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Netherlands – Sint Maarten (ratification: 1951)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Convention (n° 87) sur la liberté syndicale et la protection du droit syndical, 1948

Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87)

Written information provided by the Government

The Government has provided the following written information.

The Government of Sint Maarten has taken note of the direct requests and comments made by the Committee of Experts in their 2022 Report.

The Government of Sint Maarten would like to apologize for the delay in submitting the pending reports. This is in part due to the lack of capacity within Sint Maarten as a Small Island Developing State. The Government of Sint Maarten strives to meet its reporting obligations prior to the deadline each year.

Throughout this letter, the Government of Sint Maarten would like to confirm that the requested pending reports on Conventions Nos 12, 14, 17, 25, 42, 81, 87, 95, 101, 106, 118 and 144 have been submitted by the Government of Sint Maarten to the ILO. Confirmation of receipt was sent by the secretariat of the International Labour Standards Department on 8 April 2022.

The Government of Sint Maarten has also taken note of the observation and direct request made by the Committee of Experts concerning Convention No. 87 due to allegations made by Employers Council Sint Maarten (hereinafter "ECSM") and Sint Maarten Hospitality and Trade Association (hereinafter "SHTA").

The Committee of Experts has requested the Government of Sint Maarten for the following information:

- (1) to take the necessary measures to review, in consultation with the employers' organizations concerned, the developments mentioned in the Committee of Experts' report concerning Sint Maarten on pages 267–268, in particular as to the establishment and operations of the Soudaliga Employer Association (SEA) and its participation in the tripartite Social Economic Council (SER), in order to ensure complete respect for the rights of employers and their organizations to establish and join organizations of their own choosing and to elect their representatives in full freedom, and redress any interference from the public authorities in this regard;
- (2) to provide information on the result of the appeal challenging the appointments to the SER made by the SEA;

(3) to reply in full to its other pending comments under the Convention, adopted in 2017.

As mentioned in the letter sent by the Government of Sint Maarten to the Committee of Experts on 18 May 2021, it was indicated that Sint Maarten seeks not only to uphold the law but to ensure the principles of Good Governance are followed in common interest of the people of Sint Maarten.

The Government of Sint Maarten has been in constant dialogue with ECSM and SHTA. As previously mentioned, the Government of Sint Maarten sought to create a balanced and broad representation in the SER by having all business owners, from both larger enterprises, but also SMEs (small and medium enterprises), adequately represented in the SER.

The Government of Sint Maarten hoped that through the creation of an umbrella organization, all the above-mentioned employers would be able to have adequate representation within the SER. Therefore the mandate was given to the Chamber of Commerce and Industry of Sint Maarten (hereinafter "COCI") to execute the establishment of such an umbrella employers' organization.

The SHTA was also approached by the COCI to be part of SEA. Employers from SEA, as an umbrella organization, could then be nominated as representatives from different employer sectors to be appointed to the SER. This would then create the much-needed broad and balanced representation in the SER.

The SHTA was not in agreement and declined to join SEA. Therefore, the SHTA created its own umbrella organization, being ECSM. Even in doing so ECSM has kept the same seats and representation that SHTA previously had in the SER. The Government of Sint Maarten is of the opinion that SHTA, now through its umbrella organization ECSM, has always had adequate representation in the SER, as well as in the tripartite consultations. These tripartite consultations are held between the Government of Sint Maarten, employers' organizations and employee organizations.

The Government of Sint Maarten is of the opinion that both umbrella organizations for employers' organizations, being the SEA and ECSM, are able to have representation in the SER as well as in the tripartite consultations. This will achieve greater reflection of all employers on Sint Maarten.

ECSM/SHTA have contested this framework. Therefore, legal proceedings have been filed by the ECSM/SHTA against the Government of Sint Maarten. The petition by ECSM/SHTA was regarded as inadmissible by the Court in First Instance of Sint Maarten. Currently there is an appeal at the High Court of Aruba, Curacao, Sint Maarten and Bonaire, Saba and Sint Eustatius. The verdict of the High Court concerning the appointments and representation of employer organizations in the SER will be rendered at the end of May 2022. The Government of Sint Maarten is awaiting the outcome of this decision. When a verdict is rendered in the court of law, it must be upheld by all parties concerned, unless an appeal is filed.

In relation to the appeal challenging appointments to the SER made by the SEA, the Government does not observe this as a challenge. As Minister of General Affairs, the SER is functioning and providing its participatory function to Government.

With this letter, the Government of Sint Maarten would like to make note that the above-mentioned is a priority that Sint Maarten is addressing continuously. The Government of Sint Maarten will continue dialogue with all parties concerned and hopes that, through the decision by the High Court, the SER will be able to adequately fulfil their role as an advisory council.

The Government of Sint Maarten is able to answer any questions the Committee of Experts may have regarding the abovementioned. Once the High Court decision has been handed down, this can also be shared with the Committee of Experts.

Discussion by the Committee

Government representative – Netherlands – Sint Maarten – Thank you Chairperson for the opportunity to address the Committee on behalf of the Government of Sint Maarten. Sint Maarten is a constituent State, within the Kingdom of the Netherlands. It is a Member of the ILO by the Kingdom of the Netherlands. As was stated by the Government of Sint Maarten in its letter dated 20 May 2022, which has been made available to this Committee, Sint Maarten has done its utmost to respond to the direct requests and comments made by the Committee of Experts in its 2022 report, meeting its reporting obligations and implementing and applying the ILO Conventions that are applicable to Sint Maarten; this, despite our capacity and challenges as a small island developing State.

With respect to the requests and comments of the Committee of Experts, the Government of Sint Maarten wishes to provide context, particularly as it relates to the establishment and operations of the Soualiga Employer Association (SEA) and its participation in the Social Economic Council (SER).

The SER is an independent advisory tripartite organization established by national ordinance to provide the Government of Sint Maarten with solicited and unsolicited advice on all important social and economic issues. The SER consists of three representatives of employers' organizations, three representatives of employees' organizations and three independent experts, and all members of the SER have a substitute member. Due to an existing conflict related to the employers' representation in the SER dating back to 2017, and based on concerns raised by the SER Board 2017–20 via the then Chairperson, the Minister of General Affairs decided, based on section 2 of the Business Ordinance of Sint Maarten, to mandate the Sint Maarten Chamber of Commerce and Industry to establish a working group to structure an umbrella employer organization. The intention of the Minister of General Affairs was to ensure a balanced structure with respect to the representatives of the umbrella employer organization, like that of our local umbrella employee organization, the Windward Island Chamber of Labour Unions (WICLU), established in 1997 and also represented in the SER. In so doing, the Chamber of Commerce and Industry installed an advisory committee on its board of directors to further execute the task expeditiously. The advisory committee was able, based on stakeholder engagement and involvement, to complete the establishment of the requested umbrella employers' organization, the SEA. The actions of the Sint Maarten Hospitality and Trade Association (SHTA), inter alia, to establish the Employers' Council of Sint Maarten (ECSM), have since been perceived as not respecting the democratic process of the Government as prescribed by national law, namely the Business Ordinance of Sint Maarten, to grant the aforementioned mandate to the Chamber of Commerce and Industry although stakeholder consultations with the above-mentioned employers were held. These actions are also perceived as an objection to the intention of the Government to ensure that a broad-based representation of the employers is established to ensure we adhere to the international normative framework in this regard.

It is good to mention that the SHTA, which filed a complaint against these plans of the Government of Sint Maarten, has seen a representation growth in the SER, now having two members and two substitutes. SEA has now one member and one substitute. This is an indication that its influence in the SER has not decreased, which would not be the intention of the Government. As you might be aware, the SHTA has since filed legal proceedings against

the Government of Sint Maarten. However, given: (a) the stage at which the litigation process has now found itself; and (b) the verdict of the Joint Court of Justice concerning the appointments to the SER, which is expected on 29 June 2022, the Government of Sint Maarten will have to await the outcome of the decision of the Joint Court of Justice in this regard before taking further action.

In conclusion, I would like to emphasize that it is the wish and the intention of the Government of Sint Maarten to continuously engage in fruitful tripartite dialogue with our social partners in our country, both within the formal structures that we have, the SER, and beyond. It is my belief that this case has its origins exactly in that intention; to establish cooperation with the country's most representative organizations. If the Government has unintentionally taken steps that could be seen as not in conformity with Convention No. 87, we would be interested in learning from the ILO about the steps that Sint Maarten could take to address these concerns that have been raised. As a government of a small island developing State, with limited technical capacity within our country, we would welcome technical assistance from the ILO to help us to take the necessary steps in this regard.

Worker members – This is the first time that the Committee is discussing the application of Convention No. 87 by the Government of Sint Maarten. We note the practice of the authorities in Sint Maarten that affects the right of organizations to elect their representatives in full freedom, which contradicts the principles contained in the Convention. We further note the concerns raised that a governmental agency in Sint Maarten has established the SEA, an umbrella organization to represent employers, including within the tripartite SER.

We note the concern that the SEA is a government creation attempting to establish an employer representative organization which does not reflect genuine employers' organizations and is being used to marginalize the existing employer representative groups. We stress the importance that should be attached to the right of organizations to elect their representatives in full freedom. We reiterate the observation of the Committee of Experts that it is the prerogative of employers and their organizations to determine the conditions for electing their representatives and to establish higher-level organizations.

The authorities should refrain from any undue interference in the exercise of these rights. We also note that similar observations were repeatedly made by the Committee on Freedom of Association (CFA). Accordingly, in the view of the CFA, the right of employers' and workers' organizations to elect their own representatives freely is an indispensable condition for them to be able to act in full freedom and to promote effectively the interests of their members. The Worker members call on the Government to ensure respect for the principles contained in the Convention, including the right of organizations to carry out their activities in full freedom.

The Government must take steps to ensure that employers' and workers' organizations can independently and genuinely represent the economic and social interests of their members. The Government must respect the observations of the Committee of Experts and review its actions in this regard. The Worker members further note that in 2017, the Committee of Experts had raised serious concerns regarding the exercise of the right to strike of public employees and that these issues remain pending to this day.

The Committee of Experts had noted that section 374(a), (b) and (c) of the Penal Code and section 82 of Ordinance No. 159 of 1964 containing the conditions of service of public servants, prohibited employees, including teachers, from striking under penalty of imprisonment. We note that the Penal Code was reviewed, and a new Penal Code entered into force in 2015. However, it is unclear whether the provisions of section 374 of the former Penal Code, which were in violation of the Convention, were carried over into the new Penal Code.

We recall that no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike. Legislative provisions which impose sanctions, including sanctions of imprisonment, in relation to the legitimate exercise of the right to strike are contrary to freedom of expression and the principles of freedom of association.

Therefore, the Worker members request that the Government of Sint Maarten ensure in law and in practice that public employees can fully exercise their right to strike and repeal any provisions in the legislation imposing penalties.

Membres employeurs – Au nom du groupe des employeurs, je voudrais remercier le représentant du gouvernement de Sint-Maarten pour ses explications concernant les évolutions intervenues dans son pays en ce qui concerne le respect de la liberté d'association des employeurs. Nous apprécions aussi la contribution écrite du gouvernement.

Mais, avant tout, nous soulignons que la convention n° 87 fait partie des conventions fondamentales de l'OIT et qu'à ce titre, elle doit faire l'objet d'une attention particulière et d'un contrôle prioritaire. C'est la première fois que la commission analyse ce cas individuel, mais c'est déjà la troisième observation formulée par la commission d'experts à ce sujet.

Le rapport de la commission d'experts a retenu les commentaires de l'ECSM et de la SHTA. Sint-Maarten a créé le SER par décret national à la suite de l'obtention de son statut de semi-autonomie en 2010. Le SER est un conseil tripartite dont le conseil d'administration est composé de trois représentants des travailleurs et de trois représentants des employeurs, désignés par les organisations représentatives respectives, et d'un maximum de trois représentants indépendants. «Indépendant» signifie être nommé par le gouvernement, ne pas être fonctionnaire et ne représenter ni les travailleurs ni les employeurs. Le décret mentionne un examen périodique des organisations les plus représentatives sans que les conditions de représentativité n'aient été fixées. Le SER est chargé de rendre des avis sollicités et non sollicités par le gouvernement sur des questions socio-économiques. Pour certains changements législatifs, il est obligatoire de demander l'avis du SER, même si cet avis n'est pas contraignant.

Quels sont les faits litigieux? À travers la chambre de commerce, le gouvernement a créé la coupole SEA, une organisation soi-disant représentative des employeurs. Le gouvernement explique que la SEA est une organisation faïtière chargée de représenter les employeurs de manière équilibrée, notamment au sein du SER. Malheureusement, ni la chambre de commerce, ni la SEA ne reflètent une représentation librement choisie et librement organisée par les employeurs. Selon la SHTA, qui est membre de l'Organisation internationale des employeurs (OIE), cette opération politique serait une tentative de marginaliser les groupes représentatifs d'employeurs existants, en violation de l'article 3 de la convention n° 87.

La SHTA a créé une coupole des employeurs avec trois autres organisations représentatives. Cette coupole, l'ECSM, a interpellé plusieurs fois le Premier ministre. N'étant pas entendus par le gouvernement, les employeurs se sont vus contraints d'introduire des commentaires auprès de l'OIT pour violation de la convention n° 87, ainsi que plusieurs recours judiciaires au niveau national contre les décisions du gouvernement.

Le premier résultat judiciaire devrait être connu à la fin juin 2022. Entre temps, nous regrettons de constater que les deux membres du SER nommés par l'ECSM ont été empêchés de participer aux réunions du SER. Ces membres employeurs ont été informés qu'ils ne seraient pas suspendus, mais la suspension impliquerait de suivre une trajectoire légale. L'effet est cependant le même. Par conséquent, les employeurs représentatifs ne sont plus au courant

de ce qu'il se passe au SER, si ce n'est qu'il n'y a plus qu'un seul membre employeur, celui désigné par la coupole SEA, elle-même créée par le gouvernement.

La composition actuelle du SER est de trois travailleurs, trois membres indépendants et seulement un membre employeur non représentatif. En droit, en vertu des articles 2 et 3 de la convention n° 87, il appartient aux employeurs de créer des organisations de leur choix et d'y adhérer, ainsi que d'élire leurs représentants librement.

Le gouvernement devrait, en toutes circonstances, s'abstenir de toute ingérence à cet égard. La liberté d'association est un principe démocratique fondamental qui s'applique entièrement aux organisations représentatives des employeurs et des travailleurs. Comme expliqué dans l'Étude d'ensemble de 2012, *Donner un visage humain à la mondialisation*, les pouvoirs publics doivent respecter à 100 pour cent la liberté d'association. L'interdiction de toute ingérence publique se traduit notamment par une interdiction de créer, à la place des partenaires sociaux, une organisation coercitive ou une organisation bénéficiant d'un traitement de faveur.

Je cite deux extraits de cette Étude d'ensemble: «Le favoritisme ou, au contraire, la discrimination exercée par les autorités à l'égard d'une ou plusieurs organisations de travailleurs ou d'employeurs peut revêtir différentes formes: pressions exercées sur les organisations dans les déclarations publiques des autorités; aides inégalement distribuées; locaux fournis pour la tenue de réunions ou d'activités à une organisation plutôt qu'à une autre; reconnaissance refusée aux dirigeants de certaines organisations dans l'exercice de leurs activités légitimes, etc. De l'avis de la commission, tout traitement inégal de ce genre compromet le droit des travailleurs ou des employeurs de constituer des organisations de leur choix et de s'y affilier.»

Deuxième citation: «Les législations qui régissent de façon détaillée le fonctionnement interne des organisations de travailleurs et d'employeurs présentent des risques graves d'ingérence incompatibles avec la convention. Lorsque des dispositions législatives sont jugées nécessaires, elles devraient se borner à établir un cadre global, en laissant la plus large autonomie possible aux organisations dans leur fonctionnement et dans leur gestion. La commission estime que les restrictions à ce principe devraient avoir pour seul but de préserver l'intérêt des membres et de garantir le fonctionnement démocratique des organisations.»

Qu'est-ce que cela veut dire dans la pratique? Dans ses informations écrites du 16 mai dernier, le gouvernement de ce pays a expliqué qu'en créant une organisation faïtière il espérait obtenir une représentation équilibrée et large des employeurs au sein du SER. Cependant, l'objectif n'excuse pas les moyens utilisés, car il est de la prérogative des employeurs et de leurs organisations de déterminer les conditions d'élection de leurs représentants et de créer des organisations de niveau supérieur sans aucune ingérence des pouvoirs publics ou d'autres organisations gouvernementales.

En conclusion, tenant compte de tous les éléments recueillis, les membres employeurs prient instamment les autorités de Sint-Maarten de garantir la liberté d'association aux employeurs sur son territoire. Les membres employeurs prient le gouvernement de prendre des mesures immédiates et efficaces pour assurer, tant en droit qu'en pratique, que la liberté d'association des employeurs est respectée.

Concrètement, le gouvernement est prié de se concerter avec les organisations d'employeurs concernées à propos de la création et du fonctionnement de la coupole SEA et de sa participation au SER. En effet, il importe d'assurer le plein respect des droits des employeurs et de leurs organisations de constituer des organisations de leur choix et d'y

adhérer ainsi que d'élire leurs représentants en toute liberté et de remédier à toute ingérence des pouvoirs publics à ce sujet.

les membres employeurs prient en outre le gouvernement de fournir des informations sur le résultat du recours judiciaire interne contestant les nominations des représentants des employeurs au sein du SER.

Enfin, pour donner suite de manière constructive à la décision judiciaire qui sera rendue dans les prochaines semaines, il serait utile que le gouvernement demande l'assistance technique du BIT en vue de la mise en conformité de la situation nationale avec la convention n°87.

Worker member, Netherlands – Sint Maarten – This written statement is being tabled due to the fact that as a Workers' representative, I, Stuart Johnson, of the Sint Maarten delegation, will be travelling to Curaçao, and this limits my active participation virtually on this subject matter.

On Sint Maarten, even though the Government would want to argue that the Convention is fully ratified and implemented, as a Worker representative, I would like to present a number of concerns and challenges that are creating enormous obstacles to the full implementation of this Convention.

The referendum procedure to gain the right to represent workers in the private sector or in a company. Challenges are noticeable by the workers' organizations when workers seek representation based on the Convention.

Limitation of the workers by the employers. A vast and extended number of workers on contracts. Those workers do not have the right to vote in a referendum since only permanent workers can vote according to the law and regulations.

Abuse of the short-term contracts by employers, even though organized workers under Convention No. 87 find themselves in constant confrontation with their employers when they exercise their rights as workers to attend meetings called by the union. The latest was that these workers were receiving anything from warning letters to court summons together with the union from the employers or management of the companies or even ministries within the Government.

Noticeable is that a faith-based government-subsidized school board was put in the contract with teachers in employment, a clause that would prohibit them from being a member of a union. This is a violation of the workers' rights according to the Convention. With these illustrations, it goes to show that a number of bottlenecks in the application continues to contribute to the violations against workers in general and their organization in the country – Sint Maarten.

During the pandemic, the workers in the private sector got a unilaterally imposed cut in their wages and benefits from 20, 25 and up to 50 per cent. This included various violations of the agreed salaries between employers' and workers' organizations. A 12.5 per cent cut was also implemented with respect to public and semi-public sector workers, and this resulted in protests by the workers and their unions from May 2020 until today.

The recommendations:

1. Amendment necessary to guarantee all workers their rights to full representation and active participation in workers' organizations, and to eliminate the "50 per cent plus one" as proof.

2. Make collective bargaining also possible for public sector workers, teachers, public sector schools and government-subsidized schools.
3. Control of the compliance and sanctions against abuse or violation of the Convention.

Employer member, Germany – Freedom of association under Article 3 of the Convention means that workers and employers can set up, join and run their own organizations without interference from the State or one another. The establishment of a central federation and affiliation to international federations are also protected. The authorities shall refrain from any intervention.

In this case, an umbrella employers' organization was created, not as a result of the willingness of existing employers' organizations exercising their fundamental right to organize and freely associate, but on the initiative of the Government, which entrusted the Chamber of Commerce and Industry with the task of creating such an umbrella employers' organization. However, it is the prerogative of the employers and their organizations to establish higher-level organizations without any interference of the public authorities or other governmental organizations.

To realize the principle of freedom of association in practice requires, among other things, a legal basis which guarantees that these rights are enforced, the enablement of an institutional framework which can be tripartite or between the employers' and workers' organizations, the absence of discrimination against individuals who wish to exercise their rights to have their voice heard, as well as the absence of discrimination between private and public employers.

The constitution of Sint Maarten provides, in Chapter 2, Fundamental Rights, paragraph 1, article 12, "that the right of association shall be recognized". According to article 16, discrimination on the grounds of religion, belief, political opinion, race, skin colour, sex, language and on any grounds whatsoever shall not be permitted.

The SER provides the Government of Sint Maarten with advice on all important social and economic issues. In the SER, workers' and employers' organizations have the general space for tripartite consultations and social dialogue and to engage the expertise in the field of labour employment policy.

The association of employers in a central organization is the expression of employers' freedom of association protected by Article 3 of the Convention and is one of the basic freedoms of workers' and employers' organizations. The State shall ensure its full recognition and application without discrimination between private and public employers or any kind of marginalization of the private companies.

The Government of Sint Maarten should ensure that the national legal bases guarantee that this fundamental right of employers' organizations is respected and enforced in practice and shall refrain from any interference in the right of employers' organizations to establish a central federation.

We encourage the Government to avail itself of the technical assistance of the Office in order to ensure full conformity of the national legislation and practice with Article 3 of the Convention.

Miembro empleadora, Colombia – El artículo 3 del Convenio es claro en cuanto dispone: «1. Las organizaciones de trabajadores y de empleadores tienen el derecho de redactar sus estatutos y reglamentos administrativos, el de elegir libremente sus representantes, el de organizar su administración y sus actividades y el de formular su programa de acción. 2. Las

autoridades públicas deberán abstenerse de toda intervención que tienda a limitar este derecho o a entorpecer su ejercicio legal.»

En el presente caso observamos que la creación de la SEA como organización coordinadora para representar a los empleadores, incluso en el SER, no fue el resultado de la voluntad de las organizaciones de empleadores más representativas en Sint Maarten de ejercer su derecho fundamental a organizarse y asociarse libremente.

La creación de la SEA es una iniciativa del Gobierno que encargó a la Cámara de Comercio e Industria la creación de dicha organización patronal de nivel superior. Desafortunadamente, ni la Cámara de Comercio ni el SEA reflejan una representación libremente elegida, organizada por los empleadores.

Este accionar del Gobierno parecería ser un claro intento de marginar a los grupos representativos de empleadores existentes, como la SHTA, miembro de la OIE, en clara violación a las disposiciones del artículo 3 del Convenio.

Alentamos al Gobierno a solicitar la asistencia técnica de la Oficina para garantizar la plena conformidad de la legislación y la práctica nacionales con el artículo 3 del Convenio.

Observer, International Organisation of Employers (IOE) – Sint Maarten is part of the Dutch Kingdom. Since 10 October 2021, it is a semi-autonomous country within the Kingdom of the Netherlands. Sint Maarten is governed by its own Constitution, as well as the Kingdom Charter. Ratified ILO Conventions are binding regulations in both Sint Maarten's Constitution and the Kingdom Charter.

Sint Maarten is a small island in the north-eastern Caribbean. Its gross domestic product (GDP) is about 80 per cent dependent on tourism. The period since 10 October 2010 has known great political instability. Lack of fiscal discipline has seen the public debt balloon. Sint Maarten's economy suffered tremendous damage during the passing of hurricane Irma in 2017, and in 2020 the Covid pandemic brought a slowly recovering tourism-based economy to a complete standstill.

The Netherlands has made assistance available both times; post-Irma, as a grant administered by a construct involving the World Bank; and post-Covid, through medical facilities and liquidity support to the public office.

Public debt, already an issue, has ballooned even more and that debt will have to be serviced. In order to receive the much-needed liquidity support, one of the conditions set by the Netherlands was agreeing to a far-reaching reform agenda. This agenda includes fiscal and administrative reforms, economic and labour reforms, as well as healthcare, education and social support reforms. The objective is to create a more resilient and sustainable Sint Maarten.

In 2020, the Government of Sint Maarten decided unilaterally, in fact, to suspend the SER. The reason provided was an order to rebalance employer representation. In order to achieve that, a mandate was issued by the Government to a government institution to facilitate the establishment of an employer representative organization.

Before, most representative organizations recognized by the Government for employers were excluded from this process, and the intent was to have the new organization do the employer appointments to the SER.

Not having a lawfully functioning SER has robbed both employers and employees of the forum for social dialogue. Far-reaching decisions have been made in the meantime, and the social partners not having been heard.

The reform packages are being developed jointly by the Government of the Netherlands and the Government of Sint Maarten. Without proper social dialogue, while both the Netherlands and Sint Maarten have ratified Convention No. 87, neither party is ensuring that that legislation is adhered to. Neither party ensures that the social partners have their rightful place in the process.

It is our sincere hope that through the application of mechanisms, both Governments, Sint Maarten and the Kingdom Government, make use of the available expertise offered by the ILO to ensure that the opportunity for the social partners and their lawful place for conducting dialogue are secured.

Government representative – In closing, the Government of Sint Maarten would like to thank the members of the employers' and workers' organizations and other governments for their contributions today. As a young constituent State, we have lots to learn from and improve, and believe that, with the assistance of you and the other countries, we will continue to meet our obligations and ensure that we adhere to ILO standards accordingly. The Government of Sint Maarten would like to reiterate that we would appreciate the provision of technical support by the ILO to assist us in meeting our obligations more effectively and efficiently, starting with the upcoming visit of the Director of the ILO Office for the Caribbean.

Worker members – We take note of the comments of the Government concerning the situation in Sint Maarten. We also take note of the interventions of the other speakers, and we note that some of the issues raised fall outside of the scope of this Convention and its application. We emphasize that the authorities have an obligation to respect the principles of freedom of association, including the right of organizations to elect their representatives in full freedom, as prescribed by the provisions of the Convention.

The Worker members call on the Government to take comprehensive action to make the laws and practice in Sint Maarten compatible with the Convention.

Regarding the right to strike of public employees, we call on the Government of Sint Maarten to ensure in law and practice that public employees can fully exercise their right to strike and to repeal any provisions in its legislation imposing penalties.

Before we conclude, we would like to emphasize issues relating to obstacles to the full enjoyment of the exercise of the right of workers to freely join and form unions raised by the Worker representative from Sint Maarten.

We note that the widespread use of temporary contracts by employers constitutes a significant limitation to the right to unionize, as contract workers are not allowed to participate in referenda for the creation of unions. We note in this regard that the threshold set by the legislation – 50 per cent plus one – is excessively high.

We also take note of the employers' practice to impose clauses in employment contracts prohibiting workers from forming or joining a union. Some employers even go as far as lodging complaints leading to court summons. These practices constitute undue interference in the right of workers to freedom of association.

We reiterate our call for the Government of Sint Maarten to ensure full compliance with the provisions of the Convention.

Membres employeurs – Nous remercions les différents intervenants et, bien sûr, en particulier le gouvernement de Sint-Maarten pour les informations écrites et orales qu'il vient de communiquer à la commission.

Sur le fond, nous insistons sur le fait que la convention n° 87 est une convention fondamentale et qu'à ce titre elle nécessite une attention particulière de l'OIT, des gouvernements et des partenaires sociaux.

Notre position par rapport à Sint-Maarten est très claire: on ne transige pas avec la liberté d'association des employeurs. Le groupe des employeurs prie donc le gouvernement de prendre des mesures immédiates et efficaces pour assurer que, tant en droit que dans la pratique, la liberté d'association des employeurs est entièrement garantie sur son territoire. Je répète: la liberté d'association des employeurs, tant en droit que dans la pratique, doit être entièrement garantie sur son territoire.

En effet, il importe d'assurer le plein respect des droits des employeurs et de leurs organisations de constituer des organisations de leur choix et d'y adhérer, ainsi que d'élire leurs représentants en toute liberté et de remédier à toute ingérence des pouvoirs publics à ce sujet.

Selon nous, les actions suivantes sont requises dans ce but. Premièrement, se concerter avec les organisations d'employeurs concernées à propos de la création et du fonctionnement de la coupole SEA et de sa participation au SER. Deuxièmement, fournir des informations sur le résultat du recours judiciaire interne contestant les nominations des représentants des employeurs au sein du SER. Troisièmement, demander l'assistance technique du BIT en vue de la mise en conformité de la situation nationale avec la convention n° 87. Quatrièmement, répondre intégralement aux commentaires de la commission d'experts restés en suspens depuis 2017.

Nous comptons donc sur l'attitude positive du gouvernement afin que ce cas national ne revienne pas une deuxième fois devant notre commission.

Conclusions of the Committee

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

The Committee urges the Government, in consultation with the social partners, to:

- **refrain from any undue interference in the exercise of freedom of association of employers and workers, including any interference through the promotion of organizations that are not freely established or chosen by workers and employers, such as the Squaliga Employer Association (SEA);**
- **consult workers' and employers' organizations with a view to identifying their representatives in the Social Economic Council (SER);**
- **provide information on the outcome of the appeal challenging the appointments of the employers' representatives to the SER; and**
- **bring national legislation into line with the Convention to ensure that all workers, including public sector workers, are able to fully exercise the rights and guarantees under the Convention.**

The Committee invites the Government to avail itself of technical assistance from the Office to bring the national law and practice into conformity with the Convention.

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