required member States within 12 or, exceptionally, 18 months of the closing of each session of the Conference to submit the instruments adopted at that session to the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action, and to inform the Director-General of the ILO of the measures taken to that end, with particulars of the authority or authorities regarded as competent.
- 180.** The Committee noted from the report of the Committee of Experts (paragraph 114) that considerable efforts to fulfil the obligation to submit had been made in certain States, namely: Cambodia, Colombia, Cyprus, Ethiopia, Ghana, Turkmenistan and Uzbekistan. In addition, the Conference Committee received information about the submission to the national Parliament from the Government of Ukraine.

### **Failure to submit**

- 181.** The Committee noted that, in order to facilitate its discussions, the report of the Committee of Experts mentioned only the governments which had not provided any information on the submission to the competent authorities of instruments adopted by the Conference for seven sessions at least (from the 91st Session in June 2003 to the 100th Session in June 2011, because the Conference did not adopt any Conventions and Recommendations during the 93rd (2005), 97th (2008) or 98th (2009) Sessions. This time frame was deemed long enough to warrant inviting Government delegations to the special sitting of the Conference Committee so that they may explain the delays in submission.
- 182.** The Committee noted the regret expressed by several delegations at the delay in providing full information on the submission of the instruments adopted by the Conference to parliaments. Some governments had requested the assistance of the ILO to clarify how to proceed and to complete the process of submission to national parliaments in consultation with the social partners.
- 183.** The Committee expressed great concern at the failure to respect the obligation to submit Conventions, Recommendations and Protocols to national parliaments. It also recalled that the Office could provide technical assistance to facilitate compliance with this constitutional obligation.

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- 184.** The Committee noted that 33 countries were still concerned with this serious failure to submit the instruments adopted by the Conference to the competent authorities, that is, **Angola, Bahrain, Bangladesh, Belize, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, El Salvador, Equatorial Guinea, Fiji, Guinea, Haiti, Iraq, Kyrgyzstan, Libya, Mozambique, Papua New Guinea, Peru, Rwanda, Saint Lucia, Sao Tome and Principe, Seychelles, Sierra Leone, Solomon Islands, Somalia, Sudan, Suriname, Syrian Arab Republic, Tajikistan and Uganda**. The Committee hoped that appropriate measures would be taken by the governments and the social partners concerned so that they could bring themselves up to date, and avoid being invited to provide information to the next session of this Committee.

## **Supply of reports on ratified Conventions**

- 185.** In Part II of its report (Compliance with obligations), the Committee had considered the fulfilment by States of their obligation to report on the application of ratified Conventions. By the date of the 2012 meeting of the Committee of Experts, the percentage of reports received was 67.8 per cent, (67.8 per cent for the 2011 meeting also). Since then, further reports had been received, bringing the figure to 78.9 per cent (as compared with 77.4 per cent in June 2012 and 77.3 per cent in June 2011).

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

- 186.** The Committee noted with regret that no reports on ratified Conventions had been supplied for the past two years or more by the following States: **Burundi, Equatorial Guinea, San Marino, Sierra Leone and Somalia**.
- 187.** The Committee also noted with regret that no first reports due on ratified Conventions had been supplied by the following countries:

<b>State</b>	<b>Conventions Nos</b>
Bahamas	– Since 2010: Convention No. 185
Equatorial Guinea	– Since 1998: Conventions Nos 68, 92
Kazakhstan	– Since 2010: Convention No. 167 – Since 2011: Convention No. 185
Kyrgyzstan	– Since 2006: Convention No. 184 – Since 2010: Convention No. 157
Sao Tome and Principe	– Since 2007: Convention No. 184
Seychelles	– Since 2007: Conventions Nos 147, 180
Vanuatu	– Since 2008: Conventions Nos 87, 98, 100, 111, 182 – Since 2010: Convention No. 185

- 188.** It stressed the special importance of first reports on which the Committee of Experts based its first evaluation of compliance with ratified Conventions.
- 189.** In this year's report, the Committee of Experts noted that **40** governments had not communicated replies to most or any of the observations and direct requests relating to Conventions on which reports were due for examination this year, involving a total of **387** cases (compared with 537 cases in December 2011). The Committee was informed that, since the meeting of the Committee of Experts, 14 of the governments concerned had sent replies, which would be examined by the Committee of Experts at its next session.

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- 190.** The Committee noted with regret that no information had yet been received regarding any or most of the observations and direct requests of the Committee of Experts to which replies were requested for the period ending 2012 from the following countries: **Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Gambia, Grenada, Guinea-Bissau, Guyana, Kiribati, Libya, Mali, Mauritania, Mongolia, San Marino, Sao Tome and Principe, Sierra Leone, Solomon Islands, Syrian Arab Republic, Tajikistan, Thailand and Zambia.**
  - 191.** The Committee noted the explanations provided by the Governments of the following countries concerning difficulties encountered in discharging their obligations: **Angola, Democratic Republic of the Congo, Mauritania and Seychelles.**

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

- 192.** The Committee noted that **339** of the **768** article 19 reports requested on Convention No. 151, Recommendation No. 159, Convention No. 154 and Recommendation No. 163 had been received at the time of the Committee of Experts' meeting. This is **44.14** per cent of the reports requested.
- 193.** The Committee noted with regret that over the past five years none of the reports on unratified Conventions and Recommendations, requested under article 19 of the Constitution, had been supplied by: **Brunei Darussalam, Democratic Republic of the Congo, Equatorial Guinea, Guinea, Guinea-Bissau, Ireland, Libya, Saint Kitts and Nevis, Sao Tome and Principe, Sierra Leone, Somalia, Tajikistan and Vanuatu.**

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

- 194.** Once again this year, the Committee did not have to apply the criterion: "the Government has failed during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23(2) of the Constitution, copies of reports and information supplied to the ILO under articles 19 and 22 have been communicated".

### **Application of ratified Conventions**

- 195.** The Committee noted with particular interest the steps taken by a number of governments to ensure compliance with ratified Conventions. The Committee of Experts listed in paragraph 81 of its report new cases in which governments had made changes to their law and practice following comments it had made as to the degree of conformity of national legislation or practice with the provisions of a ratified Convention. There were 39 such cases, relating to 30 countries; 2,914 cases where the Committee of Experts was led to express its satisfaction with progress achieved since it began listing them in 1964. These results were tangible proof of the effectiveness of the supervisory system.
- 196.** This year, the Committee of Experts listed in paragraph 84 of its report, cases in which measures ensuring better application of ratified Conventions had been noted with interest. It noted 240 such instances in 109 countries.
- 197.** At its present session, the Conference Committee was informed of other instances in which measures had recently been or were about to be taken by governments with a view to

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ensuring the implementation of ratified Conventions. While it was for the Committee of Experts to examine these measures, the present Committee welcomed them as fresh evidence of the efforts made by governments to comply with their international obligations and to act upon the comments of the supervisory bodies.

## Specific indications

198. The Government members of **Angola, Bangladesh, Democratic Republic of the Congo, Mauritania and Seychelles** had promised to fulfil their reporting obligations as soon as possible.

## Case of progress

199. The Committee welcomed the discussion of this case of progress and the exchange that took place on the application by **Iceland of the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)**. The Committee praised the Government's ambitious approach to promote employment opportunities for persons with disabilities. This approach involved the social partners who established the Vocational Rehabilitation Fund (VIRK) to give effect to the provisions of a collective agreement adopted at the national level in 2008. The Committee considered this case as an example of good practice. It commended the Government for its comprehensive efforts to improve access to the labour market for persons with disabilities. The Committee invited the Government to continue to report on progress made in the implementation of the Convention.

## Special cases

200. The Committee considered it appropriate to draw the attention of the Conference to its discussion of the cases mentioned in the following paragraphs, a full record of which appears as Part Two of this report.
201. As regards the application by **Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee noted the written and oral information provided by the Government representative and the discussion that ensued.
202. The Committee recalled that the outstanding issues in this case concerned the need to ensure the right of workers to establish organizations of their own choosing and organize their activities and programmes free from interference by the public authorities in law and in practice. The Committee further highlighted the long outstanding recommendations from the Commission of Inquiry for amendments to be made to Presidential Decree No. 2 dealing with trade union registration, Decree No. 24 concerning the use of foreign gratuitous aid and the Law on Mass Activities.
203. The Committee noted the information provided by the Government on the work of the Tripartite Council for the Improvement of Legislation on the Social and Labour Sphere and, in particular, its decision to support the amendment of Decree No. 2 by repealing the 10 per cent minimum membership requirement for the establishment of trade unions at the enterprise level. The Committee further noted the Government's stated commitment to social dialogue and cooperation with the ILO.

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- 204.** The Committee noted with regret new allegations of violations of freedom of association in the country, including allegations of interference in trade union activities, pressure and harassment. In particular, while observing that the Government stated that there were no registration refusals in 2012, the Committee took note of the allegations of the refusal to register the Belarus Independent Trade Union (BITU) primary organization at “Granit” enterprise and the subsequent indication by the Government that this matter was addressed by the Tripartite Council.
- 205.** The Committee observed with deep regret that no new information was provided by the Government nor has any tangible result been achieved in implementing the recommendations made by the Commission of Inquiry of 2004.
- 206.** Recalling the intrinsic link between freedom of association, democracy, the respect for basic civil liberties and human rights, the Committee urged the Government to intensify its efforts to bring the law and practice into full conformity with the Convention, in close cooperation with all the social partners and with the assistance of the ILO. The Committee urged the Government to immediately take all measures necessary to ensure that all workers and employers in the country may fully exercise their rights to freedom of expression and of assembly. The Committee invited the Government to accept a direct contacts mission with a view to obtaining a full picture of the trade union rights situation in the country and assisting the Government in the rapid and effective implementation of all outstanding recommendations of the Commission of Inquiry. It expected that the Government would submit detailed information on proposed amendments to the abovementioned laws and decrees to the Committee of Experts at its meeting this year and trusted that it would be in a position to note significant progress with respect to all remaining matters at its next session.
- 207.** As regards the application by **Fiji of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee took note of the statement made by the Government representative and of the discussion that followed.
- 208.** The Committee observed that the outstanding issues in this case concerned numerous and grave allegations of the violations of the basic civil liberties of trade unionists, including arrest, detention and assaults and restrictions of freedom of expression and of assembly. The Committee further observed the issues relating to a number of discrepancies between the labour legislation, in particular the Public Order (Amendment) Decree (POAD), the Employment Relations Promulgation and the Essential National Industries Decree, and the provisions of the Convention. The Committee further recalled the resolution adopted by the ILO Governing Body in November 2012 calling on the Government to accept a direct contacts mission under previously agreed terms of reference based on conclusions and recommendations of the ILO Committee on Freedom of Association in Case No. 2723.
- 209.** The Committee noted the Government’s statement that the draft Constitution ensured protections for human and socio-economic rights and the independence of the judiciary and the Government was intensively preparing for democratic elections in September 2014. It further noted the Government’s commitment to: finalize the review of the labour legislation with the social partners within the framework of the Employment Relations Advisory Board (ERAB) so as to bring it into conformity with ratified international labour Conventions; and ensure that all cases of breaches of Fijians’ fundamental rights would be investigated and independently prosecuted by the independent Office of the Director of Public Prosecutions. The Government representative indicated that they would welcome the visit of the ILO direct contacts mission on mutually acceptable terms of reference in December 2013.

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- 210.** The Committee did not address the right to strike in this case as the Employers do not agree that there is a right to strike recognized in Convention No. 87.
- 211.** The Committee noted with concern the recently adopted Political Parties Decree and certain provisions of the draft Constitution that were alleged to pose risks to the exercise of freedom of association and the basic civil liberties of trade unionists and the officers of employers' organizations. Recalling the intrinsic link between freedom of association, expression, and assembly, on the one hand, and democracy and human rights on the other, the Committee urged the Government to undertake an ex officio independent investigation without further delay into the alleged acts of assault, harassment and intimidation against Felix Anthony, Mohammed Khalil, Attar Singh, Taniela Tabu and Anand Singh and to drop the charges against Daniel Urai and Nitendra Goundar. The Committee urged the Government to amend the POAD so as to ensure that the right to assembly may be freely exercised and expected that the ERAB would complete its review of the laws and decrees so that the necessary amendments would be made by the end of the year in order to put them into full conformity with the Convention.
- 212.** The Committee recalled with regret that the direct contacts mission was not able to take place as scheduled in September 2012. Encouraged by the Government's latest indication that it would welcome the return of the direct contacts mission, the Committee expressed the firm hope that the mission, as mandated by the ILO Governing Body, would take place as soon as possible so that it could report back to the Governing Body in October 2013.
- 213.** The Committee persevered in the hope that the mission would be able to assist the Government and the social partners in finding solutions to all the outstanding matters raised by the Committee of Experts. It requested the Government to provide a detailed report for the Committee of Experts' examination this year and expressed the firm expectation that next year it would be in a position to observe the substantial and concrete progress made.
- 214.** As regards the application by **Uzbekistan of the Worst Forms of Child Labour Convention, 1999 (No. 182)**, the Committee took note of the oral and written information provided by the Government representative and the discussion that followed.
- 215.** The Committee noted the issues raised by the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC) relating to the systematic mobilization of children by the State in the cotton harvest, including the extensive use of labour of teenagers, young persons and adults in all regions of the country, as well as the substantial negative impact of this practice on the health and education of school-aged children obliged to participate in the cotton harvest.
- 216.** The Committee noted the information provided by the Government outlining the laws and policies put in place to combat the forced labour of, and hazardous work by, children. This included the order issued by the Prime Minister in August 2012 banning the use of children under 15 and the adoption of a plan of additional measures for the implementation of Convention No. 29 and Convention No. 182 in 2012, including measures to maintain monitoring for the prevention of forced child labour. The Committee also noted the Government's statement that it had established a tripartite inter-ministerial working group with a view to developing specific programmes and actions aimed at fulfilling Uzbekistan's obligations under ILO Conventions. Lastly, the Committee noted the Government's statement that the use of compulsory labour was punishable with penal and administrative sanctions and that in this regard, concrete measures were being taken by the labour inspectorate officials to prosecute persons for violations of labour legislation.

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- 217.** The Committee noted the information from the Government, as well as other sources, that as a result of the measures taken, school children under 15 years of age had not been mobilized during the cotton harvest in 2012. It nevertheless observed with serious concern information provided by several speakers, including representatives of governments and the social partners, that school children between the ages of 16 and 18 continued to be mobilized for work during the cotton harvest. The Committee reminded the Government that the forced labour of, or hazardous work by, all children under 18 constituted one of the worst forms of child labour. It therefore urged the Government to take the necessary measures, as a matter of urgency, to ensure the effective implementation of national legislation prohibiting compulsory labour and hazardous work for all children below the age of 18.
- 218.** The Committee noted the Government's indication that it was willing to engage in broad technical cooperation with the ILO, which would consist of awareness-raising measures and capacity building of the national social partners and various stakeholders, and would also include monitoring of the 2013 cotton harvest with ILO-IPEC technical assistance. In this regard, the Committee requested the Government to accept an ILO high-level monitoring mission during the 2013 cotton harvest, that would have full freedom of movement and timely access to all situations and relevant parties, including in the cotton fields, in order to enable the Committee of Experts to assess the implementation of the Convention at its 2013 session. Noting the Government's statement that it would be amenable to the terms of reference put forward by the ILO in this respect, the Committee urged the Government to pursue its efforts to undertake, in the very near future, a round-table discussion with the ILO, UNDP, UNICEF, the European Commission and the representatives of national and international organizations of workers and employers.
- 219.** The Committee requested the Government to include in its report to the Committee of Experts due in 2013, comprehensive information on the manner in which the Convention was applied in practice, including, in particular, enhanced statistical data on the number of children working in agriculture, their age, gender, and information on the number and nature of contraventions reported and penalties applied. The Committee expressed the hope that it would be able to note tangible progress in the very near future.

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

- 220.** The Committee wished to express its gratitude to the 32 governments which had collaborated by providing information on the situation in their countries and participating in the discussion of their individual cases.
- 221.** The Committee regretted that, despite the invitations, the governments of the following States failed to take part in the discussions concerning their countries and the fulfilment of their constitutional obligations to report: **Bahamas, Bahrain, Brunei Darussalam, Burundi, Comoros, Congo, Côte d'Ivoire, Djibouti, El Salvador, Fiji, Guinea, Haiti, Iraq, Ireland, Kazakhstan, Kiribati, Kyrgyzstan, Libya, Mali, Mongolia, Mozambique, Papua New Guinea, Peru, San Marino, Sierra Leone, Solomon Islands, Somalia, Sudan, Suriname, Syrian Arab Republic, Thailand, Uganda and Zambia.** The Committee decided to mention the cases of all these States in the appropriate paragraphs of its report and to inform them in accordance with the usual practice.
- 222.** The Committee noted with regret that the governments of the States which were not represented at the Conference, namely: **Belize, Dominica, Equatorial Guinea, Grenada, Guinea-Bissau, Guyana, Rwanda, Saint Lucia, Saint Kitts and Nevis, Sao Tome and Principe, Tajikistan and Vanuatu** were unable to participate in the Committee's examination of the cases relating to them. It decided to mention these countries in the

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appropriate paragraphs of this report and to inform the governments, in accordance with the usual practice.

## F. Adoption of the report and closing remarks

223. The Committee's report was adopted as amended.
224. The Government member of Libya, while acknowledging that no information had been provided with respect to the issues addressed in paragraph 190 of the report, indicated that his country should not have been listed in paragraph 221 of the report as he had been present throughout the Committee's discussions.
225. The Employer members indicated that their closing remarks differed from those of the previous year when no cases had been discussed and when there had been a failure by everyone concerned. The situation this year could not be more different, since there had been no failure. The Employer members had promised that there would be a list of individual cases, and they had kept their promise. Moreover, the list had been finalized in a timely manner, giving everyone time to prepare adequately. The long list had also been much shorter than the previous year, with only 40 cases, which meant that it was more likely that Governments on the long list would appear before the Committee. This year, 25 individual cases and one case of progress (Iceland) had been discussed. The case of Rwanda had not been discussed as the delegation of that country had not been accredited to the Conference. The Committee's schedule had been kept and the discussions had ended on time. They also expressed satisfaction that the discussions had ended with a case of progress.
226. They emphasized that each of the 26 cases had concluded with agreed conclusions, which had not been easy to accomplish, particularly with regard to cases under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), involving issues pertaining to the right to strike. While the Employer members had repeated their views regarding the right to strike on numerous occasions, the Committee had still managed to agree on conclusions through constructive dialogue. They added that there had been no failure this year, and that expectations had been exceeded.
227. During the discussion of the General Survey, the Employer members had expressed appreciation of the work of the Committee of Experts, but they had also raised in detail the specific areas where they had disagreed with the Committee of Experts, or where they had considered that it had exceeded its mandate. Since the failure of 2012, a series of informal consultations had been held, most recently in February 2013, which had included six members of the Committee of Experts, who had raised two issues with regard to the work of the Conference Committee. In the first place, they had raised the question of whether the Conference Committee was properly supervising cases if it had conclusions that avoided issues that the social partners disputed, such as whether Convention No. 87 contained a right to strike. Secondly, they had questioned the extent to which the Employer members disagreed with the views expressed by the Committee of Experts, other than on the right to strike, as no feedback had previously been provided. The experts had therefore asked the Employer members to indicate where they challenged or disagreed with the views of the Committee of Experts. And that was exactly what the Employer members had done in their detailed comments on the General Survey, with particular reference to paragraphs 6, 7 and 8 of the General Survey. Those comments had already been made during the informal discussions and on other occasions, and therefore constituted nothing new. The Employer members had also reiterated their call for a short simple "statement of truth" at the beginning of the reports of the Committee of Experts, as a disclaimer, and had

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reiterated their concerns with regard to the mandate of the Committee of Experts and the content of the General Survey.

228. They concluded by declaring that they remained committed to maintaining an effective supervisory mechanism, which was the envy of all other supervisory bodies in the United Nations system. They considered that the discussions in the Committee had been interesting, lively and had attracted much attention. They had enjoyed the constructive dialogue with the Worker and Government members, and the Office.
229. The Worker members recalled that their primary objective had been to reach agreement with the Employer members on the list of 25 cases to be examined by the Committee, on the condition that no veto would be made by either of the parties in the choice of the proposed cases and that no Convention could be excluded, subject to respecting a geographical and thematic balance between fundamental, priority and governance Conventions. The second objective of the Worker members had been to be able to adopt common conclusions agreed to by the Employer and Worker members. That was the only working hypothesis that could be envisaged for the proper functioning of the supervisory bodies. And that presupposed, on the one hand, that the issues relating to the incidents that had occurred in 2012 would not be addressed within the Committee out of respect for the processes that were being followed officially within or outside the Governing Body, with the assistance of eminent persons keen to preserve the standard-setting role of the ILO and the supervisory procedures. That had also presupposed that the Committee was able to address all of the cases on the list agreed to with the Employer members in a climate which had up to then been very promising. It was therefore to be welcomed that it had been possible to discuss the individual cases and cover all the Conventions included on the list, including one of the two cases of progress.
230. The Worker members wished to emphasize that this year they had saved the supervisory machinery. By working to maintain the standards system and to defend the very important role of the Conference Committee, their intention had been to give every chance to the processes that were under way to find a way out of the crisis. The positive outcome of the discussions had been made possible not only because of their efforts, but also because of the very important concessions that had been made by the Worker members, which should not be repeated from year to year, nor be interpreted as an admission of weakness. That was illustrated by the decision to remove from the list the case of Colombia, despite the fact that it had been on the list since well before 2012, and that it had not been possible to discuss it since 2009, in spite of the systematic violation of Conventions Nos 87 and 98 and the climate of impunity that reigned for those responsible for the murders of trade unionists. The present session of the Conference had offered the opportunity for contacts between all the parties concerned under the direction of the Director-General of the ILO. Those contacts had shown that everyone was willing to continue the dialogue on Colombia within the tripartite dialogue committee. Much still remained to be done, but a positive signal had been sent that should be noted in the report of the Conference Committee, which should be kept informed in an appropriate manner of the follow-up to the contacts.
231. Other concessions had been made by the Worker members in relation to the issue of the interpretation of Convention No. 87 with a view to preventing a repetition of the failure of 2012, which would have been fatal to the work of the Committee. This year, 2013, had therefore been a pivotal year, and what had happened could neither be repeated nor generalized. Indeed, the concessions made had not always been understood within the Workers' group, nor by the Employers' group, which had persevered in its intention to reopen the question of the mandate of the Committee of Experts and the legal basis for the right to strike. The intention of the Worker members had been to examine the cases related to Convention No. 87 with moderation, recalling the important principles set out in the instrument, over and above the question of strikes and the mandate of the Committee of

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Experts. In many of the cases, it had therefore been recalled that freedom of association was a human right and a prerequisite for collective bargaining and healthy social dialogue which was of benefit to employers, workers and social peace. The pressure exerted by the Employer members had forced the Worker members to make concessions that went to the very heart of their beliefs so as not to jeopardize the objective of agreeing on conclusions for all of the cases. Nevertheless, Convention No. 87 was one of the international instruments in which the Worker members found the basis for the right to strike and to take action in support of their claims, which were often the only and the final weapon available to workers whose calls went unheeded and whose rights were denied, even though they were set out in national law. And yet, outside national law, the source of those rights was being denied. But, if a government was not willing to respect the rights of workers that were set out in international instruments, why would it adopt legislation at the national level recognizing the possibility for workers to use such a weapon against itself through its economic or social policy? That type of reasoning resulted in an imbalance in the forces at play in favour of governments and a war against unions and social dialogue decreed by a small group of actors who mistook the social model. No economy could be productive without high-quality work which guaranteed the support of the workers for the plans of their employers. Workers who were not respected would not respect their work!

- 232.** In 2013, the Worker members had therefore had to accept a procedure that was similar to the issue already raised in 2012 by the Employer members concerning the inclusion of a disclaimer in the report of the Committee of Experts. The conclusions of some cases relating to the application of Convention No. 87 therefore included the wording that “the Committee did not address the right to strike in this case as the employers do not agree that there is a right to strike recognized in Convention No. 87”. It should be noted in this regard that the Committee had never commented in its conclusions on the basis of the right to strike and the Employer members were the only ones to disagree on this point. If the Employer members wanted to go further in challenging the mandate of the Committee of Experts and the right to strike, they should seek a solution in other tools available in the ILO Constitution, such as the recourse to article 37(2). In this regard, everything was possible except a new blockage and a new war of attrition.
- 233.** Returning to the discussion of the General Survey, the Worker members welcomed the fact that the Committee had presented the outcome of the discussion to the Committee for the Recurrent Discussion, as that was an essential link. It made it possible to reaffirm the importance of collective bargaining in all sectors, both private and public, in these times of crisis and attempts to reform labour law based on austerity. A failure on this point would have been fatal not only to the ILO, but also for the different industrial relations systems based on a balanced social dialogue between workers and employers at the interprofessional, sectoral and enterprise levels.
- 234.** The Worker members then addressed several individual cases that had been examined by the Committee. With regard to the case of Iceland (Convention No. 159), it had confirmed the beneficial contribution of examining a case of progress. This contribution was also of a qualitative nature, as it had afforded the opportunity to address two very current issues with efficiency and common sense: increasing the overall participation rate in the labour market through the reintegration of persons with reduced capacity and the added value of social dialogue, as the participation of social partners in the search for solutions for employment promotion was a key success factor. Iceland was a country with high unionization rates and high collective bargaining coverage which operated together ensuring an inclusive social policy and high-performance employment protection legislation.
- 235.** Three cases had been mentioned in special paragraphs in the report of the Committee: Uzbekistan (Convention No. 182), Belarus (Convention No. 87) and Fiji (Convention

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No. 87). For these three cases, constructive conclusions focused on concrete actions had been adopted. For Uzbekistan, the Government had agreed to engage widely in technical cooperation with the ILO and a high-level monitoring mission would be organized during the cotton harvest. It was to be hoped that the Government would do everything possible to combat child labour effectively and that, at its next session, the Committee of Experts would be in a position to take note of progress on this case. With regard to the case of Belarus, the Committee had invited the Government to accept a direct contacts mission with the goal of achieving a comprehensive overview of the situation of trade union rights in the country and to help the Government to implement the recommendations of the Commission of Inquiry of 2004. It was to be regretted that the Government had clearly stated that it wished to reflect on whether the Committee's conclusions were acceptable or well founded. As for the case of Fiji, the Worker members expressed the hope that another direct contacts mission, of which the Government had said that it was in favour, could be organized as soon as possible so that a report could be submitted to the Governing Body in 2013. They noted however that the Government had taken the floor after the adoption of the conclusions to express reservations and that it would send in its comments later. The Worker members hoped that the workers of Fiji would not again be deprived of their freedom upon their return to their country.

- 236.** Moreover, in five cases, direct contacts missions had been decided on as in the case of Saudi Arabia, where the mission would have as an objective to assess the situation on the ground with regard to discrimination and help the parties to continue to realize tangible progress. Such a mission should be capable of working on legislative issues, while at the same time having regard to the daily reality of the persons concerned, including through interviews. In 11 other cases, technical assistance missions were foreseen, or a reinforced and extended technical assistance mission in the case of Paraguay (Convention No. 29). The Government of Egypt had also been encouraged to seek technical assistance, so that the law on freedom of association could be adopted as soon as possible. Furthermore, high-level missions had been proposed for certain serious and long-standing cases, but particularly since the beginning of social dialogue with the concerned governments could be seen through the information provided. In this regard, considering the severity of the situation, the cases of Swaziland and Zimbabwe needed to be followed up. Finally, an offer to exchange cases of good practice had been made to Chad concerning Convention No. 144.
- 237.** With regard to Greece, which concerned the slow destruction of collective bargaining, and Spain relating to the austerity policy, which was having disastrous and counter-productive effects on employment, the Worker members emphasized that the conclusions had not failed to make the link with the Oslo Declaration. They therefore considered that governments should defend the European social model that had enabled them to sustain the impacts of the crisis and could not hide behind the argument of European economic governance to avoid the application of ratified ILO Conventions. Building on the Oslo Declaration, governments should promote decent work and employment creation through macroeconomic policies favouring real economies and an enterprise-friendly environment stimulating competitiveness and sustainable development.

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- 238.** The Chairperson thanked the Vice-Chairpersons, the Reporter of the Committee and all the delegates and the secretariat for their work, highlighting the constructive atmosphere in which the work of the Committee had taken place and recalling that the cases examined had involved concrete situations and the work of the Committee would have practical consequences on the lives of workers.

Geneva, 18 June 2013

(*Signed*) Noemí Rial  
Chairperson

David Katjaimo  
Reporter

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## **Annex 1**

INTERNATIONAL LABOUR CONFERENCE

C. App./D.1

102nd Session, Geneva, June 2013

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### **Committee on the Application of Standards**

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## **Work of the Committee**

### **I. Introduction**

This document sets out the manner in which the work of the Committee on the Application of Standards is carried out. It is submitted to the Committee for adoption when it begins its work at each session of the Conference, in particular to enable the Committee to approve the latest adjustments made in its work. The work undertaken by the Committee is reflected in a report. Since 2007, in response to the wishes expressed by ILO constituents, the report has been published both in the *Record of Proceedings* of the Conference and as a separate publication, to improve the visibility of the Committee's work.<sup>1</sup>

Since 2002, ongoing discussions and informal consultations have taken place concerning the working methods of the Committee. In particular, following the Governing Body's adoption of a new strategic orientation for the ILO standards system in November 2005,<sup>2</sup> consultations began in March 2006 regarding numerous aspects of this system,<sup>3</sup> including the question of the publication of the list of individual cases discussed by the Committee. A tripartite Working Group on the Working Methods of the Committee was set up in June 2006 and has met 11 times since then. The last meeting took place on 12 November 2011. On the basis of these consultations, and the recommendations of the Working Group, the Committee has made certain adjustments to its working methods. An overview of these adjustments is detailed below.

Since 2006, an early communication to governments (at least two weeks before the opening of the Conference) of a preliminary list of individual cases for possible discussion by the Committee concerning the application of ratified Conventions has been instituted. Since 2007, it has been the practice to follow the adoption of the list of individual cases with an informal information session for Governments, hosted by the Employer and Worker Vice-Chairpersons, to explain the criteria used for the selection of individual

<sup>1</sup> The reports thus published can be found at:  
[http://www.ilo.org/global/standards/WCMS\\_183447/lang--en/index.htm](http://www.ilo.org/global/standards/WCMS_183447/lang--en/index.htm).

<sup>2</sup> See documents GB.294/LILS/4 and GB.294/9.

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

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cases.<sup>4</sup> Changes have been made to the organization of work so that the discussion of individual cases could begin on the Monday morning of the second week, and improvements have been introduced in the preparation and adoption of the conclusions relating to cases. In June 2008, measures were adopted to address those cases in which Governments were registered and present at the Conference, but chose not to appear before the Committee; the Committee now has the ability to discuss the substance of such cases.<sup>5</sup> Specific provisions have also been adopted concerning the respect of parliamentary rules of decorum.<sup>6</sup>

In November 2010, the Working Group discussed the possibility for the Committee to discuss a case of a government which is not accredited or registered to the Conference.

Since June 2010, important arrangements have been implemented to improve time management.<sup>7</sup> In addition, modalities have been established for discussion of the General Survey of the Committee of Experts on the Application of Conventions and Recommendations, in light of the parallel discussion of the recurrent report on the same subject under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization.

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

- (i) Adoption of the list of individual cases: at the time, it was agreed that the Employer and Worker spokespersons would meet informally before the 101st Session (2012) of the Conference to elaborate a process to improve the adoption of the list and would report on the outcome of their consultations.<sup>8</sup>
- (ii) Balance in the types of Conventions among the individual cases selected by the Conference Committee: the importance of this issue was reaffirmed, notwithstanding the difficulties in achieving diversity in the types of Conventions selected for discussion. The issue would be kept under review, including by exploring the option of establishing a quota system which could mandate the selection of cases per each type of Conventions.
- (iii) Possibility for the Conference Committee to discuss cases of progress: it was recalled that there had been long-standing consensus on the inclusion of a case of progress in the Conference Committee's report, but that the practice had been temporarily suspended in 2008 due to concerns about time management. The issue would be kept under review.

<sup>4</sup> See below Part V, B.

<sup>5</sup> See below, Part V, D, footnote 20.

<sup>6</sup> See below, Part V, F.

<sup>7</sup> See Part V, B – Supply of information and automatic registration – and E.

<sup>8</sup> For the 102nd Session (June 2013), discussions have taken place between the Employers' group and the Workers' group in the context of the follow-up to the decision adopted by the International Labour Conference, at its 101st Session (2012), on certain matters arising out of the report of the Committee on the Application of Standards; see *Provisional Record No. 19, Part 1 (Rev.)*, International Labour Conference, 101st Session, Geneva, 2012, para. 208.

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- (iv) Possible improvements in the interaction between the discussion on the General Survey by the Committee on the Application of Standards and the discussion on the recurrent item report by the Committee for the Recurrent Discussion: it was recognized that until the new discussion modalities which had been agreed upon took effect in 2014,<sup>9</sup> the process followed during the 100th Session (June 2011) should be continued during the 101st Session (May–June 2012). This process had proved to be satisfactory.
  - (v) Automatic registration of individual cases: Modalities for selecting the starting letter for the registration of cases: There was consensus to continue the experiment begun in June 2011 when the Committee had used the A + 5 model to undertake the automatic registration of individual cases based on a rotating alphabetical system, to ensure a genuine rotation of countries on the list.
  - (vi) Other questions: The question of the impact of the deliberations of the Working Party on the Functioning of the Governing Body and the International Labour Conference on the work of the tripartite Working Group: It was recalled that the tripartite Working Group reported to the Conference Committee on the Application of Standards. However, the work of the Conference Committee could also be influenced by the Working Party on the Functioning of the Governing Body and the International Labour Conference. In such circumstances, it was decided that, although there was no need for the tripartite Working Group to meet in March 2012, it might be useful to retain the option for it to meet in the future, to follow-up as necessary upon questions raised by the Working Party.<sup>10</sup>

## **II. Terms of reference of the Committee**

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

- (a) the measures taken by Members to give effect to the provisions of Conventions to which they are parties and the information furnished by Members concerning the results of inspections;

<sup>9</sup> At the 309th Session of the Governing Body (November 2010), the Steering Group on the Follow-up to the Social Justice Declaration took the view that the review of the General Survey by the Conference Committee on the Application of Standards should take place one year in advance of the recurrent discussion by the Conference. This required a shift from the existing arrangement under which the General Survey and the recurrent discussion report on the same theme were submitted to the Conference in the same year. As a transition measure, the Governing Body decided in March 2011 that no General Survey on instruments related to employment should be undertaken for the purposes of the next recurrent discussion on employment that will take place in 2014.

<sup>10</sup> At the meeting of the Working Party on the Functioning of the Governing Body and the International Labour Conference during the 316th Session (November 2012) of the Governing Body, Governments reiterated that the findings of the informal Working Group on the Working Methods of the Committee on the Application of Conventions and Recommendations should be fed into the discussions of the Working Party. At the meeting of the Working Party during the 317th Session (March 2013) of the Governing Body, the Group of Latin American and Caribbean Countries recalled its proposal for the question of improving the working methods of the Committee to be discussed by the Working Party, but the Employers' group, the Workers' group and a number of other Government groups did not agree with that proposal, stating that, at that stage, the question should be discussed in a different context; see GB.316/INS/12, para. 12, and GB.317/INS/10, para. 8.

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- (b) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution;
  - (c) the measures taken by Members in accordance with article 35 of the Constitution.

### **III. Working documents**

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

The basic working document of the Committee is the report of the Committee of Experts on the Application of Conventions and Recommendations (Report III (Parts 1A and B)), printed in two volumes.

Volume A of this report contains, in Part One, the General Report of the Committee of Experts (pages 5–44) and, in Part Two, the observations of the Committee concerning the sending of reports, the application of ratified Conventions and the obligation to submit the Conventions and Recommendations to the competent authorities in member States (pages 45–857). At the beginning of the report there is a list of Conventions by subject (pages v–x), an index of comments by Convention (pages xi–xviii), and by country (pages xix–xxvii).

It will be recalled that, as regards ratified Conventions, the work of the Committee of Experts is based on reports sent by the governments.<sup>11</sup>

Certain observations carry footnotes asking the government concerned to report in detail, or earlier than the year in which a report on the Convention in question would normally be due, and/or to supply full particulars to the Conference.<sup>12</sup> The Conference may also, in accordance with its usual practice, wish to receive information from governments on other observations that the Committee of Experts has made.

In addition to the observations contained in its report, the Committee of Experts has, as in previous years, made direct requests which are communicated to governments by the Office on the Committee's behalf.<sup>13</sup> A list of these direct requests can be found at the end of Volume A (see Appendix VII, pages 905–917).

The Committee of Experts refers in its comments to cases in which it expresses its satisfaction or interest at the progress achieved in the application of the respective Conventions. In 2009, 2010 and again in 2011, the Committee clarified the general approach in this respect that has been developed over the years.<sup>14</sup>

In accordance with the decision taken in 2007, the Committee of Experts may also decide to highlight cases of good practices to serve as a model for other countries to assist

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<sup>11</sup> See paras 42–46 of the General Report of the Committee of Experts.

<sup>12</sup> See paras 72–74 of the General Report of the Committee of Experts.

<sup>13</sup> See para. 64 of the General Report of the Committee of Experts.

<sup>14</sup> See paras 79 and 83 of the General Report of the Committee of Experts. See also Annex II of the present document.

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them in the implementation of ratified Conventions and furtherance of social progress.<sup>15</sup> At its session of November–December 2009, the Committee of Experts has provided further explanations on the criteria to be followed in identifying cases of good practices by clarifying the distinction between these cases and cases of progress. No specific cases of good practices have been identified by the Committee of Experts this year.

Furthermore, the Committee of Experts has continued to highlight the cases for which, in its view, technical assistance would be particularly useful in helping member States to address gaps in law and in practice in the implementation of ratified Conventions, following-up on the practice established by the Conference Committee in this regard since 2005.<sup>16</sup>

Volume B of the report contains the General Survey by the Committee of Experts, which this year concerns the Labour Relations (Public Service) Convention, 1978 (No. 151), the Collective Bargaining Convention, 1981 (No. 154), the Labour Relations (Public Service) Recommendation, 1978 (No. 159), and the Collective Bargaining Recommendation, 1981 (No. 163).

## B. Summaries of reports

At its 267th Session (November 1996), the Governing Body approved new measures for rationalization and simplification of reporting. In this connection, it adopted changes along the following lines:

- (i) information concerning reports supplied by governments on ratified Conventions (articles 22 and 35 of the Constitution), which now appears in simplified form in two tables annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) (Appendices I and II, pages 861–875);
- (ii) information concerning reports supplied by governments as concerns General Surveys under article 19 of the Constitution (this year concerning labour relations and collective bargaining in the public service) appears in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B) (Appendix IV, pages 239–244);
- (iii) summary of information supplied by governments on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference (article 19 of the Constitution), which now appears as Appendices IV, V and VI to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) (pages 886–904).

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

<sup>15</sup> See paras 85–87 of the General Report of the Committee of Experts.

<sup>16</sup> See paras 88–89 of the General Report of the Committee of Experts.

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## C. Other information

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

- (i) supplementary reports and information which reached the International Labour Office between the meetings of the Committee of Experts and the Conference Committee;
- (ii) written information supplied by governments to the Conference Committee in reply to the observations made by the Committee of Experts, when these governments are on the list of individual cases adopted by the Conference Committee.

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

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

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

## V. Schedule of work

### A. General discussion

1. *General Survey.* In accordance with its usual practice, the Committee will discuss the General Survey of the Committee of Experts, Report III (Part 1B). This year, for the fourth time, the subject of the General Survey has been aligned with the strategic objective that will be discussed in the context of the recurrent report under the follow-up to the 2008 Social Justice Declaration. As a result, the General Survey concerns labour relations and collective bargaining in the public service, while the recurrent report on social dialogue will be discussed by the Committee for the Recurrent Discussion on the strategic objective of social dialogue. In order to ensure the best interaction between the two discussions, it is proposed to maintain the adjustments in place since 2011 to the working schedule for the discussion of the General Survey – they are reflected in the document C.App/D.0. As was the case during the last two sessions of the Conference, the Selection Committee is expected to take a decision to allow the official transmission of the possible output of the discussion of the Committee on the Application of Standards to the Committee for the Recurrent Discussion. In addition, the Officers of the Committee on the Application of Standards could present information regarding their discussion of the General Survey to the Committee for the Recurrent Discussion.

2. *General questions.* The Committee will also hold a brief general discussion which is primarily based on the General Report of the Committee of Experts, Report III (Part 1A) (pages 5–44).

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## B. Discussion of observations

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

### **Cases of serious failure by member States to respect their reporting and other standards-related obligations<sup>17</sup>**

Governments are invited to supply information on cases of serious failure to respect reporting or other standards-related obligations for stated periods. These cases are considered in a single sitting. Governments may remove themselves from this list by submitting the required information before the sitting concerned. Information received both before and after this sitting will be reflected in the report of the Conference Committee.

#### **Individual cases**

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

- the nature of the comments of the Committee of Experts, in particular the existence of a footnote (see Appendix I);
- the quality and scope of responses provided by the government or the absence of a response on its part;
- the seriousness and persistence of shortcomings in the application of the Convention;
- the urgency of a specific situation;
- comments received by employers' and workers' organizations;
- the nature of a specific situation (if it raises a hitherto undiscussed question, or if the case presents an interesting approach to solving questions of application);
- the discussions and conclusions of the Conference Committee of previous sessions and, in particular, the existence of a special paragraph;
- the likelihood that discussing the case would have a tangible impact.

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

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<sup>17</sup> Formerly "automatic" cases (see *Provisional Record No. 22*, International Labour Conference, 93rd Session, June 2005).

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## **Supply of information<sup>18</sup> and automatic registration**

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

Cases will be divided in two groups: The first group of countries to be registered following the above alphabetical order will consist of those cases in which a double footnote was inserted by the Committee of Experts and are found in paragraph 73 of that Committee’s report. The second group of countries will constitute of all the other cases on the final list and they will be registered by the Office also following the abovementioned alphabetical order. Representatives of governments *which are not members* of the Committee are kept informed of the agenda of the Committee and of the date on which they may be heard:

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

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

## **Adoption of conclusions**

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

## **C. Minutes of the sittings**

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

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<sup>18</sup> See also section E below on time management.

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

## D. Special problems and cases

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

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

- None of the reports on ratified Conventions has been supplied during the past two years or more.
- First reports on ratified Conventions have not been supplied for at least two years.
- None of the reports on unratified Conventions and Recommendations requested under article 19, paragraphs 5, 6 and 7, of the Constitution has been supplied during the past five years.
- No indication is available on whether steps have been taken to submit the Conventions and Recommendations adopted during the last seven sessions of the Conference<sup>19</sup> to the competent authorities, in accordance with article 19 of the Constitution.
- No information has been received as regards all or most of the observations and direct requests of the Committee of Experts to which a reply was requested for the period under consideration.
- The government has failed during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23(2) of the Constitution, copies of reports and information supplied to the Office under articles 19 and 22 have been communicated.
- The government has failed, despite repeated invitations by the Conference Committee, to take part in the discussion concerning its country.<sup>20</sup>

<sup>19</sup> This year the sessions involved would be the 91st (2003) to 100th (2011).

<sup>20</sup> In conformity with the decision taken by the Committee at the 73rd Session of the Conference (1987), as amended at the 97th Session of the Conference (2008), for the implementation of this criterion, the following measures will be applied:

- In accordance with the usual practice, after having established the list of cases regarding which Government delegates might be invited to supply information to the Committee, the

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

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

## **E. Time management**

- Every effort will be made so that sessions start on time and the schedule is respected.
- Maximum speaking time for speakers are as follows:
  - Fifteen minutes for the spokespersons of the Workers’ and the Employers’ groups, as well as the Government whose case is being discussed.
  - Ten minutes for the Employer and Worker members, respectively, from the country concerned to be divided between the different speakers of each group.
  - Ten minutes for Government groups.
  - Five minutes for the other members.

Committee shall invite the governments of the countries concerned in writing, and the *Daily Bulletin* shall regularly mention these countries.

- Three days before the end of the discussion of individual cases, the Chairperson of the Committee shall request the Clerk of the Conference to announce every day the names of the countries whose representatives have not yet responded to the Committee’s invitation, urging them to do so as soon as possible.
- On the last day of the discussion of individual cases, the Committee shall deal with the cases in which Governments have not responded to the invitation. Given the importance of the Committee’s mandate, assigned to it in 1926, to provide a tripartite forum for dialogue on outstanding issues relating to the application of ratified international labour Conventions, a refusal by a Government to participate in the work of the Committee is a significant obstacle to the attainment of the core objectives of the International Labour Organization. For this reason, the Committee may discuss the substance of the cases concerning Governments which are registered and present at the Conference, but which have chosen not to be present before the Committee. The debate which ensues in such cases will be reflected in the appropriate part of the report, concerning both individual cases and participation in the work of the Committee. In the case of governments that are not present at the Conference, the Committee will not discuss the substance of the case, but will bring out in the report the importance of the questions raised. In both situations, a particular emphasis will be put on steps to be taken to resume the dialogue.

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- Concluding remarks are limited to ten minutes for spokespersons of the Workers' and the Employers' groups, as well as the Government whose case is being discussed.
  - However, the Chairperson, in consultation with the other Officers of the Committee, could decide on reduced time limits where the situation of a case would warrant it, for instance, where there was a very long list of speakers.
  - These time limits will be announced by the Chairperson at the beginning of each sitting and will be strictly enforced.
  - During interventions, a screen located behind the Chairperson and visible by all speakers will indicate the remaining time available to speakers. Once the maximum speaking time has been reached, the speaker will be interrupted.
  - In view of the above limits on speaking time, Governments whose case is to be discussed are invited to complete the information provided, where appropriate, by a written document, not longer than five pages, to be submitted to the Office at least two days before the discussion of the case (see also section B above).
  - In the eventuality that discussion on individual cases is not completed by the final Friday, there is a possibility of a Saturday sitting at the discretion of the Officers.

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

All delegates have an obligation to the Conference to abide by parliamentary language and by the generally accepted procedure. Interventions should be relevant to the subject under discussion and should avoid references to extraneous matters.

It is the role and task of the Chairperson to maintain order and to ensure that the Committee does not deviate from its fundamental purpose to provide an international tripartite forum for full and frank debate within the boundaries of respect and decorum essential to making effective progress towards the aims and objectives of the International Labour Organization.

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## **Appendix I**

### **Criteria for footnotes<sup>1</sup>**

At its November–December 2005 session, in the context of examining its working methods, and in response to the requests coming from members of the Committee for clarification concerning the use of footnotes, the Committee of Experts adopted the following criteria (paragraphs 36 and 37):

The Committee wishes to describe its approach to the identification of cases for which it inserts special notes by highlighting the basic criteria below. In so doing, the Committee makes three general comments. First, these criteria are indicative. In exercising its discretion in the application of these criteria, the Committee may also have regard to the specific circumstances of the country and the length of the reporting cycle. Second, these criteria are applicable to cases in which an earlier report is requested, often referred to as a “single footnote”, as well as to cases in which the government is requested to provide detailed information to the Conference, often referred to as “double footnote”. The difference between these two categories is one of degree. The third comment is that a serious case otherwise justifying a special note to provide full particulars to the Conference (double footnote) might only be given a special note to provide an early report (single footnote) in cases where there has been a recent discussion of that case in the Conference Committee on the Application of Standards.

The criteria to which the Committee will have regard are the existence of one or more of the following matters:

- the seriousness of the problem; in this respect, the Committee emphasizes that an important consideration is the necessity to view the problem in the context of a particular Convention and to take into account matters involving fundamental rights, workers’ health, safety and well-being as well as any adverse impact, including at the international level, on workers and other categories of protected persons;
- the persistence of the problem;
- the urgency of the situation; the evaluation of such urgency is necessarily case-specific, according to standard human rights criteria, such as life-threatening situations or problems where irreversible harm is foreseeable; and
- the quality and scope of the government’s response in its reports or the absence of response to the issues raised by the Committee, including cases of clear and repeated refusal on the part of a State to comply with its obligations.

At its 76th Session, the Committee decided that the identification of cases in respect of which a special note (double footnote) is to be attributed will be a two-stage process: the expert initially responsible for a particular group of Conventions may recommend to the Committee the insertion of special notes; in light of all the recommendations made, the Committee will take a final, collegial decision on all the special notes to be inserted, once it has reviewed the application of all the Conventions.

<sup>1</sup> See paras 67, 68, 69, 70 and 71 of the General Report of the Committee of Experts (102nd Session, Report III (Part 1A)).

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## Appendix II

### Criteria for identifying cases of progress<sup>1</sup>

At its 80th Session (November–December 2009), at its 81st Session (November–December 2010), and at its 82nd Session (November–December 2011), the Committee made the following clarifications on the general approach developed over the years for the identification of cases of progress:

- (1) The expression by the Committee of interest or satisfaction does not mean that it considers that the country in question is in general conformity with the Convention, and in the same comment **the Committee may express its satisfaction or interest at a specific issue while also expressing regret concerning other important matters** which, in its view, have not been addressed in a satisfactory manner.
- (2) The Committee wishes to emphasize that **an indication of progress is limited to a specific issue related to the application of the Convention and the nature of the measure adopted by the government concerned.**
- (3) The Committee exercises its discretion in noting progress, taking into account the particular nature of the Convention and the specific circumstances of the country.
- (4) The expression of progress can refer to different kinds of measures relating to national legislation, policy or practice.
- (5) If the satisfaction or interest relates to the adoption of legislation or to a draft legislation, the Committee may also consider appropriate follow-up measures for its practical application.
- (6) In identifying cases of progress, the Committee takes into account both the information provided by governments in their reports and the comments of employers' and workers' organizations.

Since first identifying cases of **satisfaction** in its report in 1964,<sup>2</sup> the Committee has continued to follow the same general criteria. The Committee expresses satisfaction in cases in which, **following comments it has made on a specific issue, governments have taken measures through either the adoption of new legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions.** In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. The reason for identifying cases of satisfaction is twofold:

- to place on record the Committee's appreciation of the positive action taken by governments in response to its comments; and
- to provide an example to other governments and social partners which have to address similar issues.

<sup>1</sup> See paras 79 and 83 of the General Report of the Committee of Experts (102nd Session, Report III (Part 1A)).

<sup>2</sup> See para. 16 of the report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference.

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Within cases of progress, the distinction between cases of satisfaction and cases of **interest** was formalized in 1979.<sup>3</sup> In general, cases of interest **cover measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners.** In comparison to cases of satisfaction, cases of interest relate to progress, which is less significant. The Committee's practice has developed to such an extent that cases in which it expresses interest may encompass a variety of measures. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention. This may include:

- draft legislation that is before parliament, or other proposed legislative changes forwarded or available to the Committee;
- consultations within the government and with the social partners;
- new policies;
- the development and implementation of activities within the framework of a technical cooperation project or following technical assistance or advice from the Office;
- judicial decisions, according to the level of the court, the subject matter and the force of such decisions in a particular legal system, would normally be considered as cases of interest unless there is a compelling reason to note a particular judicial decision as a case of satisfaction; or
- the Committee may also note as cases of interest the progress made by a State, province or territory in the framework of a federal system.

<sup>3</sup> See para. 122 of the report of the Committee of Experts submitted to the 65th Session (1979) of the International Labour Conference.

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## **Annex 2**

INTERNATIONAL LABOUR CONFERENCE

C.App./D.6

102nd Session, Geneva, June 2013

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### **Committee on the Application of Standards**

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#### **Cases regarding which governments are invited to supply information to the Committee**

The list of the individual cases on the application of ratified Conventions appears in the present document.

The text of the corresponding observations concerning these cases will be found in document C.App./D.6/Add.1.

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

Report of the Committee of Experts  
(Report III (Part 1A), ILC, 102nd Session, 2013)

<b>Country</b>	<b>Convention No.</b> (The page numbers in parentheses refer to the English version of the Report of the Committee of Experts)
Bangladesh	87 (page 56)
Belarus	87 (page 63)
Cambodia	87 (page 72)
Canada	87 (page 74)
Chad	144 (page 517)
Dominican Republic	111 (page 455)
Egypt	87 (page 91)
Fiji	87 (page 96)
Greece	98 (page 106)
Guatemala	87 (page 110)
Honduras	98 (page 120)
Islamic Republic of Iran	111 (page 480)
Kenya	138 (page 329)
Republic of Korea	111 (page 496)
Malaysia	29 (page 243)
Mauritania	81 (page 588)
Pakistan	81 (page 593)
Paraguay	29 (page 261)
Saudi Arabia	111 (page 508)
Senegal	182 (page 390)
Spain	122 (page 653)
Swaziland	87 (page 173)
Turkey	98 (page 191)
Uzbekistan	182 (page 405)
Zimbabwe	87 (page 215)

### **Cases of progress**

<b>Country</b>	<b>Convention No.</b> (The page numbers in parentheses refer to the English version of the Report of the Committee of Experts)
Iceland	159 (page 635)
Rwanda	138 (page 389)

102nd Session of the International Labour Conference, June 2013

Committee on the Application of Standards – Working schedule for the examination of individual cases

Saturday 8 June morning	Monday 10 June morning	Tuesday 11 June morning	Wednesday 12 June morning	Thursday 13 June morning	Friday 14 June morning
<u>Honduras:</u> Convention No. 98  <u>Islamic Republic of Iran:</u> Convention No. 111	<u>Kenya:</u> Convention No. 138  <u>Uzbekistan:</u> Convention No. 182	<u>Swaziland:</u> Convention No. 87  <u>Chad:</u> Convention No. 144	<u>Bangladesh:</u> Convention No. 87  <u>Belarus:</u> Convention No. 87	<u>Dominican Republic:</u> Convention No. 111  <u>Egypt:</u> Convention No. 87	<u>Guatemala:</u> Convention No. 87  <u>Malaysia:</u> Convention No. 29
Saturday 8 June afternoon	Monday 10 June afternoon	Tuesday 11 June afternoon	Wednesday 12 June afternoon	Thursday 13 June afternoon	Friday 14 June afternoon
	<u>Pakistan:</u> Convention No. 81  <u>Paraguay:</u> Convention No. 29	<u>Turkey:</u> Convention No. 98  <u>Zimbabwe:</u> Convention No. 87	<u>Cambodia:</u> Convention No. 87  <u>Canada:</u> Convention No. 87	<u>Spain:</u> Convention No. 122  <u>Fiji:</u> Convention No. 87	<u>Mauritania:</u> Convention No. 81  <u>Rwanda:</u> Convention No. 138
Saturday 8 June evening	Monday 10 June evening	Tuesday 11 June evening	Wednesday 12 June evening	Thursday 13 June evening	Friday 14 June evening
	<u>Senegal:</u> Convention No. 182	<u>Saudi Arabia:</u> Convention No. 111	<u>Republic of Korea:</u> Convention No. 111	<u>Greece:</u> Convention No. 98	<u>Iceland:</u> Convention No. 159

