

## Committee on the Application of Standards

CAN/Iraq/PV.19

## Commission de l'application des normes

07.06.22

## Comisión de Aplicación de Normas

110th Session, Geneva, 2022

110<sup>e</sup> session, Genève, 2022110.<sup>a</sup> reunión, Ginebra, 2022

### Iraq (ratification: 1962)

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Convention (n° 98) sur le droit d'organisation et de négociation collective, 1949

Convenio sobre el derecho de sindicación y de negociación colectiva, 1949 (núm. 98)

### Written information provided by the Government

The Government has provided the following written information following the meeting of the Tripartite Advisory Commission held on Monday, 10 May 2022.

***The Committee requests the Government to indicate in what manner it ensures that effect is given to the Convention with respect to public officials.***

A preliminary draft of an Act on union organization was prepared and considered by the Council of State. The Council returned the draft for discussion by the relevant parties and there was liaison with the International Labour Organization over preparation of a preliminary version of the draft so that it might come into line with the relevant international Conventions and thus be invigorated and returned to legislative force. Under the oversight of the International Labour Organization, the Ministry held a workshop concerning the Act attended by all the representatives of the labour unions in Iraq for the purpose of arriving at a definitive version of the preliminary draft of the Act and of seeing that it achieves its proper function in law.

The Government requests the Organization to provide technical assistance in preparing the Act and in trade union capacity-building and promoting the activation of the Conventions relating to union freedom.

***The Committee therefore requests the Government to take the necessary measures to ensure that the sanctions actually imposed in cases of anti-union discrimination are sufficiently dissuasive. In this regard, the Committee requests the Government to provide information on the sanctions imposed in practice.***

The sanctions that are imposed in practice match those penalties stipulated in the Labour Code, and which include those mentioned in section 11(ii); no scope is given for deviation from the provisions of the Labour Code. In light of the existing amendment to the Labour Code (which is under discussion), the matter of sanctions will be discussed with the social partners.

***The Committee requests the Government to specify which remedies may be imposed by the Labour Court in such cases, indicating in particular whether the Court is empowered to reinstate the dismissed workers in their positions.***

The Labour Code gives workers the right to appeal a severance decision before the severance committee formed pursuant to Instructions No. 4 of 2017.

They may also appeal the severance decision in court within 30 days of being informed of the termination of their service, as per the provisions of section 46(i) of the Labour Code.

A worker is deemed to have waived his right to appeal if he does not submit it within this period. In choosing one of these remedies he forfeits his right to the other one.

The severance committee's decision may be appealed against in the labour court within 30 days of the worker being informed of the decision.

If the committee or the court finds that the termination of the worker's service is contrary to the conditions for terminating the labour contract as specified in section 43 of the Labour Code, they may order the reinstatement of the worker or the restitution of all wages owed to him since the termination of the work contract.

***The Committee requests the Government to provide information regarding the length of the procedure to treat complaints against acts of anti-union discrimination and its application in practice.***

The length of the period for the treatment of a complaint lodged by a worker concerning labour disputes over existing rights is in accordance with the application of the provisions of the Labour Code, which is within 30 days of the complaint being submitted as per section 157(iv).

If the complaint concerns a collective dispute over future interests, the length of the period specified for resolution of the dispute is up to 48 hours from the date on which the request for this is received, during which an appointment to hear the dispute must be fixed.

The length of the period for settling the dispute is seven days from the expiry of the 48-hour period as per the provisions of section 161(iii) and (iv) concerning the settling of disputes

In all the above situations, cases involving labour issues are deemed to be urgent actions, as per section 166(iii).

Three hotlines have also been opened for receiving workers' complaints and forwarding them to the labour inspectorate, which deals with them as a matter of urgency and works to resolve any problem amicably before having recourse to the competent courts. The hotlines have proved to be successful in this regard.

***The Committee requests the Government to indicate whether other laws or regulations explicitly prohibit acts of interference and provide for rapid procedures and sufficiently decisive sanctions against such acts, including sanctions pertaining to the establishment of workers' or employers' organizations and to adequate protection against any acts of interference.***

Section 22(iii) of the 2005 Constitution of the Republic of Iraq states: "The State shall guarantee the right to form and join unions and professional associations and this shall be regulated by law."

It is also stated in the provisions of section 42(i)(k) of the Labour Code that the range of rights afforded to workers includes "freedom to create and join trade unions".

With regard to information concerning the measures taken or envisaged to promote collective bargaining, the number of collective agreements concluded and in force in the

country, as well as the sectors concerned and the number of workers covered by these agreements: there is a specific part of the Labour Code (that is Chapter 15) regulating everything pertaining to collective agreements and bargaining. This Chapter defines all the measures for concluding collective work agreements or entering into collective bargaining free from interference by any party (see sections 146–156 of the Code), although it should be noted that to date, no collective agreements have been concluded or are in force in the State.

**Recommendations: Iraq is in urgent need of trade union capacity-building and of promoting the activation of the Conventions relating to union freedom.**

## Discussion by the Committee

*Interpretation from Arabic: Government representative* – The Government has noted the observations of the Committee of Experts, and I would like to point out the following. My Government has ratified 68 Conventions, including 8 fundamental Conventions. We have also ratified Convention No. 98 in 1962, and we continue to discuss and collaborate with the Committee of Experts, the Baghdad Office, the Regional Office in Beirut and the ILO in Geneva in order to reach an optimal implementation of these Conventions. I must admit that we are extremely surprised by the inclusion of Iraq on the shortlist.

Iraq, since 2003, has seen major developments and a new Constitution was adopted in 2005. A Constitution based on freedom, equal treatment of all citizens without any discrimination, and this Constitution guarantees the right to organize in all its forms. Important developments occurred with respect to freedom of expression, the promulgation of a law on political parties, and the holding of elections every four years, whereby members of Parliament are elected by Iraqi citizens and Parliament would consequently appoint the executive.

Following these transformations, however, we faced major challenges and terrorist attacks which did not distinguish between one category of the population and another and, in spite of all these challenges, Iraq was able to take important strides to adopt new legislation, which are in conformity with the Constitution and the new era. Thus, Labour Code No. 37 of 2015 was adopted. It provided for the first time for the most representative trade union organizations and allocated an entire chapter on collective bargaining, and occupational health and safety so as to protect workers' rights in conformity with ILO Conventions. The Code was promulgated with continuous ILO assistance which eventually led to the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) in 2018.

Since Law No. 52 of 1987 is of a general nature and its provisions are not in conformity with Conventions Nos 87 and 98, the Ministry of Labour and Social Affairs called for the establishment of a committee by virtue of a Diwani Order to prepare a new draft law. Thus, Diwani Order No. 18 of 2018 was promulgated, establishing a committee under my chairmanship and the membership of trade unions and some of these trade unions include trade unions which have presented this case at the ILO. But we have to bear in mind that the adoption of a new law needs to go through different stages before its final adoption as a result of the separation between the powers of the State. Thus, work went on ahead and a draft law on trade union organizations for workers and employees in Iraq was prepared.

Furthermore, the Ministry has adopted a new policy in dealing with the situation. It has kept the same distance from all trade unions operating, while waiting for the promulgation of a new law.

With respect to the Committee's request to take the necessary measures to ensure that sanctions actually imposed in cases of anti-union discrimination are sufficiently dissuasive, we would like to recall here that the sanctions imposed are in line with the enacted law, including article 11(2) and, of course, I have to remind you all that this article will be the subject of an amendment once the new law is presented to Parliament, in consultation with the social partners. There is also the Committee's request on specifying the remedies which may be imposed by the labour tribunal in such cases, indicating in particular whether the tribunal is empowered to reinstate the dismissed workers in their positions.

The Labour Code grants the right to workers to appeal against a termination decision before the Committee on Termination of Service, which was set up by virtue of Instruction No. 4 of 2017, or before the court within 30 days as of the date on which a worker was notified of his/her termination based on section 46 I of the Labour Code.

A worker would be considered to have rescinded the right of appeal if he/she does not submit it within the deadline and if one of the parties chose one option he/she would lose the right to use the other option.

The decision of the Committee on Termination of Service can be appealed against before the Labour Court within 30 days as of the date of the worker's notification.

If the Committee or Court finds out that a worker's termination is different from the cases of terminating a labour contract as specified in section 43 of the Labour Code, it will consequently decide to reinstate the worker and pay him/her full wages for the period since his/her labour contract was terminated.

There is also the request by the Committee of Experts to provide information on the length of the procedure to treat complaints against acts of anti-union discrimination and its application in practice. The periods required by the procedures in treating a complaint submitted by a worker and which concern labour conflicts on existing rights is related to the application of the sections of the law, which is 30 days as of the date on which the complaint was submitted, as specified in section 157 IV of the Code.

In the case of a complaint which is related to a collective conflict involving future interests, the set period to resolve a conflict is 48 hours so as to identify a date on which to examine the conflict as of the day on which the request was received and seven days to decide on the conflict as of the date on which 48 hours has ended to decide finally on the conflict as specified in section 161 – III and IV.

In view of these points, labour cases are considered urgent actions based on paragraph 3 of section 166.

This leads me to the request by the Committee of Experts on indicating whether there are other laws or regulations which explicitly prohibit acts of interference in the process of establishing workers' trade unions or employers' organizations and provide for rapid procedures and sufficiently dissuasive sanctions against such acts of interference. I would like to recall here that in the Constitution of 2005, article 22(III) specifies that the State shall guarantee the right to form and join trade unions and professional associations, and this shall be regulated by law.

This is in addition to section 42 I-k which also includes the cluster of rights granted by the Labour Code to workers on their freedom to establish and join trade unions.

With respect to the Committee's request on providing information on the measures taken or envisaged to promote collective bargaining, the number of collective agreements concluded

and in force in the country, as well as the sectors concerned and the number of workers covered by these agreements, I would like to bring to the Committee's attention that there is an entire chapter in the labour law, which is chapter 15, which includes any matter related to collective bargaining and collective agreements. In this chapter, all measures are outlined whereby collective bargaining or negotiations can be conducted without any intervention from any outside party in articles 146–156. It is to be noted here that there are still no collective agreements which have been concluded or are in force in the country.

I would like to point out here that, in order to solve all these issues, negotiations and continued dialogue should take place and of course we would like to avail ourselves of the technical assistance of the ILO.

**Employer members** – In terms of background details, as we all know, Convention No. 98 is a fundamental Convention. It is classified as up to date, so it is not part of the revision of work that the Standards Review Mechanism is looking at. Iraq ratified the Convention in November 1962 so it was a long time ago. This case has only been discussed by the Committee once before in 2008, although the Committee of Experts has made 20 observations on this case in the past.

Iraq was discussed in the Committee in 2008, well before it ratified Convention No. 87 in 2017. This discussion focused on the observations made by the International Trade Union Confederation (ITUC) in 2006 and violations of trade union and collective bargaining rights on serious cases of violence and other violations of freedom of association and on the views of the Committee of Experts on the new draft Labour Code which had not yet been adopted.

The Committee in its conclusions noted the Government's statement regarding the ongoing process of reconstruction and the climate of violence in the country. It further noted that the draft Labour Code, prepared with the assistance of the ILO, was presently before the Shura Council, as well as the Government's statement that: (a) it would take the comments of the Committee of Experts on board before proceeding with its adoption; and (b) that despite the current absence of an appropriate legislative framework governing the right to organize, trade unions were in fact able to carry out their activities without interference.

The Committee also took note of the statement made by the Iraqi Workers' delegate as to the difficulties faced in organizing workers and the interference workers' organizations encountered in their activities, including the freezing of trade union assets. The Committee observed similar concerns by the Iraqi employers' organizations, observing that a draft Labour Code was prepared some time ago with the assistance of the ILO; the Committee expressed the firm hope the draft Code would be modified along the lines requested by the Committee of Experts in full consultation with the social partners and would be adopted without delay. In the meantime, the Committee called upon the Government to ensure that the laws and practice of the previous regime were no longer applied.

The Committee considered that the application of this Convention and vigorous efforts towards extensive and meaningful social dialogue were important building blocks to the process of reconstruction ongoing in the country. It hoped that it would be in a position in the near future to observe that all workers, including public servants not engaged in the administration of the State, could fully enjoy the effective protection of the provisions of the Convention.

Welcoming the Government's request for ILO technical assistance, the Committee urged it to accept an ILO technical assistance mission in the near future. That was in 2008.

Moving forward now to 2017. The Committee of Experts noted with interest the approval of the ratification of Convention No. 87 in November 2017. Noting the late receipt of the Government's report, the Committee of Experts also observed that the Government reported the adoption of the new Labour Code in 2015. The Committee of Experts said it would examine the Government's report and the new legislation at its next session in order to evaluate its conformity with the Convention and ensure that the comments made by the Committee of Experts regarding the previous legislation have been taken into consideration.

This brings us to the present day and the present report. In its observation in the report now before the Committee, the Committee of Experts, with respect to the scope of the Convention, noted that section 3 of the Labour Code stipulates that its provisions do not apply to public officials appointed in accordance with the Civil Service Law or a special legal text, and members of the internal security forces. It requested the Government to indicate in what manner it ensures that effect is given to the Convention with respect to public officials not engaged in the administration of the State who are excluded from the application of the Labour Code.

With respect to Article 1 of the Convention, which is protection against acts of anti-union discrimination, sufficiently dissuasive sanctions, the Committee of Experts considered that the amount of the fine provided in section 11(2) of the Labour Code – 1 million dinars which is approximately US\$685 – may not be adequate to deter and prevent the repetition of acts of anti-union discrimination. It requested the Government to take the necessary measures to ensure that the sanctions imposed in cases of anti-union discrimination are sufficiently dissuasive and to provide information on the sanctions imposed in practice.

With respect to anti-union dismissal, the Committee of Experts noted that section 145 of the Labour Code provides that when the penalty of dismissal has been imposed on a worker, such a decision may be challenged within 30 days before the Labour Court. It noted, however, that the Labour Code does not specify which sanctions are applicable in the event of an anti-union dismissal. The Committee of Experts requested the Government to specify which remedies may be imposed by the Labour Court in such cases, indicating in particular whether the Court is empowered to reinstate the dismissed workers in their positions.

With respect to rapid appeal procedures, the Committee of Experts requested the Government to provide information regarding the length of the procedure to treat complaints against acts of anti-union discrimination and its application and practice.

With respect to Article 2, which is protection against acts of interference, the Committee of Experts noted that the Labour Code does not contain any provisions which explicitly prohibit acts of interference. It requested the Government to indicate whether other laws or regulations explicitly prohibit acts of interference and provide for rapid procedures and sufficiently decisive sanctions against such acts.

As we have heard from the Government, the Government has responded to all of these requests in writing and we will not therefore repeat the response because we think we heard it very clearly, concisely and comprehensively from the Government. With that, we will turn to my concluding remarks.

To sum up, if we look at the timeline of this case in particular, it is clear that progress has been slow. A Labour Code was drafted in 2003, it was before the Shura in 2008 but not adopted until 2015. Convention No. 87 was ratified in 2017 and this is the first time Iraq's application of Convention No. 98 is in fact being fully examined. It is fair to say that this is a case in which progress has been made but, as in so many cases like this, more needs to be done.

Here, the Employer members note that technical assistance was provided to the process of drafting the Labour Code in 2003, and, looking at the Committee of Experts' observations, it seems possible that some of the guidance provided to the process of drafting the Code had been lost in translation and at subsequent finalization and passage into law. With that in mind, the Employer members urge the Government of Iraq to take note of the Committee of Experts' observations and work with the most representative employers' and workers' organizations towards closing the apparent gaps between the Labour Code and the basic requirements of Convention No. 98.

If, as it has itself requested, Iraq were again to avail itself of the technical assistance accessible through the ILO, the Government may find that it was able to complete many, if not most, of the recommended actions, in time for a favourable report the next time the Committee of Experts reports on Convention No. 98.

**Worker members** – Iraq needs to be discussed again in our Committee. This time it is under Convention No. 98. The Committee of Experts' report shows that many difficulties persist in the implementation of the Convention. We have just heard the Government make a number of points and try to make it sound like things are going in the right direction. The reality is quite different. A number of points that have been and will be raised are also related to Convention No. 87, but as everyone knows Conventions Nos 87 and 98 are closely linked and complementary so it is justified to address them.

The first issue we wish to address concerns the scope of the right to collective bargaining. Indeed, civil servants do not fall within the scope of the Labour Code. However, it is this text that contains the provisions that give effect to Convention No. 98. The consequence is that as things stand, a significant category of workers is deprived of its rights in this area. This includes teachers, employees of public enterprises and the decentralized institutions.

In this respect, the Revolutionary Command Council Resolution No. 150 of 1987 states in its section 10 that trade unions are limited to the private sector and are not allowed in the public sector. Section 2 of the Trade Unions Organizations Act No. 52 of 1987 includes the same provision. Similarly, several ministerial instructions and circulars prohibit the founding of trade unions in the public sector and prevent collective bargaining. It should be noted that we are talking about a country where the public sector plays an important and vital role.

The second problem we wish to highlight concerns the numerous acts of discrimination suffered by trade union activists. It should be recalled that Article 1(b) of the Convention provides protection for the worker against dismissal or any other prejudice by any other means because of his or her trade union membership or participation in trade union activities.

We must denounce many prejudicial measures taken against workers solely and only because of their trade union actions. Colleagues will discuss specific examples, but I can already indicate that the spectrum of these acts of discrimination is very broad. It ranges from ministerial decisions that exclude certain organizations to individual disciplinary measures taken against trade union activists.

The Government claims that the current legislative arsenal provides for sanctions against acts of discrimination. It also states that legal changes are under way in this regard. The Worker members insist that the changes introduced should result in truly dissuasive sanctions. The judicial process must also offer all guarantees of impartiality and of course must be accessible. We also ask the Government to collect data on the number of complaints handled, the decisions taken and their consequences.

A careful analysis of the situation reveals the root cause of the acts of discrimination that we denounce here. Indeed, we observe that these acts are the result of the Government's desire to organize and maintain a system of trade union monopoly. This results from section 21 of the Trade Unions Act No. 52 of 1987, which provides that the General Federation of Trade Unions is the supreme body for the trade unions. It is clear that the main purpose of the facts and practices reported here is to prevent the emergence of alternative trade union organizations. These acts of discrimination extend to intimidation of peaceful trade union protests. Activists are interrogated by the police and accused of illegal trade union activities.

We strongly remind that respect for freedom of association and the right to organize is incompatible with a climate of violence and intimidation. We call on the Government to make the necessary legislative changes and to guarantee all workers the rights and protections provided by the Convention.

**Membre gouvernementale, France** – J'ai l'honneur de m'exprimer au nom de **l'Union européenne (UE) et de ses États membres. L'Albanie**, pays candidat, la **Norvège**, pays de l'Association européenne de libre-échange (AELE), membre de l'Espace économique européen (EEE), ainsi que **la République de Moldavie** s'alignent sur la présente déclaration.

L'UE et ses États membres sont attachés à la promotion, à la protection, au respect et à la réalisation des droits de l'homme, y compris les droits du travail tels que le droit d'organisation et de négociation collective.

Nous encourageons activement la ratification et la mise en œuvre universelles des normes internationales fondamentales du travail, notamment la convention n° 98.

Nous soutenons l'OIT dans son rôle indispensable d'élaboration, de promotion et de contrôle de l'application des normes internationales du travail ratifiées et des conventions fondamentales en particulier.

L'UE et ses États membres sont des partenaires de longue date de l'Iraq. En réponse aux nombreux défis auxquels l'Iraq est confronté après des années de conflit, l'UE a adopté en 2018 une nouvelle stratégie à l'égard de l'Iraq afin de soutenir les efforts du gouvernement en matière de stabilisation, de reconstruction, de réconciliation et de développement. L'UE et l'Iraq ont également signé un accord de partenariat et de coopération global.

Nous saluons le fait que le gouvernement ait fourni des informations actualisées avant cette réunion.

Tout en tenant compte des observations fournies, nous notons avec préoccupation les observations de la commission d'experts rappelant la nécessité de lever tous les obstacles au pluralisme syndical, ainsi que de veiller à ce que les droits prévus dans la convention soient applicables à tous les fonctionnaires publics non commis à l'administration de l'État.

En ce qui concerne le champ d'application de la convention, nous rappelons que tous les travailleurs, sans distinction aucune, y compris les travailleurs du secteur public, qu'il s'agisse ou non de services essentiels, sont couverts par la convention. La mesure dans laquelle la convention s'applique aux forces armées et à la police doit être déterminée par les lois ou réglementations nationales.

En ce qui concerne les travailleurs du secteur public, nous tenons à souligner que toutes les autres personnes employées par le gouvernement, les entreprises publiques ou les institutions publiques autonomes sont couvertes par la convention et devraient donc bénéficier des garanties que celle-ci prévoit. Malheureusement, l'article 3 du Code du travail ne respecte pas ce champ d'application en excluant tous les, je cite, «fonctionnaires publics



nommés conformément à la loi sur la fonction publique ou à un texte spécial de loi». Nous demandons instamment au gouvernement d'adapter le Code du travail afin qu'il soit conforme à la convention.

L'UE et ses États membres attirent également l'attention sur l'importance de la protection contre les actes de discrimination antisyndicale et prennent note des dispositions du Code du travail irakien. Nous nous faisons l'écho de l'appel lancé par la commission d'experts au gouvernement pour qu'il prenne les mesures nécessaires pour assurer que les sanctions effectivement appliquées aux cas de discrimination antisyndicale soient suffisamment dissuasives.

Nous demandons au gouvernement de fournir des informations supplémentaires sur la mise en œuvre de ces dispositions dans la pratique, ainsi que sur les réparations qui peuvent être imposées en cas de licenciement antisyndical illégal et sur la durée de la procédure de traitement des plaintes contre les actes de discrimination antisyndicale.

Enfin, en l'absence de telles dispositions dans le Code du travail, nous réitérons l'appel de la commission d'experts à fournir des informations sur les dispositions légales interdisant expressément les actes d'ingérence dans l'établissement, le fonctionnement ou l'administration des organisations de travailleurs ou d'employeurs.

L'UE et ses États membres restent attachés à leur coopération et à leur partenariat étroits avec l'Iraq et attendent avec impatience de poursuivre les efforts conjoints avec le gouvernement et l'OIT pour améliorer les normes du travail pour tous en Iraq, y compris la mise en œuvre des conventions fondamentales.

*Interprétation de l'arabe: Membre travailleur, Tunisie* – Je vous remercie de me donner la parole pour discuter du cas de l'Iraq au nom de la Fédération syndicale tunisienne. Nous connaissons les épreuves qu'a traversées le peuple irakien suite aux guerres, puis suite au blocus et enfin suite à ces conflits meurtriers qui ont abouti à la perte de millions de travailleurs, de leurs biens et de leurs moyens de subsistance.

Nous estimons que la procédure de recouvrer leurs droits syndicaux et de les développer fait partie du processus de reconstruction du pays, de renforcement de sa stabilité et de développement de la législation du travail pour être en conformité avec les normes internationales du travail, répondre aux revendications des travailleurs irakiens et de leur mouvement syndical.

À cet égard, les syndicats ont demandé la révision de plusieurs chapitres de la loi n° 52/1987 afin d'éliminer toutes les formes de discrimination, d'assurer la protection des travailleurs, de cesser de s'immiscer dans les affaires internes des syndicats et de garantir le droit de la liberté syndicale et de la négociation collective.

Le Code du travail a été révisé afin de donner aux syndicalistes et aux travailleurs tous leurs droits. Nous demandons au gouvernement de cesser toute ingérence et de fournir la protection aux travailleurs. Nous avons pris connaissance des informations fournies par le gouvernement et nous voyons que les efforts vont dans le bon sens.

Il est extrêmement important de mettre un terme à la discrimination à l'encontre des travailleurs quelle que soit la raison de cette discrimination. Nous demandons au gouvernement d'abroger les lois qui permettent la discrimination contre les travailleurs et ces lois qui les privent de la liberté dans l'exercice de leurs activités syndicales. Nous demandons au gouvernement d'appliquer complètement la convention et de mettre un terme aux licenciements abusifs de syndicalistes.

Face à ces exactions, nous ne pouvons que répéter notre appel au gouvernement de modifier le Code du travail et de faire cela en concertation avec les organisations de travailleurs et d'employeurs et de permettre la réintégration des syndicalistes licenciés. Nous réaffirmons la nécessité de mettre en œuvre toutes les dispositions de cette convention afin de permettre un pluralisme syndical et d'empêcher toute ingérence dans les activités syndicales.

*Interpretation from Arabic:* **Government member, Egypt** – We have taken note of all the measures taken by the Government to bring its national legislation into conformity with the Convention, as well as its efforts to enact a new law which guarantees freedom of association, trade union pluralism and the absence of discrimination.

We know that Iraq has ratified a large number of Conventions and that it is committed to observing the protection of the civil, economic, cultural, political, social and labour rights of the Iraqi people. We have taken due note of the laws adopted by the State of Iraq which protect the rights of Iraqis, such as Labour Law No. 37 of 2015, which includes an entire chapter on collective bargaining and other provisions which protect a worker's right in the case of termination of service.

In conclusion, we would like to express our appreciation of the efforts made by the Government to bring into conformity its legislation with the provisions of the Convention and we hope that the Committee will recognize the efforts being made by the country in its conclusions, and respond to its request for technical assistance.

**Worker member, United Kingdom** – We note the responsibility of governments to create conditions in law and practice in which unions and employers can freely bargain. However, as we have heard, not only does the Iraqi Government provide insufficient disincentives for anti-union discrimination in the workplace, but it actively works against those conditions conducive to collective bargaining.

We all know of the damage caused by the sense of impunity granted by negligence or collusion of governments in the suppression of free trade union activity. Rather than addressing this imperative, we see the Iraqi Government perpetuating a climate of fear. When thousands of workers in the energy sector demonstrated peacefully to demand their workplace rights, security forces brutally dispersed the protests. Similarly, another peaceful protest on 14 February ended in violent attacks by the police and the arrest of two trade unionists. In this climate of impunity, one employee at an oil facility was killed by organized crime gangs following continuous attacks against independent trade unions. A ministry terminated the contract of one electricity worker for organizing a protest against job cuts. Six hundred and fifty oil workers were dismissed after seeking collective bargaining and, when they protested peacefully, they were beaten by the police with batons. On 31 March, electricity workers protested peacefully about employment conditions they had tried to raise with management. The subsequent police crackdown left hundreds injured.

In the discussion on the General Report, I noted that a company had weighed the likely cost of punishment for breaking labour laws against future wage savings, and knowingly broke the regulations. How much more likely is such cynical behaviour if a company thinks that, instead of being punished by the Government, they might be applauded. Indeed, recently two leaders of the General Federation of Iraqi Trade Unions (GFITU) who sought collective bargaining were instead reassigned by their company to jobs they did not want as punishment.

Finally, we note the interdependence of the fundamental principles and, in particular, the centrality of respect for Convention No. 87 in providing the necessary foundations for fulfilment of Convention No. 98. By allowing, and indeed propagating, a climate of fear in which

anti-union violence is commonplace, the Government of Iraq is undermining the necessary conditions for workers' organizations, free of interference, to engage in collective bargaining, something we hope it will urgently address.

*Interpretation from Arabic:* **Government member, Qatar** – We listened very carefully to the statement made by the Government of Iraq with reference to the Convention. We wish to state that we appreciate the efforts being undertaken to ensure that Iraq is in compliance with the provisions of the Convention and we note that there is a bill on trade union organization which is currently under discussion with the ILO and workers' organizations. This reflects the Government's keenness to bring its legislation into conformity with the provisions of Convention No. 98 in accordance with the Iraqi Constitution, which guarantees the freedom of establishing workers' organizations. We note that the Government is seeking to strengthen the system of complaints mechanisms available to workers so as to enable them to appeal when they feel that there has been discrimination against them.

We support the Government's request for ILO technical assistance in drafting the legislation in question, for capacity-building and to take the necessary operational measures to put into effect the Convention. We also believe that further assistance could help to give effect to other provisions of the Convention. We would commend the efforts that are being undertaken and we believe they should be further supported. We also support the statement made by Iraq in that regard.

**Worker member, United States of America** – The American Federation of Labor and Congress of Industrial Organisations (AFL-CIO) has been working with Iraqi trade unions on labour law issues for many years. While there has been some progress in that time, including the 2015 Labour Code, the fact remains that the rights to freedom of association and collective bargaining remain deeply constrained in Iraq.

As noted in the Committee of Experts' comments on Iraq for Conventions Nos 87 and 98, the existence of a trade union monopoly violates these fundamental Conventions. In practice, independent unions are, therefore, largely unable to build membership and bargain collectively.

On 20 January 2021, the Supreme Judicial Council refused to appoint a judge to oversee the running of the provincial elections of the GFITU, reiterating that the Iraqi Government only recognizes the General Federation of Iraqi Workers (GFIW). One pernicious practice used over the course of many years to frustrate collective bargaining is the issuance of government administrative orders directing ministries to only bargain with the government-approved GFIW. Given the role and importance of the public sector in Iraq, orders to government agencies to refuse to bargain affect a very large number of workers. For example, on 12 October 2020, the Iraqi Ministry of Labour issued Administrative Order No. 11367, instructing government administrative bodies not to deal with unions other than the government-approved GFIW. Following Administrative Order No. 11367, several ministries issued circulars to implement this policy. On 11 July 2021, the Ministry of Electricity issued a directive banning all trade union committees and instructed employees in publicly-owned companies not to engage with such committees or face discipline under the amended Penal Code 111 of 1999, among other laws.

Clearly much work remains for the Government of Iraq to come into compliance with Convention No. 98.

*Interprétation de l'arabe:* **Membre gouvernemental, Algérie** – La délégation algérienne remercie le représentant du gouvernement de l'Iraq pour sa déclaration relative à la mise en

œuvre de la convention. Nous prenons bonne note des informations fournies par le représentant du gouvernement selon lesquelles la réforme du Code de travail, préparée par la Commission consultative tripartite, a pour objectif la promotion de la négociation collective dans le secteur de la fonction publique, la protection des délégués syndicaux contre les actes antisyndicaux, le renforcement des sanctions dissuasives à imposer en cas de discrimination antisyndicale et d'ingérence dans le fonctionnement des organisations syndicales.

Mon pays note aussi positivement que le gouvernement demeure attaché aux principes de l'OIT visant à renforcer les libertés syndicales et s'est dit convaincu que cet engagement serait maintenu. Ces mesures démontrent à l'évidence le bien-fondé de la nouvelle approche de l'Iraq, qui gagnerait à être accompagné davantage par le BIT, à la lumière de ses obligations découlant de la convention.

Nous espérons que les consultations engagées sur l'amélioration de la protection contre les licenciements abusifs, y compris les licenciements pour motifs antisyndicaux, tiendront compte des commentaires formulés par la commission d'experts sur l'application des dispositions de l'article 1 de la convention.

Enfin, nous demandons instamment au BIT de fournir une assistance technique et un accompagnement au gouvernement afin de l'aider dans son travail de mise en conformité de sa législation et de sa pratique avec les dispositions de cette convention. Nous espérons que cette assistance sera axée sur les résultats et nous estimons à cet égard que les dispositions de la convention et les commentaires de la commission d'experts fournissent une solide base de travail.

*Interpretation from Arabic: **Worker member, Syrian Arab Republic*** – Iraq is a Member of the ILO and as such it respects the Constitution of the ILO. That being so, it has taken the legislative steps required to give effect to ratified Conventions. We consider that the provisions of Convention No. 98 are not in contradiction with the provisions of the Labour Code and are indeed in line with the legislative principles that govern the situation of workers in Iraq.

We believe that all the steps required to give effect to the Convention have been taken. We know that Iraq is now working on new legislation to guarantee pluralism when it comes to trade unions, non-discrimination and the full exercise of trade union rights.

However, the Labour Code contains provisions which guarantee freedom of association and collective bargaining, in addition to providing for other rights which protect workers against termination and their right to join the most representative trade union. We therefore commend Iraq for its efforts to give effect to that Convention and to bring its legislation into full conformity with international labour standards. We do believe that the ILO needs to provide further technical assistance to allow Iraq to do even more and ensure the appropriate implementation of the Convention.

*Interpretation from Arabic: **Government member, Oman*** – We would like to thank the Government of Iraq for the measures taken in cooperation with the social partners to promote the implementation of the Convention.

The Government of Oman would like to recognize the progress that has been made in this area. We also welcome the fact that the Government is of a mind to continue with the implementation of the Convention by bringing its legislation into line with the provisions of the Convention, and we certainly recognize progress made in the area of legislation, particularly those laws relating to trade union organizations, the Labour Code and a number of ministerial decrees which strengthen Iraq's observance of international labour standards. We also welcome the measures in effect in Iraq, despite the huge post-pandemic challenges, and the

pandemic which has had an impact on all countries and particularly on developing countries. As you know, Iraq has ratified Convention No. 87 on freedom of association which strengthens freedom of association in Iraq. We would still invite the Government to continue its efforts in order to protect the rights of workers and promote trade union activities in the country. We hope that the ILO will continue to provide technical assistance to help the tripartite constituents to provide and guarantee decent work.

*Interprétation de l'arabe: Membre gouvernemental, Maroc* – Permettez-moi tout d'abord de remercier le gouvernement irakien pour les informations et les éclaircissements qui nous ont été fournis. Nous saluons le gouvernement pour les efforts déployés afin de répondre aux observations et commentaires de la commission d'experts. À cette occasion, nous saluons les efforts déployés pour ce qui est du contrôle des normes internationales du travail par cette commission.

Ces remarques portent sur la nécessité de prendre les mesures afin de prendre les sanctions dissuasives en cas de discrimination antisyndicale lors de la création d'organisations professionnelles de travailleurs et d'employeurs et d'éviter l'ingérence dans les affaires internes de ces organisations.

Après avoir écouté les réponses du gouvernement à propos de ces observations, nous notons positivement que le gouvernement a pris une série de mesures concernant cette convention, notamment le fait de préparer une nouvelle loi qui garantit la liberté d'organisation syndicale, qui encourage le pluralisme et qui interdit la discrimination antisyndicale et l'ingérence dans les affaires internes de ces organisations.

Nous notons également que le gouvernement œuvre pour garantir la conformité de sa législation nationale aux normes internationales du travail, notamment le Code du travail n° 37 de 2015 qui prévoit expressément la négociation collective dans un chapitre consacré à cette question, ainsi que la protection des droits des travailleurs en cas de cessation de services.

En conclusion, le gouvernement du Maroc appuie la position du gouvernement irakien dans sa coopération avec l'OIT afin de réformer la représentation des syndicats, et le Royaume du Maroc recommande de poursuivre les efforts pour promulguer une nouvelle loi qui tient compte des préoccupations des travailleurs.

**Government member, Pakistan** – Pakistan appreciates Iraq's commitment to the implementation of international labour standards. We have taken note of the Government's proposal to enhance its compliance with the relevant Convention in consultation with the ILO. Pakistan welcomes the recommendations of the Committee and Iraq's willingness to accept capacity-building and technical assistance from the ILO to introduce necessary improvements in its legislative and administrative framework.

It is the responsibility of every government to create a conducive environment for the well-being and welfare of its people and national circumstances should be respected. In this regard, we are pleased to note that the Government of Iraq is undertaking steps to promote social dialogue with the relevant stakeholders. For the future, we support Iraq's constructive engagement with the ILO and encourage social dialogue in the spirit of tripartite mechanisms that recognize steps under way to address the existing observations.

*Interpretation from Arabic: Government member, Saudi Arabia* – The delegation of Saudi Arabia, welcomes the efforts that have been made by the Government of Iraq and the measures that have been taken to bring national law into line with the Convention, as well as the efforts towards the enactment of relevant legislation in this area. We also welcome the

provisions of Labour Code No. 37 of 2015, which is currently in force, and which have developed those sections which guarantee all rights of workers.

In conclusion, we welcome the fact that the Government of Iraq stands ready to avail itself of ILO technical assistance in order to ensure a better application of the Conventions.

*Interpretation from Arabic: **Government member, Libya*** – The delegation of my country wishes to begin by applauding the efforts made by the Government of Iraq with reference to the Convention. We also commend the Government's efforts to draft new legislation to guarantee freedom of association in the country while eliminating all obstacles towards the full implementation of that legislation.

We commend the fact that the Government stands ready to accept further technical assistance from the ILO concerning this Convention, and we think that it is indeed appropriate. We therefore call on the ILO to provide technical assistance to Iraq in order to ensure that it can give full effect to the Convention and the rights enshrined therein.

*Interpretation from Arabic: **Government member, Syrian Arab Republic*** – At the outset, allow us to thank the representative of Iraq for having provided the information that we have heard today. With regard to the information provided on the efforts made to apply the provisions of the Convention and the adoption of the necessary measures in this regard, my delegation would like to support Iraq in its readiness to avail itself of ILO technical assistance with respect to a better application of ILO Conventions.

*Interpretation from Arabic: **Observer, International Trade union Confederation (ITUC)*** – Our Confederation wishes to underline the importance of the Iraqi Government taking full account of the recommendations made by the Committee of Experts, especially with reference to the Convention. We can confirm that what the Government has said is true. The Government is indeed drafting new legislation on trade union organizations in the country.

In 2018, Ministerial Decree No. 18 was adopted and which launched the process, but we think it now needs to go faster because we see that today there are still trade unionists being excluded from participation in negotiations that they should be involved in because they are seen as not representing workers in the public sector in particular. And this is an issue within various industries, electricity industry, the oil industry, the civil service, as well as other areas. So, what is happening right now is that it is still not possible to have trade unions in those sectors; it is not possible to have collective bargaining and that is creating serious problems in the country.

We have also seen that many trade unionists have been subject to sanctions. We therefore call upon the Government to repeal Law No. 52/1987 on trade union organizations and also to repeal Decision No. 150/1987 on the matter. We recommend that all legislation that runs counter to the spirit of this Convention should be repealed.

We also recognize that Iraq urgently needs technical assistance from the ILO for trade union capacity-building to promote the application of Conventions on the freedom of association. We need to improve the structure of our Ministry of Labour to allow it to play its rightful role and to allow its staff to play their rightful part in taking the country forward and promoting collective bargaining.

**Observer, International Transport Workers' Federation (ITF)** – For over a decade, the Committee of Experts has been calling on the Government to remove obstacles to trade union pluralism, which hamper trade union multiplicity, and, consequently, the enjoyment by all workers of rights protected under the Convention.

While we welcome the Government's indication that Government Decision No. 8750 of 2005 has been repealed, we are deeply concerned that Law No. 52 of 1987 is still in force. This law effectively establishes a de facto trade union monopoly forbidding the establishment of other unions and federations. While multiple unions operate in the country despite Law No. 52, the effect of the law is such that the Government favours the official governmental federation, thus marginalizing and excluding from social dialogue initiatives of other workers' organizations. Therefore, the Government continues to exert undue interference on the constitution and activities of independent trade unions while effectively restricting the right of these organizations to bargain collectively on behalf of their members. These are serious violations of the Convention.

The Government of Iraq has an obligation to encourage and promote free and voluntary collective bargaining under Article 4 of the Convention. There is no conceivable way for this to be done where a trade union monopoly that is not based on any valid representativity criteria continues to operate.

Further, it is clear that any favourable or unfavourable treatment by the public authorities of a particular trade union as compared with others, if it is not based on objective criteria, constitutes an act of discrimination and interference in violation of the Convention.

We therefore call on the Government to repeal Law No. 52 and to promote and encourage free and voluntary collective bargaining in practice so as to ensure full respect for the guarantees set out in the Convention.

*Interpretation from Arabic: Government representative* – I would like to thank all those who participated in the discussion and for their interventions.

The representative of the General Trade Union Federation in Iraq made his statement. He criticized the Government's measures and this is an indication that there is freedom, that there are no restrictions on what is being said. But we, on our part, can refute any allegation that free trade unions cannot operate freely, of course within the law, which is what is happening in the rest of the world.

In Iraq, at the Ministry of Labour, we have set up a committee and this committee is chaired by myself, and I continue to work with Ms Corinne and Mr Jordi from the Standards Department on the law, and Mr Ali Rahim, who is the head of the Iraqi Trade Union Federation, to which Mr Safar is a member and who is also a member of this committee which was set up. The fact that this committee was made up of other trade union organizations by virtue of an order issued by the Council of Ministers and their participation in drafting the new draft law on trade union organization testifies to the non-existence of discrimination and a clear recognition of all trade union organizations.

The Government is not party in any trade union conflict. It seeks an optimum application of Iraq's Constitution and that of ILO Conventions. However, we have encountered special circumstances such as the fight against terrorism and several political crises which may have been an obstacle in expediting the promulgation of the law. We, the Government believe in the right to organize, in pluralism, and not to interfere in the work of trade union organizations.

With respect to the right of employees in joining trade union organizations, the new draft law grants the right of employees to establish their trade union organizations inside ministries. We have an independent judiciary. In Iraq, we do not have a single prisoner of opinion because the Constitution guarantees the right to freedom of expression and the right to demonstrate. There may be separate incidents of one officer or soldier, but this does not reflect the general policy of the State nor its procedures. We continue to work, and we continue to dialogue with

the social partners. We also continue to work with the Office, the Beirut Office or with the Baghdad Office. Recently, a workshop was held on the new draft law, attended by the Director of the Baghdad Office, Ms Maha Qataa, and most trade union organizations, including Mr Adnan Safar.

We would like to avail ourselves of ILO technical assistance so as to reach a new draft law which is in conformity with our Constitution, which is based on freedom, pluralism and the provisions contained in Conventions Nos 87 and 98. I would like to take this opportunity to thank the Office, Ms Corinne Vargha from the International Labour Standards Department, and Mr Jordi – I am sorry, I cannot remember the name of the other official.

**Employer members** – We have listened to all of the comments that have been made by all of the participants this afternoon and I think it is fair to say we have expressed things in different ways, but we are broadly consistent in the views that have been expressed.

One thing worth observing is that Iraq is not unique in the sense that it is one of a number of countries in our memories, in our lifetimes, that have emerged from regimes which were far less democratic than what is in place now, and what they have all experienced, and Iraq has certainly experienced it, is that it is not easy to emerge from that sort of background to come to full forms of democracy. That does not happen in five minutes and the processes and expressions of democracy have got to be understood before you can even give effect to them. So we do understand that it has not been easy.

We also understand that the Government of Iraq is committed to upholding the principles of the Convention, that it has recognized that it is not an expert in those things in its own right, and that it has asked for the assistance of the ILO, among others, to do that. That is what a number of countries before Iraq have not done and they have taken longer, so we are seeing a situation where I think we need to say to Iraq: Do what you say you are going to do; we accept and you accept that there are gaps in where you need to be to be fully compliant with the Convention, and in so far as the ILO and anybody else who is available and willing to give assistance, take that assistance; I think you have asked for it, I think you should receive it and I think you are going in the right direction and, as I said in my earlier remarks, if you are doing these things, it may be that next time we meet we are actually hearing progress.

**Worker members** – I would like to thank the delegates who participated in our discussion.

The Government of Iraq made reference to a number of issues which do not fall under the scope of the examination of this discussion; in particular, aspects relating to internal affairs of the unions.

The Worker members insist that the Government must ensure the right to collective bargaining for all workers. We call on the Government to: first, repeal section 10 of the Revolutionary Council Resolution No. 115 of 1987; second, repeal section 2 of Law No. 52 of 1987. As a reminder, these two texts prohibit the establishment of trade union organizations in the public sector; third, repeal the instructions and ministerial circulars that have the same effect. They must be replaced by provisions that unequivocally guarantee the right to freedom of association and collective bargaining in this sector; fourth, repeal section 21 of Law No. 52 of 1987 on trade union organizations which provides that the General Federation of Trade Unions is the supreme body for trade union organizations. We call on the Government to adopt legal provisions that ensure trade union pluralism at all levels and guarantee the right to collective bargaining; fifth, establish a mechanism to effectively and dissuasively combat acts of anti-union discrimination such as dismissals; and sixth, stop intimidation of trade union activists by ensuring a climate free of violence against them.



In order to give effect to these elements, we ask the Government to accept a direct contacts mission.

### Conclusions of the Committee

The Committee took note of the oral and written statements made by the Government and the discussion that followed.

The Committee noted with concern that there are significant compliance issues regarding the Convention in law and practice with respect to the protection against anti-union discrimination, the scope of collective bargaining permitted under the law, the lack of trade union pluralism, and interference in free and voluntary collective bargaining.

Taking into account the discussion, the Committee urges the Government, in consultation with the social partners, to:

- provide information on measures taken or envisaged to encourage and promote voluntary collective bargaining, the number of collective agreements concluded and in force in the country, as well as the sectors concerned and the number of workers covered by these agreements;
- prohibit acts of undue interference in the establishment, functioning and administration of trade unions and make provision for appeal procedures, coupled with effective and dissuasive sanctions;
- undertake legal and practical measures to ensure protection against anti-union discrimination, including through effective and expeditious access to courts, adequate compensation and the imposition of sufficiently dissuasive sanctions; and
- take all appropriate legal and practical measures to ensure that trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind.

The Committee invites the Government to accept an ILO direct contacts mission.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 with information on the application of the Convention in law and practice, in consultation with the social partners.